



# DECISION

*Fair Work Act 2009*

s.185 - Application for approval of a single-enterprise agreement

## **Port of Brisbane Pty Ltd**

(AG2020/1932)

### **PORT OF BRISBANE PTY LTD - TSHD BRISBANE ENTERPRISE AGREEMENT 2020**

Port authorities

COMMISSIONER BOOTH

BRISBANE, 29 JULY 2020

*Application for approval of the Port of Brisbane Pty Ltd - TSHD Brisbane Enterprise Agreement 2020.*

[1] An application has been made under s.185 of the *Fair Work Act 2009* (the Act) by Port of Brisbane Pty Ltd (the Applicant) for approval of the *Port of Brisbane Pty Ltd – TSHD Brisbane Enterprise Agreement 2020* (the Agreement). The Agreement is a single enterprise Agreement.

[2] Correspondence was sent to the Applicant and bargaining representatives on 23 July 2020, raising matters to be noted in the decision as follows.

[3] I observe that the following clauses may be inconsistent with the National Employment Standards (NES):

- Clause 4.8 – Abandonment of employment; and
- Clause 8.1 – Annual leave.

[4] However, noting the NES precedence clauses at clause 1.10 of the Agreement, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[5] It is also noted that the consultation term at clause 3.2 of the Agreement does not appear consistent with the requirements of the Act. Accordingly, the model consultation term set out in the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[6] Subject to the matters raised at paragraphs [3]–[5], I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as are relevant to this application for approval have been met.

[7] The Australian Maritime Officers Union (AMOU), the Australian Institute of Marine and Power Engineers (AIMPE), and the Maritime Union of Australia Division of the Construction, Forestry, Maritime, Mining and Energy Union (MUA) filed Form F18s in this matter, advising that it supports approval of the Agreement by the Commission, and providing notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) of the Act, I note the Agreement covers the AMOU, the AIMPE, and the MUA.

[8] The Agreement is approved and, in accordance with clause 1.4 of the Agreement and s.54 of the Act, will operate from 7 days from the date of approval of the Agreement. The nominal expiry date is 30 June 2023.



COMMISSIONER

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Note - the model consultation term is taken to be a term of this agreement and can be found at the end of the agreement.

# TSHD Brisbane

## Enterprise Agreement 2020



## **PART 1. APPLICATION AND OPERATION**

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### **1.1 Title**

This Agreement is known as the Port of Brisbane Pty Ltd – TSHD Brisbane Enterprise Agreement 2020.

### **1.2 Table of Contents**

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### 1.3 Agreement Coverage

This Agreement applies to all employees of the Port of Brisbane Pty Ltd who work on the TSHD Brisbane and to the Port of Brisbane Pty Ltd as the employer in respect of such employees.

### 1.4 Date of Operation

This Agreement takes effect from 7 days after approval by FWC and will remain in force until 30 June 2023. The parties agree to commence discussions for a replacement enterprise agreement at least 3 months prior to the nominal expiry date.

Copies of this Agreement will be posted on the Company's intranet site and other means to ensure it is accessible to all employees.

### 1.5 Parties Bound

This Agreement is binding upon the employees as prescribed by clause 1.3 and their employer, and will cover

- (a) The Australian Maritime Officers Union,
- (b) The Australian Institute of Marine and Power Engineers; and
- (c) The Construction, Forestry, Maritime, Mining and Energy Union.

## **1.6 Employment Relations**

### **1.6.1 Freedom of Association**

The Company recognises employees' rights of Freedom of Association and to be represented by unions and their accredited representatives.

### **1.6.2 Union Delegates/Representatives**

Union delegates and representatives have a role to play within the workplace. The existence of accredited union delegates and/or job representatives is recognised and respected. The Company shall not unnecessarily hinder accredited union representatives in the reasonable and responsible performance of their duties. Accredited union representatives will be given reasonable paid time off to attend meetings where appropriate.

### **1.6.3 Deduction of Union Fees**

The Company will provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.

### **1.6.4 Industrial Relations Education Leave**

An employee may be granted up to a maximum of five (5) working days leave of absence on full pay without charge in any calendar year, non-cumulative, to attend courses or seminars conducted to acquire knowledge and competencies in industrial relations provided that -

- (a) The employee submits an application in writing containing Course or Seminar subject matter, date and venue.
- (b) Such application is supported by the appropriate Union.
- (c) The course or seminar subject matter is suitable in the Company's opinion.
- (d) The granting of such leave will be subject to Company convenience and will not unduly affect the operation of the Company.
- (e) The Company will not be responsible for any costs incurred by the employee in attending the course.
- (f) Any additional leave necessarily required for such purpose, up to a maximum of five (5) working days, will be considered on the basis of leave without pay or deductible from the employee's annual leave if available.

### **1.6.5 Shipboard Management Committee**

The Shipboard Management Committee exists to resolve the day to day operational issues as they occur onboard the TSHD Brisbane. The Committee is made up of representatives from each department onboard and is required to meet as a minimum, once every six (6) months.

## **1.7 Definitions**

1.7.1 The "Act" means the *Fair Work Act 2009* as amended or replaced from time to time.

1.7.2 "New Capital Works" means dredging works outside of the Port of Brisbane that involve the development/upgrading of infrastructure that is not covered by existing contracts and does not include the maintenance of infrastructure.

1.7.3 "Company" means the Port of Brisbane Pty Ltd.

1.7.4 "FWC" means Fair Work Commission.

1.7.5 "Union" means those unions mentioned in clause 1.5.

1.7.6 "Award" means the Port Authorities Award

## **1.8 Policies and Standards**

1.8.1 Subject to 1.8.2 below, if the Company intends to amend any policies or standards referred to in this Agreement, it will consult with employees affected by that amendment.

1.8.2 The Company agrees that the standards that have been develop between the parties in relation to Dry Docking /Refit and Amenities, in the terms in which they have been agreed and which are being applied at the time this Agreement commences operation:

(a) Will continue to apply as the Company's standards in these areas during the operation of the Agreement; but

(b) The Company will engage in meaningful consultation with employees affected by these standards and their representatives with a view to exploring proposed improvements to these standards during the operation of this Agreement.

1.8.3 With the exception of the obligations upon the Company created by clause 1.8.1 and 1.8.2 above, the parties acknowledge that, to the extent that this Agreement contains any references to the Company's policies or standards, these do not have the effect of incorporating these policies or standards as terms of either:

(a) this Enterprise Agreement; nor

(b) the contracts of employment of employees to whom this Agreement applies.

