

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of this agreement.

# **DARWIN PORT CORPORATION**

## **MARINE PILOTS'**

**2014 - 2018**

## **ENTERPRISE AGREEMENT**

AGREEMENT BETWEEN THE NORTHERN TERRITORY COMMISSIONER FOR  
PUBLIC EMPLOYMENT AND DARWIN PORT CORPORATION MARINE PILOTS

# PART 1 APPLICATION AND OPERATION OF THE AGREEMENT

## 1. Title

This Agreement will be known as the *Darwin Port Corporation Marine Pilots' 2014 - 2018 Enterprise Agreement*.

## 2. Period of Operation

This Agreement will come into effect seven (7) days after the approval from the Fair Work Commission and will remain in force until 30 June 2018.

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#### **4. Definitions**

For the purposes of this Agreement:

- 4.1 “Agreement” means the *Darwin Port Corporation Marine Pilots’ 2014 - 2018 Enterprise Agreement*;
- 4.2 “AMOU” means the Australian Maritime Officers Union of 377 Sussex Street, Sydney, NSW, 1240;
- 4.3 “CEO” means the Chief Executive Officer of Darwin Port Corporation;
- 4.4 “Commissioner” means the Commissioner for Public Employment in the Northern Territory;
- 4.5 “DPC” means the Darwin Port Corporation;
- 4.6 “employee” means a marine pilot, employed by DPC under the PSEM Act, who is covered by this agreement;
- 4.7 “employer” means the Commissioner for Public Employment in the Northern Territory;
- 4.8 “Fair Work Commission” means the body established under the FW Act to administer that Act;
- 4.9 “FWC” means Fair Work Commission;
- 4.10 “FW Act” means the *Fair Work Act 2009* (Commonwealth) as amended from time to time;
- 4.11 “Marine Orders Part 9” refers to “Marine Orders Part 9: Health and Medical Fitness” as issued by the Australian Maritime Safety Authority pursuant to subsection 425(1AA) of the *Navigation Act 1912* as varied from time to time;
- 4.12 “marine pilot” means a person employed by the DPC in one of the classifications specified in clause 20 of this Agreement;
- 4.13 “National Employment Standards” means the minimum employment standards applying under the FW Act;

- 4.14 "NTPS" means the Northern Territory Public Sector;
- 4.15 "NTPS Agreement" means the Northern Territory Public Sector 2013 – 2017 Enterprise Agreement (Agreement ID: AE405518), or any replacement agreement to that agreement;
- 4.16 "Pilotage Authority" means the Pilotage Authority as defined under the *Marine Act* (NT) as amended from time to time;
- 4.17 "Port" means the area of water and land constituting the Port of Darwin comprised within the boundaries declared under Section 43A of the *Darwin Port Corporation Act* as amended from time to time;
- 4.18 "PSEM Act" means the *Public Sector Employment and Management Act*, as amended from time to time, and includes the Regulations, By-laws, Employment Instructions and Determinations as varied from time to time, made under that Act.

## **5. Parties Covered by this Agreement**

This Agreement covers:

- 5.1 the Commissioner;
- 5.2 the AMOU; and
- 5.3 the marine pilots employed in the DPC.

## **6. No Extra Claims and Negotiation of Replacement Agreement**

- 6.1 This 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.
- 6.2 This Agreement will be read in conjunction with the PSEM Act and will prevail over the PSEM Act to the extent of any inconsistency. For the avoidance of doubt, the PSEM Act is not incorporated into the Agreement.
- 6.3 Subject to sub-clause 6.4, the parties agree that they will not for the period from the commencement date of this Agreement until its expiry, make claims for the making of a further agreement, whether in relation to matters dealt with in this Agreement or otherwise.
- 6.4 Negotiations for a replacement agreement will commence four months prior to the expiry of this Agreement, or earlier or later by agreement between the parties.

## **7. Objectives of the Agreement**

- 7.1 The parties agree that the following five (5) objectives will enable the parties to monitor and improve the existing management and work practices continually and to meet future challenges within the Port:
- (a) to provide efficient harbour management and pilotage operations and to review performance indicators regularly to assist in improving the effectiveness of the Port's performance;
  - (b) to encourage optimum use of the Port, as a strategic part of the total transport infrastructure, for the economic benefit of the Northern Territory;
  - (c) to support and assist other agencies in achieving Port and marine-related objectives; and

(d) to market and promote the advantages of the geographic location of the Port.

