

JUSTICE

FOR DOCK

WORKERS



ICTSI:
GLOBAL TURMOIL
SPREADS TO
FLAGSHIP VICT
TERMINAL





Why would a company that has invested over \$700 million in a new terminal, its largest investment, import an industrial relations model which is based on broken promises, intimidation and fear?

Paddy Crumlin - President of ITF

The Victoria International Container Terminal (VICT), at the Port of Melbourne, recently opened to great fanfare. The terminal's parent company, global port operator International Container Terminal Services Inc. (ICTSI), claims that the terminal is "the most advanced container terminal in the world" and the world's first fully automated container terminal.¹ But while the company celebrates these technological innovations, it has taken a business as usual approach to industrial relations, importing its anti-worker business model that has seen protracted disputes and protests throughout its global network.

In October 2017, the International Transport Workers' Federation (ITF) released a report that detailed an emerging pattern of labour violations throughout ICTSI's global network, outlining:

- a failure to respect the right to freedom of association;
- poor safety standards; and
- illegal outsourcing of labour.

Many of these violations are in breach of domestic law in the countries where ICTSI operates and contravene international labour conventions. Violations also contravene ICTSI's own policies and statements, and call into question the company's ability to effectively manage their global business and ensure the same standards and performance across all their terminals.

Sloppy management and poor morale led to industrial turmoil

Recent events at VICT make clear that ICTSI cannot keep its most expensive terminal quarantined from the problems evident in its global operations. In 2017, ICTSI appointed an independent company to assess workers' attitudes towards VICT management. Despite workers identifying widespread issues with management, little action was taken to resolve the highlighted issues. Instead, in November 2017, VICT retaliated against a casual worker who had been acting as a union delegate at the site. This worker was terminated after raising legitimate concerns with management regarding workplace bullying and harassment.

Due to company failures to address these issues internally, the ITF opened a hotline for workers to report issues at VICT. The responses detail a culture of broken promises, of intimidation and fear, and of a management regularly disregarding worker safety by attempting to override safety officers and experienced stevedores. This report details the responses of these workers, and shows that the pattern of labour violations that the ITF has identified throughout ICTSI's global network extends into the company's flagship terminal.



International Container Terminal Services Inc.

Philippine-based International Container Terminal Services Inc. (ICTSI) is one of the fastest growing and most profitable terminal operators in the world. Established in 1987, ICTSI has ambitiously expanded its global operations and now operates 30 container terminals globally. Growth has been targeted in privatised ports, with a focus on emerging markets. ICTSI has a history of moving into countries that are some of “the worst countries in the world to work in”,² in which workers are routinely exposed to labour rights violations with no guarantee of rights. This latest dispute shows that they are trying to import their anti-worker business model to Melbourne, Australia. Local ICTSI subsidiary, Victoria International Container Terminal Limited (VICT), signed the contract to operate the Port of Melbourne’s new international container terminal at Webb Dock East on the May 2, 2014. The agreement is for the design, construction, commissioning, operation, maintenance and financing of the terminal. The terminal began operations in early 2017.

Labour violations in the ICTSI network



Paying poverty wages

- Underpayment of wages below regional or national statutory wages.
- Underpayment of wages below union agreements.
- Standard wages set below the living wage.
- Excessive overtime in contravention of domestic legislation and international standards.



Discrimination against unions and their members

- Denial of workers’ rights to freedom of association and collective bargaining.
- Refusing to negotiate with workers and their representatives regarding wages and working conditions.

- Failure to recognise unions as the legitimate organisation representing workers.
- Punitive actions against union members including: refusal of overtime; sackings; cancellation of promotions; and differential treatment of union and non-union members.



Outsourcing responsibility for working conditions

- Illegal out-sourcing of workers in contravention of domestic law and international conventions.
- Use of out-sourced workers to undercut wages and conditions.



Endangering workers with unacceptable safety standards

- Cases of employees working at heights without fall protection or safety equipment.
- Poor maintenance of equipment approaching negligence.
- Casual workers given no or insufficient safety equipment.
- Workers standing under suspended loads.
- Failures to properly manage access into and within terminals.