Any dispute arising out of the implementation of the Amenities and Dry Docking Standards will be dealt with in line with clause 3.1.

## **1.9 Relationship with Modern Award**

The parties acknowledge that this agreement supplants the Port Authorities Award while it remains in effect.

## **1.10 Relationship with National Employment Standards**

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.

**2.1 Enterprise Flexibility**

- 2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place at each enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.
- 2.1.2 The consultative processes established in an enterprise in accordance with clause 2.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.1.1. Representatives nominated by employees may be involved in such discussions.
- 2.1.3 Any proposed genuine agreement reached between an employer and employee/s in an enterprise is contingent upon the agreement being submitted to Fair Work Australia.

**2.2 Facilitative Provisions**

To achieve workplace changes and flexibility in conditions throughout the period of the Agreement, any workplace practice or arrangement to meet Port of Brisbane Pty Ltd or employee requirements may be varied subject to the following conditions:

- (a) The proposed changes to conditions of employment have been agreed by management and the majority of employees potentially affected by the proposal. Where this is required, all employees potentially affected will be consulted as a group. In these circumstances, agreement is defined as a majority of employees affected. However, it is acknowledged by the parties that consensus should, wherever possible, be the basis of agreement. In determining the outcome, neither party will unreasonably withhold or delay agreement.
- (b) All employees, the subject of consultation will have the right to confer with a representative of their choice before any changes are introduced.
- (c) In cases of significant workplace changes, the application of a trial period, will be allowed when requested.

**2.3 Team Based Work**

A further aim of the Agreement is to provide the appropriate framework to develop flexible and multi skilled work forces at each site thereby allowing a “team” approach to activities wherever possible.

It is intended that this team approach will eventually allow any employee to perform any tasks in an area for which that employee is appropriately trained and a position is available. It is not intended that team-based work will reduce the incidence of Higher Duties Payments.



**3.1 Grievance and Dispute Settling Procedure**

- (a) One of the fundamental objectives of this Agreement is to eliminate lost time in the event of a grievance or dispute arising, and that it is in the best interests of all parties to achieve prompt resolution of grievances and disputes.
- (b) The most effective procedure to achieve that is for the responsibility for the resolution of the grievance or dispute to remain as close as possible to those directly involved in the grievance or dispute. However, an employee or the Employer may choose, at any time, to have a representative including a Union representative involved in the dispute settling procedure.
- (c) Subject to clause 5.2 the matters to be dealt with in those procedures will include all grievances or disputes between an employee and the Employer in respect of any matter pertaining to the relationship between the employee and the Employer (including any matter arising under this Agreement or under the National Employment Standard). Such procedures will apply to a single employee or to any number of employees.
- (d) In the event of an employee having a grievance or dispute, then:
  - (1) In the first instance the employee will attempt to resolve the matter with their immediate supervisor, who will respond to such request as soon as reasonably practicable under the circumstances.
  - (2) If the grievance or dispute is not resolved, the employee or, if the employee so chooses, the employee's representative or Union delegate, may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.
  - (3) If the grievance or dispute is not resolved under Step (2) or a grievance or dispute concerns alleged actions by the supervisor referred to in Step (1) or (2), then the employee, employee's representative or Union official can bypass the relevant Step of the procedure and refer the matter to their General Manager for discussion. If the grievance or dispute involves their General Manager, the employee may bypass this Step of the procedure and proceed to Step 4 below.
  - (4) If the grievance or dispute is still unresolved after discussion mentioned above, either party may refer the grievance or dispute to FWC for conciliation and, if necessary, arbitration.
- (e) Subject to clause 5.2 and Section 739 of the Act, when exercising their function under this clause, a member of FWC will attempt resolution using the following alternative dispute resolution processes:
  - (i) mediation; and/or
  - (ii) conciliation; and/or
  - (iii) arbitration.
- (f) Discussions at any stage of the procedure will not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are

unreasonably delayed or hindered, it will be open to either party to refer the dispute to FWC during any stage of the process.

- (g) In the event that a grievance or dispute is being dealt with in accordance with the procedure outlined above, work will continue to proceed under the conditions and arrangements prevailing before the dispute arose. Where those conditions cannot be restored, then work will continue in accordance with the reasonable and lawful direction of the Company and in accordance with the employee's skills, competence, training and safe work practices.

### **3.2 Consultation About Major Change**

3.2.1 This term applies if:

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

3.2.2 The Company must notify the relevant employee(s) and their Unions of the preliminary decision to introduce the major change. The parties must act in good faith in relation to the consultation and the procedure provided by this clause.

3.2.3 As soon as practicable after making its preliminary decision, the Company must:

- (a) discuss with the relevant employee(s) and their Unions:
  - (i) the introduction of the change; and
  - (ii) the effect the change is likely to have on the employee(s); and
  - (iii) measures to avert or mitigate the adverse effect of the change on the employee(s); and
- (b) for the purposes of the discussion — provide, in writing, to the relevant employee(s) and their Unions:
  - (i) all relevant information about the change including the nature of the change proposed; and
  - (ii) information about the expected effects of the change on the employee(s); and
  - (iii) any other matters likely to affect the employee(s).

3.2.4 However, the Company is not required to disclose confidential or commercially sensitive information to the relevant employee(s) or their Unions.

3.2.5 The Company must give prompt and genuine consideration to matters raised about the major change by the relevant employee(s) or their Unions and provide a genuine opportunity to affect the outcome.

3.2.6 If a term in the enterprise agreement provides for a major change to production, program, organisation, structure, regular roster, ordinary hours of work or technology in relation to the enterprise of the Company, the requirements set out in subclauses (2), (3) and (5) are taken not to apply.

- 3.2.7 If the Company makes a final decision to introduce a major change, the Company will advise relevant employee(s) and their Unions in writing. This written notification will include details of the proposed change and an implementation date which will not be earlier than 7 days from the date of the notification.
- 3.2.8 If relevant employee(s) or their Unions wish to raise a grievance or dispute relating to the introduction of the change, a notice of dispute must be lodged with FWC in accordance with Clause 3.1 (d) (4) within 21 days from the date of the notification. The company will maintain status quo while the matter is being referred and heard by the Fair Work Commission.
- 3.2.9 In this term, preliminary decision means a decision which is capable of implementation by the Company subject to changes (if any) arising from consultation.
- 3.2.10 In this term, a major change is likely to have a significant effect on employee(s) if it results in:
- (a) the termination of the employment of employee(s); or
  - (b) major change to the composition, operation or size of the Company's workforce or to the skills required of employee(s); or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work or regular roster; or
  - (e) the need to retrain employee(s); or
  - (f) the need to relocate employee(s) to another workplace; or
  - (g) the restructuring of jobs.
- 3.2.11 In this term, relevant employee(s) means the employee(s) who may be affected by the major change.

