Maritime Union of Australia

Preliminary Submission

Productivity Commission Inquiry

Australia's Workplace Relations Framework

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This response has been prepared and submitted
on the basis that it is a public document.

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Who is the MUA?

The Maritime Union of Australia (MUA) represents over 15,000 workers in the shipping, stevedoring, port services, offshore oil and gas and diving sectors of the Australian maritime industry.

Members of the MUA work in a range of occupations across all facets of the maritime sector including on coastal cargo vessels (dry bulk cargo, liquid bulk cargo, refrigerated cargo, project cargo, container cargo, general cargo) as well as passenger vessels, towage vessels, salvage vessels, dredges, ferries, cruise ships, recreational dive tourism vessels and in stevedoring and ports. In the offshore oil and gas industry, MUA members work in a variety of occupations on vessels which support offshore oil and gas exploration e.g. on drilling rigs, seismic vessels; in offshore oil and gas construction projects including construction barges, pipe-layers, cable-layers, rock-dumpers, dredges, accommodation vessels, support vessels; and during offshore oil and gas production, on Floating Production Storage and Offtake Tankers (FPSOs), FSOs and support vessels. MUA members work on LNG tankers engaged in international Liquefied Natural Gas (LNG) transportation. The MUA is a member of the International Transport Workers Federation (ITF) which is the peak global union federation for over 700 unions representing over 4.5 million transport and logistics workers worldwide

Summary

The MUA sees proposals to change the existing WR system when they are promoted by economically rationalist policy makers as dangerous. To date, increased concentrations of wealth, a lack of action about unemployment, increased insecure work and a decrease in legal rights are the overarching components of increased productivity when measured from economic rationalist perspectives. **[Pages 4-7]**

This submission recommends:

Proposals to alter the Greenfield Agreement making process: **[Page 8]**

The MUA contends that no significant changes are required to the existing arrangements as they relate to the creation of Greenfields Agreements and cites the lack of a genuine agreement in the model proposed by the Government, misinformation by the Australian Mines and Metals Association (AMMA) and high profitability of Corporations to show that the proposed changes are demonstrably not necessary.

Changes to the range of "Permitted Matters", that can be the subject of Enterprise Bargaining: **[Page 9]**

The MUA proposes that restrictions on 'permitted matters' in Enterprise Bargaining be abolished. Citing the experience of the MUA in opposing apartheid in South Africa by implementing an oil boycott, the MUA contends that restrictions upon employees capacity to bargain for social or political objectives is outdated, harms civil society and can also harm employee workplaces and the workplaces of others particularly in relation to child labour and dangerous species depleting environmental practices.

Proposals to change good faith bargaining arrangements. **[Page 10]**

The MUA contends that employers should not be able to hide behind the protection of confidential information or commercially sensitive information when bargaining with employees and cites the example of Patrick introducing automation shortly after an Agreement was reached. The continuous disclosure of Corporations required by the Corporate law is used as a starting point for a review of the confidentially arrangements in the Good Faith Bargaining obligations.

Reducing Industrial Disputes: **[Page 11]**

The MUA urges a mature approach regarding the incidence, cause and cure of industrial disputes. Noting that employees are already severely restricted from taking industrial action to settle disputes and the FWC has significant dispute settling powers, the MUA proposes no change to the current framework besides an increased capacity for employees to withdraw their labour for safety related matters.

The performance and responsibilities of the Fair Work Ombudsman **[Page 12]**

The MUA recommends that responsibility for the enforcement of the Seagoing Industry Award 2010 Part B for international ships carrying domestic cargo be transferred from the FWO to the Port State Control inspectorate of the Australian Maritime Safety Authority. This Inspectorate is already doing an admirable job enforcing safety and labour standards in the difficult area of international shipping. The FWO does not have the resources and expertise in this area to provide effective enforcement. The result would be a more efficient and effective use of government resources.

The impact of Unfair Dismissal upon employees: **[Page 12]**

Whilst acknowledging the large volume of Unfair Dismissal cases before the Fair Work Commission, the delay for persons in being able to obtain a review of their own termination is the most significant influence on whether or not a person decides to take a matter to hearing, or settle prior to hearing.

