

**PROPOSED**  
**DARWIN PORT CORPORATION**  
**(NORTHERN TERRITORY PUBLIC SECTOR)**  
**2014 – 2018**  
**ENTERPRISE AGREEMENT**

**EXPLANATORY NOTES**

**THIS DOCUMENT REFLECTS THE CHANGES IN THE PROPOSED  
AGREEMENT COMPARED WITH THE CURRENT AGREEMENT**

Please note:

- i. Reference to the 'current Agreement' means the Darwin Port Corporation (NTPS) 2011 – 2014 Enterprise Agreement and reference to the 'new Agreement' means the proposed Darwin Port Corporation (NTPS) 2014-2018 Enterprise Agreement.
- ii. References to the 'NTPS Agreement' mean the Northern Territory Public Sector 2013-2017 Enterprise Agreement'.
- iii. Technical changes were required throughout the new Agreement in line with amendments introduced: on 1 January 2012 to the *Public Sector Employment and Management Act* (PSEM Act) (eg 'permanent employee' changed to 'ongoing employee; 'temporary employee' to 'fixed period employee'); and to the *Fair Work Act 2009* (FW Act).
- iv. Unless otherwise stated, references to clause and sub-clause numbers in the explanatory notes are referring to the current Agreement clauses.

## **PART 1 – APPLICATION AND OPERATION OF AGREEMENT**

### **1. Title**

Amended title: Darwin Port Corporation (NTPS) 2014-2018 Enterprise Agreement.

### **2. Period of Operation and Variation**

Amended clause title to “Period of Operation” and removed reference “The Agreement may only be varied in accordance with the Fair Work Act”. Also updated to reflect the term of the proposed Agreement: four years to 30 June 2018.

### **3. Table of Contents**

Updated the index list to reflect changes in agreement.

### **4. Definitions**

Updated terminology such as Fair Work Australia with Fair Work Commission (FWC), added the phrase ‘as amended from time to time’ after PSEM Act to clarify that the agreement applies taking into account any amendments to this legislation during the life of the new Agreement. Added definition of ‘employer’ as there is a definition of ‘employee’, and added ‘NTPS Agreement’ as there is reference made to the *NTPS 2013-2017 Enterprise Agreement* in the Agreement. Updated definition of ‘Control Tower Officer’ to ‘Harbour Control Officer’. Minor clarification of the ‘Continuous Service’ definition.

### **5. Parties Bound**

Omitted. The FW Act states that parties are covered by an agreement; not ‘bound’. This is addressed under clause 6.

### **6. ~~Coverage of this Agreement~~ Parties Covered by this Agreement**

Title amended to reflect ‘Parties Covered by this Agreement’. Sub-clause 6.2 deleted because any new agreement approved by the FWC automatically replaces the current agreement therefore there is no requirement to include this provision in the agreement.

### **7. No Extra Claims and Negotiations for Replacement Agreement**

The changes made to this clause are to ensure consistency with the NTPS Agreement provisions by updating sub clause 7.1 to reflect the agreement constitutes a final settlement of the parties’ claims, and together with the PSEM Act, is intended to set out, or set out processes for determining, all the terms and conditions of employment of the employees who will be subject to this Agreement, until its expiry. Sub-clause 7.2 updated to provide flexibility when negotiations for the next agreement may commence, with agreement of the parties.

## **8. Operation of Public Sector Employment and Management, By-laws and Determinations**

The changes made to this clause are to ensure consistency with the NTPS Agreement provisions and clarify the interaction between the current enterprise agreement and PSEMA legislation.

## **9. Intention, Commitment and Objectives**

Sub-clauses 9.1 and 9.2 (c) were amended because the reference to '*Landside Review*' is no longer applicable and was completed during term of agreement. Some other minor amendments made to reflect appropriate terminology.

## **10. Joint Consultative Committee (JCC)**

Sub-clause 10.6 has been amended to add policies the committee will consider. These policies were referred to throughout the current Agreement and have been omitted as the policies apply outside of the Agreement.

## **PART 2 – PROCEDURAL MATTERS**

### **11. Dispute Settling Procedures**

Updated to be consistent with the NTPS Agreement provision and to clarify those matters this clause does not apply to such as refusals for requests for flexible work arrangements or extended parental leave on reasonable business grounds, and pay progression outcome for Senior Officer classifications.