## **PART 4. EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS**

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### **4.1 Employment categories**

4.1.1 Employees covered by this Agreement will be advised in writing of their employment category upon appointment.

Employment categories are:

- (a) full-time;
- (b) part-time (as defined); or
- (c) casual (as defined).

### **4.2 Part-Time Employees**

4.2.1 A part-time employee is an employee who:

- (a) is engaged to work an average of fewer than 168 ordinary hours per four week period; and
- (b) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

4.2.2 Before commencing part-time employment the employee and employer must agree upon the roster.

### **4.3 Casual employees**

4.3.1 A casual employee means an employee engaged by the hour and who may leave the Company's service or be discharged at any moment without notice:

Provided that a casual employee will receive a minimum of 4 hours' work or payment thereof in respect of each engagement.

4.3.2 The rate of wages for casual employees will be calculated by dividing the fortnightly rate of wages and allowances applicable to the employees relevant classification by 84 and adding 23% to that rate.

### **4.4 Higher Duties Payment**

When an employee is required to undertake the duties and responsibilities of a position in a higher level, then the following conditions will apply:

4.4.1 If there is a legal requirement (such as a truck driver's licence, coxswain certificate, etc.) to operate plant or equipment then the employee who is directed by their supervisor to relieve in the position will be paid at the minimum rate of the higher level for the actual time involved.

4.4.2 In all other circumstances where relieving is considered necessary by the Company the employee will be directed (where practicable in writing) prior to undertaking such duties by their supervisor to relieve in the higher level position. If the employee performs all the duties of the relieving position then the employee will be paid extra remuneration at the higher classification for all time worked in the position, provided higher duties is performed for a minimum of one day. If the employee is unable to assume the full duties and accept the full responsibilities of the position then the employee must receive appropriate training, which may include on the job training, before relieving in the position.

Note: If an employee is relieving in a higher classified position and immediately commences annual leave or long service leave, then payment at the higher rate of pay will continue only for that period of time that the employee would have relieved in the position had the officer not commenced such leave.

#### **4.5 Incidental and peripheral work**

4.5.1 The Company may direct an employee to carry out such duties as are within the limits of the employee's skill competence and training consistent with the classification structure of this Agreement provided that such duties are not designed to promote de-skilling.

4.5.2 The Company may direct an employee to carry out such duties and use such tools and equipment as may be required:

Provided that the employee has been properly trained in the use of such tools and equipment.

4.5.3 Any direction issued by the Company pursuant to clauses 4.5.1 and 4.5.2 will be consistent with the employer's responsibilities to provide a safe and healthy working environment.

#### **4.6 Termination of Employment**

4.6.1 Statement of employment

The Company will, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.6.2 Termination by Company

(a) In order to terminate the employment of an employee the Company will give the following notice:

Period of Continuous Service	Period of Notice
not more than 1 year .....	1 week
more than 1 year, but not more than 3 years .....	2 weeks
more than 3 years, but not more than 5 years.....	3 weeks
more than 5 years.....	4 weeks

(b) In addition to the notice in clause 4.6.2(a), employees over 45 years of age at the time of giving of notice and with not less than 2 years' continuous service, will be entitled to an additional week's notice.

(c) Payment in lieu of notice will be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof:

Provided that the period of notice may be reduced by mutual agreement between the Company and employee.

(d) In calculating any payment in lieu of notice the full time rate of pay for the hours the employee would have worked had the employment continued until the end of the notice period will be used.

- (e) The period of notice in clause 4.6.2(a) will not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case, of casual, or seasonal employees, or to employees on daily hire, or employees engaged for a specific period of time or for a specific task or tasks.
- (f) An employee dismissed on account of intoxication, insubordination, dishonesty or misconduct will not be entitled to receive the aforementioned notice of termination of employment or payment in lieu thereof:
- (g) Any employee who is dismissed on account of drunkenness, dishonesty, insubordination or culpable negligence whilst employed on the dredger will be paid his/her entitlements to the time of dismissal. In addition, the Company will be responsible for necessary and reasonable transport, meals and accommodation expenses of the employee to the point of disembarkation.

#### 4.6.3 Notice of termination by employee

The employee will give the Company one fortnight's notice of the employee's termination of employment or forfeit one week's salary in lieu:

Provided that the period of notice may be reduced by mutual agreement between the Company and employee.

Any employee whilst working on the dredger who gives notice to finish forthwith will be responsible for his/her own transport, meals and accommodation expenses to the point of disembarkation. The employer will be responsible to put such an employee ashore where transport to the point of disembarkation is reasonably available.

#### 4.7 Redundancy

As soon as it is practicable the Company will inform Unions and employees of intended changes that could either result in positions becoming redundant or significantly alter the manner in which employees currently carry out their duties. An agreement has been reached with the parties to this Agreement in respect of redundancy entitlements and it is to be known as the Port of Brisbane Redundancy Agreement and is attached as Schedule A.

#### 4.8 Abandonment of employment

Where an employee is absent from work for a continuous period exceeding 3 working days without the consent of the Company or without notification to an authorised officer of the Company, the employee's absence will be *prima facie* evidence that the employee has abandoned their contract of employment, which is deemed to be terminated:

This clause will not apply to employees who take industrial action by way of withdrawal of labour against the Company.

#### 4.9 Continuity of Service – Transfer of Business

In cases where a transfer of business occurs, continuity of service should be determined in accordance with the Act.