The incentives of employers either towards or away from the use of sponsored worker visas: **[Page 13]**

The MUA opposes 457 visas, as the right for a person to remain in Australia is contingent upon their continued employment, which is a gateway to their exploitation. The MUA proposes that 457 visas be the subject of more regulation, not less and that labour shortages be resolved through training and permanent migration- particularly given there are nearly 800,000 Australians looking for work.

The implications of international labour standards (including those in trade agreements: **[Page 14]**

The MUA encourages the use of international agreements such as the Maritime Labour Convention to increase labour standards and conversely, we oppose free trade agreements that are devoid of labour protections.

MUA Response to Issues Paper 1: The Inquiry in Context.

PERSPECTIVE

As a consequence of being able to trace its historical roots to 1872, the MUA has 143 years of experience. Today, MUA members range in skills, education and experience and alternative employment prospects. The work our members do is frequently dangerous. It's also critical to the local, national and international economy and trade. MUA workers can work in gangs, crews, or alone and do so in all weather conditions and all day and all year round. The work of most MUA Members is atypical and it's always been that way.

While Workplace Regulation Frameworks may be altered by new market forces, social trends and ideologically inspired regulation, the MUA's broad perspective has remained the same throughout. We exist to improve the terms and conditions of our Members and to campaign for improvements to our local communities and international society. Impacting upon our goals are our opponents, many of whom have historically brutal approaches to people and the planet, be it servile employee relations practices, appalling workplace safety, indifference to destruction of the environment or rapacious greed. To the MUA, then, Workplace Relations is frequently a contest between us and our opponents. A complication of this scenario is that our opponents are some of the world's oldest and largest corporations, be they shipping companies, oil and gas corporations, or global stevedores.

Safety crisis in the maritime industry

There is a safety crisis in the maritime industry. Stevedoring – loading and unloading cargo on the waterfront – is one of Australia's most dangerous industries. The fact is, even just one workplace fatality is too many. Sadly, in Australia, on average, one worker is killed each year per 100,000 workers. In some industries the rates are much higher. Construction, for example, is almost triple the average rate, with 2.8 workers killed per 100,000. Stevedoring is a staggering 14 times the average, with an average fatality rate of 14 per 100,000 workers each year. [1]

This is unacceptable. It is a safety crisis and urgent action needs to be taken to address the problems. To address this problem, the MUA has campaigned for better regulation and a Stevedoring Code of Practice to save lives.

Issues Paper 1 commented that 'the more general impact of the WR system on WHS is relevant to this inquiry'. It is a well-known fact that the work intensification that is often associated with efforts to improve 'productivity' (narrowly defined) can lead to increased fatality and injury levels and higher levels of stress in workers.[2] The Productivity Committee must bear this in mind in making any recommendations.

CONTEXT

The political context is noteworthy. The Government that sought this Productivity Commission Inquiry was elected with many of the Senior Ministers today being Ministers of the Howard Government that lost office in 2007. That older Government's Industrial Relations legacy is its failed *Workchoices* regime that was rejected by the Australian electorate. Industrial Relations has always been an ideological battleground with impacts on and by the political sphere.

With this Government being plagued by the instability that it criticised in the previous Government, it is not surprising that it is using this inquiry as a distraction from its own internal problems. The other reason for this Inquiry is to provide the justification for changes to the Workplace Relations framework that are sought by the backers of the Government, be they the ideological warriors from within including Tony Abbott, Eric Abetz, Julie Bishop and Cori Bernadi or from elsewhere including AMMA, Gina Rhinehart or Chevron. These changes have been rejected by the Australian electorate before, and the MUA is confident they will be rejected again - regardless of how the Government proposes it has consulted with the community through Productivity Commission Inquiries like this one.

It is unusual that the term "productivity" is not defined in the *Productivity Commission Act*. (the PCA). Relevantly s 8 (1) (a) of the PCA requires *'that the Productivity Commission In the performance of its functions, must have regard to the need to improve the overall economic*

[1] Fatality rate in transport and all industries are for 2010-11 from: Safe Work Australia, 2012, *Notified Fatalities Statistical Reports 2010-11*, p.7.

