



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Southern Port Authority Trading AS Southern Ports
(AG2025/249)

SOUTHERN PORTS AUTHORITY ALBANY MARINE PILOTS ENTERPRISE AGREEMENT 2024

Port authorities

COMMISSIONER SCHNEIDER

PERTH, 24 FEBRUARY 2025

Application for approval of the Southern Ports Authority Albany Marine Pilots Enterprise Agreement 2024

[1] Southern Port Authority T/A Southern Ports (the Applicant) has made an application for the approval of an enterprise agreement known as the *Southern Ports Authority Albany Marine Pilots Enterprise Agreement 2024* (the Agreement). The application was made under section 185 of the *Fair Work Act 2009* (Cth) (the Act). The Agreement is a single enterprise agreement.

[2] The Applicant has provided a written undertaking. A copy of the undertaking is attached to the Agreement. I am satisfied that the undertaking will not cause financial detriment to any employee covered by the Agreement and that the undertaking will not result in substantial changes to the Agreement.

[3] In compliance with section 190(4) of the Act, the bargaining representative's views regarding the undertaking proffered were sought. They were provided with the opportunity to raise and address any objections they had to the undertakings proffered. No objection was raised.

[4] Subject to the undertakings referred to above, and 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, 188, and 190 of the Act as are relevant to this application for approval have been met.

[5] Clause 3 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.

[6] The Commission noted with the parties that there appeared to be drafting errors present in the copy of the Agreement filed for approval. The Applicant has confirmed these are errors and has filed an amended copy of the Agreement correcting such errors.

[7] Under section 218A(2)(a) of the Act, the Commission can, on its own initiative, exercise its power to “*vary an enterprise agreement to correct or amend an obvious error, defect or irregularity (whether in substance or form)*”. I am satisfied that the following are amendments to obvious errors, defects, or irregularities and will be varied, effective 3 March 2025:

- Clause 5.1(b) – amended to refer to correct Agreement Name.
- Clause 26.7 – amended to reference correct clause/s.
- Clause 34.9(i) – amended to reference correct clause.
- Clause 23.4a & 23.4(b) – reference to part-time and casual employees have been removed in the amended Agreement.
- Clause 23.6 – reference to casual employees has been removed in the amended Agreement.
- Clause 40.11 (a) – has been amended to only include full-time employees.
- Clause 40.11(b) – removed reference to casual employees.

[8] The Agreement is approved and, in accordance with section 54 of the Act, will operate from 3 March 2025. The nominal expiry date of the Agreement is 30 June 2027.



COMMISSIONER

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SOUTHERN PORTS
ALBANY BUNBURY ESPERANCE

Southern Ports Authority Albany Marine Pilots Enterprise Agreement 2024

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

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1. TITLE

- 1.1 This Agreement shall be known as the Southern Ports Authority Albany Marine Pilots Enterprise Agreement 2024.

2. COVERAGE

- 2.1 This Agreement covers:

- a) Southern Ports Authority (ABN 30 044 341 250) (679 Murray Street, West Perth 6005, Western Australia) (**Employer**); and
- b) a Harbour Master, Deputy Harbour Master, Marine Pilot or Trainee Marine Pilot (Employees) based at the Port of Albany; and
- c) Australian Maritime Officers Union, subject to the Union applying to be covered by the Agreement pursuant to s183 of the *Fair Work Act 2009* (Cth) (FW Act).

3. AMBIT

- 3.1 This Agreement is intended to provide a comprehensive account of the terms and conditions, including (but not limited to) providing the basis for salary payment and various allowances, applicable to Employees.
- 3.2 The Agreement shall replace and rescind the ***Southern Ports - Albany Marine Pilots Enterprise Agreement 2021-2023***, and any other Agreement written or unwritten which applied prior to the commencement of this Agreement.
- 3.3 This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this Agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

4. LENGTH OF AGREEMENT

- 4.1 This Agreement shall be effective from the date of approval by Fair Work Commission and the nominal expiry date will be 30 June 2027. All salary and allowances are to be back dated to the expiry of the previous EBA which expired 30 June 2023.
- 4.2 After the nominal expiry date, the conditions of employment contained in this Agreement shall continue to apply until the Agreement is terminated or replaced in accordance with the Fair Work Act or any successor Act.
- 4.3 The parties agree in good faith, to commence negotiations for the renewal of this Agreement at least six (6) months prior to the nominal expiry date.

5. DEFINITIONS

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

- a) '**Act**' means:
 - (i) the Fair Work Act 2009 (as amended).

- b) **'Agreement'** means:
 - (i) Southern Ports Authority Albany Marine Pilots Enterprise Agreement 2024.
- c) **'AMOU'** means:
 - (i) Australian Maritime Officers Union.
- d) **'CEO'** means:
 - (i) Chief Executive Officer.
- e) **'COO'** means:
 - (i) Chief Operating Officer.
- f) **'CPI'** means:
 - (i) Consumer Price Index (Perth) where the nearest quarter is used for adjustments.
- g) **'Deputy Harbour Master'** means:
 - (i) means an Employee who has been appointed by the Board under s.102.(3) and who is authorised to exercise the functions of the Harbour Master as described under S102 (4) of the Port Authorities Act 1999.
- h) **'Employee'** means:
 - (i) a person employed by the Employer in any of the following positions:
 - (a) Harbour Master
 - (b) Deputy Harbour Master
 - (c) Marine Pilot
 - (d) Trainee Marine Pilot
 - (ii) to perform duties within the scope of this Agreement primarily at the Port of Albany.
- i) **'Employer'** means:
 - (i) Southern Ports Authority or as amended by legislation. The location of this agreement applies to the Port of Albany.
- j) **'FWC'** means:
 - (i) Fair Work Commission.
- k) **'Harbour Master'** means:
 - (i) means an Employee who has been appointed by the Board under s.102.(2) and who is authorised to exercise the functions of the Harbour Master as described under S103 of the Port Authorities Act 1999.
- l) **'Immediate Family'** means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee.
- m) **‘Marine Pilot’** means:
 - (i) means an employee of the Southern Ports Authority who is licensed to pilot vessels within the Port.
- n) **‘Marine Safety’** means:
 - (i) means responsibilities for marine safety as defined in legislation relevant to Ports, Harbor Masters and Marine Pilots.
- o) **‘Port’** means:
 - (i) Port of Albany
- p) **‘Shiftworker’** means:
 - (i) For the purposes of the Agreement, a Shiftworker is entitled to an extra week of annual leave as provided for in the National Employment Standards of the Fair Work Act 2009 (Cth).
- q) **‘Trainee Marine’** Pilot means:
 - (i) means a Pilot that is in training to become a Marine Pilot. The Trainee Marine Pilot salary shown in Clause 6.1 is the starting salary for a trainee. The starting salary will be increased in increments up to the level of Marine Pilot with the quantum of the increments commensurate with skills and experience.
- r) **‘Union’** means:
 - (i) the Australian Maritime Officers Union.