7.2 It is essential to the success of the DPC that:

- (a) its management practices are such as to ensure the flexible use of employees in all aspects of DPC operations in order to achieve the objectives listed in sub-clause 7.1; and
- (b) safe and efficient marine services (including pilotage services) are provided to meet current and future demands.

## **8. Omitted**

## **9. Job Security, Redeployment and Redundancy**

9.1 The parties agree there will be no involuntary redundancies arising directly from the implementation of this Agreement.

9.2 Subject to 9.3, Schedule 10 (Northern Territory Public Sector Redeployment and Redundancy Entitlements) of the NTPS Agreement will apply to marine pilots.

9.3 The provisions of Schedule 10 (Northern Territory Public Sector Redeployment and Redundancy Entitlements) of the Northern Territory Public Sector 2013–2017 Enterprise Agreement do not apply in transfer of business or transfer of employment situations where work of the Employer is outsourced or transferred to another employer and the marine pilot receives an offer of employment with the second employer:

- (a) on terms and conditions substantially similar to, and considered on an overall basis, no less favourable than the marine pilot's terms and conditions with the Employer immediately before the termination; and
- (b) which recognises the marine pilot's service with the Employer in relation to redundancy.

## **PART 2 PROCEDURAL MATTERS**

### **10. Dispute Settling Procedures**

10.1 The parties are committed to avoiding industrial disputation about the application of this Agreement.

10.2 This clause sets out the procedures to be followed for avoiding and resolving disputes about matters arising under this Agreement.

10.3 However, this clause does not apply in relation to disputes about:

- (a) refusals of requests for flexible work arrangements on reasonable business grounds under sub-clause 49.14(b) of the NTPS Agreement and section 65(5) of the FW Act; and
- (b) refusals of requests for extended parental leave on reasonable business grounds under sub-clause 49.13 of the NTPS Agreement and under section 76(4) of the FW Act.

10.4 This clause does not prevent an employee who is aggrieved in relation to the matters referred to in sub-clause 10.2 and 10.3 above from instead seeking review under section 59 of the PSEM Act.

10.5 General

- (a) In the event of a dispute arising in relation to a matter covered by this Agreement the following procedure will apply.
- (i) Subject to the requirements of the FW Act, a party to a dispute may appoint the AMOU or another person, organisation or association to accompany or represent them at any stage of the dispute.
  - (ii) The parties to a dispute must genuinely attempt to resolve the dispute through the processes set out in this clause and must co-operate to ensure that these processes are carried out expeditiously.
  - (iii) Whilst a dispute is being dealt with in accordance with this clause, work must continue in accordance with usual practice, provided that this does not apply to an employee who has reasonable concerns about imminent risk to his or her health and safety, has advised the CEO of this concern and has not unreasonably failed to comply with a direction by the CEO to perform other available work that is safe and appropriate for the employee to perform.
  - (iv) Subject to any agreement between the parties in relation to a particular dispute, it is agreed that the provisions of the FW Act will be applied by the FWC with respect to the exercising of its functions and powers under this clause.
  - (v) Any decision or direction the FWC makes in relation to the dispute shall be in writing.
  - (vi) Subject to the right of appeal under sub-clause 10.8(d), any direction or decision of the FWC, be it procedural or final, shall be accepted by all affected persons and complied with by the parties.

10.6 Internal Resolution

- (a) In the event of a dispute, the parties will in the first instance endeavour to resolve the matter internally as follows:
- (i) The employee will refer the matter to his or her immediate supervisor for resolution, who may request that the employee provide written details of the matter, provided that where the dispute concerns alleged actions of the immediate supervisor, the employee may bypass this step.
  - (ii) If the matter cannot be resolved under paragraph (i) above, it will be referred in writing to the relevant manager for resolution.
  - (iii) If the matter cannot be resolved under paragraph (ii) above, it will be referred in writing to the relevant CEO for resolution.
  - (iv) If the matter cannot be resolved under paragraph (iii) above, it will be referred in writing to the Commissioner for resolution.
- (b) Where reasonably practicable, attempts to resolve the matter under each stage of the process referred to in paragraph (a) will begin within 48 hours of, and be completed within five (5) working days of the referral relating to that particular stage.