#### 4.10 Anti-Discrimination

- 4.10.1 It is the intention of the parties to this Agreement to prevent and eliminate discrimination as defined by Federal and State Anti-discrimination legislation. The following Federal Acts apply: the *Racial Discrimination Act 1975 (Cth)*, *Sex Discrimination Act 1984 (Cth)*, *Disability Discrimination Act 1992 (Cth)*, *Human Rights and Equal Opportunity Commission Act 1986 (Cth)*, *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*, *Fair Work Act 2009 (Cth)* and the *Anti-Discrimination Act 2004 (Cth)*. The *Anti-Discrimination Act 1991 (Qld)* also applies. The legislation covers the following grounds of discrimination:
- (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy and potential pregnancy, breastfeeding, paternity status, age, race, colour, racial descent, national or ethnic origin, imputed disability, disability, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person having any of the above characteristics;
  - (b) sexual harassment;
  - (c) racial and religious vilification; and
  - (d) termination for temporary absence from work due to injury or illness or being on maternity leave or paternity leave.
- 4.10.2 Accordingly in fulfilling their obligations under the Dispute Resolution procedure in clause 3.1, the parties to this Agreement must take reasonable steps to ensure that neither the Agreement provisions nor their operation are directly or indirectly discriminatory in their effects.
- 4.10.3 Under the *Anti-Discrimination Act 1991 (Qld)* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 4.10.4 Nothing in this clause is to be taken to affect:
- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991 (Qld)*; or
  - (b) an employee, employer or registered organisation, pursuing matters of discrimination, including by application to the Human Rights and Anti-Discrimination Commission Queensland.

## **PART 5. WAGES AND WAGE RELATED MATTERS**

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### **5.1 Salaries**

An employee will be paid the following annual salary according to their classification.

<b>Classification</b>	<b>1 July 2020</b>
Master	\$179,467
Chief Engineer	\$176,809
Relief Master	\$173,425
Relief Chief Engineer	\$164,215
Dredge Master	\$148,735
2 <sup>nd</sup> Engineer	\$148,735
Senior General Purpose Hand	\$125,853
Cook	\$125,853
General Purpose Hand	\$114,411

The rates of pay shown in the table above have been increased by 2% in line with the Brisbane Consumer Price Index published by the Australian Bureau of Statistics for the December Quarter 2018 to December Quarter 2019 and will apply to all employees covered by this Agreement from 1 July 2020.

The rates of pay shown in the table above will be increased during the term of this Agreement as follows:

- 1) Effective 1 July 2021, the rates of pay will be increased by the applicable percentage in accordance with the Brisbane Consumer Price Index published by the Australian Bureau of Statistics for the December Quarter 2019 to December Quarter 2020, or 1%, whichever is the greater percentage;
- 2) Effective 1 July 2022, the rates of pay will be increased by the applicable percentage in accordance with the Brisbane Consumer Price Index published by the Australian Bureau of Statistics for the December Quarter 2020 to December Quarter 2021, or 1%, whichever is the greater percentage;

These rates reflect a component for the inclusion of the previous at risk incentive payments and recognise the commitment of employees to maintain dredging operations for the entire year.

5.1.1 If the Brisbane Consumer Price Index falls below 1% in any reported period, and in line with the commitments of the parties and employees set out in Part 2 of this Agreement, any party to the agreement may initiate discussions in relation to the economic circumstances and the objectives and commitments set out in Part 2 of this Agreement. Any discussions will be held in good faith.

5.1.2 The parties acknowledge and understand that the Company will not replace the roles of Relief Master and Relief Chief Engineer once the current incumbents accept appointment to another position or cease employment with the Company.

It is also acknowledged that the Relief Master and Relief Chief Engineer are not entitled to any higher duties payment under clause 4.4.2 when relieving in the role of Master or Chief Engineer. The salaries contained in this Agreement for these roles include a component for undertaking these higher duties.

### **5.2 No Further Claims**

There will be no further wage increases granted during the life of this Agreement.



### 5.3 Payment of Wages

Each employee will be paid their wages by means of direct credit (Electronic Funds Transfer) into a nominated bank, credit union or building society account to be available on the agreed pay day.

All charges associated with the payment of wages into the nominated account will be met by the Company.

### 5.4 Annualised Salary

The rates of pay shown in clause 5.1 represent an annual salary inclusive of overtime and shipkeeping payments and incremental, special, victualling, sea rates, thickness testing, dirt money, living-away-from-home and travelling allowances. Such salary will be paid every two weeks by direct debit.

Pursuant to the objective of the Port of Brisbane Pty Ltd to seek dredging work outside Queensland waters, the parties subject to this agreement will consult on the scope, location and duration of the work, and any possible effect it may have on the crew of the dredger. The rates of salary contained in this agreement will continue to apply for the period of such contract.

### 5.5 Capital Works Bonus

5.5.1 The company may, in its capacity as a contractor, tender for, privately negotiate, or otherwise agree to be engaged by a principal to undertake New Capital Works.

5.5.2 The company is committed to have meaningful consultation with employees and representatives before committing to any contract or agreement to undertake New Capital Works, and will continue to consult during the operation of any contract or agreement to undertake New Capital Works.

5.5.3 Subject to paragraph 0 below, the parties agree that:

- (a) if the company is able to agree with a principal to undertake New Capital Works (whether through a tender process, private negotiation, or otherwise) on a basis that includes a bonus component, the company will seek to have included, as part of any contract or agreement to undertake New Capital Works, definitions of how the bonus component can be achieved; and
- (b) if any relevant criteria or KPIs agreed between the company and a principal as conditions for payment of the bonus component have been met; and
- (c) the company receives payment of the bonus component, regardless of the amount of the bonus component received by the company,  
the employees will be entitled to receive from the company, for each day they work on the New Capital Works, the Capital Works Bonus set out in the table immediately below:

	1-Jul-2020	1-Jul-2021	1-Jul-2022
Capital Works Bonus	\$131.18	Prior years Capital Works Bonus rate indexed in line with 1 July 2021 wage increase outlined in Clause 5.1(1)	Prior years Capital Works Bonus rate indexed in line with 1 July 2022 wage increase outlined in Clause 5.1(2)

In relation to the conditions for payment of the Capital Works Bonus set out in paragraph 5.5.3 above:

- (i) the employees acknowledge that relevant criteria or KPIs agreed between the company and a principal for payment of a bonus component may include (but are not limited to) those relating to the early completion of the New Capital Works, or (for example) achievement of environmental, safety, time or productivity measures or targets; and

- (ii) the company acknowledges that it will have meaningful consultation with employees and representatives before committing to submitting a tender and provide to employees, subject to any commercial in confidence considerations, information regarding any relevant criteria or KPIs that are agreed between the company and a principal as conditions for payment of the bonus component.
- (iii) The company acknowledges that employees may elect not to pursue achievement of the relevant criteria or KPIs that are agreed between the company and a principal as conditions for payment of the bonus component in circumstances where they reasonably consider those to be unrealistic, unachievable, not measurable, or capable of compromising safe operations.