6. SALARY & SUPERANNUATION

6.1 Annual salary inclusive of all overtime, adjustment pay, allowances, leave loading and bank fees shall be:

Position	Commencement of Agreement
Trainee Marine Pilot	\$239,270
Marine Pilot	\$267,420
Deputy Harbour Master / Pilot	\$281,495
Harbour Master / Pilot	\$295,569

6.2 The amount set out in 6.1 shall be an aggregated annualised salary for performance of all duties specified in this Agreement.

Adjustment Pay

- 6.3 The annual salary for each position in the above table will be adjusted on 1 July 2025, 1 July 2026 and 1 July 2027 in accordance with WA State Government wages policy that applies on these dates. Unless otherwise amended by the WA State Government, these increases will be as follows:
- a) 5% on 1 July 2025;
 - b) 4% on July 2026;
 - c) 3.5% on 1 July 2027.
- 6.4 In the absence of a WA State Government Wages policy, the salaries in the above table will be increased by 2.75% or CPI, whichever is greater, for each year of operation of this Agreement.

Higher Duties

- 6.5 Where a Deputy Harbour Master or Senior Pilot is delegated according to the Act, to perform the functions of Harbour Master where the Harbour Master is absent, the DHM (or that Pilot) shall receive the difference in remuneration between their salary and the HM salary.

7. SUPERANNUATION

- 7.1 The Employer will make superannuation contributions to superannuation fund nominated by the Employee of an amount sufficient to meet the minimum employer contribution requirements under the Superannuation Guarantee Administration Act 1992 (Commonwealth) as amended from time-to-time.
- 7.2 An Employee will advise the Employer in writing within 14 days of the commencement of employment of the superannuation fund in which contributions are to be made. Where he/she does not provide this advice to the Employer, the Employer will make the contributions to the default superannuation fund, Australian Superannuation Fund.

8. WORKING ON NON-WORK DAYS OR ROSTERED DAYS OFF (RDO'S)

- 8.1 Where an Employee has been requested by the Employer, and agrees, to work on a non-workday or rostered day off as specified by the roster, the Employee can elect to be paid a normal days' salary (at time and a half (x 1.5) or be credited with a day in lieu for working on this day.
- 8.2 The Employer, as the first option, will utilise Employees to provide coverage to back-fill any scheduled leave absences by other Employees.
- 8.3 In relation to clause 8.1 and 8.2, Trainee Pilots will be excluded from Pilotage Duties.

9. HOURS OF DUTY

Hours

- 9.1 The salaries and allowances in this Agreement are based upon the hours necessary to meet the required responsibilities as directed by the Employer.
- 9.2 These are 80 hours per fortnight at an average of 40 hours per week (which includes 38 ordinary hours plus reasonable additional hours) over a two-week cycle.

- 9.3 Employees will not be required to attend the office during weekends and public holidays where there is no requirement to attend to Pilot duties, other shipping matters or emergency issues.

Roster

- 9.4 In accordance with Clause 9.1 - Hours, rosters shall be agreed by the Employees and approved by the Chief Operating Officer (COO).
- 9.5 Other than the requirements in Clause 10 (Fatigue Management System), nothing in this Agreement, as far as is reasonably practicable, shall prevent the Employees from providing marine pilotage services to the Port 24 hours a day, 365 days a year and roster/s and work cycles will be developed and agreed by the parties for such marine pilotage services.

10. FATIGUE MANAGEMENT SYSTEM

- 10.1 The parties agree that fatigue must and will be managed via consultation between the Employees and the Chief Operating Officer.
- 10.2 In order to effectively manage fatigue, variations to the roster and/or the use of relief pilotage services may be required.

11. DUTY STATEMENT

- 11.1 Duties of Employees may include some or all of the following:
- a) Provision of pilotage services.
 - b) Provision of pilotage information for charging purposes.
 - c) Participation in the Ports emergency management processes including acting as Incident Controller when required.
 - d) Liaison with, and management of pilot boat crew.
 - e) Assist with Port promotion.
 - f) Represent the Employer when and where required at meetings, conferences, etc.
 - g) Involvement in planning, construction and maintenance of marine structures and navigation aids.
 - h) Provide advice to shippers of pilotage availability and marine matters within the Port.
 - i) Contribute to shipping and maritime matters within the Port.
 - j) Co-ordination of all arrangements for vessels arriving, anchoring, berthing, unberthing, shifting ship, departing.
 - k) Liaise with ships' agents, Port users and Southern Ports - Albany staff, regarding arrival and departure arrangements for vessels, including tugs, line boats, mooring gangs etc. having regard to tides, drafts, weather, sea state, and draft/channel limitations of the Port.
 - l) Co-ordinate maintenance, repairs, surveys of pilot vessels.
 - m) Planning and monitoring of maintenance dredging and other areas within the Port.
 - n) Conduct systematic monitoring soundings of channels and other areas within the Port.
 - o) Involvement in Port trade developments and planning processes.
 - p) Liaise with and advise Hydrographic Office with regard to Notices to Mariners,

navigational charts, navigational warning, and hydrographic reports.

- q) Advise and liaise with Australian Maritime Safety Authority (AMSA) regarding Port state control matters.
- r) Operate Port control radio station.
- s) Conduct in-house training on marine related matters as required.
- t) Act as a Port emergency coordinator in the event of any Port emergency.
- u) On scene co-ordination of marine oil and chemical pollution clean-up operations within Port boundaries.
- v) Initial response and on scene co-ordination of marine oil and chemical pollution clean-up operations outside of port boundaries.
- w) Conduct pilotage exemption certificate examinations.
- x) Carry out any other duties commensurate with an Employees qualifications and experience.
- y) Be available whilst in the Albany area, whether on duty or not, for any emergency as far as reasonably practicable.
- z) The Harbour Master shall be responsible for Marine Safety.

