[2025] FWCA 1456

FairWork Commission

DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Southern Port Authority Trading AS Southern Ports
(AG2025/1174)

SOUTHERN PORTS - ESPERANCE SHIFT SUPERINTENDENTS ENTERPRISE AGREEMENT 2024

Port authorities

COMMISSIONER SCHNEIDER PERTH, 1 MAY 2025

Application for approval of the Southern Ports - Esperance Shift Superintendents Enterprise Agreement 2024

[1] Southern Port Authority (the Applicant) has made an application, under section 185 of the *Fair Work Act 2009* (Cth) (the Act), for the approval of a single enterprise agreement known as the *Southern Ports - Esperance Shift Superintendents Enterprise Agreement 2024* (the Agreement).

[2] On the basis of the material contained in the application and accompanying declarations, I am satisfied that each of the requirements of sections 186, 187 and 188 of the Act as are relevant to this application for approval have been met.

[3] Clause 4 of the Agreement provides that where there is any conflict with the National Employment Standards (NES) and the Agreement the NES will apply to the extent of the inconsistency. Pursuant to section 205A(2) of the Act, the workplace delegates' rights term prescribed by the *Port Authorities Award 2020* is taken to be a term of the Agreement.

[4] The Agreement is approved and, in accordance with section 54 of the Act, will operate from 8 May 2025. The nominal expiry date of the Agreement is 1 January 2028.

THE SEAL OF THE FAIR WORK COMMISSION

COMMISSIONER

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Note – the model delegates' rights term is taken to be a term of this agreement and can be found at the end of the agreement.

SOUTHERN PORTS

ALBANY BUNBURY ESPERANCE

Southern Ports -- Esperance Shift Superintendents Enterprise Agreement 2024

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PART 1 – AGREEMENT OPERATION

1. TITLE

1.1 This agreement shall be known as the Southern Ports – Esperance Shift Superintendents Enterprise Agreement 2024.

2. COVERAGE

2.1 This Agreement covers:

a) Southern Ports Authority (ABN 30 044 341 250) (The Esplanade Esperance, WA 6450) (**Employer**); and

b) Employees of the Employer who are employed as Shift Superintendents based at the Port of Esperance (Employees);

c) the Australian Maritime Officers Union (AMOU) of Suite 1, Level 5, 377 Sussex Street Sydney, NSW 2000, subject to the Union applying to be covered by the Agreement pursuant to s183 of the *Fair Work Act 2009* (Cth) (FW Act).

3. LENGTH OF AGREEMENT

3.1 This Agreement shall commence operation 7 days after the day the Agreement is approved by the Fair Work Commission.

3.2 The nominal expiry date of this Agreement shall be 1 January 2028. However, this Agreement shall continue to operate beyond the nominal expiry date until it is replaced or terminated.

3.3 No party to this Agreement shall engage in industrial action before the nominal expiry date.

3.4 The parties agree to commence negotiations for a new enterprise agreement to replace this Agreement not less than six (6) months before the nominal expiry date of this Agreement.

4. NATIONAL EMPLOYMENT STANDARDS

4.1 This Agreement operates to the exclusion of any modern award or other industrial instrument. Any legislation, policy, procedure, or other document referred to in this Agreement is not incorporated into the Agreement and does not form part of it.

4.2 The Agreement will be read and interpreted in conjunction with the National Employment Standards (NES) under the Fair Work Act 2009 (Cth) (FW Act) as varied. Where there is any inconsistency between this Agreement and the NES, and the NES provides greater benefit, the NES provision will apply to the extent of the inconsistency.

5. INDIVIDUAL FLEXIBILITY

5.1 Notwithstanding any other provisions of this Agreement, an Employee and Employer may agree to vary the effect of this agreement to meet the genuine individual needs of the Employee and the Employer.

5.2 The terms that an Employee and Employer may agree to vary the effect of are those concerning:

a) hours of work;

b) overtime rates;

c) penalty rates and shift loadings;

d) allowances; and

e) leave loading.

5.3 The Employee and the Employer may agree to flexible working arrangements that for example look like the following:

a) An Employee working Ordinary Hours outside of the Ordinary Hours of the workplace;

b) An Employee working their part time Ordinary Hours over a different spread of days;

c) An Employee receiving an hourly rate which incorporates allowances they are entitled to.

5.4 Any arrangement for individual flexibility under this clause must be genuinely agreed to by the Employee and the Employer. The arrangement must be in writing and signed by the Employer and the Employee (including the Employee's parent or guardian where they is under 18 years of age). A copy of the agreement must be given to the Employee within 14 days of it being agreed to.

5.5 The Employer must ensure that the terms of the individual flexibility arrangement:

a) are about permitted matters under section 172 of the Fair Work Act 2009; and

b) are not unlawful terms under section 194 of the Fair Work Act 2009; and

c) result in the Employee being better off overall than the Employee would be if no arrangement was made.

5.6 The individual flexibility arrangement may be terminated:

a) by the Employee or the Employer giving 28 days' notice of termination, in writing, to the other party; or

b) at any time, by written agreement between the Employee and the Employer.

6. DEFINITIONS

6.1 For the purposes of this Agreement, unless the contrary intention appears:

a) **'Act'** means:

(i) the Fair Work Act 2009 (Cth);

b) **'Agreement'** means:

(i) the Southern Ports – Esperance Shift Superintendents Enterprise Agreement 2024;

c) **'Close Relative'** means:

(i) the Employee's spouse, de facto partner, child, parent, grandparent, grandchild, or sibling; or

(ii) a child, parent, grandparent, grandchild, or sibling of the Employee's spouse or de facto partner;

(iii) a person related to the Employee according to Aboriginal or Torres Strait Islander kinship rules.

d) **'Commencement date'** means:

(i) the date seven (7) days after this Agreement is approved by FWC;

e) **'Continuous shift work'** means:

(i) work performed in which shifts are continuously rostered 24 hours per day for seven (7) days per week, including public holidays;

f) **'Daily Rate'** means:

(i) the equivalent of twelve point five (12.5) hours pay;

g) **'Employer'** means:

(i) Southern Ports Authority;

h) **'Employees'** means:

(i) any person who is an Employee of the Employer engaged as a Shift Superintendent based in Esperance, WA;

i) **'Flat Rate'** means:

(i) the rate of pay paid for all hours worked up to an annual aggregate of two thousand two hundred and seventy five (2,275) hours per annum;

j) **'FWC'** means:

(i) the Fair Work Commission;

k) **'Immediate Family'** means:

(i) the Employee's spouse, de facto partner, child, parent, grandparent, grandchild, or sibling; or

(ii) a child, parent, grandparent, grandchild, or sibling of the Employee's spouse or de facto partner.

l) **'NES'** means:

(i) the National Employment Standards as prescribed by the Act;

m) **'Parties'** means:

(i) the Employer, the Employees and the Union covered by this Agreement;

n) **'Shift work'** means:

(i) work performed by an Employee on day shift or night shift, either solely or in any combination thereof, as part of non-continuous shift work or continuous shift work roster arrangement.

o) **'Shift worker',** for the purposes of the additional week of annual leave set out in the NES means:

(i) an employee who is a 7-day shift worker who is regularly rostered to work on Sundays and public holidays.

p) **'State'** means:

(i) the State of Western Australia;

q) **'Union'** means:

(i) the Australian Maritime Officers Union; and

r) **'Wages Policy'** means:

(i) the Government of Western Australia Public Sector Wages Policy Statement as amended from time to time.

PART 2 – EMPLOYMENT ARRANGEMENTS

7. TYPES OF EMPLOYMENT

Basis of Employment

7.1 An Employee shall be engaged in accordance with the terms and conditions of this Agreement on either a:

a) full time basis; or

b) part time basis; or

c) casual basis.

7.2 At the time of engagement, the Employer will provide to each Employee written advice setting out the terms of the Employee's engagement and, in particular, whether the Employee is to be engaged on a full time, part time or casual basis.

Full Time Employment

7.3 A full time Employee is engaged on the basis of working thirty-eight (38) ordinary hours per week, plus an additional five point seventy-five (5.75) hours per week that may be worked on an aggregated roster system.

Part Time Employment

7.4 A part time Employee is an Employee engaged on the basis of working no less than eight (8) hours per week and for no more than thirty-eight (38) ordinary hours per week.

7.5 A part time Employee will be rostered for a minimum of four (4) consecutive hours on any shift or day.

7.6 A part time Employee is entitled to equivalent pay and conditions to those of full time Employees on a pro rata basis.

7.7 At the time of engagement, the Employer and the part-time Employee will agree in writing the number of ordinary hours to be worked each week.

7.8 Any variation to the number of agreed hours will be by mutual agreement recorded in writing.

Casual Employment

7.9 A casual Employee is an Employee who is engaged on a casual basis and is paid as such.

7.10 Casual Employees will be paid per hour for the work performed plus an additional 25 per cent (25%) casual loading.

7.11 On each occasion a casual Employee is required to attend work, the casual Employee is entitled to a minimum payment of three (3) hours' work.

8. PROBATIONARY PERIOD

8.1 The employment of all new Employees, except casual Employees, will be subject to a three (3) month probationary period.