## 10.7 Conciliation

- (a) If the dispute remains unresolved after the parties have genuinely attempted to reach a resolution in accordance with sub-clause 10.6, any party may refer the dispute to the FWC, for resolution by conciliation.
- (b) Provided the requirements of sub-clauses 10.5 and 10.6 have been met by the parties to the dispute, it is agreed that jurisdiction will not be raised by any party at conciliation.
- (c) Conciliation before the FWC shall be regarded as completed when:
  - (i) the parties have reached agreement on the settlement of the dispute; or
  - (ii) the member of the FWC conducting the conciliation has either of his or her own motion or after application by any party, satisfied him or herself that there is no likelihood that further conciliation will result in a settlement within a reasonable period.

## 10.8 Arbitration

- (a) If a dispute remains unresolved at the completion of conciliation, either party may refer the dispute to the FWC for determination by arbitration, subject to any jurisdictional submissions.
- (b) Where a member of the FWC has exercised conciliation powers in relation to the dispute, that member will not be the member responsible for conducting the arbitration if any party to the dispute objects to that member doing so.
- (c) Subject to paragraph (d), the determination of the FWC is final and binding.
- (d) A party may appeal an arbitrated decision of a single member of the FWC, with leave of the full bench, provided that such appeal is lodged within 21 days of the decision being made.

## 10.9 Leave to Attend Industrial Proceedings

- (a) An employee required by summons or subpoena to attend industrial proceedings, or to give evidence in proceedings affecting the employee will be granted paid leave.
- (b) Leave to attend industrial proceedings counts as service for all purposes.

# 11. Management of Change and Consultation

## 11.1 This clause applies if the Employer:

- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
- (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

### *Major change*

## 11.2 For a major change referred to in paragraph 11.1(a)

- (a) the Employer must notify the relevant employees of the decision to introduce the major change; and
- (b) subclauses 11.3 to 11.9 apply.

## 11.3 The relevant employees may appoint a representative for the purposes of the procedures in this clause.

- 11.4 If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the Employer of the identity of the representative;
- the Employer must recognise the representative.
- 11.5 As soon as practicable after making a decision, the Employer must:
- (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
    - (iii) measures the Employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - (b) for the purposes of the discussion — provide, in writing, to the relevant employees:
    - (i) all relevant information about the change including the nature of the change proposed; and
    - (ii) information about the expected effects of the change on the employees; and
    - (iii) any other matters likely to affect the employees.
- 11.6 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 11.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 11.8 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Employer, the requirements set out in paragraph 11.2(a) and subclauses 11.3 and 11.5 are taken not to apply.
- 11.9 In this clause, a major change is likely to have a significant effect on employees if it results in:
- (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the Employer's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.

*Change to regular roster or ordinary hours of work*

- 11.10 For a change referred to in paragraph 11.1(b):
- (a) the Employer must notify the relevant employees of the proposed change; and
  - (b) subclauses 11.10(a) to 11.15 apply.
- 11.11 The relevant employees may appoint a representative for the purposes of the procedures in this clause.



- 11.12 If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the Employer of the identity of the representative;
- the Employer must recognise the representative.
- 11.13 As soon as practicable after proposing to introduce the change, the Employer must:
- (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion — provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the Employer reasonably believes will be the effects of the change on the employees; and
    - (iii) information about any other matters that the Employer reasonably believes are likely to affect the employees; and
  - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 11.14 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 11.15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 11.16 In this clause:
- relevant employees* means the employees who may be affected by a change referred to in subclause 11.1

## 12. Individual Flexible Working Arrangements

- 12.1 The CEO and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of this Agreement (including Schedules) if the arrangement:
- (a) deals with arrangements about when work is performed;
  - (b) meets the operational needs of the DPC;
  - (c) is genuinely agreed to by the CEO and employee;
  - (d) is about matters that would be permitted matters if the arrangement were an enterprise agreement;
  - (e) must not include a term that would be an unlawful term if the arrangement were an enterprise agreement; and
  - (f) results in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to.
- 12.2 Arrangements are to be in writing and:
- (a) signed by the CEO and employee, and if the employee is under 18 years of age, signed by a parent or guardian of the employee;
  - (b) includes details of:
    - (i) the terms of this Agreement that will be varied by the arrangement;
    - (ii) how the arrangement will vary the effect of the terms;

- (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (iv) states the period of operation of the arrangement.