The Employees are engaged by the Employer to perform work within the Port of Albany and any work (excluding statutorily required training) outside of the Port of Albany will be by mutual agreement only.

Draft Surveys

- 11.2 The Employer recognises the right (but not obligation) of Employees to provide a service conducting 'surveys' (such as grain surveys, condition surveys, draft surveys and bunker surveys) and the use of items of equipment (for example motor vehicle and mobile phone) that are provided by the Employer with a private use component, to be used in conducting this work.
- 11.3 It is agreed that survey work can be conducted outside of the Employers work activity.
- 11.4 Employees are not working for the Employer whilst providing this service, nor are they covered by any Employer insurances.
- 11.5 The conducting of surveys shall not interfere with the movement of vessels. The method by which this is achieved will be agreed between the Regional Manager and the Employees.
- 11.6 All survey activity is performed at the risk of the Employees involved and no responsibility for the activity accrues to the Employer.

12. CONTRACT OF SERVICE

- 12.1 Except where the Employer approves of a shorter period of notice, an Employee shall provide the Chief Executive Officer (CEO) or the COO written notice of intention to resign of not less than:
 - a) One month, in the case of a permanent Employee, or payment in lieu of notice to the extent that the period worked falls short of the notice provided, or
 - b) One week, in the case of a temporary Employee.

- 12.2 The CEO may terminate the service of any permanent Employee, consistent with the terms of this Agreement, by providing one month's notice in writing. Where the Employee is over the age of 45 and has more than 5 years of service the Employee shall receive an additional week of notice.
- 12.3 The foregoing provisions of this clause do not affect the CEO's right to dismiss the Employee without notice for serious and wilful misconduct, consistent with the terms of this Agreement. In such circumstances, notice will not apply, and the salary of the Employee shall be paid up to the time of dismissal only.
- 12.4 Any request by the Employee to meet and discuss the matter shall not be unreasonably refused.
- 12.5 Where the CEO is considering terminating the employment of an Employee in accordance with subclauses (b) or (c) of this clause, the Employee will be provided with a written statement setting out all relevant details upon which the CEO has based this decision.
- 12.6 Nothing within this clause is intended to conflict with the provisions of Clause 29, Formal Disciplinary Procedure, and in the event of any inconsistency between the two clauses, the provisions of Clause 29 will apply to the extent of the inconsistency.

13. PAYMENT OF SALARY

- 13.1 Salary shall be paid fortnightly.
- 13.2 Unless otherwise agreed, salary shall be paid by direct transfer to an account in a bank or other financial institution nominated by the Employee and approved by the Employer.
- 13.3 Salary may otherwise be paid in such manner as may be agreed between the Employer and the Employee.
- 13.4 Each pay cycle, Employees shall be provided with a pay slip that provides details including the gross amount of salary earned, allowances paid, accrual of entitlements and any deductions applied.
- 13.5 In the event of any identified salary underpayment, the Employer will make an adjustment to rectify the discrepancy as soon as is practicable but, in any event, no later than the subsequent pay period.
- 13.6 The Employer may make deductions from an Employee's salary with the written consent of that Employee but shall not make any deductions without such written consent.

14. ANNUAL LEAVE

- 14.1 The Employee shall be entitled to thirty-five days (35 days) of annual leave, on full pay, for each year of service.
- 14.2 Annual leave shall be calculated on a pro rata, calendar year basis, commencing on the first day of employment with the Employer or its predecessor.
- 14.3 Annual Leave is not rostered but must be taken from time to time as approved by the COO in order to best accommodate operational requirements.

- 14.4 Leave periods reflect actual rostered days at work: Leave periods accrue having regard to actual rostered days at work.
- 14.5 Annual leave may be taken during the calendar year in which it accrues, but the time during which the leave may be taken is subject to the approval of the COO.
- 14.6 On written application, the Employee shall be paid salary in advance when proceeding on annual leave.
- 14.7 An Employee who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an Employee.
- 14.8 Accrued annual leave entitlements will be paid out to Employees upon cessation of employment with the Employer.
- 14.9 Cashing out of annual leave is in accordance with the National Employment Standards (NES).

15. ANNUAL LEAVE LOADING

- 15.1 Annual leave loading is incorporated in the salaries provided in this Agreement.

16. PERSONAL LEAVE AND OTHER LEAVE ENTITLEMENTS

Personal leave

- 16.1 Personal Leave provides for paid leave that may be used for:
- a) sick leave due to personal injury or ill health, or
 - b) carer's leave.
- 16.2 Ten days' Personal Leave will be credited to permanent Employees at the commencement of employment and at the beginning of the anniversary of employment start date for each year of employment.
- 16.3 Unused Personal Leave will accumulate from year to year.
- 16.4 Unused Personal leave is not paid out upon termination of employment.
- 16.5 The COO may approve additional paid or unpaid special leave to Employees for sick leave or carer's leave on a discretionary basis.

Sick leave

- 16.6 The Employer will pay the salary of a permanent Employee who is unable to present for duty due to personal injury or ill health, up to the limit of his or her personal leave accrual balance.
- 16.7 Where the Personal Leave accrual balance is insufficient, a permanent Employee will be entitled to claim additional paid sick leave up to a maximum of 13 weeks (in any one year of their employment) less any Personal Leave taken on any occasion of personal injury or ill health resulting in absence from duty. This additional sick leave does not accumulate from year to year.
- 16.8 An Employee is not entitled to sick leave during periods of Workers Compensation.

- 16.9 An Employee may, upon request from the Employer, be required to provide a medical certificate or, in circumstances where a medical certificate cannot be obtained (e.g. where the request to produce is retrospective), to provide a signed statutory declaration, in order to qualify for Personal Leave payment.