8.2 An Employee who has at least three (3) months of continuous service with the Employer immediately prior to full time or part time employment will not be required to serve a probationary period.

8.3 At the completion of the three (3) month probationary period and subject to the outcome of a performance review, the probationary period may be extended for a further three (3) months.

8.4 Where an Employee's probationary period has been extended for a further three (3) months, the Employer must notify the Employee in writing of the extension and provide justification for the extension of the probationary period.

8.5 At, or prior to, the end of the probationary period the Employer will either:

a) confirm the employment in writing;

b) extend the initial three (3) month probationary period by up to three (3) months; or

c) terminate the employment.

8.6 If at the end of the probationary period the Employer has not confirmed the employment or terminated the employment, the employment will be deemed to continue on a permanent and ongoing basis.

8.7 During the probationary period either the Employer or the Employee may terminate the employment by giving one (1) weeks' notice of termination or payment in lieu of notice.

8.8 The probationary period will count towards the calculation of all entitlements under this Agreement.

9. GENERAL DUTIES & RESPONSIBILITIES

9.1 Employees are employed to undertake the duties contained in their position description. Position descriptions may change by mutual agreement between the Employer and the Employee from time to time to reflect changes to duties.

9.2 At all times in performing their duties and responsibilities, Employees are required to:

a) comply with any lawful direction given by the Employer;

b) use their best endeavours;

c) devote the whole of their time and attention while undertaking their duties, to their work;

d) not engage in any activities which seek to publicly harm the reputation, or criticise the actions, of the Employer; and

e) ensure the highest level of safe working practices are adhered to and maintained.

10. CLASSIFICATIONS

10.1 The classifications for Employees under this Agreement are:

a) Shift Superintendents:

(i) Experienced employees capable of running a safe and productive shift, ensuring execution of shipping, operational and management functions under their responsibility.

b) Trainee Shift Superintendents:

(i) Employees with limited experience, who requires supervision in the day-to-day activities of the Shift Superintendent role.

PART 3 – REMUNERATION AND ENTITLEMENTS

11. RATES OF PAY

11.1 Employees (other than apprentices and trainees) shall be paid no less than the Flat Rate of Pay per hour, according to their classification, as set out in **Schedule A**. The relevant Flat Rate of Pay as set out in **Schedule A** is based on an eighty-seven-point five (87.5) hour fortnight.

11.2 The Flat Hourly Rate paid is in full compensation for the hours necessary to fulfil the duties and the conditions under which the work is performed and is inclusive of all penalties, allowances, leave loading or other payments that would otherwise have been payable, unless otherwise provided for in this Agreement.

12. ANNUAL WAGE INCREASES

12.1 The Rates of Pay set out in **Schedule A** have been calculated for each year of this Agreement. The Rates of Pay set out in **Schedule A** are increased in accordance with Government Wages Policy (GWP). For the term of the agreement, GWP as agreed, has been applied as follows:

a) 1 January 2025 – 2%

b) 1 January 2026 – 2%

c) 1 January 2027 – 2%.

12.2 In the event this Agreement expires, and a new replacement Agreement has not been put to formal vote, rates of pay will increase on 1 January 2028 in line with GWP or in the absence of GWP, Perth CPI for the September quarter preceding.

13. REMOTE AREA LIVING ALLOWANCE

13.1 Employees will be entitled to a Remote Area Living Allowance (RALA), if they are employed at a Port Location that is classified as a Remote Area by the Australian Taxation Office (ATO) for the purposes of Fringe Benefits Tax.

13.2 Where an Employee is eligible, RALA will be paid as a Flat Hourly Allowance according to the employee's classification. It will be applicable to all hours worked, up to a maximum of eighty-seven-point five (87.5) hours a fortnight.

13.3 The RALA rates are set out in **Schedule B.**

13.4 RALA, where paid, will be considered as ordinary time earnings for the purpose of superannuation and taxation.

13.5 RALA will be paid in accordance with clause 13 where an Employee is terminated due to redundancy.

14. HIGHER DUTIES

14.1 The Employer recognises that periods of higher duties contribute to consistent and efficient business operations as well as providing Employees with professional development opportunities.

Authorisation

14.2 Payment of higher duties for a period of Employee absence is not automatic and must be authorised by the Regional Manager after recommendation by the appropriate Manager.

14.3 Where a higher duties allowance is to be paid to an Employee, the Employer's *Higher Duties Allowance* form is to be completed by the Employee and forwarded to payroll for processing.

14.4 Authorisation will be subject to a demonstrated operational need for the position to be filled during the normal incumbent's absence.

14.5 One Employee's absence will result in only one Employee at a time being in receipt of higher duties payment for that absence.

Payment

14.6 Where an Employee is appointed to relieve in a higher paid position and undertakes all of the duties of the higher-level position of one (1) day/shift or more, the Employee will be paid the higher salary/hourly rate for that higher position for the period worked.

14.7 Where an Employee is appointed to relieve in a higher position and undertakes some of the duties of the higher level or is being trained in the role for one (1) day/shift or more, the Employee will be paid a percentage of the salary difference, which will be negotiated and mutually agreed upon prior to the commencement of the Employee performing the higher duties.

14.8 When an Employee who is in receipt of a higher duties allowance for less than three (3) months and proceeds on any period of paid leave, including public holidays and rostered days off, or attending training associated with their normal position, the Employee shall not receive the higher duties allowance for the period of leave.

14.9 Where an Employee acts in a higher paid position they must be prepared and able to fulfil the normal requirements of that position for the period of higher duties including flexibility with regard to working hours, i.e. extra hours are not paid for salaried positions.

Eligibility

14.10 Factors that will be taken into account in determining an Employee's eligibility for a higher duties placement will include:

a) the Employee's capability to perform the duties of the higher position;

b) the Employee's availability during the period of the normal incumbent's absence

c) the opportunity for the Employee to realistically gain new skills or experience; and

d) the eligibility of alternative candidates for the placement.

15. PAYMENT OF WAGES

15.1 Wages shall be paid, in arrears, fortnightly into a bank account nominated by the Employee on a day set by Southern Ports. The Employer may change the day the remuneration is paid to an Employee, provided the change is for operational reasons and the Employer provides the Employee with no less than one (1) month notice of the change.

16. SUPERANNUATION

16.1 Superannuation shall be paid in accordance with the Superannuation Guarantee (Administration) Act 1992 (Cth) and any regulations made pursuant to it.

17. SALARY PACKAGING

17.1 An Employee may, by agreement with the Employer, enter into a salary packaging arrangement in accordance with the Employer's salary packaging policy. The Employer may not unreasonably withhold agreement to the salary packaging.

17.2 Salary packaging is an arrangement whereby the salary benefit arising under this Agreement are reduced, with another or other benefits to the value of the replaced salary being substituted and due to the Employee.

17.3 The value of any agreed salary package, viewed objectively, shall not be less than the value of entitlements under this Agreement which would otherwise apply.

17.4 The value of any agreed salary package, viewed objectively, shall not be greater than the value of the entitlements under this Agreement which would otherwise be due to the Employee.

17.5 The salary packaging arrangement entered into shall be by separate written agreement with the Employer which sets out the terms and conditions of the arrangement provided that:

a) the terms of such an agreement shall comply with the terms of this clause;

b) the agreement shall include details of the Employee's classification and salary level applying immediately prior to the salary package, coming into effect, and the details of the package; and

c) the Employee shall be provided with a copy of the agreement.

17.6 Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the Employee concerned and shall be cost neutral in relation to the total employment costs to the Employer.

17.7 The salary packaging arrangement must comply with relevant taxation laws and the Employer shall take reasonable steps to ensure that it does comply, however, the Employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the Employee.

17.8 An Employee may elect to cancel any salary packaging arrangement by giving a minimum of four (4) weeks' notice, unless the salary packaging relates to a Deed of Novation, entered into voluntarily by the Employee, which does not allow termination by notice.

17.9 The Employer may elect to cancel any salary packaging arrangement by giving a minimum of four (4) weeks' notice if the Employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits, provided that the Employer cannot retrospectively cancel any salary packaging arrangement.

17.10 The Employer and the Employee may agree to forgo the notice period.

17.11 The cancellation of a salary packaging arrangement will not cancel or otherwise affect the operation of this Agreement.

17.12 The following may be incorporated into a salary package:

a) superannuation payments; and/or

b) a novated motor vehicle lease and associated costs such as registration, insurance, fuel cards, maintenance, servicing and repairs.

c) Any dispute arising from the operation, interpretation or application of this clause may be dealt with in accordance with the Dispute Resolution Process at clause 54 of this Agreement.

18. TRAVEL ALLOWANCE

18.1 Esperance based Employees will be entitled to a Travel Allowance as set out in this clause, for each year this Agreement is in operation.

18.2 The Travel Allowance includes:

a) an amount of $850.00; and

b) two days additional paid leave.

18.3 The Travel Allowance is to be used for the purpose of:

a) the Employee or a member of their Immediate Family under their care is required to travel to Perth, Albany or Kalgoorlie for a specialist or diagnostic appointment/s, or treatment/s not available in Esperance.