12.3 To take effect, the individual flexibility arrangement must be approved by the Commissioner and implemented via a Determination or other appropriate instrument and the CEO must give the employee a copy of the Determination or other appropriate instrument within 14 days of the Commissioner's approval.

12.4 The Commissioner will not approve an individual flexibility arrangement unless the Commissioner is satisfied that the requirements of this clause have been met.

12.5 The CEO or employee may terminate the individual flexibility arrangement:

- (a) by giving written notice of not less than 28 days (or in accordance with the FW Act) to the other party to the arrangement; or
- (b) if the CEO and employee agree in writing – at any time.

12.6 An employee may choose to be represented by his or her nominated representative in relation to the development and implementation of individual flexible arrangements under this clause.

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

13.1 A group of employees and the DPC may agree to depart from the standard approach specified in or developed in accordance with this Agreement, including amongst other matters:

- (a) hours of work;
- (b) allowances;
- (c) meal breaks and
- (d) leave.

13.2 Agreements to vary working arrangements will:

- (a) result in more efficient operations;
- (b) be genuinely agreed to by the majority of employees involved;
- (c) result in employees being better off overall than the employees would have been if no variation had been made;
- (d) be recorded in writing and approved by the CEO;
- (e) if required by the parties, include a mechanism to terminate and/or review the agreement; and
- (f) require approval of the Commissioner and implementation via a Determination or other appropriate instrument.

13.3 Employees may choose to be represented by their nominated representative in relation to the development and implementation of working arrangements under this clause.

13.4 The AMOU will be consulted on proposed arrangements prior to the approval of the Commissioner.

## **14. Sharing of Information**

- 14.1 The parties recognise that it is essential to achieve a spirit of trust and cooperation between the DPC and employees.
- 14.2 The DPC will provide, on a regular and systematic basis, accurate and comprehensive information to employees on a range of operational, industrial, personnel and organisational matters, not including confidential or commercially sensitive information.
- 14.3 Such information sharing will be achieved through formal and informal means such as briefings, day-to-day discussion, and on-the-job discussions.

## **15. Productivity Improvements**

- 15.1 The parties agree to the following productivity objectives:
- (a) ensuring that DPC operations are managed efficiently and effectively in the best interests of employees, Port users and the community;
  - (b) satisfying the requirements of customers through the provision of reliable, efficient and competitive service levels;
  - (c) facilitating fundamental structural and attitudinal changes in order to modernise the operations of the DPC;
  - (d) achieving real productivity improvements as required by the Northern Territory Government and the customers of the DPC;
  - (e) ensuring a safe and healthy work environment;
  - (f) providing employees with the opportunity to make contributions to decisions that affect them, their work or their work environment;
  - (g) improving employee relations and avoiding industrial disputation through improved communication, information sharing and consultation;
  - (h) assisting all employees (including managerial employees) to accept the responsibility and accountability that is appropriate to their role in the DPC; and
  - (i) providing career paths for employees through the acquisition of skills, the provision of training, and the development of more flexible work practices in keeping with the operational requirements of the DPC.

## **16. Omitted**

### **PART 3 GENERAL EMPLOYMENT CONDITIONS**

#### **Division 1 Classifications, Salaries and Related Matters**

## **17. Payment of Salary**

- 17.1 Salary will be paid fortnightly.
- 17.2 Subject to clause 30, where an employee ceases employment, all salary and monies due to the employee will be forwarded within one week of the employee's cessation.