### **12. Management of Change and Consultation**

This clause has been replaced with the FW Act 'Management of Change and Consultation' model clause which includes new provisions introduced to the FW Act from 1 January 2014.

### **13. Individual Flexible Working Arrangements**

No change to the parameters about when work is performed within the span of hours. Minor changes to terminology. Removed requirement to inform the Commissioner for Public Employment where an IFWA is terminated.

### **14. Variation to Working Arrangements for Groups of Employees**

Sub-clause 14.4 has been changed to make consistent with the NTPS Agreement that the relevant unions be consulted on proposed arrangements prior to the approval of the Commissioner, however there is no longer a requirement to consult with unions prior to having discussions with employees.

## **15. Code of Conduct and Disciplinary Procedures**

Omitted: this is a Darwin Port Corporation policy that exists external to the Agreement, which has been referenced under clause 10 Joint Consultative Committee (JCC) as a policy that may be considered by that committee.

## **16. Modern Enterprise Award**

Omitted. An application for a Modern Enterprise Award is underway and the clause is no longer relevant for the new Agreement.

## **17. Union Delegates and Training**

Title of the clause has been updated to 'Union Delegates and Training' and has been replaced with provisions aligned to clause 16 'Union Rights' of the NTPS Agreement. It also replaces clause 19 'Trade Union Training' of the current Agreement. A key change is that subject to meeting requirements, union delegates may request up to 5 days paid leave per annum to attend union training.

## **18. Record of Time Worked and Salary Paid**

Omitted: this clause is no longer relevant as 'wages' are no longer arranged 'in-house'. FW Act provisions in relation to salary documentation requirements apply.

## **19. Trade Union Training**

Omitted: this provision is now contained in clause 17.

## **20. Use of Contractors**

This clause has been amended to clarify the expected application of the provisions. The proposed clause continues to provide:

- guiding management principles for the engagement of contractors including a priority of the best use of DPC employees to perform the work;
- notification process of use of contractors; and
- appropriate training for DPC employees subject to CEO approval.

The Guiding Management Principles have been retained in the Agreement. Prior to a decision to engage contractors the following principles apply: considerations on specific work required; how the work can best be done by DPC employees; the most cost effective manner; and how to best meet operational requirements.

DPC contractors are usually engaged on 3 year 'period' contracts to perform operational work that DPC employees are either not required, unable, or not available to perform from time to time. This list of 'period' contractors is currently provided to the unions and it is proposed this continues via a 6 monthly report on the use of contractors to the Joint Consultative Committee (JCC).

## **PART 3 – RESTRUCTURES, CLASSIFICATIONS, SALARIES AND ALLOWANCES ETC**

Removed 'Restructures' from title as there are none under the new Agreement

### **21. Classification Restructures and Translations**

Omitted: there are no restructures in the new Agreement.

### **22. Classifications**

A new sub-clause introduced to explain the classifications that are covered by the new Agreement and reference to the relevant Attachments to the new Agreement. A change has been made to the title of 'Control Tower Officer' to 'Harbour Control Officer'. Included references to Senior Port Administrative Officers and Senior Port Professional Officers.

### **23. Salaries and Related Matters**

This clause has been updated to reflect new salary increases and dates of salary increases. The Maritime Administrative Productivity Payment provision has been removed as it was once off payment under the current Agreement.

### **24. DPC Safety Payment**

Omitted: this payment was a once off payment made under the current Agreement.

### **25. Recovery of Overpayments and Relocation costs on Cessation of Employment**

Minor technical change to update reference to title of By-law 27 and update 'temporary' to 'fixed period'.

### **26. Payment of Superannuation Contributions**

No change to effect of the provision. Updated to reflect current legislation and improve readability.

### **27. Salary Sacrifice**

No change to effect of the provision. The only changes are to reflect current legislation.

### **28. Casual Employment**

The only change is the removal of sub-clause 28.1 which referred to the use of long standing, mature aged employees as casuals: it is open to the Darwin Port Corporation to utilise ex-employees as casuals regardless of the length of service or age. A minor change in sub-clause 28.2 to remove the word 'permanent' as the word ongoing in the same sentence means the same thing under the PSEMA.