Carer's Leave

- 16.10 The Employer will pay the salary of a permanent Employee, who is unable to present for duty if he or she is required to care or provide support to a member of the Employee's family who requires care or support because of an illness or injury to the member, or an unexpected emergency affecting the member.
- 16.11 An Employee may, upon request from the Employer, be required to provide a medical certificate or, in circumstances where a medical certificate cannot be obtained (e.g. where the request to produce is retrospective), to provide a signed statutory declaration, in order to qualify for Personal Leave payment.
- 16.12 Two days' unpaid carer's leave is available to all Employees each year.

17. DOMESTIC VIOLENCE LEAVE

17.1 The Employer recognises that Employees may sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, the Employer is committed to providing support to Employees that experience domestic violence. Domestic violence includes physical, sexual, financial, verbal or emotional abuse by an immediate family member as defined in the Fair Work Act.

17.2 General Measures

- a) Proof of domestic violence may be required and can be in the form of an agreed document issued by the Police Service, a Court, a Doctor, a Domestic Violence Support Service or Lawyer.
- b) All personal information concerning domestic violence will be kept confidential. No information will be kept on an Employee's personal file without their express written permission.
- c) No adverse action will be taken against an Employee if their attendance or performance at work suffers as a result of experiencing domestic violence.
- d) The Employer's contact will be a nominated member of the HR department who will have skills and knowledge in managing domestic violence and privacy issues.
- e) An Employee experiencing domestic violence may raise the issue with their immediate supervisor or the nominated human resources representative. The supervisor may seek advice from the nominated human resources representative if the Employee chooses not to make contact with the human resources department.
- f) Where requested by an Employee, the nominated human resources representative will liaise with the Employee's supervisor on the Employee's behalf, and will, in consultation with the Employee, make a recommendation on the most appropriate form of support.
- g) The Employer will, in conjunction with the elected Consultative Committee, develop a procedure to supplement this clause which details the appropriate action to be taken in the event that an Employee reports domestic violence.
- h) An Employee experiencing domestic violence will have access to ten (10) days per year of paid special leave for medical appointments, legal proceedings and other activities related to domestic violence. This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day and can be taken without prior approval. Additional leave may be drawn from an Employee's available accrued personal leave balance.
- i) An Employee experiencing domestic violence will be referred (with their consent) to the Employee Assistance Program (EAP) and/or other local resources. The EAP shall include professionals trained specifically in domestic violence.

18. LEAVE WITHOUT PAY

- 18.1 The COO may grant an Employee leave without pay for any period subject to the following:
- a) every application for leave without pay will be considered on its merits; and
 - b) the work of the Employer is not inconvenienced; and
 - c) all other leave credits of the Employee shall be exhausted prior to making such application.

19. COMPASSIONATE LEAVE

- 19.1 The Employee shall be entitled to 3 days' compassionate leave upon any occasion involving the death of a member of the Employee's Immediate Family or a member of the Employee's household.
- 19.2 Compassionate leave for a period not exceeding three days in respect of any such occasion referred to in 16.6.a, shall be without loss of any ordinary pay which the Employee would have received had they not utilised such leave.
- 19.3 Compassionate leave need not be utilised on consecutive days and may (or may not as the Employee so chooses) include the day of the funeral.
- 19.4 The entitlement to paid compassionate leave shall be dependent on compliance with the following conditions:
- a) The Employee shall give the Employer notice of intention to take such leave as soon as is reasonably practicable after the death of such relation.
 - b) Evidence that would satisfy a reasonable person of the relevant death shall be provided by the Employee to the Employer.
 - c) The Employee shall not be entitled to leave under this clause in respect of any period which coincides with any other period of leave entitlement under this Agreement or otherwise.
- 19.5 An Employee is also entitled to 3 days of compassionate leave for each occasion (a permissible occasion as defined within the Act) when a member of the Employee's Immediate Family, or a member of the Employee's household:
- a) contracts or develops a personal illness that poses a serious threat to his or her life; or
 - b) sustains a personal injury that poses a serious threat to his or her life; or
 - c) dies.

- 19.6 The Employer may also, upon sufficient cause being shown, grant an Employee up to two additional days' paid leave for such other reason provided that the total leave available to Employees under this sub-clause shall not exceed three (3) working days in any one calendar year.

20. PARENTAL LEAVE

- 20.1 Subject to 16.7(b), an Employee is entitled to up to fifty-two (52) consecutive weeks of unpaid leave for:

- a) the birth of a child of the Employee's spouse; or
- b) the placement of a child with the Employee for adoption

20.2 To be entitled to parental leave an Employee must:

- a) have completed at least 12 months continuous service with the Employer before the expected date of birth or placement; and
- b) give the Employer at least 10 weeks' written notice or as soon as practicable of his/her intention to utilise the parental leave.

20.3 An absence on parental leave:

- a) does not break the continuity of service of an Employee; and
- b) Other provisions relating to parental leave are as provided in accordance with the Act.

21. STUDY LEAVE

21.1 Study Leave shall be granted under the Southern Ports Study Assistance Procedure.

22. LONG SERVICE LEAVE

22.1 The Employee shall be entitled to thirteen (13) weeks long service leave on full pay if the Employee has completed seven (7) years' continuous service with the Employer and/or its predecessor.

22.2 Employees may elect to access their pro rata long service leave entitlements once they have completed five (5) years' continuous service with the Employer.

22.3 For each and every subsequent period of seven (7) years' continuous service the Employee shall be entitled to an additional thirteen (13) weeks' long service leave, on full pay.

22.4 Upon written application by the Employee, the COO may approve the Employee taking:

- a) Double the period of long service leave entitlement on half pay, in lieu of the period of long service leave entitlement on full pay, or
- b) Any portion of the Employee's long service leave entitlement on full pay or double such period on half pay.

22.5 Employees will, upon cessation of employment, have their accumulated long service leave entitlements paid to them in full.

22.6 Employees will accrue a day in lieu for each occasion that a public holiday occurs during a period of long service leave, which may be added to the period of long service leave or utilised at a later date, at the Employee's discretion.

22.7 Long service leave will be taken during periods suitable to the Employee and subject to operational requirements.

22.8 It is intended that long service leave shall generally be taken within three (3) years of entitlement but where long service leave accumulates for any reason, the sum entitlement shall not exceed six (6) months of continuous long service leave without written approval of the Employer.