## **18. Omitted**

## **19. Omitted**

## 20. Classifications and Progression

### 20.1

The following classifications apply to Marine Pilots employed under this Agreement:

Classification	Licence	Relativity
MPL1	Trainee	90%
MPL2	Restricted 1	92.5%
MPL3	Restricted 2	95%
MPL4	Unrestricted / Restricted LNG	100%
MPL5	Unrestricted / LNG	115%

### 20.2

Classifications definitions

- (a) **Marine Pilot Level 1 (MPL1) Trainee Marine Pilot**  
A DPC employee undertaking training towards obtaining an initial, or reaccreditation of an expired or cancelled, marine pilotage licence for the Port of Darwin, in accordance with the *Marine Act* and the DPC Marine Pilot Training Plan.
- (b) **Marine Pilot Level 2 (MPL2) Restricted 1**  
A DPC employee holding a marine pilotage licence for the Port of Darwin for vessels up to 140 metres length overall ("LOA") (or other requirement as determined by the Pilotage Authority) in accordance with the *Marine Act* and the DPC Marine Pilot Training Plan.
- (c) **Marine Pilot Level 3 (MPL3) Restricted 2**  
A DPC employee holding a marine pilotage licence for the Port of Darwin for vessels up to 190 metres LOA (or other requirement as determined by the Pilotage Authority) in accordance with the *Marine Act* and the DPC Marine Pilot Training Plan.
- (d) **Marine Pilot Level 4 (MPL4)**  
(i) **Unrestricted excluding LNG**  
A. A DPC employee holding a marine pilotage licence, without restriction, excluding a licence to pilot a Liquid Natural Gas ("LNG") vessel, for the Port of Darwin in accordance with the *Marine Act* and the DPC Marine Pilot Training Plan; or  
(ii) **Restricted 2 plus LNG**  
A. A DPC employee holding a marine pilotage licence at the "Restricted 2" licence level and who is also licensed to pilot a LNG vessel, for the Port of Darwin in accordance with the *Marine Act* and DPC Marine Pilot Training Plan.
- (e) **Marine Pilot Level 5 (MPL5) Unrestricted plus LNG**  
A DPC employee holding a marine pilotage licence at the "Unrestricted" licence level and who is also licensed to pilot a LNG vessel, for the Port of Darwin in accordance with the *Marine Act* and DPC Marine Pilot Training Plan.

### 20.3

Classification progression

Each marine pilot will be able to progress without restriction through the training/licensing matrix commencing at MPL1 through to MPL5.

## 21. Salaries

21.1 Marine pilot salaries are aggregated and are inclusive of overtime, shift payments, public holidays, out-of-hours payments, on call payments, recreation leave loading and consolidated allowances.

21.2 The salaries of marine pilots will be as set out in the following table.

Classification	Current Salary per annum	Salary per annum from 15 October 2014 (3% increase)	Salary per annum from 1 July 2015 (3% increase)	Salary per annum from 1 July 2016 (3% increase)	Salary per annum from 1 July 2017 (3% increase)
MPL1	202,403	208,475	214,729	221,171	227,806
MPL2	208,025	214,266	220,694	227,315	234,134
MPL3	213,647	220,056	226,658	233,458	240,462
MPL4	224,892	231,639	238,588	245,746	253,118
MPL5	258,626	266,385	274,377	282,608	291,086

## 22. Superannuation

Employer superannuation contributions for an employee employed under this Agreement will be in accordance with terms and conditions specified in clause 40 of the NTPS Agreement.

## 23. Salary Sacrifice

23.1 Salary sacrifice for employer superannuation and salary sacrifice packaging for an employee employed under this Agreement will be in accordance with terms and conditions specified in clause 41 of the NTPS Agreement.

23.2 Any salary sacrifice packaging arrangements entered into by an employee in accordance with sub-clause 23.1 must meet the full obligations of the employer in relation to salary payments required under this Agreement.

## 24. Omitted

## Division 2 General Employment Arrangements

## 25. Duties

The typical duties of a marine pilot may include:

25.1 Undertake training to gain a valid Port of Darwin pilot licence.

25.2 Conducting the pilotage of vessels in the Port of Darwin to meet operational needs and in accordance with safe working policy and procedures of the DPC.

25.3 Undertake safety training and marine emergency training for the Port of Darwin.

25.4 Liaise with and provide advice to DPC clients and stakeholders and DPC Management on navigation, pilotage and shipping matters as required.