## **29. Allowances**

Sub-clause 29.7 has been amended to reflect that designated employees to act as first aid officers and who hold a first aid certificate will be paid an allowance. Those positions that require a first aid certificate as part of their duties (e.g. MSOs, MSGs) will continue to receive the first aid allowance. Sub-clause 29.8 has been amended to clarify that the normal trigger to HDA does not apply to MSO1 or 2 level employees who hold a Master Class 5 certificate and are required to assume responsibility as Master of a vessel.

## **30. Allowances Provided by PSEM By-laws**

Omitted: this clause is unnecessary as the PSEMA By-laws exist and apply external to the agreement.

## **PART 4 – HOURS OF WORK, BREAKS, OVERTIME, PUBLIC HOLIDAY WORK ETC**

Update title to reflect the provisions include Public Holiday work

## **31. Notification of Work Requirements**

No change.

## **32. 24 Hour Operations**

Omitted as this clause was related to the *Landside Review* which was completed.

## **33. Flexibility of Hours**

No change.

## **34. Part-Time Employment**

New provision sub-clause 34.6 that provides for an employee to request fewer hours than the minimum weekly limits set under the clause subject to CEO approval. A clarification under sub-clause 34.8 has been made regarding service increments that is wording aligned to the NTPS Agreement.

## **35. Ordinary Hours of Work**

A change to sub-clauses 35.1 and 35.2 to clarify positions under 12 Hour Operational Shift Workers and Operational Day Workers, and clarity under sub-clauses 35.2 and 35.3 that employees may be rostered within the span of hours from 6am to 6pm and changes to rosters will be in accordance to the consultation provisions. Clarified sub-clause 35.3 also applies to Senior Port Administrative Offices and Senior Port Professional Officers.

### **36. Meal and Rest Breaks**

A clarification that operational non-shift employees will not work for more than 5 hours continuously without an unpaid meal break without approval and that the timing of such breaks are determined based on the nature of the work at hand.

### **37. Shift Work (~~8 hour shift roster~~)**

Removed '(8 hour shift roster)' from the title. Clarified shift rosters to be approved by the CEO. Updated to reflect that employees may agree to changes in shift rosters of less than one week. Sub-clause 37.5 was removed as clause 12 Change Management and Consultation provisions apply.

### **38. Requirement to Work Reasonable Additional Hours**

The wording under sub-clause 38.3 was updated to reflect the provisions under the FW Act.

### **39. Overtime**

### **40. Sub-clause 39.6 has been mostly removed and refers to clause 34.7 which already sets out conditions of overtime for part-time employees. Call-Back**

A minor change made to this clause to refer to clause 41 which refers to the scope of the employee's skills and training.

### **41. Duties During a Call-Back**

No change.

### **42. 10 Hour Break**

No change.

### **43. Time-off In Lieu of Overtime Payment (TOIL)**

No change.

### **44. Work on a Public Holiday**

One minor change to refer to clause 51 Public Holidays and clarity under clause 44.5 where overtime worked outside ordinary hours of work.

## **PART 5 – LEAVE AND PUBLIC HOLIDAYS**

### **45. Annual Recreation Leave**

Update title to Recreation Leave. Changes made to this clause are consistent with the wording under the NTPS Agreement. For example, under definitions, 'continuous service' has been deleted as it isn't referenced in the clause. Sub-clause 45.3(b) updated to included references to Senior Port Administrative Officers and Senior Port Professional Officers. Sub-clause 45.5 has been omitted as the leave roster is a past practice, and was an operational matter; not an entitlement. Sub-clause 45.8 has been updated to reflect that where a public holiday occurs during recreation leave (including a period of half pay) the period of the public holiday is not deducted from the employee's leave entitlement. Sub-clause 45.11 has been omitted to align with the NTPS Agreement as it is not necessary given the provision to be able to cash out leave provided 4 weeks remains in the employee's leave balance.

#### **46. Annual Recreation Leave Loading**

Updated title to Recreation Leave Loading, and clause 46.1(a)(ii) to reflect a change to ABS reporting periods which is now the 'June' quarter.