18.4 For the purpose of clause 18.3 (a) 'under their care' means that an Employee is required to provide care to the immediate family member due to the family members personal illness or injury.

18.5 The Travel Allowance can be utilised a maximum of four (4) times per calendar year. The Travel Allowance does not accrue and is available in full upon request in accordance with this clause, from 1 January of each year of this Agreement.

18.6 The Employer may request evidence of the requirement to travel and/or evidence of requirement to provide care for their immediate family member required to travel for the purposes set out in clause 18.3 (a).

PART 3 – HOURS OF WORK, ROSTERING AND PENALTY RATES

19. HOURS OF WORK

19.1 For the purposes of paying wages, the hours of work for Full-time Employees will be an average of thirty-eight (38) ordinary hours and five point seventy five (5.75) additional hours per week Monday to Sunday, including public holidays.

19.2 For the purpose of this Agreement a "week" means the period from the commencement of Monday day shift to the conclusion of the night shift on the following Sunday. This is in line with the Employer's fortnightly pay period.

20. ROSTERING PRINCIPLES

20.1 The Employer may roster Employees in accordance with the terms of this Agreement.

20.2 Employees will perform shift work in accordance with their roster comprising of fourteen (14) rostered shifts on duty and fourteen (14) days rostered off duty, in any twenty-eight (28) day period.

20.3 Rostering arrangements shall be by mutual agreement between the Employer and the Employees.

20.4 Employees will be rostered to take days off so as to ensure that wherever possible Employees do not work more than seven (7) consecutive days, exclusive of call outs in a fourteen (14) day work cycle.

20.5 Rostered duty start and finish times are as follows:

a) day shift commences at 0600 and finishes at 1830; and

b) night shift commences at 1800 and finishes at 0630.

20.6 A shift will comprise of twelve and a half (12.5) hours, inclusive of meal breaks and a handover of thirty (30) minutes.

20.7 A handover of thirty (30) minutes is required at the beginning of each shift.

20.8 All hours performed continuously past midnight counts as part of the previous day's work.

20.9 Full-time Employees are required to work an average of forty-three point seventy-five (43.75) hours per week over a fifty two (52) week period as per the roster arrangement.

20.10 The roster arrangements referred to in this clause are based on current port requirements at the commencement of this Agreement and the pay rates set out in **Schedule A** of this Agreement are in full compensation for all rostered hours reflected in that roster arrangement.

20.11 The basis for any roster is to provide secure permanent rostered jobs and maintain as much regularity and predictability of working shifts as possible.

20.12 Subject to clause 20.14, when port requirements change, and the Employer has an essential need for roster changes the Employees shall provide the flexibility to address the necessary changes.

20.13 In these circumstances information relating to changed port requirements will be provided to the Employees to facilitate such discussions.

20.14 Any change in the roster arrangement will be by mutual agreement between the Employer and the Employees.

20.15 There will be an annual roster posted on the Employer's intranet.

20.16 Days off are set in the roster but may be varied by agreement between the Employer and the Employee.

20.17 In exceptional circumstances an extra shift may be offered on rostered days off by mutual agreement between the Employer and the Employee.

21. NOTIFICATION AND CANCELLATION OF SHIFTS (Casual Employees)

Notification of Shifts

21.1 Casual Employees shall be notified of the requirements to attend for shift work as follows:

a) For day shift, the Employer will notify the Employee prior to the end of the day shift on the previous working day Monday – Friday.

b) For night shift the Employer will notify the Employee before the end of the day shift on the previous working day, subject to clause 21.1(c).

c) For night shift subsequent to work on a day shift, notification shall be given before the end of the day shift being worked. Wherever possible Employees shall be given prior advice by the end of the day shift on the previous working day Monday – Friday.

d) An Employee shall be advised of the start time and duration of his or her shift for the following day, or cancellation of a work requirement on a Sunday or a Monday Public Holiday by either being advised before the end of the shift being worked. Details of work requirements may be given in person or by answering machine.

e) Notwithstanding anything in this clause, where unforeseen or emergency circumstances arise Employees may be requested to attend for work immediately.

Cancellation of Shifts

21.2 A casual Employee's shift may be cancelled by the Employer for operational reasons.

21.3 If the Employer is to cancel a casual Employee's shift, the following shall apply:

a) the Employer will provide the casual Employee with no less than 24 hours' notice; and

b) the Employee will be paid two (2) hours at the hourly rate for the cancelled shift if not allocated to work another shift on that day.

22. OVERTIME

22.1 Employees may be required to work reasonable additional hours in excess of their rostered shifts or hours.

22.2 Additional hours worked up to two thousand two hundred and seventy-five (2,275) hours per annum will be paid at the applicable Flat Hourly Rate as set out in **Schedule A.**

22.3 Additional hours worked in excess of two thousand two hundred and seventy-five (2,275) hours per annum will be paid at the rate of time and a quarter (being 1.25 times) of the Flat Hourly Rate as set out in **Schedule A.**

23. SHIFT EXTENSIONS

23.1 Employees shall be provided with as much notice as practicable of a requirement to work overtime as an extension to a shift being worked.

23.2 In the event the Employer requires an Employee to work overtime as an extension to a shift being worked the following provisions shall apply:

a) the Employer will provide the Employee with at least one (1) hour's notice before the end of the relevant rostered shift being worked. A lesser period of notice of a requirement to work overtime may be given by the Employer in the event of unforeseen or exceptional circumstances;

b) Employees shall ensure continuity of service by working overtime as a shift extension in the event of an unforeseen or exceptional circumstance;

c) the Employee shall accrue time in lieu or be paid overtime in accordance with the provisions of this Agreement for all hours worked during a shift extension Employee;

d) A minimum of 30 minutes (0.5 hour) payment increments will apply for each 30 minutes, or part thereof, of overtime worked.

e) Unless otherwise agreed, the maximum number of hours to be worked by an Employee in any one working day shall not exceed 14 hours.

24. PUBLIC HOLIDAYS AND CLOSED PORT DAYS

Public Holidays

24.1 The following days will be observed as public holidays for Employees:

a) New Year's Day;

b) Australia Day;

c) Labour Day;

d) Good Friday;

e) Easter Monday;

f) Anzac Day;

g) WA Day;

h) Queen's Birthday;

i) Christmas Day;

j) Boxing Day; and

k) any other day, or part day, declared or prescribed by or under a law of the Commonwealth or State of Western Australia to be observed generally within the State of Western Australia as a public holiday, then such a day shall be deemed to be a public holiday for the purpose of this Agreement.

24.2 Any Employee, excluding a casual Employee, required to work on a public holiday, other than a closed port day shall:

a) accrue one (1) additional day (12.5 hours) time in lieu which shall be taken at a time agreed between the Employee and the Employer; or

b) at the Employee's discretion, be paid at the rate of double time.

24.3 Casual Employees required to work on a public holiday, other than a closed port day, will be paid at the rate of double time for all hours worked.

24.4 When any public holiday, other than a closed port day, falls on an Employee's rostered day off, the Employee may elect to be:

a) paid the daily rate for that day; or

b) accumulate one (1) day (12.5 hours) of time in lieu for that day.

Closed Port Days

24.5 Employees shall not be required to work unless by mutual Agreement. Closed Days will be:

a) Australia Day;

b) Anzac Day;

c) Christmas Day;

d) Good Friday; and

e) one (1) additional day, being a day which will be scheduled each year for a specific purpose by agreement between the majority of the Maintenance and Operations Employee based in Esperance, and the Employer. Employees will endeavour to provide as much notice as possible as to when the third day will be taken with a minimum of 10 weeks' notice to apply.

24.6 Employees shall ensure continuity of service on a closed port day.

24.7 For the purposes of clause 24.5(e), the closed port day will be a 24-hour closed day with labour rostered for port requirements.

24.8 To ensure continuity of service will be achieved, the Employees will agree amongst themselves which Employee will be rostered for duty on a closed port day.

24.9 An Employee, except casual Employees, required to work on a closed port day shall be paid at the rate of double time and a half (2.5 times) and will accrue one (1) additional day (12.5 hour) time in lieu.

24.10 Casual Employees required to work on a closed port day shall be paid:

a) at the rate of double time and a half (2.5 times) for all hours worked; and

b) an additional twelve point five (12.5) hours at the hourly rate in compensation for the one (1) additional days' time in lieu accrued by full time and part time Employees.

25. CALL BACK

25.1 An Employee recalled working, which is not a shift extension, after leaving the Employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of three (3) hours' work at the rate of one and a quarter (1.25) times the ordinary rate for each time they are recalled to duty.

25.2 It shall not be classed as a call back where it is:

a) customary for an Employee to return to the Employer's premises to perform a job outside ordinary working hours and requirements have been notified the previous day; or

b) where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

25.3 For the purposes of this clause, time reasonably spent in getting to and from work shall be counted as time worked.

25.4 An Employee may be required to work more than three (3) hours continuously. When an Employee has worked more than three (3) hours continuously a minimum of 30 minutes (0.5 hour) payment increments will apply for each 30 minutes, or part thereof, of overtime worked.

25.5 For the purposes of this clause a call back is applicable in the event of an Employee being required to attend work three (3) hours prior to the shift to be worked.

