

# Summary of Decision

26 March 2014



## Appeal by The Maritime Union of Australia

C2013/7645

1. This decision concerns an appeal by The Maritime Union of Australia (MUA) against the decision of Fair Work Commission Delegate, Mr Chris Enright, to refuse to issue to Mr William Tracey, MUA Assistant Branch Secretary, a Right of Entry Permit.
2. Patrick Stevedores Holdings Pty Ltd sought permission to make a submission in relation to the appeal. The Full Bench was satisfied that Patrick Stevedores had a sufficient interest in the matters that were subject of the appeal beyond that of an ordinary member of the public and accordingly granted permission to be heard.
3. The Full Bench granted permission to appeal “*because the appeal raises important questions about the correct approach to the construction and application of sections 512 and 513 of the Act which deal with issuing of right of entry permits to officials of organisations*” . However the Full Bench dismissed the appeal.
4. The MUA applied under s. 512 of the *Fair Work Act 2009* for an entry permit to be issued to Mr Tracey. At the time the application was made, Mr Tracey was the holder of an entry permit which was due to expire on 21 December 2013.
5. In 2009 and again in 2010, Mr Tracey was involved in conduct which resulted in penalties being imposed by the Federal Court of Australia on 31 October 2012 for contraventions of predecessor legislation and of the *Fair Work Act 2009*.
6. Section 512 of the *Fair Work Act 2009* sets out the circumstances in which the Commission may issue entry permits to organisation officials, as follows:

**“512 FWC may issue entry permits**  
The FWC may, on application by an organisation, issue a permit (an *entry permit*) to an official of the organisation if the FWC is satisfied that the official is a fit and proper person to hold the entry permit.”
7. Section 513 of the *Fair Work Act 2009* provides the permit qualification matters the Commission must take into account when deciding whether an official is a “*fit and proper person*”.
8. The Delegate had concluded that he was not satisfied that Mr Tracey was a fit and Proper person to hold an entry permit.
9. The Full Bench did not identify any appealable error in the decision of the Delegate.
10. The Full Bench held that:

*“Much of the criticism by the Appellant of the Decision is really directed to the weight given by the Delegate to the various matters that the Delegate was required to take into account. In our view the Delegate correctly applied the relevant provisions and took into account required and relevant matters. The conclusion the Delegate came to was open to him on the material before him, and whilst we may well have come to a different conclusion, that is an insufficient basis to uphold the appeal.”*

[2014] FWCFB 1973

- *This statement is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission’s reasons.*

- ENDS -

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