- 25.5 Participate as an active member of the workplace safety team.
- 25.6 Assist with management and control of day to day shipping movements.
- 25.7 Training of DPC Pilots and assessment of candidates for pilot licences and pilotage exemption certificates.
- 25.8 Assist in the coordination and management of on-water emergencies such as oil spills, collisions, groundings and other incidents.

## **26. Hours of Work and Shift Work**

- 26.1 The ordinary hours of work of an employee employed under this Agreement are 37.5 hours per week.
- 26.2 An employee employed under this Agreement is a shift worker for the purposes of the National Employment Standards.
- 26.3 Subject to time off in lieu and safe fatigue management provisions, marine pilots are expected to be available to work reasonable additional hours if required by the Agency, and may be called for duty at any time that he or she is required. A marine pilot may refuse to work additional hours in circumstances where the working of such additional hours would result in the marine pilot working hours which are unreasonable. In determining whether additional hours are reasonable or unreasonable, the following must be taken into account:
  - (a) any risk to the marine pilot's health and safety from working the additional hours;
  - (b) the marine pilot's personal circumstances, including family responsibilities;
  - (c) any notice given by the CEO or delegate of any request or requirement to work the additional hours;
  - (d) any notice given by the marine pilot of his or her intention to refuse to work the additional hours;
  - (e) the needs of the DPC;
  - (f) whether the marine pilot is entitled to receive time off in lieu or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
  - (g) the usual patterns of work in which the marine pilot works;
  - (h) the nature of the marine pilots' role, and the level of responsibility
  - (i) any other relevant fact.

## **27. Roster and Hours of Work**

### General

- 27.1 Rosters will be agreed between the marine pilots and DPC to satisfy operational and leave requirements.
- 27.2 The roster will be managed by the DPC and may be varied by agreement between the DPC and marine pilots in accordance with sub-clause 11.10 of this Agreement, having regard to operational requirements and safe fatigue management.
- 27.3 The CEO will approve the final agreed roster and any variations.

- 27.4 Recreation leave will be taken by each marine pilot during the twelve months roster cycle within the roster by agreement between the marine pilots. If there is a disagreement the CEO will decide.
- 27.5 A fatigue management system will be utilised by the DPC and marine pilots to ensure safety is maintained.
- 27.6 Marine pilots may be asked to perform pilotage duty on a rostered day off on a voluntary basis.
- 27.7 Marine pilots will, wherever possible, provide coverage for short term illness and emergencies by coming in on a rostered day off and such coverage will be shared equally amongst the pilots over a twelve month cycle.
- 27.8 No shipping movements / other duties will be allocated to a marine pilot who is on recreation / long service or personal leave except in an emergency or other extraordinary circumstance.
- 27.9 Additional hours may only be worked with the prior approval of the DPC. Where this cannot be obtained in advance then the CEO may grant approval at a later time.

Time-off-in-lieu arrangements for additional hours of work

- 27.10 The CEO may approve time off in lieu of additional hours worked in excess of the roster, subject to operational requirements and safe fatigue management.
- 27.11 A marine pilot required to provide pilotage services or attend to a Port emergency on a rostered day off will be credited with:
- (a) a half day off the roster for up to 4 hours of work commencing after 0700 and up to 1800, to be used at a later time; or
  - (b) a day off the roster for more than 4 hours of work commencing after 0700 and up to 1800, to be used at a later time; or
  - (c) a day off the roster for work commencing after 1800 and up to 0700 (or to attend an emergency without notice), to be used at a later time.
- 27.12 A marine pilot required to perform other duties, eg administration, pilotage planning and meetings, on a rostered day off will be credited with time off in lieu on an "hour for hour" basis.
- 27.13 Time off in lieu will not apply to travel to attend training interstate.
- 27.14 A marine pilot may accumulate a maximum of five days credit in time off in lieu. The five day maximum includes time accumulated as a day off the roster and time accumulated as hourly credits. These credits must be used within two months or will be paid out in cash to the marine pilot.
- 27.15 Time off in lieu credits accrued as at the commencement date of this Agreement will be recorded and recognised by the DPC.