25.6 Where an Employee has returned home following a call back, any further call back occurring within the initial three (3) hour period shall not be classed as a new call back and only one (1) payment shall be made.

26. REST PERIODS

26.1 Employees will be entitled to an uninterrupted break of ten (10) consecutive hours between the completion of a shift on one day and the commencement of a shift on the next day.

26.2 If the Employer requires an Employee to either continue working or to resume duty without having had ten (10) consecutive hours off duty, the Employee will be released from duty after completion of such additional hours until the Employee has had ten consecutive hours off duty without loss of pay for ordinary working time during such absence.

27. MEAL BREAKS

27.1 Employees are entitled to a paid meal break of 60 minutes per shift. Subject to operational requirements, Employees may take their meal breaks as either:

a) two (2) meal breaks of 30 minutes; or

b) one (1) meals break of 30 minutes and two (2) tea breaks of 15 minutes.

28. TIME IN LIEU

28.1 Employees may elect to reduce their salary by an amount equivalent to up to five (5) hours pay per week, which will be credited and accumulated as time in lieu.

28.2 Hours attracting overtime payments can be accumulated as time in lieu at the applicable overtime rate and accessed at a mutually agreed time between the Employer and the Employee.

28.3 Where an Employee has scheduled to take time in lieu, the Employer may defer the scheduled time in lieu to meet operational requirements, provided the Employer notifies the relevant Employee of the proposed deferment of the rostered lieu day before 3.30pm on the day prior to when the rostered lieu day was to be taken by the Employee, or such later period if agreed by the Employee.

28.4 Where an Employee has made other arrangements to occur on the scheduled time in lieu and is unavailable, the Employee will be entitled to decline the deferment to the scheduled time in lieu and will not be compelled to work by the Employer.

28.5 If an Employee's scheduled time in lieu is deferred, then the Employee may access that time in lieu at a time convenient to the Employee.

28.6 Employees shall not accrue more than ten (10) days (125 hours) of time in lieu.

28.7 An Employee may elect to cash out any accumulated time in lieu at the hourly rate.

28.8 Upon termination, if time in lieu has not been taken, the Employer will pay the Employee at the hourly rate.

PART 4 - LEAVE ENTITLEMENTS

29. ANNUAL LEAVE

Full and Part Time Employees

29.1 Full time Employees are entitled to twenty-five (25) rostered on shifts (312.5 hours) annual leave for each year of continuous service.

29.2 Part time Employees will be entitled to the same annual leave as a full time Employee calculated on a pro rata basis.

29.3 Annual leave accrues according to an Employee's ordinary hours of work and will be credited on a pro rata basis at the completion of each fortnightly pay period.

Annual Leave Exclusive of Other Leave

29.4 If the period during which an Employee takes paid annual leave includes a period of any other leave specified below, the Employee is taken not to be on paid annual leave for the period of that other leave or absence:

a) personal leave;

b) compassionate leave;

c) long service leave;

d) jury service leave;

e) emergency services leave; or

f) defence force leave.

Taking Annual Leave

29.5 Employees, where practicable, are encouraged to take the annual leave entitlement in the year following the year in which it was accrued.

29.6 The Employer will approve requests for annual leave where an Employee has sufficient leave accrued, unless there are operational reasons to prevent it from doing so. In such circumstances clause 29.9 of this Agreement will not apply.

29.7 Employees may take annual leave prior to the accrual of a full year's entitlement, provided they have sufficient pro rata annual leave accrued.

29.8 Leave loading is not payable on annual leave.

Direction to Take Annual Leave

29.9 Where an Employee has accrued more than fifty (50) shifts annual leave, the Employer may direct the Employee to take the accrued annual leave in excess of fifty (50) shifts, provided the Employer has:

a) notified the Employee of their annual leave accumulation;

b) advised the Employee of their options, which include:

c) the making of an arrangement for the Employee to commence leave as soon as possible. Such arrangements should include a leave plan that clearly articulates dates of when the excess leave will be taken; or

d) the Employee utilising the 'Cashing Out of Annual Leave' provisions at clauses 29.12 and 29.13 of this Agreement; and

e) The Employer has genuinely tried to reach an agreement with the Employee on how to reduce or eliminate the excessive annual leave accrual and an agreement has not been reached.

29.10 Failing any arrangement being made between the Employer and the Employee, in accordance with clause 29.9(e), the Employer may direct the Employee to take the excess annual leave in one (1) or more periods by giving a minimum of eight (8) weeks' written notice prior to the date the Employee is required to commence the leave.

29.11 A direction by the Employer under clause 29.9:

a) is of no effect if it would result at any time in the Employee's remaining accrued entitlement to paid annual leave being less than 50 shifts when any other paid annual leave arrangements agreed by the Employer and the Employee are taken into account;

b) must not require the Employee to take any period of paid annual leave of less than one (1) shift;

c) must not require the Employee to take a period of paid leave beginning less than eight (8) weeks, or more than 12 months, after the direction is given; and

d) must not be inconsistent with any leave arrangement agreed by the Employer and the Employee.

e) This clause shall not apply when an Employee has made a request for annual leave in accordance with clause 29 and it has not been approved by the Employer.

Cashing Out of Annual Leave

29.12 An Employee is entitled cash out paid annual leave.

29.13 Paid annual leave must not be cashed out if:

a) the cashing out would result in the Employee's remaining accrued entitlement to paid annual leave being less than twenty-five (25) shifts; and

b) the Employee has not taken at least two (2) weeks of annual leave within the preceding twelve (12) months.

c) Each cashing out arrangement must be in a separate agreement in writing between the Employer and the Employee.

d) An Employee who cashes out annual leave must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee has forgone.

30. PERSONAL/CARER'S LEAVE

30.1 An Employee may take personal/carer's leave if the leave is taken:

a) because the Employee is not fit for work because of a personal illness, or personal injury, affecting the Employee (Personal leave); or

b) to provide care or support to a member of the Employee's immediate family or a member of the Employee's household who requires care or support because of:

c) a personal illness, or personal injury, affecting the member; or

d) an unexpected emergency affecting the member (Carers leave).

30.2 Full time Employees will be entitled to accrue ten (10) days (125 hours) of paid personal/carer's leave for each year of continuous service.

30.3 For each day or rostered shift an Employee is on approved personal/carer's leave the amount of twelve point five (12.5) hours will be deducted from the Employee's personal/carer's leave.

30.4 Part time Employees are entitled to the same personal/carer's leave entitlement as a full time Employee calculated on a pro rata basis.

30.5 Personal leave not used in any one year will accrue to the next year.

30.6 Where an Employee has accumulated, as at 1 July of any year, more than 28 days (350 hours) personal/carer's leave, the Employee may elect, prior to 31 July in that year, to cash out all or part of the accrued personal/carer's leave in excess of 28 days (350 hours).

30.7 An Employee who cashes out personal/carer's leave in accordance with clause 30.6, must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee has forgone.

Unpaid Carer's Leave

30.8 Where an Employee has exhausted their entitlement to paid personal/carer's leave, the Employee may take up to two (2) days of unpaid carer's leave for each occasion in accordance with the Act.

30.9 An Employee may take unpaid carer's leave for a particular permissible occasion as a single continuous period of up to two (2) days; or any separate periods as agreed by the Employer and Employee.

Notification and Proof

30.10 Employees must, if practicable, notify the Employer of their inability to attend for duty within twenty-four (24) hours of the commencement of the personal/carer's leave. If it is not practicable to notify the Employer within twenty-four (24) hours, the Employee must notify the Employer of their intention to take personal/carer's leave as soon as possible. Where practicable, the notice should include the nature of the illness or injury and how long the Employee expects to be absent from work.

30.11 In all cases of personal/carer's leave the Employer may require the Employee to provide evidence of the Employee's illness or injury; or the illness, injury or unexpected emergency of a member of the Employee's immediate family or household. Where the Employer requires the supporting evidence, the Employee must provide the Employer with a medical certificate from a registered health practitioner or a statutory declaration.

30.12 Where the personal/carer's leave is for a period of five (5) consecutive rostered shifts or more; or where in the Employer's opinion the circumstances require confirmation of the reason for the absence, the Employer may require the Employee to provide a medical certificate issued by a qualified medical practitioner that the Employee was unable to attend for work.

30.13 The provisions of this clause do not apply to any time where absence form work is due to illness or injury that is covered by workers' compensation.

31. COMPASSIONATE LEAVE

31.1 An Employee, including casual Employees are entitled to three (3) days of compassionate leave without loss of salary on each occasion when a member of the Employee's immediate family or member of the Employee's household:

(i) contracts or develops a personal illness that poses a serious threat to his or her life;

(ii) sustains a personal injury that poses a threat to his or her life; or

(iii) dies; or

b) a child is stillborn, where the child would have been a member of the employee's immediate family, or a member of the employee's household, if the child had been born alive; or

c) the employee, or the employee's spouse or de facto partner, has a miscarriage.

31.2 Consideration to additional compassionate leave will be given if interstate or intrastate travel is required on a case-by-case basis as determined by the HR Manager.