[2] Michael Quinlan, Philip Bohle and Felicity Lamm, *Managing Occupational Health and Safety: A multidisciplinary approach*, 3rd Edition, p.26-29.

performance of the economy through higher productivity in the public and private sectors in order to achieve higher living standards for all members of the Australian community.' It is unclear what productivity in the way it is provided by the PCA means. The basic definition of Productivity as provided for by *Collins Dictionary of Economics* accords with a narrow view of the term:

> "*The relationship between the output of an economic unit and the factor inputs which have gone into producing that output. Productivity is usually measured in terms of output per man –hour…"*

In the MUA's view this constrained definition is a Trojan horse for discredited dry economic rationalist theory and practical "Reaganonomics" that supports the myth that wealth trickles down to employees if only they make more products per hour. If the traditional view of workplace productivity (that of making more with lower labour costs) is embraced by the Productivity Commission then this Inquiry may necessarily ignore, gloss over or dismiss more important concerns than productivity per se. Thus higher productivity can mean cutting corners on life saving safety measures (and parts of the maritime industry are already inherently unsafe) and increasing inequality - particularly as higher productivity is necessarily a stepping stone to higher profits and other adverse outcomes including environmental degradation and abuses of market power. From a square workplace perspective, lower labour costs can and do actually mean retrenchments and additional work for no extra reward. It is not surprising then that many workers are sceptical of the benefits of productivity when it is cast in such narrow terms.

More broadly, how much productivity does the Australian economy need? With 800,000 Australians out of work, this is arguably not the time to be increase productivity in a narrow sense as it is likely to increase unemployment. If a significant indicator of *productivity* is *profitability* then Australia's largest corporations have more than enough productivity to share with the Commonwealth, via increased tax revenues and increased earnings for the people that actually create the profits - their employees and the families of their employees of these businesses. In light of the above, this submission encourages this Inquiry to:

a. Adopt an evidence-based approach to making findings about productivity and to treat the vested interests of some businesses and their ideological views with great caution.
b. Avoid a neo-classical narrow economic definition of productivity that is focussed on making more products with less labour costs.
c. Reject trickle down "Reaganomics" economics and avoid highly discredited neo conservative political assumptions.
d. Deal with the significant failings of the Workplace Relations system (poor wealth distribution, stubborn unemployment, and increasing casualisation of employment), but also acknowledge workplace relations is impacted by global forces, national and local regulation and markets.
e. Ensure any economic modelling that the Productivity Commission Undertakes does not:
    - assume there is already full employment, or

- that people made redundant in one industry or location as a consequence of business becoming more productive will be necessarily all be re-employed, or
- assume that natural resources will necessarily be refreshed and are infinite.

Accordingly, The MUA sees proposals to change the existing WR system when they are promoted by economically rationalist policy makers as dangerous. To date, increased concentrations of wealth, a lack of action about unemployment, increased insecure work and decrease in legal rights are the overarching components of increased productivity when measured from economic rationalist perspectives.

The next part of this submission briefly responds to select aspects of the Inquiry raised in the Issues Papers to the

MUA response to Issues Paper 2: Safety Nets

The Commission seeks feedback on the advantages and disadvantages of different approaches for comparing minimum wages across countries, and how such results should be interpreted.

The MUA encourages the PC to look at international social outcomes if it intends to proceed with such a comparison. Minimum wages cannot be compared in isolation due to vastly different living standards, cost of living, and the extent to which health care and education are provided by government or not. For example, levels of poverty, education and health - all components of human fulfilment, should be included in any comparison. Conversely, the relation between the level of the minimum wage and the concentration of wealth should be considered in any comparison of minimum wages. With the respected charity Oxfam reporting that less than 1% of the world's population will own more than remaining 99% of the world's population by next year,[3] there is a strong case to be made that globally, minimum wages should be increased.

What is the rationale for the minimum wage in contemporary Australia? How effective is the minimum wage in meeting that rationale? To what degree will the role and effects of the minimum wage change with likely future economic and demographic developments?

The rationale for the minimum wage goes back to the *Harvester Judgment* that set a minimum standard for a factory worker to provide for their family. This amount is now not up-to-date with the costs of living, particularly the most important cost of housing. As such, the minimum wage no longer fulfils the founding principles it used to provide to the Australian population. Housing affordability on the minimum wage is not possible except in the rarest of

[3] ABC The World Today. (20 January 2015) *"1 per cent of the world will own more than half its wealth by 2016, Oxfam report says"* http://www.abc.net.au/news/2015-01-20/oxfam-say-wealth-inequality-joblessness-on-the-rise/6027744

circumstances. Not only is the minimum wage is too low, the practice of correlating executive salaries to the minimum wages of employees has been broken, contributing to inequality.