Management falsifies causes of worker dispute

In late November 2017, a casual worker was terminated after VICT claimed that he was ineligible for a Maritime Security Identification Card (MSIC). VICT publicly alleged that it was “illegal for [the worker] to work in the secure areas at Webb Dock under Federal law.”³ Despite these allegations, on the November 8, 2017, this worker was granted a MSIC card. In the words of Will Tracey, MUA Deputy Secretary:

The worker in question was granted a Maritime Security Identification Card card last Friday by federal authorities and the company can end this dispute right now by offering him his job back. 22 workers on site had been identified as not having an MSIC that allows them to work in the restricted landside zone but only one was punished by the company – undoubtedly because he stood up for workers’ rights on the job. VICT management and its supporters made the claim several times that this worker had his appeal for an MSIC rejected, not once but twice, when the truth is that he has held a two-year MSIC card on several occasions since receiving an assault conviction more than 20 years ago. The worker in question now has an MSIC card – so either our federal agencies have got it wrong by re-issuing his card, or the company has been caught out telling lies. I think it is the latter.

VICT statements were in response to the Maritime Union of Australia (MUA) highlighting that 21 other workers at the terminal were also without their MSIC cards, but despite this, were allowed to work within select areas of the terminal. With the worker being granted a MSIC card on December 8, 2017, VICT’s statements have been shown to be a clear misrepresentation of the facts, that were made to undermine community support for the dock worker, and to justify their targeting of him because of his union activity.

This dock worker had been trying to raise legitimate worker concerns with management, regarding the bullying and intimidation of workers, but could not get local management to act. The concerns he raised were broadly felt by the workforce, as highlighted in an internal VICT survey that identified major issues with management.

The Victorian Transport Association (VTA) have claimed that the community picket initiated by Melbourne unions and local community members around the Port of Melbourne in support of this worker, is holding Melbourne consumers to ransom.⁴ However, shipping information from the Port of Melbourne’s own website shows that the last ship to berth at VICT was on the 26th November, with all other ships which were due to arrive over the period of the dispute being diverted to neighbouring terminals to be loaded and unloaded.

Company claims that the picket is preventing essential medical equipment, like EpiPens, being delivered were shut down by the Victorian Premier, Daniel Andrews: “EpiPens are in fact not in containers in the Port of Melbourne, or any other port for that matter, because they come in via an airport. So I would advise those who seek to scare the community against doing just that.”⁵

VICT did a survey of the staff, back in June or July. An independent company came in. How they could get such a negative response and still do nothing. They said that 75%, 80% of people had come back and said they were unhappy, that management was untrustworthy, that they had no feeling for upper management. How can a survey go so bad, and nothing happen? The company told workers how bad it was. Everyone is too scared to talk. The survey was all about company interaction, about how workers work with bosses. 80% strongly disagreed that management was doing well, but nothing has happened. It was full on. The comments in the survey were full on.

VICT dock worker



Broken promises: widespread underpayments and casualisation

When they started, casuals were on \$36.50/hr. A few months in, casuals were told that they were going to be going permanent. And they were going to change their title. They were going to make them “1820 annual hours” employees. When they started at the port as casuals the company promised them that they would move onto continuing contracts, which paid \$75,000 for Level 1. Then when it came around, the Human Resources Director presented them with the contracts. It was meant to be for permanent positions, but their pay slips still say they’re casuals. They signed them to a \$64,000/year training year. They told them the training wage was for a month, then a month and a half, then a couple of months. It went on like this for months.

VICT dock worker

Many workers took employment at VICT because of promises made by VICT management that were not met after workers transferred across to the company. These promises relate to permanency, rates of pay and levels of staffing in lashing and pinning gangs.

Many, who were employed to work on the wharf, were promised permanent, full-time positions if they came to work at VICT. However, when they were finally offered their contracts, they were employed on a casual basis, on “1820 Annual Hours” contracts with no certainty regarding their shifts from week to week.

The current Enterprise Bargaining Agreement (EBA) specifies that Level 1 workers employed on “1820 Annual Hours” contracts should be paid \$75,206 annually for up to 1820 hours per year.