- 22.9 Where accrued long service leave entitlements exceed six (6) months, the Employee may be reasonably directed to utilise a portion of that long service leave adequate to reduce the accumulated balance sufficiently to comply with sub-clause (i) above.
- 22.10 A lump sum payment for long service leave accrued in accordance with this clause and/or for pro rata long service leave shall be made in the following cases:
- a) an Employee who retires at or over the age of fifty-five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro rata long service leave unless the Employee has completed a minimum twelve months continuous service.
 - b) an Employee who has retired for any other reason, provided that no payment shall be made for pro rata long service leave unless the Employee has completed a minimum three years' continuous service prior to the date of retirement.
 - c) Where the Employee dies and has provided a minimum twelve (12) months continuous service; and leaves a dependent spouse, child or children, parent or invalid sibling, in which case the payment shall be made to the spouse or other dependent.
- 22.11 Long service leave will be calculated at the salary rate applicable at the date of the Employee's retirement, resignation or death, and the over-all long service leave payment shall not exceed twelve (12) month's salary.
- 22.12 Long service leave accrued prior to this Agreement shall remain to the credit of the Employee.
- 22.13 For the purposes of applying this clause 'continuous service' includes any period that an Employee is (or has been) absent on full or part pay, from their duties with the Employer (and/or its predecessor). However:
- a) Any period exceeding two weeks during which the Employee is absent on leave without pay; and/or
 - b) Any period during which the Employee is taking his/her long service leave entitlement (or any portion thereof); whilst not deemed to have broken the Employee's period of continuous service, will not be counted as continuous service either.

23. DEFENSE FORCE RESERVES LEAVE

- 23.1 The Employer will grant leave of absence for the purpose of Defence service to an Employee who is a volunteer member of the Defence Force Reserves or the Cadet Force. Defence service means service, including training, in a part of the Reserves or Cadet Force.
- 23.2 Leave of absence may be paid or unpaid in accordance with the provisions of this clause.
- 23.3 Application for leave of absence for Defence service shall, in all cases, be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted, the Employee shall provide a certificate of attendance to the Employer.
- 23.4 An Employee who is a volunteer member of the Defence Force Reserves or the Cadet Force is entitled to paid leave of absence for Defence service, subject to the conditions set out hereunder.
- a) On written application, an Employee shall be paid salary in advance when proceeding on such leave.
 - b) Casual Employees are not entitled to paid leave for the purpose of Defence service.
 - c) An Employee is entitled to paid leave for a period not exceeding 105 hours on full pay in

any period of twelve months commencing on 1 July in each year.

- d) An Employee is entitled to a further period of leave, not exceeding 16 calendar days, in any period of twelve months commencing on July 1. Pay for this leave shall be at the rate of the difference between the normal remuneration of the officer and the Defence Force payments to which the officer is entitled if such payments do not exceed normal salary. In calculating the pay differential, pay for Saturdays, Sundays, Public Holidays and rostered days off is to be excluded, and no account is to be taken of the value of any board or lodging provided for the officer.

23.5 Any leave for the purpose of Defence service that exceeds the paid entitlement prescribed in (1) of this clause shall be unpaid.

23.6 An Employee may elect to use annual or long service leave credits for some or all of their absence on Defence service, in which case they will be treated in all respects as if on normal paid leave.

23.7 The Employer cannot compel an Employee to use annual leave or long service leave for the purpose of Defence service.

24. INCOME PROTECTION

24.1 Marine Pilot/s shall be entitled from the date this Agreement commences to the benefits of an income protection/salary continuous insurance policy provided by the Employer.

24.2 The income protection/salary continuous entitlement shall be the payment to an eligible Employee of 75% of salary plus the superannuation guarantee. Employer superannuation guarantee pro rata for each day of entitlement to commence after all sick leave entitlements are expended for the period until the Employee is able to return to work, up till a maximum of two years.

24.3 The Policy may include:

- a) 30-day waiting period
- b) Benefit expiry at age 65
- c) An 'own' occupation definition
- d) A current Automatic Acceptance Limit (AAL) of \$10,000 per year

25. TRAVEL ALLOWANCE

25.1 The Employer will reimburse all travel and motor vehicle expenses of an Employee during approved, work-related travel in accordance with the Southern Ports Travel Policy and Procedures.

26. MOTOR VEHICLE PROVISION/ALLOWANCE

Vehicle Provision

26.1 SPA will meet all necessary costs for a new Toyota Fortuna GXL or a new Mitsubishi Pajero GLS (or any vehicle of equivalent value at the Employee's discretion) without any additional financial contribution from the relevant Employee ("the Vehicle").

26.2 The Vehicle will be replaced every three (3) years or after 60,000km (whichever occurs first) with a new vehicle.

- 26.3 The Vehicle may be used by the Employee for full private use including any usage by spouses/partners.
- 26.4 The Employee may elect to have the Vehicle fitted with a mobile VHF radio, bull bar, tow bar and spotlights at the Employer's cost.
- 26.5 The Employer will meet the full running costs (including but not limited to fuel, maintenance, road tax, insurance etc.) of the Vehicle.
- 26.6 A hands-free kit will be installed in the vehicle, if required.

Vehicle Allowance

- 26.7 As an alternative to the provisions outlined within Clause 26.1, an Employee may elect to receive a 'Vehicle Allowance'.
- 26.8 This election must be provided in writing to the Employer and will then stand for the next 3-year period, at which point the Employee will again have the option to choose between the arrangements captured in Clauses 26.1 and 26.2.
- 26.9 Where the Employee has elected to receive the Vehicle Allowance option, the Employer will pay the Employee \$28,000 per annum in lieu of the provisions outlined within Clause 26.1; and
- 26.10 The Employee will have the option to salary sacrifice a vehicle through a novated lease arrangement in accordance with the Employer's novated lease procedures applicable at the date of commencement of the formal access period prior to vote for this Agreement (and not subject to any alteration while this Agreement applies).

27. PERSONAL HEALTH AND FITNESS

- 27.1 The Employer will, on production of a receipt, reimburse the Employee an amount up to \$299 per calendar year towards membership fees to a gymnasium or golf club or other health and fitness facility.