#### **47. Personal Leave**

Consistent with other leave clauses, this clause has been amended to move the explanation of the relationship with By-laws and other instruments, and updated the definition of immediate family and 'spouse' to reflect FW Act definitions.

An addition of a new sub-clause (47.8(c)) has been made regarding documentary evidence requirements in relation to carer's leave to reflect the specific nature of carer's leave. Intended to clarify the evidence that is provided to the CEO to allow the CEO to determine if the leave is for the purposes of sick leave or carer's leave. Clarified that if recreation or long service leave is taken at half pay, the recredit of any approved sick leave is also at half pay. Removal of sub-clauses 47.9 (e) and (f) in relation to seeking the opinion of the NT Medical Advisor as both these provisions are mirrored in [Employment Instruction No. 5 Medical Examinations](#) and no longer required in the Agreement.

#### **48. Compassionate Leave**

Consistent with other leave clauses, this clause has been amended to: move the explanation of the relationship with By-laws and other instruments, and the application to casuals to the beginning of the clause; and updated the definition of immediate family and 'spouse' to reflect FW Act definitions.

Addition of new sub-clause regarding notice requirements consistent with other leave provisions.

#### **49. Parental Leave**

This clause now refers to the NTPS Agreement clause 49; employees will need to refer to that clause which sets out the full entitlement provisions.

Amendments to FW Act and National Employment Standards (NES) have been made which enhance existing NTPS parental leave entitlements. Changes to reflect the FW Act amendments specifically around entitlements relating to casuals and transfer to a safe job, partner/concurrent leave, adoption leave, 'Keeping in Touch days' and reasonable business grounds parameters if the employer refuses requests for extension of parental leave or returning to work on a part-time basis.

One of the few efficiencies being sought in line with the NTPS Agreement is the removal of the provision that provides an employee on the first 52 weeks of unpaid parental leave access to personal leave (as per sub-clauses 49.10(b) & (c) of the current Agreement). This would ensure consistency with the principle that there is no access to personal leave during any periods of unpaid leave that do not count as service. Employees will continue to have access to their accrued recreation leave and long service leave entitlements during unpaid parental leave. This existing entitlement has been improved as the provisions remove the current limitation which restricts access to accrued paid entitlements only during the period 24 months from time of birth or date of placement of the child will be removed.

Other changes include improving the readability and simplifying of the provisions for better understanding of the provisions.

## **50. Long Service Leave**

Removed sub-clause 50.2 which provided for long service leave rosters being drawn up, which are a past practice. The amended clause confirms that LSL entitlements are contained in By-law 8.

## **51. Public Holidays**

A change to this provision clarifies that the *Public Holidays Act (NT)* applies, and thus not requiring the list of Public Holidays in the clause. The Act will prevail.

Part 6 – General Conditions

## **52. Security of Employment, Redeployment and Redundancy**

Updated title to include 'Redeployment and Redundancy'. Updated sub clause 52.5 (now 52.2) to clearly reflect that there will be no involuntary redundancies arising directly from the implementation of the new Agreement. Deleted current Agreement sub clauses 52.2, 52.3, 52.4 and 52.6: operational in nature and addressed under the PSEM Act. The insertion of new sub-clauses 52.3 and 52.4 referring to redeployment and redundancy entitlements and transfer of business laws is consistent with NTPS common provisions and the FW Act.

## **53. Contract of Employment**

Omitted: This clause was introduced a long time ago and is inconsistent with the PSEM Act the use of 'fixed period' (temporary) employees across the NTPS. This provision has been removed from all NTPS agreements. Sub-clauses 53.5 and 53.6 'Engagement', and 53.7 'Attendance at Work', were removed as they were policy matters and are now reflected under clause 10 (JCC).

## **54. Work Practices**

Omitted: These provisions are operational in nature and are not required in the new Agreement.

## **55. Termination of Employment**

The termination notice is in accordance with PSEM Act and the FW Act provisions and not required in the Agreement. Sub-clause 55.3 (now 55.2) Time Off During Notice Period has been retained.

## **56. Mixed Functions**

Sub clause 56.2 has been moved under the Higher Duties Allowance clause where it is more relevant.