32. LONG SERVICE LEAVE

32.1 Part time Employees will be entitled to the same long service leave entitlement as a full time Employee calculated on a pro rata basis.

32.2 An Employee shall be entitled long service leave in accordance with the Long Service Leave Act 1958 (WA) (or the relevant Act where the legislation is replaced), with the following improved conditions:

a) Thirteen (13) weeks leave will be available after seven (7) years continuous service with the Employer;

b) Where the employment ends after five (5) years continuous service, pro rata long service leave will be available be paid out on termination, except where termination is due to serious misconduct;

c) Employees may take pro rata long service leave after five (5) years of continuous service;

d) For each subsequent period of seven (7) years continuous service the Employee will be entitled to an additional thirteen (13) weeks long service leave;

e) Any entitlement to long service leave accrued up to 1 January 2025 will be as per the Employees previous terms and conditions. From 1 January 2025 long service leave will apply in accordance with this clause.

32.3 Part time Employees will be entitled to the same long service leave entitlement as a full time Employee calculated on a pro rata basis.

33. PARENTAL LEAVE

33.1 An Employee will be entitled to parental leave in accordance with the Act or any other applicable legislation relating to an Employee's lawful entitlement to parental leave.

Paid Parental Leave

33.2 A full time Employee who is the primary caregiver of a child and who has completed twelve (12) month's continuous service with the Employer shall be entitled to twelve (12) weeks paid parental leave upon the birth or adoption of a child or children.

33.3 A full time Employee who is not a primary caregiver of a child and who has completed twelve (12) month's continuous service with the Employer shall be entitled to one (1) week's paid parental leave upon the birth or adoption of a child or children.

33.4 Part time Employees will be entitled to the same paid parental leave entitlement as a full time Employee calculated on a pro rata basis on the actual hours worked.

33.5 An Employee who is the primary caregiver of a child may take the paid parental leave at half pay for a period equal to twice the period to which the Employee would otherwise be entitled.

33.6 Paid parental leave will count as qualifying service. During periods of paid parental leave at half pay an Employee will only accrue annual leave and personal/carer's leave at half the usual rate.

33.7 An Employee may, however, apply to take all other available leave entitlements in conjunction with their paid parental leave entitlement as part of any parental leave absence.

33.8 An Employee must give the Employer at least:

a) ten (10) weeks' written notice of his or her intention to take parental leave if the Employee is the primary caregiver; or

b) four (4) weeks' written notice of his or her intention to take parental leave if the Employee is not the primary caregiver; and

c) specify the intended start and finish date of the parental leave; and

d) at least four (4) weeks before the intended start date:

e) confirm the intended start and end dates of the parental leave; or

f) advise the Employer of any changes to the intended start and finish dates of the parental leave.

33.9 A pregnant Employee can commence the period of paid parental leave any time up to six (6) weeks before the expected date of birth or for the purposes of adoption from the placement of the child.

33.10 A pregnant Employee wanting to work the six (6) weeks before the birth will be required to provide the Employer with a certificate from a medical practitioner confirming the Employee's fitness for work and detailing any limitations to be placed on the Employee.

33.11 Parental leave may be taken concurrently by an Employee and their partner in accordance with s.72(5) of the Act.

33.12 An Employee's absence on unpaid (that is, not paid by the Employer), parental leave:

a) does not break continuity of service of an Employee; and

b) is not counted when calculating the period of service for the purpose of this Agreement, including long service leave and other entitlements.

33.13 Unless agreed otherwise between the Employer and Employee, an Employee may change the period of parental leave on one occasion and at least four (4) weeks prior to the commencement of the changed arrangements.

34. FAMILY AND DOMESTIC VIOLENCE LEAVE

34.1 An employee is entitled to ten (10) days of paid family and domestic violence leave in a twelve (12) month period when:

a) the Employee is experiencing family and domestic violence; and

b) the employee needs to do something to deal with the impact of the family and domestic violence; and

c) it is impractical for the employee to do that thing outside the employee's work hours.

34.2 For the purpose of this clause, Family and domestic violence means:

a) violent, threatening or other abusive behaviour by a close relative of a person, a member of a person's household, or a current or former intimate partner of a person, that:

(i) seeks to coerce or control the person; and

(ii) causes the person harm or to be fearful.

34.3 Paid family and domestic violence leave:

a) is available in full at the start of each twelve (12) month period of the employee's employment; and

b) does not accumulate from year to year; and

c) is available in full to part-time and casual employees.

34.4 The employee may take paid family and domestic violence leave as:

a) a single continuous ten (10) day period; or

b) separate periods of one (1) or more days each; or

c) any separate periods to which the employee and the employer agree, including periods of less than one (1) day.

Notice and Evidence Requirements

34.5 Where an Employee intends to take Family and Domestic Violence Leave in accordance with this clause must give notice as soon as practicable (which may be a time after the leave has started) and must advise of the period, or expected period, of the leave.

34.6 An employee who has given notice of the taking of leave under this clause may be required to provide evidence that would satisfy a reasonable person of their requirement to access leave under this clause.

35. EMERGENCY SERVICES LEAVE

35.1 Paid leave of absence shall be granted to an Employee who is an active volunteer member of state Emergency Service, St John Ambulance Brigade, Volunteer Fire & Rescue Service, Bushfire Brigades, Volunteer Marine Rescue Service Groups, FESA or any other voluntary emergency units in order to allow attendances at emergencies or disasters as declared by the recognised emergency management body.

35.2 The Employer shall be advised of the absence as soon as possible by an Employee, the emergency services, or other persons as to the absence and, where possible, the expected duration of leave. The Employee must complete a leave of absence form as soon as practicable upon return to work. The application must be accompanied by certification from the emergency organisation declaring that the Employee was required for the specified period.

36. DEFENSE FORCE LEAVE

36.1 Members of the Defence Force Reserves will be released for the purposes of defence leave.

36.2 Employees will be entitled to two (2) weeks paid leave per annum for the purposes of Defence Service.

36.3 An Employee who in their first year of Reserve's membership will be entitled to an additional two (2) weeks for the purposes of recruitment and/or additional training. The Applicants are to provide evidence from the Australian Defence Force (ADF) of leave requirements.

36.4 Part time Employees who are members of the reserves are entitled to paid leave on a pro-rata basis.

36.5 An Employee who is requested by the Defence Force Reserves to provide additional services requiring defence force leave in excess of the entitlement provided by this clause in any calendar year, can elect to take annual leave, long serve leave or leave without pay.

PART 5 – TERMINATION AND REDUNDANCY

37. TERMINATION OF EMPLOYMENT

Notice of Termination by the Employer

37.1 Subject to the laws and procedures relating to the termination of employment, the Employer may terminate the employment of an Employee employed by giving four (4) weeks' notice in writing, or by payment in lieu of notice, except in the case of a casual Employee where notice of one hour is sufficient.

37.2 If the Employee is over 45 years old and has completed more than two (2) years continuous service with the Employer at the date of termination, the Employee shall receive an additional one (1) weeks' notice.

37.3 Employees who are terminated by reason of redundancy will not be subject to the notice provisions of this clause and will instead be subject to the notice provisions set out in clause 38.9(a) of this Agreement.

Notice of Termination by the Employee

37.4 An Employee, other than a probationary period and casual Employee, may terminate their Employment by giving four (4) weeks' notice.

37.5 If an Employee provides less than four (4) weeks' notice, the Employer may withhold the monies that would otherwise be due to the Employee for the period of the balance of notice required.

Termination without Notice

37.6 Where an Employee commits any act of serious misconduct, the Employer may terminate the Employee's employment without notice and remuneration will only be paid to the time of summary termination.

38. REDUNDANCY

38.1 Redundancy occurs when the Employer no longer requires the job done by the Employee, to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or because of insolvency or bankruptcy of the Employer.

38.2 Where the Employer has made a definite decision to reduce the number of Employees, the Employer will notify and consult with Employees and the Union in accordance with clause 53 of this Agreement in relation to, amongst other things, the number of proposed terminations, the reasons for the proposed terminations, measures to avoid or minimise the number of terminations, measures to mitigate any adverse effects of any terminations and determine the method by which the number of Employees will be reduced.

38.3 Where the Employer has identified the need to reduce the number of Employees, following consultation, the Employer will give genuine consideration to one (1) or more of the following options:

a) invite Employees to take any accrued but untaken leave entitlements;

b) retrain and redeploy Employees within the Employer's organisation that the Employee is qualified and skilled to perform;

c) the Employer obtains other acceptable employment for the Employee with an alternative

Employer in the Port of Esperance, or another port operated by the Employer;

d) adjustment in the number of casual Employees;

e) invite Employees to take an early retirement and/or voluntary redundancy package that will be negotiated between the Employer and the Employee;

f) invite the Employee to voluntarily transfer to the casual labour list of the Employer; or

g) invite Employees to accept a voluntary redundancy, as a last resort, in accordance with clause 38.8.

Redeployment

38.4 The Employer will use every endeavour to redeploy an Employee into a position within the organisation that the Employee is qualified and skilled to perform.

38.5 An Employee that is redeployed will receive reasonable training, if necessary, to assist the Employee in their redeployment. Training will be agreed between the Employee and the Employer, in writing.