28. TRAINING AND DEVELOPMENT

- 28.1 The parties to this Agreement are committed to external, industry and enterprise training to achieve:
- a) higher skills relevant to the needs of the Employer
 - b) multi-skilling to the level required for the operational efficiency and flexibility
 - c) a career path
 - d) retraining to maintain pre-existing skills
 - e) adjustment to technological change
 - f) greater efficiency and job satisfaction
- 28.2 All costs associated with standard fees, prescribed textbooks and materials incurred by the Employee in connection with training required by the Employer shall be reimbursed upon the production of receipts.
- 28.3 Travelling costs incurred by the employee undertaking training required by the Employer shall be reimbursed according to the Travel Policy and Procedures.

- 28.4 Specifically, the Employer is committed to offering Employees a range of training that is relevant.

29. PROFESSIONAL ASSOCIATION / MEMBERSHIP

- 29.1 The Employer shall reimburse each Employee up to \$599 per annum for one professional membership, provided that membership is with a professional body relevant to the vocation of a Marine Pilot.

30. COMMUNICATIONS

- 30.1 The Employer will reimburse the cost of telephone line rental, a home internet service to a maximum value of one hundred and forty (140) dollars per month, and any other business-related expenses upon presentation of a valid receipt unless agreed otherwise.
- 30.2 Employees will also be supplied with a portable computer, remote access to the Employer's internet connection and a mobile telephone.

31. UNIFORMS

- 31.1 Uniforms will be supplied in accordance with the Employers uniform procedure, except where the parties agree that for safety or comfort reasons it is necessary to depart from the policy but subject at all times to the officers displaying the corporate logo.
- 31.2 Uniforms shall be replaced on a fair wear and tear basis as is considered necessary by the Harbour Master within the applicable, approved annual budget.
- 31.3 The Employer may require uniforms to be worn at all times when considered necessary.

32. PROTECTIVE CLOTHING

- 32.1 Employees will be supplied with wet weather gear (of good and suitable quality) and appropriate safety footwear.
- 32.2 The type of wet weather gear and safety shoes will be chosen by the Harbour Master and purchased within the approved budget.

33. COPY OF AGREEMENT

- 33.1 Employees shall be provided access to a copy of this Agreement.

34. CONSULTATION AND CHANGE

Notification of Change

- 34.1 The parties to this Agreement acknowledge the rights and responsibilities of each other in relation to consultation and change.

- 34.2 Specifically, the Employer recognises its responsibility to genuinely consult with Employees, their representatives (where nominated), and the Union, about any change that is likely to have significant effect on them.
- 34.3 The Employer will give genuine consideration to the views and advice of the Employees, their representatives (where nominated), and the Union. Accordingly;
- a) Where the Employer is likely to introduce change(s) in production, program, organisation, structure or technology that are likely to have significant effect on Employees or proposes to introduce a change to the regular roster or ordinary hours of work of Employees, the Employer undertakes to notify the Employees who may be affected by the proposed change(s), and the Union.
 - b) Without limiting the generality thereof, significant effect includes;
 - (i) Termination of employment
 - (ii) Changes to the composition, operation, or size of the workforce
 - (iii) Major changes in the skills required of Employees
 - (iv) The elimination or diminution of job opportunities, promotion opportunities or job tenure
 - (v) The alteration of hours of work
 - (vi) The need for retraining or transfer of Employees to other work or locations
 - (vii) the restructuring of jobs
 - (viii) The use of contractors
 - (ix) Change(s) to the legal or operational structure of the business
 - (x) Structural changes to the Employer's operations

Company Duty to Discuss Change

- 34.4 The Employer undertakes to discuss with the affected Employees, the introduction of the proposed change(s), the effects the changes are likely to have on Employees, measures to avert or mitigate any adverse effects of such changes on Employees and give prompt consideration to matters raised by the Employees, their representatives (where nominated), and the Union in relation to the proposed change(s).
- 34.5 The parties to this Agreement agree to participate in these discussions in good faith.
- 34.6 The discussions shall commence as early as practicable after the Employer has determined that it is likely to implement the proposed change(s)
- 34.7 For the purposes of such discussion, the Employer undertakes to provide in writing to the Employees concerned, their representatives (where nominated) and the Union, all appropriate relevant information about the proposed change(s) including the nature of the proposed change(s), the expected effects of the changes on Employees and any other matters likely to affect Employees.

Implementation of Change

- 34.8 It is agreed that, after the Employer has given careful and genuine consideration to the views of Employees, and provided consultation has occurred in accordance with this clause between the Employer and relevant Employees in relation to the implementation of the proposed change(s), and subject to the appropriate settlement of any and all disputes raised in relation to the proposed change(s); the proposed change(s) may be implemented with seven days' notice.
- 34.9 Where there is a disagreement over:
- a) the application of this clause;
 - b) the implementation of the change(s) which have been the subject of consultation under this clause; and/or
 - c) the actual subject of the proposed change
 - (i) the matter may be placed into dispute pursuant to the provisions of Clause 35 Disputes Resolution;
 - (ii) Whilst a matter is being progressed according to this clause and subject to there being no stoppage of work as a result of a matter raised under this clause, the status quo will remain;
 - (iii) The status quo will be the state of affairs that existed prior to the matter that has been put in dispute.

Changes to regular roster or ordinary hours of work

- 34.10 Where the Employer proposes to introduce a change to the regular roster or ordinary hours of work of Employees, the following applies:
- a) the Employer must notify the relevant Employee(s) of the proposed change; and
 - b) sub-clauses b) to h) apply
- 34.11 The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- 34.12 If:
- a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - b) the Employee or Employees advise the Employer of the identity of the representative: the Employer must recognise the representative.
- 34.13 As soon as practicable after proposing to introduce the change, the Employer must:
- a) discuss with the relevant Employee/s the introduction of the change; and
 - b) for the purposes of the discussion--provide to the relevant Employee/s:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the Employer reasonably believes will be the effects of the change on the Employee/s; and
 - (iii) information about any other matters that the Employer reasonably believes are likely to affect the Employees; and
 - (iv) invite the relevant Employee/s to give their views about the impact of the change

(including any impact in relation to their family or caring responsibilities).

- 34.14 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employee/s.
- 34.15 The Employer must give prompt and genuine consideration to matters raised about the change by the relevant Employee/s.
- 34.16 For the purposes of applying this clause “relevant Employee/s” means the Employee/s who may be affected by the proposed change to regular roster or ordinary hours.
- 34.17 Following the consultation process outlined above; in the event that the Employer then makes a decision to implement the changes which have been the subject of consultation, the Employer may only do so in accordance with Clause 27.3 Implementation of Change.