5.5.4 For clarity, the Capital Works Bonus will apply only to New Capital Works as defined in clause 1.7.2 of this Agreement.

## 5.6 Performance Appraisal System

The Performance Appraisal System will apply annually, to all the crew of the “Brisbane” dredger and will be applied in the same way as elsewhere in the Company.

It is further agreed that the Performance Appraisal system will recognise circumstances under which the employee cannot achieve the agreed objectives in accordance with the Managing Performance Standard. The Performance Appraisal will be structured to ensure that the PBPL growth traits will not be assessed on a subjective basis.

## 5.7 Superannuation

5.7.1 All permanent employees, who were employed prior to the change of ownership of the Company on 1 December 2010, will be required to contribute to the State Public Sector Superannuation Scheme as per clause 5.7.3. The employee will contribute an amount as specified from time to time in the *Superannuation (State Public Sector) Act 1990 (Qld)* and Superannuation (State Public Sector) Deed 1990 (Qld) and the Company will provide contributions in accordance with that same Act.

5.7.2 The Company will, on behalf of all employees who commence employment with the Company after 30 November 2010, make superannuation contributions to an approved fund in accordance with the *Superannuation Guarantee (Administration) Act 1992*.

5.7.3 The Company will, on behalf of all employees, make superannuation contributions equal to those and subject to the same preconditions as applying to employees who are members of the Queensland State Public Sector Superannuation Scheme as at 1 July 2010. In order to avoid any doubt, this means that the Company will, subject to the appropriate employee co-contribution, continue to make employer superannuation contributions based on an employee’s superannuable salary as follows:-

Employer Contribution	Employee Co-Contribution
12.75%	5%
11.75%	4%
10.75%	3%
9.75%	2%

5.7.4 In the case of employees who are members of an Accumulation Superannuation Fund, where the employer superannuation contribution exceeds or is likely to exceed the maximum amount that is treated favourably for taxation purposes (Concessional or Transitional Concessional Cap) in any one year, the employer will on written request of the employee reduce the employer contribution and

increase the employee's base salary by the corresponding amount. This arrangement will only apply to employees who are in receipt of the legislated employer superannuation guarantee.

## **5.8 Salary Sacrifice**

The parties agree that employees covered by this Agreement will be allowed to "Salary Sacrifice" in respect to Superannuation. Salary Sacrifice arrangements will be consistent with the arrangements made from time to time with the Queensland Government Superannuation scheme (Q Super) or other applicable Scheme.

Employees may enter into a novated lease arrangement with a leasing company nominated by the Company in respect to motor vehicles.

Options available to employees will be limited to the provisions contained in the document agreed to between the Company and the successful leasing company.

**6.1 Hours Of Work**

- (a) Each full-time permanent crew will be required to work 168 hours in each four week period by working a continuous cycle of 14 days per each four week period and have 14 continuous days home leave.

*Crews will commence and cease work at 10.00 a.m. each second Thursday.*

- (b) (i) To achieve the efficient operation of the vessel, employees will be required to perform operational and maintenance duties 12 hours per day each day of the week.
- (ii) All watches will be 12 hours duration. Day workers, excluding the catering staff, will work the same hours, i.e., 0600 to 1800 hours, unless other mutually agreed arrangements have been made with the Master.
- (iii) The Catering staff will work a total of 12 hours daily as agreed between the parties to suit the meal times of the crew.
- (iv) To meet the operational and safety requirements of the vessel, employees may be required to work in excess of 12 hours per day for which no additional payment will be made. However, all parties should ensure that employees are provided with reasonable and equitable workload and ensure that employees have adequate rest.
- (c) Employees who work in excess of 12 hours in any 24 hour period must receive a ten hour break before commencing their next shift. This may be varied by agreement in emergent circumstances.
- (d) Where Officers are required to work on occasions beyond 12 hours in any one day to meet operational requirements the Master and the Company will ensure that the provisions of STCW95 – Chapter (viii) are strictly complied with.

**6.2 Travelling arrangements and Expenses**

- (a) *Dredging Operations in Brisbane*

Crew members reporting for work when The Brisbane is working in the Port of Brisbane will embark and disembark at the Port of Brisbane Operations Base or such other place nominated by the Master.

The Company will supply transport to employees proceeding on or returning from duties within the Port of Brisbane as follows:-

- (i) For employees residing within Zone A, the Company will be liable for the cost of taxi fares to and from the employee's residence and the dredge Brisbane up to a maximum of \$160 each way;
- (ii) For employees residing within Zone B, the Company will reimburse the employee for the cost of public transport or motor vehicle expenses (on a cents per kilometre basis at the rate specified annually by the ATO) to and from the employee's residence and the dredge Brisbane up to a maximum amount of \$160.00 each way;

- (iii) For employees residing within Zone C, the Company will be liable for the cost of commercial economy air fares to and from the airport of Cairns, Townsville, Mackay, Gladstone, Newcastle, Sydney, Canberra, Melbourne, Launceston or Hobart (as applicable) and Brisbane.

The Company will also be liable for the cost of taxi fares to and from Brisbane airport and the dredge Brisbane.

Employees are only entitled to the travelling expenses outlined above where their residency within the respective zone is acknowledged and accepted by the Company. Where an employee subsequently changes their residence, the employee only becomes entitled to changed travelling expenses where the Company approves such a change. Approval to change zones will not be unreasonably withheld where, in the Company's reasonable opinion, there is a domestic or other pressing necessity for the request and it does not result in the Company incurring material additional costs.

The Company pays no travelling time when the dredge is operating in Brisbane.

Crew members required to work during the refit of the "Brisbane" which occurs in Brisbane will be required to provide their own means of transport to and from the place of refit, including Gateway toll or any other associated costs. This provision will also apply to crew members who are required to report to the Operations Base because they are unable to report for work on the dredger in ports outside of Brisbane due to sickness or other reason acceptable to the Company.

*(b) Dredging Operations outside Brisbane*

Crew members reporting for work when the TSHD Brisbane is working outside of the Port of Brisbane, will report to the designated Brisbane airport at the time nominated by the Master and Marine Operations Manager, in sufficient time to board the aircraft.