What would be the best process for setting the minimum wage, and how (and why) does this vary from the decision-making processes used by the minimum wage Expert Panel of the Fair Work Commission?

As a result of the problems described above, people should be have significant increases to the minimum wage so as to allow them to provide themselves with the necessities of life. Alternately, the debate around the minimum wage could be sidestepped if these necessities were provided by the Commonwealth through increased tax collection, particularly from multi-national corporations with a low tax contribution and conduct that amounts to systemic tax avoidance.[4] In the MUA's view it does not make sense for a person to work all their life on a minimum wage and to not be able to afford a modest house, a pleasant working life and a dignified retirement. In this respect, the minimum wage is no longer an effective standard.

What changes, if any, should be made to the modern awards objective in relation to remuneration for non-standard hours of working?

The PC should advocate an increased penalty regime, not just for unsociable hours but also for insecure work.

MUA response to Issues Paper 3: The Bargaining Framework

The Commission seeks views about the best arrangements for greenfields agreements (not just those contemplated in the recent Bill), including an assessment of the effects of any arrangement on the viability and efficiency of major projects on the one hand and, on the other, maintaining the appropriate level of bargaining power for employee representatives

Despite employer groups making various unsubstantiated claims, the MUA contends that no significant changes are required to the existing arrangements as they relate to the creation of Greenfields Agreements. Recently, the MUA submission to the Australian Senate Inquiry into the Fair Work Amendment Bill 2014 by the Senate Education and Employment Legislation Committee[5] opposed Government legislation that would have had the effect of allowing the employer, at the end of the three month negotiation period, to avoid having to make a genuine agreement with Unions and thereby permit the employer to simply apply to the Commission for the approval of the Greenfields agreement. As the MUA submission stated:

[4] See for instance' the UK Parliament Economic Affairs Committee Report (2013) : "Tackling corporate tax avoidance in a global economy: is a new approach needed?"
http://www.publications.parliament.uk/pa/ld201314/ldselect/ldeconaf/48/4803.htm

[5] MUA Submission (23-2-2015) Senate Education and Employment Legislation Committee Inquiry into the *Fair Work Amendment (Bargaining Processes) Bill* 2014 at:
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/fairwork/Submissions

> The concern the MUA has over the proposal is that it appears to enable employers to effectively walk away from the negotiating table and simply wait until the 3-month negotiation period had lapsed before proceeding to have the agreement approved by the Fair Work Commission. The assertion that this provision will enhance good faith bargaining cannot be sustained. Whilst good faith bargaining may ensue for three months under this proposal, following that period, the employer is free to walk away and have the Fair Work Amendment Bill 2014 agreement approved without any understanding having been reached.

Accordingly, the MUA strongly opposes legislation that would have the effect of allowing employers to set the terms and conditions of employment without there being a genuine agreement with Unions and their Members. In a supplementary submission to the Inquiry, the MUA scrutinised the less than credible views of some employers and pointed out that:

> The Australian Mines and Metals Association (AMMA) has had significant success in creating the perception within the media and the community that workers in the offshore oil and gas industry, and, in particular MUA members, enjoy unreasonable wages. AMMA has done this as part of a campaign to change Australia's industrial relations laws. Its strategy is to portray the wages of offshore oil and gas workers as a threat to future projects, and hence the economic and social well being of all Australians. Research undertaken by BIS Shrapnel in 2013 found that the claims AMMA was making about the wages of MUA workers in the offshore oil and gas industry were inflated by more than 40 per cent. The same research also found that the wages of maritime workers made up less than one per cent of the cost of building projects like the $54 billion Gorgon project, and that competitiveness issues on that project were largely due to poor management. Given that AMMA's claims about the levels of wages in the sector, and their impact on the cost of building projects, are false, its assertion that wages could impact on the investment decisions for future projects should be discounted by the Committee.

Further, profits of international and national corporations are more than adequate. For instance, BHP Billiton's 2014 profit was $8.8 Billion[6] and Chevron's 2014 earnings were $19.2 billion.[7] With increasing unemployment and inequality in Australian we can see no reason for giving employers more power in the process of making Greenfields Agreements. Therefore, the MUA is confident that no change to the existing arrangements are necessary.