**28. Omitted**

## **29. Part-time Employment**

- 29.1 An employee currently employed on a full-time basis will not be required to convert to part-time employment or transfer without their consent to enable part-time employment.
- 29.2 At the time of engagement or of conversion from full-time employment, the CEO and the employee will agree in writing on a regular pattern of part-time work (agreed hours), specifying at least the hours worked each day, which days of the week the employee will work, and the actual starting and finishing times each day.
- 29.3 Changes to hours of work originally established may only be made by mutual agreement in writing between the CEO and the employee.
- 29.4 The span of hours during which a part-time employee may work ordinary hours is the same as that applicable to a full-time employee.
- 29.5 A part-time employee will not be employed for less than 15 hours per fortnight.
- 29.6 A part-time employee is entitled to all conditions of employment applicable to a full-time employee as specified in this Agreement, on a pro rata basis.

## **30. Notice Period and Termination of Employment**

- 30.1 An employee will provide a minimum of four weeks' notice of his or her intention to terminate employment with the DPC. To assist the DPC in recruitment action, employees are encouraged to advise the employer of their intention to terminate employment at the earliest possible instance.
- 30.2 If an employee fails to provide the minimum required period of notice in accordance with sub-clause 30.1, the DPC may withhold from any payments due to the employee, the amount of their salary equal to the balance of the notice period.
- 30.3 Termination of employment at the initiative of the DPC will be in accordance with the PSEM Act and the FW Act.

## **31. Recovery of Overpayments and Relocation Costs on Cessation of Employment**

- 31.1 Where an employee, who has a financial debt to the Northern Territory Government in relation to his or her employment (e.g. overpayment of salary or allowances), ceases employment before the debt is fully recovered, the balance of the debt owing may, at the discretion of the CEO, be offset against any final payments due as a result of the cessation of employment.
- 31.2 The DPC is permitted to deduct relocation costs in certain circumstances.
- (a) The CEO may authorise a deduction from an employee's final salary payment to recover relocation expenses associated with the recruitment of the employee, if:
- (i) the employee is a fixed period employee and the employee terminates their contract of employment before the expiry of the contract; or
  - (ii) the employee is an ongoing employee and the employee terminates his or her contract of employment within 12 months of the start of the employee's employment at the DPC.



- (b) Relocation expenses are expenses covered by By-law 27, Relocation Expenses - Employment or Transfer.

31.3 Sub-clause 31.2 will not apply in those circumstances in which:

- (a) the CEO and the employee mutually agree to terminate the contract of employment; or
- (b) the CEO decides that special circumstances apply.

## **32. Over-carriage**

32.1 Marine pilots are to make every effort to disembark from a vessel and are not to be over-carried out of the Port limits. However, under certain circumstances, where either due to stress of weather the marine pilot is unable to safely disembark or where by not agreeing to be over-carried the vessel would be unable to depart the berth, a marine pilot may be over-carried to the next port. In these circumstances the over-carry is, wherever possible, to be agreed in advance between the Master, the marine pilot and the DPC.

32.2 In the event of an over-carry situation a marine pilot will be paid his or her salary at double time rates for each day or part day of over-carry, plus travel costs (where relevant) and meals and incidental expenses in accordance with rates and conditions determined by the Commissioner.

## **33. Omitted**

## **34. Omitted**

## **35. Training and Professional Development**

DPC will continue to support marine pilot training and professional development to ensure employees develop and maintain skills and knowledge necessary to undertake the requirements of their position.

## **36. Marine Pilot Health and Fitness Standards**

36.1 Marine pilots are required to maintain health and fitness standards as set out in Marine Orders Part 9.

36.2 In circumstances in which a marine pilot fails to meet the health and fitness standards as set out in the Marine Orders, the CEO may:

- (a) assign the marine pilot to carry out other suitable duties other than pilotage duties; or
- (b) apply the provisions of Part 7 of the PSEM Act; or
- (c) both (a) and (b).

36.3 In taking action under sub clause 36.2 the CEO will adhere to the processes and principles set out in the PSEM Act.

36.4 A marine pilot may request the assistance of the AMOU in relation to matters covered by this clause.

36.5 A marine pilot may utilise the review of grievances provisions under Section 59 of the PSEM Act in relation to matters covered by this clause.