Transfer to Lower Paid Duties

38.6 If an Employee is redeployed into a position where the Employee's base salary prior to redeployment exceeds the base salary of the position subsequent to the redeployment, the Employer will continue to pay the Employee's base salary at the higher amount until such time that the base salary of the position subsequent to the redeployment is equal to the Employee's base salary prior to redeployment.

38.7 Where an Employee is transferred to lower paid classification following the Employee's position being made redundant, the same period of notice must be given to the Employee as the Employee would have been entitled to if the Employee's employment had been terminated.

Voluntary Redundancy Process

38.8 Where the Employer decides to reduce the number of Employees by way of voluntary redundancy, the following process will be followed:

a) the Employer will notify and consult with the Employees and the Union (where the Employees are Union members) in accordance with clause 53; then

b) following consultation, expressions of interest for redundancies will be sought on a voluntary basis from Employees; then

c) where the offer of voluntary redundancy is accepted by the Employer and an Employee, the Employer will issue a notice of termination by reason of redundancy.

Redundancy Pay

38.9 Employees whose employment is terminated by way of redundancy will be entitled to:

a) four (4) weeks' notice or payment in lieu of notice;

b) an additional one (1) weeks' notice, or payment in lieu of notice, for Employees who are forty-five years and over and have completed more than two (2) year's continuous service; and

c) severance pay at the rate of four (4) weeks per year of continuous service capped at a maximum of 40 weeks.

38.10 Employees will be entitled to six (6) months outplacement assistance with a recognised outplacement service provider that includes assistance with the preparation of resumes and registration with employment placement agencies.

Employee Leaving During Notice

38.11 An Employee whose employment is terminated by way of redundancy may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with the Employer until the expiry of such notice.

Time off During Notice Period

38.12 During the period of notice of termination given by the Employer in accordance with clauses 37.1, 37.2, 37.3, and 38.9(a), an Employee will be entitled to the equivalent of one (1) days' time off without loss of pay for each week of notice for the purposes of seeking other employment, attending job interviews or job preparation activities.

PART 6 – OTHER EMPLOYMENT MATTERS

39. USE OF PRIVATE MOTOR VEHICLE

39.1 Employees will not be required to use their own vehicle during work hours and will have access to a vehicle supplied by the Employer for business purposes.

39.2 Should an Employee choose to use his or her personal vehicle in work or for travel purposes, with approval of the Employer, the Employee will receive a motor vehicle allowance at the recommenced kilometre rate determined by the Australian Taxation Office, as amended from time to time.

40. EXPENSE REIMBURSEMENT

40.1 The Employer will reimburse all reasonable work-related expenses incurred by the Employee, including and not limited to travel, accommodation, meals, car hire and incidental expenses in accordance with the rate determined by the Australian Taxation Office, as amended from time to time.

40.2 Reimbursement is subject to the Employee providing a personal expense claim form and supporting invoices or receipts of the work-related expenses incurred.

40.3 Employees who travel on authorised work-related business, the Employer will meet the Employee's travel costs through the direct payment of accommodation, meal and flight or hire car costs and the reimbursement to the Employee of any approved costs subject to the provision of receipts (e.g. taxis).

40.4 An Employee required to travel on a normal workday will be paid the daily rate.

40.5 An Employee required to fly to Perth outside normal work hours will be paid for two (2) hours each way. Such hours will be treated as additional hours.

40.6 On such occasions as deemed necessary travel by car out of hours, the Employee will be paid for the time taken to travel at the appropriate rate, as additional hours or ordinary hours.

41. CONTINUITY OF OPERATION

41.1 The parties to this Agreement recognise and accept the requirement of the Employer to be able to guarantee delivery of services to its customers. Accordingly, the Union will not engage in industrial action in respect of members employed by the Employer the subject of this Agreement and it is a condition of employment for such Employees that no industrial action shall be undertaken during the term of this Agreement.

42. TRAINING

42.1 The parties to this Agreement recognise that in order to maintain and increase the ongoing efficiency and productivity of the port the parties commit themselves to:

a) maintain the current highly skilled and flexible workforce;

b) provide Employees with career opportunities through appropriate training to acquire additional skills; and

c) following proper consultation, the Employer shall develop a training program consistent with:

d) the current and future skills needs of the enterprise;

e) the size, structure and nature of the operations of the enterprise; and

f) the need to develop vocational skills relevant to the enterprise and the waterfront industry through courses conducted by accredited educational institutions and providers.

42.2 The aim of the Employer's approach to training is to achieve:

a) higher skills relevant to the needs of the Employer;

b) multi-skilling to the level required for operational efficiency and flexibility;

c) job satisfaction and a career path within the Employer's enterprise;

d) retraining to maintain pre-existing skills;

e) adjustment to technological change;

f) a safer working environment; and

g) improved delivery of services to the client.

42.3 Agreed training so identified and categorised shall be undertaken either on and/or off the job. Provided that if the training is undertaken during normal working hours the Employee concerned shall not suffer any loss of pay. The Employer shall not unreasonably withhold such paid training leave.

42.4 Any costs associated with enrolment and the purchase of prescribed textbooks incurred in connection with the undertaking of training, excluding those which are available in the Employer's technical library shall be reimbursed by the Employer upon production of evidence of such subject to the presentation of reports of satisfactory progress.

42.5 Travel costs incurred by an Employee undertaking training in accordance with this clause, which exceeds those normally incurred in travelling to and from work, shall be reimbursed by the Employer.

42.6 External training and assessments will be conducted by nationally accredited providers wherever appropriate.

42.7 A training matrix identifying the programmed training to meet workplace skill and qualification requirements will be updated at least biannually.

43. OCCUPATIONAL HEALTH AND SAFETY

43.1 The health and safety of Employees is considered paramount by the Employer, the Union and the Employees. All parties are committed to continuous improvement of occupational safety and health (OSH) standards in the workplace.

43.2 The Employer shall maintain a safety policy which demonstrates the commitment of the Employer and its Employees to OSH and incident prevention in accordance with Federal and State OSH legislation and other relevant legislative requirements.

43.3 The Employer will maintain, as part of its safety policy, a commitment to the observance of induction procedures on OSH for all new Employees.

43.4 The Employer will regularly review and update induction handbooks on OSH procedures as required.

43.5 The Employer and the Employees shall:

a) take appropriate measures to ensure a safe and healthy working environment prevails in accordance with the Occupational Health and Safety Policy and relevant Federal and State legislation;

b) promote and maintain safety procedures;

c) maintain records relating to work related injuries;

d) ensure that medical and first aid services are available as required by the *Occupational Safety and Health Act 1984* (WA); and

e) provide the opportunity through its formalised site committee to have safety matters raised, considered and resolved including recommendations to eliminate or reduce hazards.

43.6 The Employee shall not consume alcohol or use illicit drugs such that their own safety or the safety of any other person at work is not endangered in line with the Drug and Alcohol procedure.

43.7 The Employer shall:

a) provide appropriate equipment and ensure that it is properly used;

b) institute systems for reporting and investigating incidents;

c) provide effective safety training; and

d) may appoint a doctor for consultation where concern for the health of an Employee arises for an independent assessment at no cost or loss of wage to that Employee.

43.8 The Employee shall:

a) ensure the appropriate equipment provided is properly used;

b) ensure the systems for reporting and investigating incidents are utilised; and

c) promote and participate in effective safety training.

44. ANTI-DISCRIMINATION

44.1 The parties to this Agreement agree that:

a) it is their intention to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and

b) any disputes concerning these provisions, and their operation will be progressed under the Dispute Resolution Procedure at clause 54 of this Agreement.

44.2 Nothing in this clause:

a) allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth or State legislation;

b) prohibits any lawful discriminatory conduct (or conduct having a discriminatory effect), that is based on the inherent requirements of a particular position or individual need

c) is to be taken to affect an Employee, Employer or Union, pursuing matters of discrimination in any Federal or State jurisdiction, including by application to the Human Rights & Equal Opportunity Commission; or

d) is to be taken to affect the exemptions in section 195(2) of the Act.

45. WORKING IN THE RAIN

45.1 The Employer recognises the risks associated with working in the rain, particularly during the winter months.

45.2 Employees may be required to work in the rain, provided:

a) the Employer provides suitable protective clothing to all Employees working outdoors; and

b) work shall continue in a safe manner, subject to the provisions of relevant Federal and State safety legislation.

46. WORK ISSUED CLOTHING

46.1 The Employer will provide the following issue of personal protective clothing and equipment to each Employee:

a) one (1) pair of safety boots/shoes per year with the proviso that unserviceable boots will be replaced as required;

b) four (4) sets of working clothes per year which may, at the Employee's discretion, be overalls or trousers and shirts;

c) a "2 in 1" winter jacket each two (2) years;

d) a hard hat and safety vest as a personal issue on a needs basis;

e) general duty gloves on an as required basis;

f) one (1) PVC carry bag as required;

g) safety glasses as required;

h) wet weather gear as required;

i) earmuffs as required;

j) specialist breathing apparatus on an as required basis;

k) disposable overalls on an as required basis; and

l) sunscreen (Cancer Council approved) for use on the job as required.