More broadly, the MUA makes no apology for protecting and advancing its members remuneration or terms and conditions of employment. When the somewhat shrill claims of employers are reviewed objectively it is immediately apparent that employers only complain

[6] BHP Billiton (24-2-2015) "Results For Announcement to the Market" http://www.bhpbilliton.com/home/investors/news/Documents/2015/150224_BHPBillitonInterimResultsfortheHalfYearEnded31December2014.pdf

[7] Chevron (30 January 2015) Chevron Reports Fourth Quarter Net Income of $3.5 Billion and 2014 Earnings of $19.2 Billion at http://investor.chevron.com/phoenix.zhtml?c=130102&p=irol-news&nyo=0

about the earnings of their employees being too high, but never make the same complaint about executive salaries or corporate profits.

The Commission seeks views from stakeholders about what aspects of the employee/union-employer relationship should be permitted matters under enterprise agreements, and how it would be practically possible to address in legislation any deficiencies from either the employer, employee or union perspective.

With the Commonwealth's Constitutional nexus to Workplace Relations no longer being based on the inter state industrial disputes settling power[8] and instead being based on the more broad ranging Corporations power,[9] the jurisprudence relating to "permitted matters" and "matters pertaining to the employment relationship" as scrutinised in *Electrolux Home Products Pty Limited v The Australian Workers' Union*[10] are no longer relevant to the underpinnings of the Fair Work Act. As a result there is no good legal reason to support a narrow interpretation of the phrase "permitted matters" as is currently provided for by s172 of the Act. That is, Parliament has unnecessarily and inappropriately restricted the range of matters that employees and employers are "permitted" to bargain about. It is therefore reasonable to expand the definition of permitted matters, or better still, remove the restriction entirely.

From a civil society perspective, Enterprise Bargaining affords employees with the capacity to influence arrangements relating to their employment and the employment of others. However, the current Act severely restricts the capacity of employees to secure outcomes beyond the employment relationship. With increasing cynicism surrounding the political process, Enterprise Bargaining could provide employees with a fresh opportunity to improve many aspects of their and other citizens working and community lives. This could have wider impacts to the benefit of society as a whole. For instance, citizens are currently removed from instituting boycotts and bans against murderous despots and warmongers. This is a tragedy. The Maritime Union of Australia among other Unions has a proud place in the history of banning trade with the apartheid regime in South Africa and the export of materials for the purposes of weapon making to imperial Japan. Both actions are recognised as have a significant impact. The fiction of 'permitted matters' removes this capacity, and civil society is all the worse for it.

Closer to the workplace, because of the restrictions on 'permitted matters' an employee is unable to have a say about what sort of materials and external labour standards an employer

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[8] Section 51. XXXV of the Constitution provides: *The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: - Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:*

[9] Section 51. XX of the Constitution provides*: The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: - (XX) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:*

[10] (2004) 221 CLR 309

utilises when they purchase from other suppliers. That means employees' views regarding the importation of rainforest timber or the use of child labour in their own organisation's production chain is necessarily removed by the term "permitted matters." When the Australian Parliament does little to combat these types of significant blights upon our society, it is appropriate for employees to be able to bargain to oppose this sort of conduct. Accordingly there is no good reason why there should be restrictions regarding the permitted matters that employees may bargain over. Returning to the *Electrolux* decision, there is no good reason why employees are currently unable to require non-union employees to be required to pay bargaining fees to Unions that secure those employees improvements to their terms and conditions of employment. Again 'permitted matters' is an unnecessary restriction on the capacity of employers and employees to bargain.

To what extent are the good faith bargaining arrangements operating effectively and what if any changes are justified? What would be the effects of any changes?

While Unions generally welcome the Good Faith Bargaining provisions of the Act, there is still room to improve their operation. The most pressing change is a review of the capacity of the employer to "hide behind" the exclusion to provide employees with information if that information is deemed by the employer to be 'confidential or commercially sensitive' as per s s228 (1) (b) of the Act that makes disclosing relevant information (other than confidential or commercially sensitive information) in a timely manner a good faith bargaining requirement for all bargaining representatives to observe during negotiations for an agreement.