Flights will normally be by commercial airline, except where circumstances dictate that charter flights would be more practicable. The Company will not be liable for the costs of provision of meals or refreshments other than those provided as part of the normal airfare or for meals in respect to charter flights. In circumstances where an employee is travelling over a meal period (6am – 8am, 11am-1pm, 6pm-8pm) and a substantial meal is not provided by the airline, the company will reimburse the employee for fair and reasonable meal expenses as per the Travel Policy.

The Company will supply transport to employees proceeding on or returning from duties outside the Port of Brisbane as follows:-

- (i) For employees residing within Zone A, the Company will be liable for the cost of taxi fares to and from the employee's residence and Brisbane Airport.
- (ii) For employees residing within Zone B, the Company will reimburse the employee for the cost of public transport or motor vehicle expenses (on a cents per kilometre basis at the rate specified annually by the ATO) to and from the employee's residence and the Port of Brisbane Operations base up to a maximum amount of \$160.00 each way.

The Company will also be liable for the cost of taxi fares to and from the Port of Brisbane Operations Base and Brisbane Airport. In lieu of parking at the Operations Base and catching taxis to and from the Airport, employees may elect to park at or near the airport and claim reimbursement for parking costs up to the value of \$130 for each swing.

- (iii) For employees residing within Zone C, the Company will be liable for the cost of commercial economy air fares as outlined in (a) (iii) above.

The Company will also be liable for the costs of public transport or taxi fares to and from the employee's residence and the applicable airport up to a maximum amount of \$75.00 per occasion.

If the Company considers that travel to Brisbane is required the evening before a roster changeover, the Company will provide board and accommodation at its own expense.

Employees are only entitled to the travelling expenses outlined above where their residency within the respective zone is acknowledged and accepted by the Company. Where an employee subsequently changes their residence, the employee only becomes entitled to changed travelling expenses where the Company approves such a change. Approval to change zones will not be unreasonably withheld where, in the Company's reasonable opinion, there is a domestic or other pressing necessity for the request and it does not result in the Company incurring material additional costs.

The Company will pay travelling time when the dredge is operating outside the Port of Brisbane.

The actual travelling time will be added to the individual's annual leave account after the northern dredging program is completed minus nine (9) hours travel time per year already included in the aggregate salary. For employees relieving onboard the TSHD Brisbane, the travelling time will be calculated on a pro-rata basis based on the proportion of the year spent acting onboard the dredge. For ease of calculation the annual leave entitlement will be based on a calendar year.

The ongoing crew will accrue time from 1 hour before the scheduled aircraft departure time from Brisbane Airport up to the scheduled crew change time on the vessel. The offgoing crew will accrue their travelling time from the scheduled crew change time to the actual aircraft arrival time at Brisbane Airport.

It is noted that travelling time is calculated on the same basis regardless of residence. Employees residing within Zone B or Zone C do not receive any increased travelling time.

In situations where aircraft schedules result in crew change time being scheduled after 10 am, the crew change time of 10 am will remain. However the offgoing crew will continue to work to 12 noon carrying out such tasks as loading stores, refuelling etc. in this case the off-going crew accrues travelling time from 10am and the oncoming crew up to 10am. This will maintain a situation where the crew is available for 168 hours per fortnight and limit unnecessary downtime to the vessel.

(c) *Definitions*

For the purposes of this clause, the following definitions apply:-

**"Zone A"** means the Brisbane metropolitan area comprising that area within a 36 kilometre radial distance from the Brisbane GPO (this encompasses Burpengary, Beenleigh and Ipswich).

**"Zone B"** means that area beyond Zone A but within a 400 km radial distance of the Brisbane GPO (this encompasses Port Macquarie to the south, Gladstone to the north and Roma to the west).

**"Zone C"** means that area of the eastern seaboard north of the most northern boundary of Zone B and south of the southern most boundary of Zone B.

### 6.3 Meal Breaks

Meal Breaks will be of 30 minutes duration to suit the operation of the vessel and will be coordinated by the Shipboard Management Committee in conjunction with the catering staff.

## **6.4 Individual Flexibility Arrangement**

6.4.1 The Company 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 Agreement deals with the following matter:
  - (i) arrangements about when work is performed;
- (b) the arrangement meets the genuine needs of the Company and employee in relation to the matter mentioned in paragraph (a); and
- (c) the arrangement is genuinely agreed to by the Company and employee.

6.4.2 The Company 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.

6.4.3 The Company must ensure that the individual flexibility arrangement:

- (a) is in writing; and
- (b) includes the name of the Company and employee; and
- (c) is signed by the Company and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
- (d) includes details of:
  - (i) the terms of the Agreement that will be varied by the arrangement; and
  - (ii) how the arrangement will vary the effect of the terms; and
  - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.

6.4.4 The Company must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

6.4.5 The Company 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 Company and employee agree in writing – at any time.

**7.1 Shortages and Replacements**

- (a) In cases of short term vacancies caused through sickness or injury, the Master/Chief Engineer, in consultation with the Marine Operations Manager/Project Leader and Shipboard Management Committee, will decide whether replacements are necessary consistent with their responsibilities to provide a safe and healthy working environment.
- (b) In cases where there are shortages and no replacements are made, the crew will cover the shortages and a flexible attitude will be shown at all times by the crew. Lack of skills/qualifications will be the only reason accepted for any crew member not performing duties requested during times of shortage.
- (c) The dredger will operate shorthanded only when the provisions of the Safe Manning Certificate are complied with.
- (d) In instances where the dredger is operating shorthanded, and the company is unable to find a relief to fill the shortage the company will consider the relevant union database for reliefs.

**7.2 Selection of Labour**

The Company will advertise for replacements to fill any permanent positions that may become vacant. A member of the crew will form part of the selection panel for any permanent replacements. The company may elect to contact the relevant union to source suitable candidates.

**7.3 Shipkeeping**

The crew will provide shipkeeping duties as required to ensure the safety of the crew and the vessel.

**7.4 Embarkation/Disembarkation**

In circumstances where crew or crews are detained overnight an assessment of compensation will be determined by the parties taking into account all the circumstances.

The Company reserves the right to alter the scheduled departure time of aircraft without incurring any penalty payment provided a minimum of eight hours notice prior to schedule departure time is given either by verbal or written communication. Written communication will include a text message.

For transportation to a destination outside of the Port of Brisbane other than by plane, the place of embarkation and disembarkation will be either the Port of Brisbane Operations Base or the terminal of the organisation supplying such transport.