46.2 The above issues can be varied to meet individual Employee requirements subject to the agreement of the Employer.

46.3 An Employee is required to wear personal protective clothing and equipment in accordance with the Employer's directions, Occupational Safety and Health regulations and the Employer's procedures.

47. PERFORMANCE REVIEW

47.1 All Employees may be required to participate in an annual performance review in accordance with Employer procedures.

48. POLICIES & PROCEDURES

48.1 An Employee must abide by all policies and procedures by the Employer, as amended from time to time, Employer provided they are consistent with the terms and conditions of this Agreement.

48.2 In the event of any inconsistency between the Employer's policies and procedures and the terms and conditions of this Agreement, the Agreement shall prevail to the extent of the inconsistency.

49. HEALTH AND WELLBEING REIMBURSEMENT

49.1 The Employer's Health and Wellbeing Procedure provides the opportunity to promote and participate in fitness, health and wellbeing. An Employee may elect to utilise the subsidy towards the cost of private health insurance. All Employees can apply for subsidy under the programme details of which are provided in the procedure.

a) The Employer will reimburse the costs, up to a maximum reimbursement amount of $299 including GST per annum; and

b) Reimbursement will be made upon production of a receipt, through the Employer's expenses claim process.

50. TRANSMISSION OF BUSINESS

50.1 For the purposes of this clause the term "business" includes trade, process, business or occupation and includes part of any such business.

50.2 The parties to this Agreement acknowledge the importance of security of employment and the imperative of maintaining agreed terms and conditions of employment contained in this Agreement. In contemplation of these joint objectives the following obligations shall apply:

a) In any proposed sale, lease, assignment or transfer of proprietary rights associated with the business or part of the business shall include as part of tender specifications, and within the contractual arrangements with the Transmittee, the obligation for the Transmittee to apply the terms and conditions of employment, including the Employer contribution to superannuation, that are no less favourable than those which applied to each transmitted Employee immediately prior to the transmission of business occurring.

b) Where a business or part of a business of the Employer (the Transmitter) is transmitted from the Employer to another Employer (the Transmittee) and an Employee, who at the time of such transmission was an Employee in accordance with this Agreement, elects to become an Employee of the Transmittee, the Transmitter will:

c) have their prior service with the Employer, or any of the Employer's predecessors recognised with the Transmistter for all purposes; and

d) endeavour to ensure that the terms and conditions of employment paid and applied by the Transmittee are no less favourable than those that applied to the employment with the Transmitter.

e) The Transmitter shall:

f) notify the Employees affected of the proposed changes; and

g) discuss with the Employees affected the effect of the transmission of business; and

h) the discussion will commence as soon as practicable after a definite decision has been made as to the transmission of business or part of the business. For the purposes of the discussion the name of the organisation that is acquiring the business or part of the business will be provided if possible, however, the Transmitter shall not be required to disclose confidential information, the disclosure of which would be inimical to business interests.

50.3 Where the Transmitter declares any positions redundant as a consequence of a transmission of business and where no suitable offer of redeployment was available to the Employee and/or no voluntary redeployment occurred, the provisions of clause 38 of this Agreement will apply.

50.4 The provisions contained in Part 2-8 of the Act at the time of lodgement of this Agreement shall be observed at all times during any proposed transmission of business.

51. UNION DELEGATES CHARTER

51.1 The Employer and the Union agree to a ratio of one (1) delegate per ten (10) Employees covered under this Agreement.

51.2 The Employer will treat union delegates fairly and allow them to perform their role as a union delegate without any discrimination in their employment.

51.3 The Employer shall recognise and respect that union delegates authorised by the Union and undertakes to permit such delegates to perform their role without any discrimination in their employment.

51.4 The Employer acknowledges that union delegates represent and speak on behalf of union members in the workplace and have the right to engage in collective negotiations with the Employer on behalf of members.

51.5 The Employer will consult with delegates, primarily through the Consultative Committee, prior to introducing any significant change which will, or are likely to impact on employment levels, work processes, Employee duties or other employment related issues. Delegates will be given reasonable access to information regarding such changes.

51.6 The Employer will grant all nominated delegates reasonable paid time off work to:

a) prepare for and participate in collective bargaining on behalf of the Employees they represent;

b) participate in consultations and access to reasonable information about the workplace and the business;

c) any required amount of paid time off work to represent the interests of members to the Employer and industrial tribunals;

d) reasonable paid time during normal working hours to consult with union members;

e) participate in the operation of the union during normal working hours;

f) address new Employees about the benefits of union membership at the time that they enter employment;

g) reasonable access to telephone, facsimile, photocopying, internet and e-mail facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the union; and

h) place relevant union information on a notice board in a prominent location in the workplace.

51.7 The Employer will provide a notice board in a prominent location in the workplace on which delegates may place notices relevant to union activities or where notices may be placed containing necessary information of interest to Employee related work.

51.8 An Employee, with approval of the union and upon application in writing, shall be granted up to 10 days of paid leave, in any two (2) year period, to:

a) participate in the operation of the union;

b) take reasonable leave to work with the Union;

c) attend union education;

d) attend nominated union conferences; and

e) attend courses conducted by an approved training provider, that are designed to provide skills and competencies that will assist the delegate or workplace representative to contribute to the prompt resolution of disputes and or grievances in the workplace.

51.9 For the purposes of clause 51.8, the application to the Employer must be in writing and include the nature, content and duration of the course to be attended.

51.10 The granting of leave pursuant to this clause shall not unreasonably be withheld by the Employer

51.11 Leave of absence granted pursuant to this clause, shall count as service for all purposes of this Agreement.

51.12 Each Employee on leave approved in accordance with this clause, shall be paid as a paid day at the ordinary rate of pay.

51.13 All expenses (such as travel, accommodation and meals) associated with or incurred by the Employee attending a training course as provided in this clause shall be the responsibility of the Employee or the Union.

51.14 An Employee may be required to satisfy the Employer of attendance at the course to qualify for payment of leave.

51.15 In the event of a disagreement arising from the outcome of this clause, the matter may be settled using the dispute resolution procedure at clause 54 of this Agreement.

51.16 Nothing in this clause authorises the delegate to prejudice non-members in their employment or authorises the Employer to discriminate against non-members.

PART 7 – CONSULTATION AND DISPUTE RESOLUTION

52. CONSULTATIVE COMMITTEE

52.1 The Employer will implement a Consultative Committee with appropriate representation, including, but not limited to, Union Delegates and Workplace Representatives of the Employees covered by this Agreement.

52.2 The Consultative Committee will meet as required, but no less than once every six (6) months, to ensure a proper consultative forum is in operation.

52.3 Some functions of the Consultative Committee will include:

a) ensuring the terms of this Agreement are working adequately;

b) review of roster arrangements;

c) workforce numbers, including reducing, replacing or adding Employees;

d) implementation of agreed provisions;

e) the provision of training and professional development;

f) the Drug and Alcohol Management Procedure;

g) performance and KPI reviews; and

h) to be consulted on review and changes of policies and procedures named in, or having effect on, this Agreement; or having effect on the Employee's employment and/or performance of duties.

53. CONSULTATION

53.1 This Agreement recognises that the Employer is obligated to carry out its responsibilities in accordance with the Employer's policies and procedures and additionally, where such policies relating to production, program, organisation, structure or technology may also affect the rights and interests of its Employees. the Employer is also obligated to consider the rights and interests of its Employees in the implementation of such policies and procedures.

Changes to regular rosters and ordinary hours of work

53.2 Where the Employer proposes to introduce change to the regular rosters or ordinary hours of work of Employees, as soon as reasonably practicable the Employer will:

a) notify the relevant Employees and the Employee's representative or the Union (where the affected Employees are Union members) of the proposed change;

b) discuss with the relevant Employees and the Employee's representative or the Union (where the affected Employees are Union members) the introduction of the change;

c) provide the relevant Employees and the Employee's representative or the Union (where the affected Employees are Union members) all the relevant information about the change, including the nature of the change, what the believes will be the effects of the change on the Employees, and any other matters likely to affect the Employees, provided that the Employer is not required to disclose confidential or commercially sensitive information;

d) invite the affected Employees and the Employee's representative or the Union (where the affected Employees are Union members) to give their views about the impact of the change, including any impact in relation to their family or caring responsibilities; and

e) give prompt and genuine consideration to the matters raised by the Employees and/or Union or other nominated representative about the impact of the change.

The Employer's Duty to Notify

53.3 Where the Employer is seriously considering major change to production, program, organisation, structure or technology that are likely to have a significant effect on the Employees, the Employer must notify the Employees who may be affected and the Union Employee of the proposed change.

53.4 Without limiting the generality thereof, significant effects includes termination of employment; changes in the composition, operation or size of the workforce or in the skills required of Employees; the elimination or diminution of job opportunities, including opportunities for promotion or tenure; the alteration of hours of work; the need to retrain Employees; the need to relocate or transfer Employees to another workplace or locations; the restructuring of jobs; or changes to the legal or operational structure of the Employer or the Employer's business.