The MUA has had direct exposure to the failings of this approach. During negotiations for a new agreement with stevedore company *Patrick* at Port Botany in Sydney, the employer negotiated an agreement with the MUA "in good faith" knowing automation of its workforce was going to be implemented in short order, but nonetheless, said nothing in negotiations with its workforce and once an agreement was made and approved, announced automation and large scale retrenchments almost immediately after. This type of conduct is condoned by the Act, as the employer is able to assert that its decision to lay off scores of employees is "confidential or commercially sensitive"- a phrase that invites contentious conduct by management to be removed from the scrutiny of employees.

In terms of solutions the MUA proposes that the obligations upon employers that are currently provided for by the Corporations Act be expanded into the Good Faith Bargaining sphere of the Fair Work Act. Currently s677 of the Corporations Act defines material effect on price or value as that which:

> *'A reasonable person would be taken to expect information to have a material effect on the price or value … if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the … securities.'*

Using this concept of broader and full disclosure as a starting point, the Good Faith Bargaining requirements of the Act could be given a genuine capacity to prevent employers from circumventing the proper disclosure of information that is squarely relevant to collective bargaining.

> *To what extent should there be any changes to the FWC's conciliation and arbitration powers? Are policy changes for industrial disputes needed? Given the low current level of disputes, it is an open question whether there is any requirement for changes in the FWA's arrangements for industrial disputes, but the Commission is interested in: arrangements that might practically avoid industrial disputes.*

The MUA urges a mature perspective about the incidence and causes of industrial disputes. The starting point is that employees have very little capacity to decline to work in response to a request that amounts to a lawful and reasonable instruction from management. Outside of this context, unless an employee

- refuses to work that is based on a reasonable concern of the employee about an imminent risk to his or her health or safety or
- is participating in protected industrial action,

then generally, the employee risks civil penalties, damages and termination of their employment in the event that they refuse to work as directed.

Therefore there are already significant legal constraints upon the capacity of an industrial dispute to manifest in a significant way. Moreover though, industrial disputes are a useful application of collective employee power that can be used to increase the terms and conditions of employment or to oppose dangerous managerial prerogative. Given protracted or significant protected industrial action can also be suspended or terminated by the Fair Work Commission, it is not clear why it is desirable or necessary to further restrict the manifestation of industrial disputes. Conversely though the current capacity of employees to withhold their labour in circumstances where an employee has a safety concerns requires the employee pursuant to s19(2) (i) of the Act to establish: *" the action was based on a reasonable concern of the employee about an imminent risk to his or her health or safety."* In the MUA's view this protection is too narrow as it apears to require a personal threat to safety rather than the safety of others. The requirement for a risk to be imminent is also an unnecessary statutory limitation upon the right of employees to withhold labour in the interests of safe, *productive* workplaces.

MUA response to Issues Paper 4: Employee protections

What are the impacts on employees of unfair dismissal, both personally and in terms of altered behaviours in workplaces?

With over 8659 people filing unfair dismissal applications in Australia 1 July 2013 to 30 June 2014 it is clear that it is challenging for the FWC to deal with such a large volume of cases. Nonetheless, in the MUA's experience when an employee is unfairly dismissed it always causes significant stress upon that person and their family. Part of the stress is the often immediate loss of income and their interaction with their friends at work. Once the termination sinks in Members are often perplexed by the significant delays in having the matter taken to conciliation. Further extensive periods of time can elapse between the matter being set down for hearing, then a further wait is required for the decision to be issued. As such employees are fortunate if they can have their cases determined within 4 months. In these circumstances employees must deal with the "triple stress" of both dealing with a hearing, finding work and depleting their often limited savings. As a result, it is not surprising that so many applications for unfair dismissal result in settlement prior to arbitration.[11] Employees are rightfully sceptical of the capacity of the Unfair Dismissal remedy to offer a rapid and effective review of the circumstances that led to their termination.

MUA response to Issues Paper 5: Other Workplace Relations Issues

How are the FWC and FWO performing? Are there good metrics for objectively gauging their performance?

Should there be any changes to the functions, spread of responsibility or jurisdiction, structure and governance of, and processes used by the various WR institutions?

Are any additional institutions required; or could functions be more effectively performed by other institutions outside the WR framework?

How effective are the FWO and FWC in dispute resolution between parties? What, if any, changes should they make to their processes and roles in this area?