Any hours worked in addition to this, will be paid at an hourly rate. In contravention of the EBA, a number of workers have been offered contracts that pay only \$64,000 per annum, well below the company agreement.

In an article published on the December 7, 2017, ICTSI claims that “typical earnings at the terminal range from \$140,000 to \$160,000, topping out at \$180,000”.⁶ However, according to the agreement, wages range from \$75,206 to \$144,077 for workers working between 35 and 42 hours per week. Casual workers earn significantly below these rates, paid a flat rate of \$36.50/hour. They earn this flat rate irrespective of whether they work day shift, night shift, weekends or public holidays.

Enterprise Bargaining Agreement

1820 Annual Hours contract

(from commencement of agreement to January 1, 2018)

Employee Level 1	\$76,710
Employee Level 2	\$106,542
Employee Level 3	\$119,327

42 Hour Roster

(from commencement of agreement to January 1, 2018)

Employee Level 1	\$92,912
Employee Level 2	\$128,640
Employee Level 3	\$144,077





Unsafe manning endangers workers

ICTSI has reported that they need contracts for a regular service with three shipping lines in order to break even on their investment. To date, they have only secured one contract for a regular service, with other ships coming into the terminal on an ad hoc basis. With VICT currently losing significant amounts of money, the company has elected to operate the terminal on a skeleton staff, and have yet to establish a regular roster.

Due to these staffing issues, workers report that they are frequently denied the breaks that are mandated in their enterprise agreement (EA) and are given insufficient notice of their shifts, with impacts on their ability to predict income and manage family and other duties.

The VICT agreement specifies that workers are to be given adequate notice of upcoming shifts, even in the case of last minute allocations.

However, night shifts are frequently only finalised in the afternoon – giving workers limited time to rearrange family schedules and limiting their ability to take on additional work to supplement their variable income.

On a night shift you're meant to be told when you're still on shift if you're needed the next night. But some guys aren't told until 3 or 4pm the next afternoon if you're needed. It's hard for the guys with families, you know, when you have school pick-ups or have to look after the kids.

VICT dock worker

Improper fatigue management risks worker lives

Fatigue is more than just feeling tired and drowsy. Fatigue at work is a state of physical and mental exhaustion which reduces a person's ability to work safely and effectively. Reports from workers at VICT suggest that the company is failing to adequately manage the risks of fatigue, adversely affecting safety.

The VICT agreement specifies that workers are entitled to a 45-minute break for shifts exceeding five hours, while workers on a 12-hour shift are entitled to a 75-minute paid rest break.⁷ Due to understaffing, and a failure to properly schedule shifts, dock workers report that they are regularly required to work through their breaks, and can go 5-6 hours or more without a break. On terminals operated by other stevedores, workers are typically allocated to a single crane, however due to understaffing VICT workers report that they have been requested to work across multiple cranes, which further impacts on their ability to take mandated breaks.

Lashing is intensive, physical and dangerous work. Fatigue significantly adds to the risk that workers will not return home safely at the end of a shift.

The failure to provide workers with sufficient breaks to ameliorate fatigue falls short of the ILO Code of Practice Safety and Health in Ports sections 9.1.6 and *Safe Work Australia Guide for Managing the Risk of Fatigue at Work 2013*⁸ which outlines the employer's duty to provide a safe workplace under the *OHS Act 2004* (VIC).

We work 12-hour shifts. Guys often work through breaks. They'll do a five-hour run doing pinning. They're going to kill someone from the lack of breaks. The ship sailing is the utmost important thing ... Safety doesn't exist when it comes to the ship sailing time. Workers have been told they have to prove that VICT is competitive in the container stevedoring industry. The writing is on the wall. It's a company that is built with blood money. It's built on standing over people.

VICT dock worker



Productivity overriding safety concerns

Dock work is dangerous work. “Despite new and sophisticated innovations, port work is still considered an occupation with very high accident rates.”⁹ That is why it is critical, in all terminal operations, to establish a safety management system that eliminates and manages risk as far as is reasonably practicable. It is critical to workers, to ensure they go home safely each day. It is critical for cargo, which can be damaged or destroyed by haphazard safety practices. And it is critical for investors, who are legitimately concerned about reliability of terminal operators and the risk of prosecution, regulatory entanglements or insurance blowouts due to recurring safety issues.