Employees May Appoint a Representative

53.5 The relevant Employees may appoint the Union or any other person as their representative for the purposes of the procedures in this clause.

53.6 If a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and the Employee or Employees advise the Employer of the identity of the representative, the Employer must recognise the representative.

Employer to Discuss Change

53.7 As soon as practicable the Employer must discuss with the relevant Employees, the Employee's representative if appointed in accordance with clause 53.5 and 53.6 and the Union (where the affected Employees are Union members) the:

a) introduction of the change; and

b) the effect the change is likely to have on the Employees; and

c) measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees.

53.8 For the purposes of the discussion the Employer will provide the Union (where the relevant Employees are Union members) and relevant Employees in writing:

a) all relevant information about the change including the nature of the change proposed; and

b) information about the expected effects of the change on the Employees; and

c) any other matters likely to affect the Employees.

53.9 The Employer must give prompt and genuine consideration to matters raised by the Employees, the Union and/or any other representative in relation to the changes.

53.10 As soon as a final decision has been made by the Employer, the Employer must notify, in writing, the Union and the Employees affected and explain the effects of the decision.

53.11 The Employer must act in good faith in relation to the consultation and the procedure provided within this clause.

Implementation of Change

53.12 It is agreed between the parties that after the above notification and discussion have taken place that the Employer, after careful genuine consideration of the views of Employees, may implement the change with four (4) weeks' notice.

Status Quo

53.13 While the consultation is occurring, the parties will respect the status quo.

53.14 Where, subject to the provisions of this clause, the Employer makes the final decision to implement change in the workplace and the relevant Employee(s) and/or the Union or other nominated representative disagrees with that decision, subject to there being no stoppage of work as a result of the decision of the Employer, the matter in dispute may be referred to the Fair Work Commission for conciliation and/or arbitration if necessary.

53.15 While the matter is in dispute the status quo, being the state of affairs that existed prior to the matter that has been put in dispute arose, will remain.

53.16 For the purposes of this clause:

a) 'good faith' includes obligations to meet, disclose relevant information, genuinely consider proposals and respond with reasons, and to refrain from capricious or unfair conduct that undermines consultation; and

b) the Dispute Resolution Procedure at clause 8.3 of this Agreement shall be used to resolve any dispute arising from the operation of this clause.

54. DISPUTE RESOLUTION PROCEDURE

54.1 The Parties to this Agreement are committed to genuinely attempting to resolve issues at the workplace level in a co-operative and consultative manner which will ensure resolution of matters while maintaining services to our customers. The procedures specified below will be followed to resolve issues without interrupting services to customers since meeting customers' requirements on time is of major importance to the Employer.

54.2 In the event of any dispute arising under this agreement and/or the NES, the following procedure will apply:

a) **Step 1** - The matter will be discussed between the Employee(s) and their manager with a view to improving communication and achieving informal resolution.

b) **Step 2** - If not settled at Step 1 the matter will be discussed between the Employee(s), the Employee(s) nominated representative who may be a Union Official if so nominated by the Employee(s), and the relevant General Manager and/or the Human Resources representative.

c) **Step 3** - If not settled at Step 2 the matter will be discussed between the Employee(s), the Employee(s) nominated representative who may be a Union Official if so nominated by the Employee(s), and the Chief Executive Officer.

d) **Step 4** – In the event the preceding steps have failed to resolve the matter and/or dispute, any person bound/covered by this Agreement or nominated representative may refer the dispute to FWC for resolution by conciliation and/or arbitration.

54.3 A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute.

54.4 FWC may deal with the dispute in two stages as follows:

a) **Stage 1** - FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation.

b) **Stage 2** - If FWC is unable to resolve the dispute at Stage 1, FWC may then:

c) arbitrate the dispute; and

d) make a determination that is binding on the parties.

Note: If FWC arbitrates the dispute, it may exercise any powers or functions available under the Act.

54.5 A decision or determination of the FWC makes when arbitrating a dispute is a decision or determination for the purpose of Division 3 of Part 5-1 of the Act. Therefore, an appeal may be made against the decision.

54.6 Whilst the matter is being progressed under this clause:

a) an Employee must continue to perform his or her work under the conditions and arrangements prevailing before the dispute arose, unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

b) subject to no industrial action being taken the status quo will apply until the resolution of the dispute through this clause

54.7 The parties to the dispute agree to be bound by a decision or determination made by Fair Work Commission in accordance with this clause.

54.8 Every effort will be made to ensure that the process contained in Steps 1 to 3 at clause 54.2 is completed within ten (10) working days.

54.9 By agreement between the parties bound/covered by this Agreement any or all of the above steps at clause 54.2 may be bypassed in the interest of speedy resolution of the dispute and/or matter. In any event, if the dispute and/or matter has not been resolved within ten (10) working days of commencing Step 1 of clause 54.2, either party may refer the dispute to FWC for resolution by conciliation and/or arbitration.

54.10 Employees required to attend FWC proceedings will be entitled to paid leave for such time.

54.11 The parties to the dispute and their representatives must act in good faith in relation to the resolution of the dispute and the above dispute resolution procedure.

Schedule A – Rates of Pay

Classification	2025	2026	2027
Shift Superintendent	$93.56	$95.43	$97.34
Trainee Shift Superintendent	$80.10	$81.70	$83.33

Schedule A – Remote Area Living Allowance

Classification	RALA p/hr
Shift Superintendent	$9.36
Trainee Shift Superintendent	$8.01

55. SIGNATURES

Employer

Signed for and on behalf of Southern Ports Authority (ABN 30 044 341 250)

Signature on behalf of the Employer	Keith Wilks Name of person authorised to sign	Date: 17/04/25

Chief Executive Officer

Position

4/679 Murray Street, West Perth WA 6005

Address Post Code

For Employees

Signed on behalf of the Employees covered by this agreement

Signature of Employee Representative	JOHN HASTIE Name of Employee Representative	Date: 17/4/25

SHIFT SUPERINTENDENT

Authority to Sign (Position Title)

4/679 Murray Street, West Perth WA 6005

Address Post Code

Part 7—Workplace Delegates, Consultation and Dispute Resolution

[Part 7—Consultation and Dispute Resolution renamed by PR774763 from 01Jul24]

25A. Workplace delegates' rights

[25A inserted by PR774763 from 01Jul24]

25A.1 Clause 25A provides for the exercise of the rights of workplace delegates set out in section 350C of the Act.

NOTE: Under section 350C(4) of the Act, the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with clause 25A.

25A.2 In clause 25A:

(a) **employer** means the employer of the workplace delegate;

(b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and

(c) **eligible employees** means members and persons eligible to be members of the delegate's organisation who are employed by the employer in the enterprise.

25A.3 Before exercising entitlements under clause 25A, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

25A.4 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

25A.5 **Right of representation**

A workplace delegate may represent the industrial interests of eligible employees who wish to be represented by the workplace delegate in matters including:

(a) consultation about major workplace change;

(b) consultation about changes to rosters or hours of work;

(c) resolution of disputes;

(d) disciplinary processes;

(e) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the Act or is assisting the delegate's organisation with enterprise bargaining; and

(f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible employees are entitled to be represented and which concerns their industrial interests.

25A.6 Entitlement to reasonable communication

(a) A workplace delegate may communicate with eligible employees for the purpose of representing their industrial interests under clause 25A.5. This includes discussing membership of the delegate's organisation and representation with eligible employees.

(b) A workplace delegate may communicate with eligible employees during working hours or work breaks, or before or after work.

25A.7 Entitlement to reasonable access to the workplace and workplace facilities

(a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:

(i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible employees;

(ii) a physical or electronic noticeboard;

(iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible employees and by eligible employees to communicate with each other, including access to Wi-Fi;

(iv) a lockable filing cabinet or other secure document storage area; and

(v) office facilities and equipment including printers, scanners and photocopiers.

(b) The employer is not required to provide access to or use of a workplace facility under clause 25A.7(a) if:

(i) the workplace does not have the facility;

(ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or

(iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

25A.8 Entitlement to reasonable access to training

Unless the employer is a small business employer, the employer must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible employees, subject to the following conditions:

(a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible employees.

(b) The number of eligible employees will be determined on the day a delegate requests paid time to attend training, as the number of eligible employees who are:

- **(i)** full-time or part-time employees; or
- **(ii)** regular casual employees.

(c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training.

(d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.

(e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.

(f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.

(g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

25A.9 Exercise of entitlements under clause 25A

(a) A workplace delegate's entitlements under clause 25A are subject to the conditions that the workplace delegate must, when exercising those entitlements:

- **(i)** comply with their duties and obligations as an employee;
- **(ii)** comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;
- **(iii)** not hinder, obstruct or prevent the normal performance of work; and

(iv) not hinder, obstruct or prevent eligible employees exercising their rights to freedom of association.

(b) Clause 25A does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible employees.

(c) Clause 25A does not require an eligible employee to be represented by a workplace delegate without the employee's agreement.

NOTE: Under section 350A of the Act, the employer must not:

(a) unreasonably fail or refuse to deal with a workplace delegate; or

(b) knowingly or recklessly make a false or misleading representation to a workplace delegate; or

(c) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under the Act or clause 25A.