

FAIR WORK COMMISSION

Matter No: B2022/1726

Subject: Re Svitzer Australia Pty Ltd

OUTLINE OF SUBMISSIONS OF PORT OF MELBOURNE OPERATIONS PTY LTD

1. The Port of Melbourne is Australia's largest container, automotive, and general cargo port, operating 24 hours a day, 365 days a year,¹ and handling more than one-third of the nation's container trade.²
2. Port of Melbourne Operations Pty Ltd (**PoM**) operates as the "landlord manager" of the Port, and is responsible for the strategic planning, development and maintenance of the Port's operations under a 50-year lease from the Victorian Government.³
3. The Port has over 30 commercial berths, which PoM leases to third party stevedores. The Port services around 3000 ship visits annually, involving some 8,850 containers and 900 new motor vehicles per day on average.⁴
4. PoM makes no submission as to the questions set out at paragraph [3](a) and [3](b) of the **Directions** issued by the Fair Work **Commission** in this matter dated 16 November 2022 (but notes the conclusions reached by Easton DP in *Svitzer Australia Pty Ltd v Australian Maritime Officers' Union, The* [2022] FWC 493, as to the capacity for industrial action in the circumstances to cause or threaten to cause significant damage to the Australian economy or an important part of it).
5. As to the question set out in paragraph [3](c) of the Directions, if the Commission is

¹ Port of Melbourne, *2050 Port Development Strategy, 2020 Edition*, accessible at <<https://www.portofmelbourne.com/wp-content/uploads/PoM-PDS-2020-Edition-For-Publication.pdf>>, accessed 17 November 2022.

² See Port of Melbourne website: <<https://www.portofmelbourne.com/about-us/about-the-port/>>, accessed 16 November 2022.

³ Port of Melbourne, *Sustainability Report 2021*, accessible at <<https://www.portofmelbourne.com/wp-content/uploads/2021-Sustainability-Report-FINAL.pdf>>, accessed 16 November 2022.

⁴ See Port of Melbourne website: < <https://www.portofmelbourne.com/about-us/factsandfigures/>>, accessed 16 November 2022.

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17 November 2022

Filed on behalf of:

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mind to make an order pursuant to s.424 of the *Fair Work Act 2009* (Cth), PoM submits that an order terminating (rather than suspending) the **Lockout** notified by Svitzer Australia Pty Ltd is appropriate, on the basis that:

- a. bargaining for a **Proposed Agreement** to replace the *Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016* has been ongoing for a significant period;⁵
- b. protected industrial action for the Proposed Agreement has previously been suspended;⁶
- c. the issues in bargaining remain unresolved;⁷ and
- d. it is desirable that affected parties be afforded certainty, which is achieved by the making of an order terminating (rather than suspending) the Lockout (with the effect that no further protected industrial action could be organised or taken by any party in relation to the Proposed Agreement).⁸

Dated: 17 November 2022

Herbert Smith Freehills
Solicitors for PoM

⁵ *Re Svitzer* [2022] FWC 3038 at [1].

⁶ *Svitzer Australia Pty Ltd v Australian Maritime Officers' Union, The* [2022] FWC 493.

⁷ *Re Svitzer* [2022] FWC 3038 at [2].

⁸ Given that such an order will ensure no further protected industrial action for the Proposed Agreement will occur, and that bargaining for the Proposed Agreement will conclude within no more than 42 days, with either the making of an enterprise agreement, or an arbitration for a workplace determination (see Div.3 of Pt 2-5 of the Act).