**7.4.1 Continuous Improvement**

- (a) The parties to this Agreement are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the Company and to enhance the career opportunities and job security of employees employed by the Company.
- (b) All measures raised by the Company, unions, or employees for consideration consistent with the objectives of paragraph (a) herein will be processed through the consultative mechanism and procedures set up by the parties.



## 7.5 General

- (a) The cost of transport, meals and accommodation will be met by the employer whilst permanent and temporary employees are travelling from the place of embarkation to the dredger and from the dredger to the place of embarkation. When the “Brisbane” is operating away from Brisbane and employees are required to be transported by plane, employees will travel either domestic or charter. When travelling domestic, employees will travel economy class.
- (b) The Master and the Chief Engineer will be responsible for the proper recording of employees’ times.
- (c) The Master will be empowered to make inspections of all cabins and to issue such instructions to any employee as may be necessary to bring any employee’s cabin and its contents to a state of cleanliness and tidiness, especially prior to change of crews.
- (d) (i) Employees will be paid fortnightly
  - (ii) Provided that each employee will be paid his/her wages by means of direct credit (Electronic Funds Transfer) into a nominated Bank, Credit Union or Building Society account to be available on the agreed pay day.
- (e) Employees other than those proceeding on home leave at 10.00 a.m. on a Thursday will remain on board the dredger and will not leave the vessel without submitting a written request to the Master seeking permission to leave the vessel and receiving the Master’s approval.
- (f) Employees will not take or consume alcohol on board the vessel. No alcohol will be allowed on the vessel without the approval of the Chief Executive Officer of the Company. The possession, soliciting, secreting or consumption of prohibited or illegal drugs is prohibited. The penalty is instant dismissal.
- (g) All crew members must meet the required medical/revalidation criteria as required by the Navigation Act and/or the Company for the position held upon the vessel. The Company will be liable for all medical/revalidation costs involved. The Company will facilitate the revalidation of the Certificate of Competency held by each individual officer and the Company agrees to pay the course costs and reasonable travelling, accommodation and meals/incidental expenses.
- (h) Prior to the last tour of duty in each calendar year the Company will, where agreed, reallocate employees to one of two crews in the following year after consultation with the Shipboard Management Committee.
- (i) Crew members are not entitled to any payment for periods of home leave irrespective of the time worked during the duty period.

## 7.6 Expenses

The Company will reimburse an officer upon presentation of receipts, for expenses reasonably incurred by the officer in the performance of their duties including but not limited to: -

1. Where the officer is involved in an inquiry in relation to casualties or proceedings concerning the conduct of the officer for alleged breach of any maritime, port or related regulations. However, the Company will not be liable to reimburse the officer where the authority

conducting the inquiry or proceeding or appellate tribunal finds serious default or serious misconduct by the officer.

2. In respect to a breach of any applicable environmental legislation, the officer will be reimbursed for:
  - (a) reasonable legal costs incurred where the Company has approved the expenditure; and
  - (b) fines imposed by a competent tribunal,

unless those proceedings have been occasioned by the serious default or serious misconduct of the officer concerned.

If the Company disputes liability under this clause, the dispute will be dealt with in accordance with the settlement of disputes procedures in this agreement.

### **7.7 Seacare Return to Work Program**

If an employee is assessed under the Seafarers Rehabilitation and Compensation Act 1992 (Seacare) as capable of undertaking a rehabilitation program, a Return to Work Program will be provided in line with the legislation.

**8.1 Annual Leave**

- 8.1.1 Employees (except casual employees) will accrue six weeks annual leave at the completion of each year's service. Days accrued under this clause include Saturdays, Sundays and statutory holidays. However, employees who, as at 1 August 2005 have exercised the "Leave and Training sacrifice" salary package may continue that option. New employees will not be able to exercise that option.
- 8.1.2 Annual leave will be paid at the rates set out in this Agreement.
- 8.1.3 The Company has agreed that, in instances where an employee's leave application has been approved, the Company will not recall an employee from leave without the employee's agreement.
- 8.1.4 Applications for annual leave will be managed in accordance with PBPLs Leave Policy.
- 8.1.5 In accordance with the Fair Work Act, employees (except casual employees) may agree in writing with the company to cash out leave in excess of 4 weeks. Annual Leave may only be cashed out in multiples of 2 weeks.

This leave will be paid at the rates set out in this Agreement.

- 8.1.6 Employees may request to take annual leave at half pay for twice the length of time.

**8.2 Annual Leave Loading**

Annual Leave Loading is incorporated into the wage rates contained in this Agreement.

**8.3 Absenteeism**

It is recognised that attendance at work is a basic element of the employment relationship. The parties agree that non genuine absenteeism can be a barrier to the achievement of continuous improvement and the parties may examine agreed measures to reduce absenteeism.

**8.4 Personal / Carer's Leave**

8.4.1 Entitlement

Every employee, except casuals, are entitled to accrue 84 hours paid personal / carer's leave for each completed year of their employment with the Company in accordance with the Act. For the purposes of the Act, the annual accrual is based on 8.4 hours per day, 10 days per completed year of employment and is accumulative.

Personal / carer's leave may be accessed for sick leave or to provide care or support to a member of the employee's immediate family or household due to their personal injury, illness or other unexpected emergency.

The term "immediate family" includes:

- (a) a spouse (including a former spouse, a *de facto* spouse, a former *de facto* spouse or a spouse of the same sex), child (including an adopted child, a step child, an exnuptial child or an adult child), parent, grandparent, grandchild or sibling of the employee; and
- (b) a child, parent, grandparent, grandchild or sibling of a spouse of the employee.

Where paid leave entitlements are exhausted or do not apply (in the case of casuals), all employees (including casuals) are entitled to reasonable unpaid carer's leave, no less than 2 days per occasion, when a member of the employee's household requires care or support because of illness or injury or an unexpected emergency.

#### 8.4.2 *Using Personal/Carer's Leave*

Personal / Carer's Leave is unlike annual or long service leave in that it is conditional upon an employee being ill or injured to the point of being unfit for duty.

It is an insurance to protect the employee and his or her family against hardship should he or she be unable to continue in their normal occupation and should be only so utilised.

1. Every employee will have an entitlement to personal / carer's leave consistent with the provisions of the Act.
2. This procedure is designed to curtail personal / carer's leave abuse by employees who are absent from work and who are not genuinely unfit for duty.
3. At the end of each three monthly period or such other period as presently applies, the Company will review the personal / carer's leave records with a view to establishing a list of employees whose record of attendance gives cause for reasonable concern.
4. (a) Any employee with an unsatisfactory record will be interviewed by the Supervisor in the presence of a representative of his / her choice if the employee so requests. If the discussion in respect of the absences does not provide satisfactory reason for the absences, then a letter of warning is to be sent to the employee.  
  