35. DISPUTE RESOLUTION

- 35.1 If a dispute relates to:
- a) a matter arising under this Agreement;
 - b) the National Employment Standards; or
 - c) any matter pertaining to the relationship between the Employer and the Employees.
 - d) This term sets out the procedures to settle the dispute provided that nothing in this term prevents a party to a dispute from applying to a court for orders in relation to a contravention or proposed contravention of a civil remedy provision.
- 35.2 An Employee is entitled to a representative of their choice for the purposes of the procedures in this term.
- 35.3 The Union may raise a dispute in a representative capacity for an Employee or Employees.
- 35.4 Where the Union raises a dispute in a representative capacity, the Union is not required to identify or provide evidence of Employee(s) on behalf of whom the dispute is raised (other than where circumstances are such that the Employer cannot properly understand the dispute unless the Employee(s) are identified).
- 35.5 In the first instance, the parties to the dispute will try to resolve the dispute at the workplace level.
- 35.6 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.
- 35.7 The Fair Work Commission will deal with the dispute by conciliation and/or arbitration. The Fair Work Commission may otherwise deal with the dispute as it sees fit, including by the exercise of any of its powers or functions under the Act.
- 35.8 A decision made by the Fair Work Commission is subject to an appeal against the decision of a single member of the Fair Work Commission to the Full Bench of the Fair Work Commission under and in accordance with s 604 of the Act and not this term.

- 35.9 To the extent possible, the parties to a dispute intend that a decision of the Fair Work Commission under this term will be subject to judicial review and that the Full Bench deal with any appeal under this term in accordance with its statutory function in s 604, exercising only powers and functions conferred on it by the Act, and not in its capacity as a private arbitrator.
- 35.10 It is a condition of validity that any decision of the Fair Work Commission under this term is legally correct. A decision that is not legally correct may be appealed to the Federal Court of Australia on that ground.
- 35.11 While the parties are trying to resolve the dispute using the procedures in this term:
- a) the parties will maintain the status quo existing immediately prior to the subject matter of the dispute arising, unless an Employee has a reasonable concern about an imminent risk to his or her health or safety; however
 - b) the Employer may direct an Employee to perform other available work within the Port, on the same terms and conditions of Employment, if it is reasonable to do so to protect the health, safety or welfare of Employees.
 - c) For the avoidance of doubt, the status quo is defined as 'the action giving rise to the dispute being withdrawn, and the situation immediately prior to the action giving rise to the dispute applying until the dispute is settled'.
- 35.12 An Employee who raises a dispute under this clause is entitled to participate in the procedure provided for in this clause without loss of pay.
- a) Employees who are directly involved in the preparation of a case for conciliation or arbitration, or who are required as a witness in an arbitration, are entitled to do so without loss of pay.
 - b) In the event that the parties to the dispute fail to agree on the identity or number of persons who qualify under this term, the question will be determined by the Fair Work Commission as part of the dispute.

36. FORMAL DISCIPLINARY PROCEDURE

- 36.1 Where the Employer arranges an interview/meeting with an Employee for the purpose of investigation of alleged misconduct, the Employee will, upon request, be entitled to representation; and sufficient time permitted (3 business days unless otherwise mutually agreed) for the Employee to arrange such representation.
- a) The Employer will accommodate representation via teleconference where physical attendance cannot be arranged; and
 - b) Where it is reasonable to assume that the alleged misconduct, if found to have occurred, could result in the termination of the Employee's employment (Serious and Wilful Misconduct) an additional day will be provided for the Employee to arrange such representation (i.e. 4 business days unless otherwise mutually agreed).
- 36.2 In the event that the conduct of an Employee is deemed by the Employer to warrant formal disciplinary action:
- a) A verbal counselling session will take place in the first instance.
 - b) A written record will be provided to the Employee and a copy placed in the Employee's personal file, documenting the nature of the discussion, the improvements required of the Employee by the Employer, and the measures implemented by the Employer to assist the Employee to make such improvements (collectively the 'Improvement Plan').

- c) A record of the verbal counselling discussion and Improvement Plan will remain in the Employee's personal file for a period of precisely twelve (12) calendar months from the date of discussion; after which it will be removed and no longer be relied upon for future disciplinary process or influence future Improvement Plans.
- d) If the conduct of the Employee does not improve in the areas discussed during the initial verbal counselling session in accordance with this clause, the Employer may arrange a further meeting to review the identified continuing performance issue(s).
- e) The Employee will, upon request, be entitled to representation; and sufficient time permitted (up to seven days unless otherwise mutually agreed) for the Employee to arrange such representation.
- f) The purpose of this meeting is to review the initial goals for improvement, the Employee's progress in achieving those goals, and the assistance provided by management in consultation with the Employee and (where applicable) his/her representative.
- g) Where the Employer is able to demonstrate that there has not been adequate improvement in accordance with the Improvement Plan; a formal written warning may be issued directly to the Employee. A copy of this formal written warning will also be placed in the Employee's personal file.
- h) The copy of the formal written warning will remain in the Employee's personal file for a period of precisely twelve (12) calendar months from the date of issue; after which it will be removed and no longer be relied upon for future disciplinary process or influence future Improvement Plans.

36.3 In the event that there continues to be no improvement in the Employee's conduct as discussed during the initial, verbal counselling session in accordance with this clause; the Employer may arrange a further meeting to review the identified continuing performance issue(s).

- a) The Employee will, upon request, be entitled to representation; and sufficient time permitted (up to seven days unless otherwise mutually agreed) for the Employee to arrange such representation.
- b) The purpose of this meeting is to review the initial goals for improvement, the Employee's progress in achieving those goals, and the assistance provided by management in consultation with the Employee and (where applicable) his/her representative.
- c) Where the Employer is able to demonstrate that there has not been adequate improvement in accordance with the Improvement Plan; a second or 'final' formal written warning may be issued directly to the Employee and the Employer may require the Employee to provide a written commitment to comply with the Improvement Plan. A copy of this formal written warning and the commitment to comply will also be placed in the Employee's personal file.
- d) The copy of the second/final formal written warning will remain in the Employee's personal file for a period of precisely twelve (12) calendar months from the date of issue; after which it will be removed and no longer be relied upon for future disciplinary process or influence future Improvement Plans.