## **57. Work Life Balance**

Replaced the 'NTPS Extended Leave Scheme' with the 'Advanced Notice of Extended Leave With Out Pay'  
Included formal requirements applicable to requests for flexible working arrangements in certain circumstances. These provisions have been included in line with the NTPS Agreement and the FW Act.  
Other minor amendments to align with NTPS Agreement.

## **58. Anti Discrimination**

Omitted: The anti-discrimination legislation exists externally to the agreement and applies regardless of referencing it in an enterprise agreement therefore it is not necessary to include in an enterprise agreement.

## **59. Working in the Rain**

Omitted: Safe working environment requirements are covered by the Work Health Safety legislation.

## **60. Clothing**

Omitted: this is covered by a Darwin Port Corporation policy and is now reflected under clause 10 (JCC).

## **61. Training**

No change.

## **62. Safety in the Workplace**

Omitted: Safe working environment requirements are covered by the Work Health Safety legislation.

## **63. Employee Health and Well being**

Omitted: this is covered by a Darwin Port Corporation policy and is now reflected under clause 10 (JCC).

## **64. Managing Fatigue in the Workplace**

Omitted: this is covered by a Darwin Port Corporation policy and is now reflected under clause 10 (JCC)..

## ATTACHMENTS

General updates across the attachments include: updating salaries with the annual wage increases, technical changes reflect PSEM Act terminology (eg replacing 'temporary employment' with 'fixed period employment') removing restructured salaries introduced last agreement.

ATTACHMENT	KEY CHANGE
<b>ATTACHMENT A – SENIOR CLASSIFICATION STRUCTURE – PAY PROGRESSION PRINCIPLES</b>	Deleted: CLASSIFICATION RESTRUCTURES – PORT ADMINISTRATIVE OFFICERS AND PORT PROFESSIONAL OFFICERS from the title. Restructures introduced in current Agreement are not relevant to the new Agreement. In line with the NTPS Agreement replaced principles and procedures for Senior Officer pay progression, including: references to 1 January 2011 no longer required as Senior Classification levels fully implemented; Updated to reflect the results of the senior pay progression agency survey, including: the application for pay progression is at the discretion of the employee and is not reliant on an invitation of a manager; and clarifying entitlements aspects of the provision around performance cycles, annual assessment date and review rights.
<b>ATTACHMENT B – SALARIES AND ALLOWANCES SCHEDULE</b>	New salary tables which combine Day, Shift and Annualised salaries, and updated allowance rates, have replaced the current Agreement rates.
<b>ATTACHMENT C – OMITTED</b>	Deleted: FLEXIBLE WORKING HOURS (FLEXTIME) – PORT ADMINISTRATIVE OFFICERS AND PROFESSIONAL OFFICERS – Aligns with NTPS Agreement and use of NTPS Flexitime scheme is now referenced under clauses 35.3 and 57.1.
<b>ATTACHMENT D – 12 HOUR SHIFT ROSTER, ALLOWANCE AND ANNUALISED SALARIES (OPERATIONAL EMPLOYEES)</b>	Removed clause 1.1 'transitional' matters as no longer applicable. Update clause 5 to allow for backfilling on the 12 hour roster for periods of less than 8 weeks. Amend clause 8 to replace 'from date of Agreement' with '20/1/12' (which is the date the current Agreement came into effect).
<b>ATTACHMENT E – PRESERVED 12 HOUR SHIFT ROSTER ARRANGEMENTS FOR MARITIME SECURITY GUARDS AND CONTROL TOWER OFFICERS</b>	Remove Control Tower Officer in title and clause as these conditions no longer apply to them.
<b>ATTACHMENT F – WORK-LIFE BALANCE INITIATIVES</b>	Aligned with NTPS Agreement wording and to reflect the FW Act provisions. Sub clause 2.5 - updated to reflect that recreational leave accrues progressively. Sub clause 3.3 (g) – amended to bring in line with FW Act entitlements and Recreation Leave clause 45.8 in the core agreement. Sub clauses 3.5 + 3.6 – procedures for