## **37. Omitted**

## **38. Omitted**

### **Division 3 Leave Entitlements**

## **39. Recreation Leave**

- 39.1 Subject to this clause, recreation leave entitlements for an employee employed under this Agreement will be in accordance with the terms and conditions specified in clause 52 of the NTPS Agreement.
- 39.2 Sub-paragraph 52.3(a)(ii) of the NTPS Agreement relating to additional recreation leave of two weeks per year will only apply to an employee employed with the DPC or the NTPS prior to 1 January 2000.
- 39.3 Employees employed with the DPC or the NTPS on or after 1 January 2000 will be entitled to one week of additional recreation leave per year in place of the provisions of sub-paragraph 52.3(a)(ii) of the NTPS Agreement.
- 39.4 Minimum recreation leave
- Any period of recreation leave taken will not be less than one week, unless agreed beforehand and then only in exceptional circumstances.

## **40. Omitted**

## **41. Recreation Leave Loading**

Recreation leave loading forms part of an employee's salary in accordance with clause 21 of this Agreement.

## **42. Parental Leave**

Parental leave entitlements for an employee employed under this Agreement will be in accordance with clause 49 of the NTPS Agreement.

## **43. Personal Leave**

- 43.1 Subject to this clause, personal leave entitlements for an employee employed under this Agreement will be in accordance with clause 51 of the NTPS Agreement.
- 43.2 Notwithstanding the provisions of sub clause 43.1, the CEO may grant additional personal leave on full pay for sick leave purposes, where an employee has exhausted his or her accrued personal leave entitlements.

## **44. Compassionate Leave**

Compassionate leave entitlements for an employee employed under this Agreement will be in accordance with clause 50 of the NTPS Agreement.

## **45. Long Service Leave**

Long service leave entitlements for an employee employed under this Agreement will be in accordance with By-law 8 of the PSEM Act.

**SIGNATORIES TO THE *DARWIN PORT CORPORATION MARINE PILOTS' 2014 - 2018*  
*ENTERPRISE AGREEMENT***



Dated: 15 / 1 / 15

Craig Allen  
Northern Territory Commissioner for Public Employment

GPO Box 4371  
DARWIN NT 0801



Dated: 19.1.2015

Michael Fleming  
Director Port Services Division  
Australian Maritime Officers' Union  
Bargaining representative of DPC Marine Pilots

PO Box 407  
HAYMARKET NSW 1240

## UNDERTAKING

### WHEREAS:

- A. The Northern Territory Commissioner for Public Employment (**Employer**) has applied to the Fair Work Commission (**FWC**) pursuant to s.185 of the *Fair Work Act 2009 (Act)* for approval of an enterprise agreement to be known as the *Darwin Port Corporation Marine Pilots' 2014-2018 Enterprise Agreement (Agreement)*.
- B. The FWC has identified the Agreement does not meet the requirement set out in s.186(6)(a)(ii) of the Act and has noted this undertaking may be made pursuant to s.190 to meet that requirement.

PURSUANT to s.190 of the Act, the Employer hereby undertakes to the Fair Work Commission it:

1. Notwithstanding clause 10.3 of the Agreement, it will do all things necessary to permit disputes in relation to the National Employment Standards to be dealt with through the dispute resolution procedure in the Agreement.
2. The Employer will ensure that a copy of this undertaking is made available to all employees covered by the Agreement and will attach it to any copy of the Agreement provided to employees or made available in the workplace.

### Employer Signature:

Date:

23/13/2015

Signed:

C. Allen

Name:

CRAIG JOHN ALLEN

Work Address:

LEVEL 4, HARBOUR VIEW PLAZA, 8 McMINN ST,  
DARWIN, NT 0800

Position/Capacity:

COMMISSIONER FOR PUBLIC EMPLOYMENT

(A person duly authorised to give this undertaking on behalf of the Employer)

### Australian Maritime Officers' Union Signature:

Date: 23 March 2015

Signed:



Name:

Chris Neiberding

Work Address:

Level 5 suite 1, 377 Sussex st, Sydney NSW 2000

Position/Capacity:

Industrial Officer