36.4 In the event of a further indiscretion related to the same issues covered in the previous steps; the Employer may take action to dismiss the Employee.

- 36.5 There is no requirement on the part of the Employer to observe the previous steps within this clause in instances of Serious and Wilful Misconduct. Serious and Wilful Misconduct' means acts of physical violence, theft of company property and/or possession of alcohol or illegal drugs within the worksite.
- 36.6 In circumstances where termination of employment is a potential outcome, a demonstrably independent third-party will be engaged to conduct the investigation in relation to the alleged misconduct and the standard of proof required (including, where applicable, based on balance of possibilities) will be suitably higher and proportionate to reflect the seriousness of the potential outcome.
- 36.7 The Employer reserves the sole discretion to bypass the verbal counselling session and progress directly to the issuance of a formal written warning in instances where an Employee has engaged in misconduct deemed by the Employer to warrant such. Where the Employer chooses to exercise this right, it will still be a requirement to provide the Employee with an Improvement Plan as outlined in this clause.
- 36.8 The Employee may dispute the actions of the Employer at any stage of the Formal Disciplinary Procedure, in accordance with the Clause 28. Dispute Resolution.

37. SALARY PACKAGING

- 37.1 Marine Pilots shall be entitled to salary package subject to ATO rules.

38. LEGAL REPRESENTATION

- 38.1 The Employer shall pay reasonable expenses incurred if the conduct of a Marine Pilot is the subject of an inquiry before any judicial or quasi-judicial authority or tribunal (other than the FWC pursuant to clause 28 of this Agreement) for any alleged breach of any maritime, port or other, unless the authority conducting the inquiry finds that such inquiry has been occasioned by the serious misconduct of the Marine Pilot. No such expenses shall be payable if –the Employer, at its own expense, provides the Marine Pilot with legal representatives before such tribunal or authority.
- 38.2 Southern Ports Authority will provide and pay the costs of Personal & Indemnity Insurance for Employees.

39. FLEXIBILITY

- 39.1 The Employer and an Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if;
- a) the arrangement deals with the details about when work is performed;
 - b) the arrangement meets the genuine needs of the Employer and Employee in relation to sub-clause 32.1.a; and
 - c) the arrangement is genuinely agreed to by the Employer and Employee.
- 39.2 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.

- 39.3 The Employer must ensure that the individual flexibility arrangement:
- a) is in writing; and
 - b) includes the name of the Employer and Employee; and
 - c) is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
- 39.4 includes details of:
- a) the terms of the Agreement that will be varied by the arrangement; and
 - b) how the arrangement will vary the effect of the terms; and
 - c) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - d) states the day on which the arrangement commences.
- 39.5 The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed.
- 39.6 The Employer or Employee may terminate the individual flexibility arrangement:
- a) by giving no more than 28 days' written notice to the other party to the arrangement; or
 - b) if the Employer and Employee agree in writing — at any time.

40. WORKPLACE DELEGATES RIGHTS

- 40.1 Clause 40 provides for the exercise of workplace delegates as set out in section 350c of the FW Act.

NOTE: Under section 350c(4) of the FW Act, the Company is taken to have afforded a workplace delegate the rights mentioned in section 350c(3) if the Company has complied with clause 40.

- 40.2 In this clause:
- 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.
- 40.3 Before exercising entitlements under clause 40, 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.
- 40.4 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

Right of representation

- 40.5 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 FW 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.

Entitlement to reasonable communication

40.6 A workplace delegate may communicate with eligible employees for the purpose of representing their industrial interests under clause 40.5. This includes discussing membership of the delegate's organisation and representation with eligible employees.

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

Entitlement to reasonable access to the workplace and workplace facilities

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

- a) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible employees;
- b) a physical or electronic noticeboard;
- c) 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;
- d) a lockable filing cabinet or other secure document storage area; and
- e) office facilities and equipment including printers, scanners and photocopiers.

40.9 The employer is not required to provide access to or use of a workplace facility under clause 40.8 if:

- a) the workplace does not have the facility;
- b) 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
- c) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

Entitlement to reasonable access to training

40.10 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.

- 40.11 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:
- a) Full-time.
- 40.12 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.
- 40.13 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.
- 40.14 If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.
- 40.15 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.
- 40.16 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.

Exercise of entitlements under clause 40

- 40.17 A workplace delegate's entitlements under clause 40 are subject to the conditions that the workplace delegate must, when exercising those entitlements:
- a) comply with their duties and obligations as an employee;
 - b) 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;
 - c) not hinder, obstruct or prevent the normal performance of work; and
 - d) not hinder, obstruct or prevent eligible employees exercising their rights to freedom of association.
- 40.18 Clause 40 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.
- 40.19 Clause 40 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 FW Act or clause 40.

40.20 Definitions for the purposes of clause 40:

- a) employee organisation has the meaning given by section 12 of FW Act.
- b) enterprise has the meaning given by section 12 of the FW Act.
- c) small business employer has the meaning given by section 23 of the FW Act.
- d) workplace delegate has the meaning given by section 350c(1) of the FW Act.

41. 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: **14/02/2025**

Chief Executive Officer

Position

4/679 Murray Street, West Perth

Address

6005

Post Code

For Employees

Signed on behalf of the Employees covered by this agreement



Employee Representative

Glenn Walsh

Name of Employee Representative

Date: 14/02 /2025

AMOU- Senior Industrial Officer

Authority to Sign (Position Title)

1 High Street Fremantle, Western Australia

Address

6160

Post Code

THE FAIR WORK COMMISSION

FWC Matter No.:

AG2025/249

Applicant:

Southern Port Authority

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Clint Carlson, Group HR Strategy and Employee Relations Manager, have the authority given to me by Southern Port Authority to give the following undertakings with respect to the Southern Ports Authority Albany Marine Pilots Enterprise Agreement 2024 ("the Agreement"):

1. For the purpose of the Agreement, a **shiftworker** means an employee who is a 7-day shiftworker who is regularly rostered to work on Sundays and public holidays.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

Signature  _____

Date 14 February 2025