The MUA is very concerned by the FWO's lack of enforcement of Seagoing Industry Award 2010 Part B (SIA Part B) conditions on international flag ships that are trading in Australia. We believe the difficulty is due to the particular nature of the international shipping industry which makes monitoring and enforcement particularly difficult. Ships may only be in port very briefly and are often travelling internationally. Crews are also resident in other countries.

[11] See for instance the FWC's statistics regarding the https://www.fwc.gov.au/resolving-issues-disputes-and-dismissals/dismissal-termination-redundancy/results-outcomes

We suggest that it would be a more efficient and effective use of government resources if the responsibility for enforcement of the SIA Part B measures was moved to agencies that are already effectively dealing with the enforcement of minimum labour standards in the international shipping. The Port State Control (PSC) inspectorate of the Australian Maritime Safety Authority (AMSA) has responsibility for enforcing the Maritime Labour Convention (and other safety issues) on ships visiting Australia. PSC inspectors regularly visit approximately 50% of the international ships visiting Australia, examine their paperwork, inspect the ship, and deal with complaints from the crew. The Australian PSC inspectorate should be commended for their excellent work in this area, the way they have carried out their new responsibilities for enforcement of the Maritime Labour Convention.

The FWO currently has responsibility for SIA Part B enforcement through an MOU between AMSA and the FWO signed on 14 January 2013. The recommendation to shift the responsibility for compliance to the PSC inspectorate would require some minor amendments to this MOU. A check of the ship's compliance with the SIA Part B measures could be integrated as an item on the PSC's regular checklist for vessel inspections. Such a change would also require a few minor changes in the administration of the Temporary Licences required under the *Coastal Trading Act 2012* (CT Act) for international ships carrying domestic cargo. For example, the Department of Infrastructure and Regional Development currently notify the FWO about every ship carrying Temporary Licence cargo. Such notifications could be redirected AMSA's PSC inspectorate. There may also be minor changes to the format of the DIRD Temporary Licence that ships are already required to carry on board which could streamline the work of the PSC inspector.

Such a shift could free up resources in the FWO to deal with other important matters. Unfortunately, it is clear to us that the FWO are simply not equipped to deal with the difficulties of enforcing labour standards on ships which may only be briefly in port during anti-social hours. The four International Transport Workers' Federation (ITF) ship inspectors in Australia inspect hundreds of ships each year and have referred many complaints to the FWO, but these are rarely resolved. To cite just one example, the *APL Bahrain* is a container ship that has traded regularly between Australian container ports (Fremantle, Adelaide, Melbourne, Sydney, Brisbane), Singapore and Malaysia since November 2010.

- In August 2011 after it had been trading in Australia for 9 months, an ITF boarded the *APL Bahrain* and found that SIA Part B wages were not being paid, although the ship met the threshold requirements. A complaint was filed with the Fair Work Ombudsman.
- In February 2012, the Fair Work Ombudsman issued a 'Notice to Produce Records or Documents' to the APL Bahrain and Bermuda Schiffahrtsgellschaft (Hamburg, Germany).
- In June 2013, after the vessel had been regularly trading in Australia for 2.5 years, ITF inspectors boarded the ship again and found:
    - No Temporary Licence displayed on board
    - No evidence that SIA wages had ever been paid to crew

- Crew told ITF inspector they had never been paid SIA wages.

We understand that this is quite a specialised area of maritime and labour law, and we would be pleased to discuss any further details with the Commission.

Does any element of the WR system affect the incentives of employers either towards or away from the use of sponsored worker visas?

The key requirement for a worker to be sponsored by a specific business as a condition for that person to continue to hold their visa and consequential lawful right to remain in Australia can and does create circumstances where the employee does not act to protect their interests and are exploited by some employers.[12] The MUA and wider Union movement have consistently held these views and are highly sceptical of the business sponsored visas regime. Relevantly, as the MUA has proposed to the Department of Immigration and Border Protection's Independent review of integrity in the subclass 457 programme on 8 May 2014:

1. Australians, in the first instance, should get increased opportunities to apply for local job before employers fill positions with temporary overseas workers.
2. When overseas workers are granted 457 Visas and employed in Australia they should:
   a. Be fully protected and free from exploitation;
   b. Employed according to Australian pay and conditions; and
   c. Have access to government services on an equal basis with all Australians.

