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Our Ref: 2014/33-03

Mr Michael Fleming
Australian Maritime Officers' Union
PO Box 407
HAYMARKET NSW 1240

Dear Mr Fleming

**RE: LETTER OF UNDERSTANDING FOR DARWIN PORT CORPORATION
MARINE PILOTS**

I refer to the enterprise bargaining negotiations for the Darwin Port Corporation Marine Pilots' 2014 - 2018 Enterprise Agreement (the proposed agreement), and the commitment to provide a letter of understanding in relation to other matters that are separate to the proposed agreement.

Subject to the approval of the proposed agreement by the Fair Work Commission, this letter is to clarify both the employer and the Chief Executive Officer (CEO) of the Darwin Port Corporation (DPC) position with respect to the following matters:

- Qualification Requirements for Marine Pilots;
- LNG Shipping to Bladin Point;
- Contract of Employment Provisions for Fixed Period Employees;
- Darwin Port Corporation Vehicle Use Policy; and
- Northern Territory Government Death and Invalidity Scheme.

Qualification Requirements for Marine Pilots

The Darwin Port Corporation Marine Pilots 2011-2014 Enterprise Agreement (the current agreement) includes the minimum qualification to be held by a person employed as a Marine Pilot as a Master Class 1 at Clause 19. This clause has been removed from the proposed agreement.

The *Darwin Port Corporation Act* (the Act) prescribes that the Harbourmaster will set the standards for pilotage and the provision of pilotage services for the Port of Darwin. The Harbourmaster has issued the Technical and Safety Standards for

Pilotage and the Provision of Pilotage Services for the Port of Darwin Version 1.1 (the Standard) (Attachment A).

The Standard prescribes at article 8.1 that an applicant for a Pilot licence must hold either:

- a) *A current Certificate of Competency as an Australian Master Unlimited; or*
- b) *A current Certificate of Recognition issued by AMSA; or*
- c) *A current Certificate of Competency as Master Unlimited, not issued by AMSA but eligible for the issue of a Certificate of Recognition by AMSA through bilateral agreement with the issuing Flag State*

The Harbourmaster when setting the Standard is required to have regard to Marine Orders made under the *Navigation Act 1912 (Cth)* and/or *Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth)*.

Darwin Port Corporation's Marine Pilot Job Description (Attachment B) sets the minimum qualification as Master Class 1. This requirement has existed in the Job Description prior to the inclusion of Clause 19 into the current agreement.

Recruitment for Marine Pilots continues to attract candidates with Master Class 1 certificates of competency and DPC are able to fill vacant positions when required.

In providing the above information to you the CEO DPC is seeking to ensure that they do not intend to change the essential minimum requirement of Master Class 1 for Marine Pilot recruitment. All future requirements will be compliant with requirements set by the Pilotage Authority and the Standard. It is worth noting that the latest standard was issued in July 2014, being the first revision since its initial issue in July 2012.

If a change to the essential prerequisite qualifications for the employment of Marine Pilots at DPC is proposed, consultation with the Marine Pilots group will occur. It would be expected that the Marine Pilot group will provide their professional advice to assist DPC management to assess and implement any changes.

LNG Shipping to Bladin Point

During bargaining the Australian Maritime Officers' Union (AMOU), on behalf of the Marine Pilots, sought an additional salary point in preparation of the potential future pilotage requirements associated with commencement of LNG Shipping to Bladin Point, which is not expected until around 2016/2017.

The DPC does not expect the work required for this project will entail a significant change in the level of Pilotage than is currently required for LNG shipping in the Port of Darwin. While there will be a requirement for additional training, the need of training is a constant element of the pilotage industry and the current training arrangements for LNG shipping would apply as usual.

Given the parties have differing views about the impact of the commencement of LNG Shipping to Bladin Point, it is agreed to support the following position as a way through to settling the matter.

If during the term of the proposed agreement the LNG shipping requirements significantly impact on the duties and responsibilities of the DPC Marine Pilots, in accordance with the management of change and consultation provisions of the proposed agreement, the CEO DPC, and the AMOU and Marine Pilots, should discuss and consider the impact the changes may have on the Marine Pilots.

If it is agreed there is a significant impact on duties and responsibilities associated with the LNG shipping requirements, then the CEO DPC can make a case to the Commissioner for Public Employment (CPE) to consider the impact on the Marine Pilots' classification and salary levels, and with the CPE's support and approval, any agreed changes can be introduced through issuing a Commissioner's determination.

If the parties cannot agree on the issues, and if the parties agree, the parties may utilise the Fair Work Commission process to mediate and/or conciliate the matter. This is consistent with the usual approach taken in negotiating agreed matters.

Contract of Employment Provisions for Fixed Period Employees

Clause 28 Contract of Employment provisions, which includes provisions preventing Marine Pilots on fixed period contracts having their services terminated due to insufficient work, has been removed from the proposed agreement.

As reported during bargaining ongoing employment is the usual method of employment for Marine Pilots, and there has never been a termination of employment due to insufficient work. This fact is supported by the increase in the number of Marine Pilots over the past years from two to the current establishment of eleven.

However, concerns raised by those who are not currently able to be provided with ongoing employment due to Australian residency requirements (or other conditions for ongoing employment), and are engaged on fixed period contracts under s457 visa arrangements, were noted during bargaining.

As you are aware the CEO of the DPC has the ability to offer ongoing employment to these Marine Pilots once they obtain Permanent Australian Residency, or meet the other conditions for employment as contained in Employment Instruction 1, and DPC works closely with these pilots to assist them in meeting these eligibility requirements.

Notwithstanding the above, Marine Pilots currently employed on fixed period contracts under the proposed agreement, may continue to have the conditions contained in sub-clause 28.1 of the current agreement apply to them as follows:

28.1 Employees employed for a specified period under the PSEM Act, as amended from time to time, may not have their services terminated before the completion of the specified period of employment due to insufficient work.

The provision may apply to existing Marine Pilots while they remain a fixed period employee during the term of the proposed new agreement (i.e. until 30 June

2018). These conditions will not apply to Marine Pilots employed after the commencement of the proposed new agreement.

Darwin Port Corporation Vehicle Use Policy

Clause 34 Darwin Port Corporation Vehicle Use Policy of the current agreement is a policy matter and has been removed from the proposed agreement.

While the benefit is separate from the proposed agreement, Darwin Port Corporation Marine Pilots shall have access to company pool vehicles consistent with the current DPC Vehicle Use Policy, as varied from time to time.

Any changes to the policy will be made in consultation with the Marine Pilots.

Northern Territory Government Death and Invalidity Scheme

Clause 24 Northern Territory Government Death and Invalidity Scheme (NTGDIS) of the current agreement, which provides that Marine Pilots employed under the agreement will be covered by NTGDIS as administered by the Northern Territory Superannuation Office, is a benefit provided separate to the Agreement under the *Superannuation Act* (NT).

This clause has been removed as the benefit is already provided under other legislation and is not required in the proposed agreement. However this letter is to confirm that Darwin Port Corporation Marine Pilots will continue to be eligible for benefits provided under NTGDIS, in accordance with the *Superannuation Act* (NT), as varied from time to time.

This letter of understanding addresses separate matters to the proposed Darwin Port Corporation Marine Pilots' 2014 - 2018 Enterprise Agreement, which shall apply to Darwin Port Corporation Marine Pilots for the term of the proposed agreement.

Yours sincerely



CRAIG ALLEN
Commissioner for Public Employment

13 December 2014



TERRY O'CONNOR
Chief Executive Officer
Darwin Port Corporation

19 December 2014