VICT is described as a “fully automated terminal”, with many operations no longer needing human intervention, and other terminal operations located away from the terminal in an operations centre. Despite this, there are still a number of manual operations which must be performed, including lashing and pinning. These operations still run the same risks of serious injury or even death as in less automated terminals. The ITF has heard evidence of a management culture that favours productivity over safety, even when it risks endangering worker lives.

Dock workers report that management regularly attempts to override safety to achieve productivity targets, failing to account for daily weather conditions or whether adequate staffing has been provided.

One day there were 100km winds, workers couldn't walk. One of the manager's helmets got blown off his head. He said, where I'm from, on a good day its 140km/hour. Workers said to him, we've been told to stop at 75km. There were guys sent up on deck trying to unlock a five-metre bar, in that wind.

When they're trying to get ships finished, management says 'where is everyone, we need to get this finished, we need everyone up there'. Just because it's end of the shift, just because the ship is meant to sail, you don't want to have a heap of people up on deck, because there are safety concerns. If there are too many people in a bay, then it pushes safety. You don't want more than 8-10 people in there. But we've got good safety guys, good permanents. The HSR team will back up workers in any instance, if the guys upstairs are pushing them. That's comforting, because the permanents, the guys who have been in the industry,



knocked this on the head. Which is good, because everyone want to go home safely. But the company is trying to say that if it's a 10pm sail, it's a 10pm sail. Workers have to stick to that. But safety is more important. Sometimes you've got to push it out a half hour, and hour.¹⁰

The ITF has also heard evidence of management overriding the instructions of experienced safety officers.

We have all seen the dogman saying "stop the hook, stop the hook" but it still keeps going. They say stop because there are guys underneath, lashing. These are brothers, fathers, sisters, mothers, grandmothers. VICT has got no right to put people in these positions. [...] But to the crane drivers it's 'do what I tell you, or your gone'.

Crane drivers work from the operations centre rather than on the terminal. Crane drivers use a combination of cameras located throughout the wharf and direction from foremen on the wharf to direct the movement of the cranes. Possible blind spots and camera obstruction mean that the dogman is meant to provide final instruction of whether to land a container. However, dock workers report that the VICT management often tries to override the instructions of safety officers on the deck.

The CEO tends to sit behind the crane driver. Even when the foreman is out on deck telling the crane driver what to do, the CEO overrides. The foreman tells the crane driver to hold the box there, and the CEO will tell the crane driver to land the box. The crane driver will say there's a guy working there. Crane drivers will listen to the foreman - they ignore the CEO. But he's always standing over people in the control room.

For the most part, crane drivers have resisted these attempts instead following the directions of safety officers on deck. However, management has tried to intimidate these operators into disregarding the instructions of their safety officers, using threats that their jobs will be offshored to Manila.

The offshoring of crane drivers to Manila raises serious questions regarding safety. Time delays and language difficulties due to operations in multiple countries will intensify safety issues, preventing the necessary oversight that will ensure that workers make it home safely at the end of each shift.



ICTSI: a risky proposition?

ICTSI is increasingly gaining a reputation for failing to ensure productive industrial relationships at their ports, due to the company's widespread failure to put in place sufficient managerial oversight and appropriate governance structures. The current issues at VICT show that ICTSI cannot keep its flagship terminal isolated from issues prevalent in its global operations. This report highlights that their Australian terminal is plagued by the same management issues that have marked its global operations.