3. More regulation of the current 457 Visa is needed, not less. There should be more robust labour market testing, market rates of pay and minimum salary thresholds. In fact, these safeguards must be strengthened.

4. The 457 Visa programme should not be extended to semi-skilled occupations, including to semi-skilled seafarer occupations, particularly where there are structured processes to address labour shortages in existing Enterprise Bargaining Agreements.

Furthermore, with the Australian Bureau of Statistics reporting that there are nearly eight hundred thousand (795,200) Australians in January 2015 unemployed,[13] looking for work and unable to provide a reasonable future for themselves and their families, it is a matter of sound public policy to totally reassess the whole 457 Visa programme. Ultimately if government in

[12] See for instance: Courier Mail (9-9-2014) *"Engineer on 457 visa allegedly ripped off by almost $45,000 by Sierra Fleet Services for work at Rivergate Marina and Shipyard, Murarrie"* at: http://m.couriermail.com.au/news/queensland/engineer-on-457-visa-allegedly-ripped-off-by-almost-45000-by-sierra-fleet-services-for-work-at-rivergate-marina-and-shipyard-murarrie/story-fnihsrf2-1227051995986 and Sydney Morning Herald (29 June 2013) "Big visa debts cripple Filipino workers' dreams of a better life" at: http://www.smh.com.au/national/big-visa-debts-cripple-filipino-workers-dreams-of-a-better-life-20130628-2p2wj.html

[13] Australian Bureau of Statistics 12 -2- 2015 Media Release *"Australia's unemployment rate increased to 6.4 per cent in January 2015"* 6202.0 - Labour Force at: http://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0

Australia has identified clearly defined and genuine skill shortages, then these shortages should be filled by permanent migration, not temporary overseas workers.

What are the implications of international labour standards (including those in trade agreements) for Australia's WR?

International Labour Standards can, if properly enforced be a useful method of lifting the minimum standards of employment for workers both domestically and abroad. By way of example, the International Maritime Labour Convention of 2000 (the MLC) provides a near globally recognisable set of minimum employment conditions for seafarers- many of whom face employment conditions that can only be described as primitive and were the subject of public scrutiny in the groundbreaking 1992 Australian Parliamentary Inquiry: *"Ships of Shame: inquiry into Ship Safety."* That Inquiry found:

> *International pressure must be applied to flag states that do not carry out their international responsibilities. If they ratify conventions then they must perform the duties of those conventions. More frequent, consistent and more stringent port state inspections will raise the expectation of substandard ship operators that their vessels will be detected and detained.*

Today, the enforcement of the MLC is undertaken by a combination of ship inspectors conducted by staff and affiliates of the International Transport Federation as well as a compliance role that is undertaken by the Australian Maritime Safety Authority. So while there are still poor standards in many areas of the shipping industry, the creation and enforcement of minimum standards in this critical area of the global economy is welcomed and should be expanded further into more areas of international trade and commerce.

Conversely though, the ACTU is extremely wary of purportedly "Free Trade" agreements that can have the effect of undercutting domestic employment norms and standards with little capacity to challenge them in readily accessible Courts and Tribunals. The Free Trade Agreements of China and South Korea have attracted controversy in this regard, particularly when they are used in tandem with loosening of visa arrangements.[14]

Furthermore, Free Trade Agreements have also come under scrutiny for paying scant if any regard to Labour standards, while paying significant attention to the removal of national tariffs and the protection of intellectual property rights. This is a skewed position to take that will do little to reduce poverty or increase safety at work. These latter outcomes are far more important to people working or not than mere "Free Trade". At the other end of the spectrum the ability of Australian business to "close up here and to set up over there" off shore, continues to be permitted without significant Government intervention. Expansive modifications to the explicit limitations to the geographical application of the Fair Work Act [15]

[14] See for instance: Rosewarne, Stuart. (20 January 2015). The Conversation. "Free trade agreements driving labour market reform by stealth". http://theconversation.com/free-trade-agreements-driving-labour-market-reform-by-stealth-36124

[15] Part 3, Division 1-3, Chapter 1 of the Act.

would be a sensible area of concentrated reform for this Inquiry to recommend in order that key Australia's employment legislation keeps pace with the increasing scale and forces of globalisation.

We would welcome the opportunity to discuss this submission in person.

Paddy Crumlin
National Secretary.

ENDS