ATTACHMENT	KEY CHANGE
	<p>purchased leave arrangements are in guidelines.</p> <p>Clause 4 (Extended Leave Scheme) – deleted and replaced with Advanced notice of Extended Leave Without Pay Requests under clause 57.1(c)(iii) Work Life Balance, in the new Agreement.</p>
<p><b>ATTACHMENT G – REMOVED</b></p>	<p>Deleted: NTPS REDEPLOYMENT AND REDUNDANCY PROVISIONS. Provisions now referenced under clause 52 of the new Agreement and refer to the NTPS Agreement provisions which incorporate the following key changes:</p> <p style="padding-left: 40px;">PART A entitlements are aligned with the rewritten provisions under the <a href="#">NTPS Agreement’s Schedule 10: Redeployment and Redundancy Entitlements</a></p> <p style="padding-left: 40px;">PART B procedures are covered under <a href="#">Employment Instruction No. 14: Redeployment and Redundancy Procedures</a></p> <p style="padding-left: 40px;">Key changes</p> <p style="padding-left: 40px;">1. Voluntary retrenchment entitlements and notice of redundancy periods remain unchanged. Some minor amendments were made to ensure compliance with minimum NES requirements. Provision included to clarify that the notice periods under clause 5.2 are offset by the redundancy payment provisions of the NES.</p> <p style="padding-left: 40px;">The NTPS redundancy entitlement remains generous compared to the NES.</p> <p style="padding-left: 40px;">2. The income maintenance provisions following termination due to redundancy have been removed. The existing provisions allow an employee to elect to be terminated (subject to Commissioner approval) during the notice period, rather than serving the whole period. However, the provisions contain an anomaly in that they require an employee to be paid the unexpired portion of the notice period in lieu on termination, and also provide for income maintenance post termination until the notice period has expired. From a practical perspective, the removal of the income maintenance following termination provision has no effect as it is not considered appropriate that rights and obligations arising from an employment relationship continue</p>

ATTACHMENT	KEY CHANGE
	<p>beyond the termination of that relationship and the Commissioner would not allow such a situation to occur in any case.</p> <p>3. The income maintenance provisions that apply on the transfer of an employee to a lower level designation and salary, including provisions relating to the impact of personal leave in extending the income maintenance period, were retained and clarified.</p> <p>4. Definitions have been updated to more closely align with the revised PSEM Act provisions. Consistent with the PSEM Act the Schedule also clarifies that employees cannot be transferred to a lower level designation and salary without their consent.</p> <p>5. New, practical union consultation provisions have been included and replace the convoluted, historical provisions.</p> <p>6. Former Part A provisions of a procedural nature have been moved from the Schedule and are covered under Employment Instruction 14 (subordinate legislation under the PSEM Act) setting out procedures for Redeployment and Redundancy situations.</p> <p>7. In addition, the proposed procedures include the following new concepts:</p> <ul style="list-style-type: none"> <li>• Where a redeployee is placed in a longer term fixed period vacancy (ie 18 months or over) the employee may elect, subject to CEO's approval, to have his or her redeployee status removed.</li> <li>• As part of suitability assessment, an agency may offer to place an employee redeployee in a position for a trial period of up to six months, with the employee or the agency having the ability to terminate the arrangement by mutual agreement. If the employee is serving out a period notice of redundancy at the time that the trial takes place, the notice period will be extended by the period of the trial to ensure that the employee does not lose the opportunity to actively seek other suitable employment options if they are not ultimately suitable for the trial position. Trials are available in some other jurisdictions and are considered</li> </ul>

ATTACHMENT	KEY CHANGE
	<p>a useful training mechanism, likely to facilitate positive suitability outcomes.</p> <p>It should be noted there have been:</p> <ul style="list-style-type: none"> <li>• no changes to the requirement to offer an employee voluntary retrenchment before a notification of redundancy;</li> <li>• no reductions in voluntary retrenchment entitlements;</li> <li>• no change to the focus on finding suitable employment for redeployees; and</li> <li>• minor amendments to bring clauses in line with the FW Act.</li> </ul>
ATTACHMENT H – REMOVED	Deleted: SAFETY MATRIX – Not applicable to new Agreement.

**Information on the New Agreement**

If you would like further information on the agreement, please contact the Employee Relations unit in the Office of the Commissioner for Public Employment on telephone **08 8999 4282**.