The current dispute in Melbourne is just another example of the failing approach to industrial relations that has plagued the global operator since it began its expansion beyond the Philippines. In 2016, ICTSI's failure to resolve labour issues at the Port of Toamasina, Madagascar, resulted in global pressure against ICTSI and the Government of Madagascar, including a submission to the International Labour Organisation (ILO) and pressure from clothing brands using the port. At the same time, the failure of ICTSI management at the Port of Jakarta to conclude negotiations with the local union led to ongoing industrial action, the targeting of the Indonesian Infrastructure Minister by Australian unionists and labour

activists, and solidarity actions by ITF affiliates globally. And as far back as 2000, ongoing disputes at the Port of Rosario, Argentina resulted in ICTSI terminating its concession agreement, following a loss in confidence in the terminal by port users, and a 50 per cent reduction in volume through the port.¹¹

ICTSI claims that they need contracts with three shipping lines to break even at the Port of Melbourne. To date, the company has only contracted with one shipping line to provide a regular service through the terminal.

Any shipping line considering partnering with ICTSI must be asking themselves whether they want to be associated with a company with demonstrated operational and governance problems. The latest turmoil at ICTSI's Melbourne terminal demonstrates that the company cannot quarantine its flagship, automated terminal, from issues endemic across its global network.

The ITF, and our union affiliates, call on ICTSI to put in place mechanisms for global oversight which ensure productive industrial relations, and adherence to local laws, international standards and conventions in all of their ports.

International Transport Workers Federation

The International Transport Workers Federation (ITF), a global union federation, represents over 700 labour unions and more than 4.5 million union members around the world. The ITF is allied with the International Trade Union Confederation (ITUC). The ITF has a long history of promoting the employment and welfare of seafarers, stevedores and other transport workers around the world. The ITF has been actively supporting dock workers in Madagascar and Indonesia in their campaigns against ICTSI for improved working conditions and union recognition.

For additional information contact:
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Endnotes

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3 Victorian Transport Association, (2017). MUA resist change and hold the consumer to ransom, 30 November 2017, <http://vta.com.au/wp-content/uploads/2017/12/Media-Release-MUA-resist-Change-and-hold-the-consumer-to-ransom-1.pdf>.

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5 SBS News, (2017). "Vic dock blockade ordered to stop", 12 December 2017, <https://www.sbs.com.au/news/vic-dock-blockade-ordered-to-stop>.

6 Patty, A. and Toscano, N. (2017). "Ports dispute enters second week and stalls millions of dollars in Christmas deliveries", Sydney Morning Herald, 7 December 2017, <http://www.smh.com.au/business/workplace-relations/ports-dispute-enters-second-week-and-stalls-millions-of-dollars-in-christmas-deliveries-20171206-gzzma0.html>.

7 ILO, (2005). ILO Code of Practice: Safety and Health in Ports, http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221152871_EN/lang-en/index.htm: 15.1.1 Employees are entitled to a 45-minute paid rest break for any shift exceeding 5 hours in accordance with clause 23; 15.1.2 Employees working a twelve-hour shift are entitled to a 75 minute paid rest break or breaks during the ordinary hours of work; 15.1.3 Where an Employee is required to work more than

one hour's overtime of an 8-hour shift prior to the commencement of or following the conclusion of their normal starting or finishing time, the Employee is entitled to an additional 20 minutes paid rest break in accordance with clause 23; 15.1.4 Meal breaks and rest periods will be taken at a time and manner agreed between the Company and the Employee and may be staggered, however subject to clause 23 of this Agreement; 23.4 Meal breaks and 1 or additional rest periods may be brought forward or put back by up to thirty minutes providing at least thirty minutes notice is provided to relevant employees.

8 Ibid: 9.1.6. Fatigue: 1. Fatigue can affect health, safety and work performance. Regular breaks should be incorporated into work periods. Excessively long shifts or work periods should be avoided. 2. If it is necessary to work an abnormally long shift, it is essential that an adequate period of rest be provided before the start of the next period of work, particularly overnight.

9 Ibid.

10 Ibid: 7.5.2. Working practices: The number of portworkers in each gang working in a hold with the same lifting appliance should depend on the nature of the cargo, the hours of work, the equipment used, the target output, and the fatigue that would result if not enough workers were employed. Numbers should be limited to what is necessary, since too many workers may be a hazard in the often constricted working spaces in a hold.

11 Reuters, (2000). "ICTSI Unit Signs Exit Agreement for Port", Reuters News, 21 July 2000.