(b) For the purposes of this Clause, unsatisfactory attendance will be judged by taking into account patterns and frequency of absence, provided that employees with chronic or long-term genuine illness or disability will not be disadvantaged.
5. If no improvement is observed in the next period, the employee is to be again interviewed [as in 4(a) above], and if the interview results in unsatisfactory reasons being given, then a second letter of warning is to be sent to the employee, also indicating proof of illness or a certificate may be required for any absence.
6. If the action still results in unsatisfactory attendance at work then a final warning is to be given.
7. The above procedure does not operate to withdraw the Company's right to take termination action or other disciplinary action against any employee if that employee has been found guilty of filling out a false personal / carer's leave application form and claiming personal / carer's leave. That is a matter relating to fraudulent misrepresentation which may justify instant dismissal.
8. (a) An employee absent from work through illness on the production of a medical certificate / statutory declaration from a registered health practitioner specifying the period or approximate period during which the employee will be unable to work, or of other evidence of illness to the satisfaction of the Company, and subject to the employee having promptly notified their supervisor of the estimated duration of the absence will, subject as herein provided be entitled to payment in full for all time so absent from work, provided that such employee has the necessary leave accrued.

- (b) The employer may request an employee to produce such certificate after more than two day's absence and the employee has notified the Company in accordance with (a) above.

However, if any employee has taken personal / carer's leave on more than five occasions in any 12 month period, then the Head of Marine may require the employee to produce a medical certificate for each and every absence thereafter on account of medical reasons in the following 12 month period. This position may be taken if the Head of Marine requires further evidence to support the employee's claim for personal / carer's leave pay.

- (c) Employees who fail to notify their supervisor of their inability to attend work as soon as reasonably practicable will not be entitled to payment of personal / carer's leave.
9. The continuity of employment of an employee with an employer for personal / carer's leave accumulation purposes will be deemed to be not broken by any of the following:
- (a) Absence from work on leave granted by the Company.
  - (b) The employee having been dismissed or stood down by the Company, or the employee having self-terminated employment with the Company, for any period not exceeding three (3) months.
10. In determining service for the purpose of calculation of personal / carer's leave entitlements:
- (a) Absences on personal / carer's leave without pay for any period in excess of three (3) months.
  - (b) Absences on special leave without pay in excess of nine (9) working days.

will not be recognised as service.

Eligibility for Personal / Carer's Leave will be in accordance with the Act.

#### 8.4.3 Workers' Compensation

Where an employee is in receipt of Workers' Compensation, the employee is not entitled to payment of personal / carer's leave.

### 8.5 Long Service Leave

#### 8.5.1 Entitlement

Employees who complete 10 years continuous service are entitled to long service leave at the rate of 1.3 weeks on full pay for each year of continuous service and a proportionate amount for an incomplete year of service.

After 7 years continuous service employees are entitled to pro rata leave but not the availability of cash equivalent on termination except in specified circumstances:

- (a) the employee terminates his or her service because of:
  - (i) ill health or incapacity that are significant but does not qualify for ill health retirement; or

(ii) a domestic or other pressing necessity; or

- (b) the employer dismisses the employee for a reason other than the employee's conduct, capacity or performance.

#### 8.5.2 Limit at Any One Time

- (a) Subject to clause 8.5.2(b), the maximum period of long service leave which may be granted at any one time is 26 weeks and the minimum period is 1 week.
- (b) Where an employee becomes ill during a period of long service leave and is granted personal / carer's leave for such illness in lieu of long service leave, the original period of long service leave granted, when duly adjusted, will not be subject to any restriction as to minimum period:

Provided that the period of such illness is of at least one week's duration and that a certificate from a duly qualified medical practitioner is submitted covering the period of illness.

- 8.5.3 *Conditions under which long service leave may be given* – An employee who desires to be granted a period of long service leave will give a minimum of 8 weeks' notice in the manner prescribed and on the form from time to time approved by the Company, on which form it will be stated the amount of leave that is required and the date from which it is desired such leave should commence.

The Company will notify the employee in writing of the decision upon the application and where the application of the employee is approved, the employee will, subject as hereinafter provided, be granted long service leave in accordance with such approval.

#### 8.5.4 Leave may be deferred or cancelled or the employee may be recalled from leave

- (a) In special or emergent circumstances the Company may:
- (i) defer or cancel any period of long service leave proved in accordance with clause 8.5;
  - (ii) recall an employee at any time from an absence on long service leave, and where it is practicable such employee will resume duty upon the day specified by the Company.
- (b) An employee so recalled from leave will be allowed to take the balance of the period of long service leave approved at a time mutually agreed upon between the Company and the employee, and for the purpose of only clause 8.5.2 the period of leave approved will be deemed to have been taken continuously at the time at which it would have been taken if the employee had not been so recalled.
- (c) When an employee is recalled from long service leave and this recall results in costs to the employee which would not have otherwise been incurred, then the employee will be reimbursed for those costs:

Provided that the employee produces proof of the costs to the satisfaction of the Company.

#### 8.5.5 Payment in lieu of leave on resignation or termination:

- (a) An employee who resigns or whose service is terminated and who immediately prior to the date on which the resignation or termination of service became effective was entitled to be granted long service leave will, be paid in lieu of long service leave, a sum equal to salary at the rate the employee was receiving at the date on which the resignation or termination of service became

effective for a period calculated as provided in clause 8.5.1 in respect of the whole of the employee's continuous service after deducting from such period any long service leave previously taken:

Provided that if the salary rate the employee is receiving at the date of resignation or termination is at a higher rate of pay than the employee's normal rate of pay, because of a higher duties payment, the higher rate of pay will only be paid as per clause 5.4.

- (b) An employee who at the time at which the resignation or termination of service became effective was on long service leave will be paid in lieu of long service leave, a sum equal to salary at the rate the employee was receiving at the date on which the resignation or termination of service became effective for a period equal to the difference between the period of long service leave taken immediately prior to the time at which the resignation or termination of service became effective and the period of long service leave calculated subject to clause 8.5.1 which the employee was entitled to be granted when the employee commenced the long service leave during which the employee's resignation or termination of service became effective:

Provided that if the salary rate the employee is receiving at the date of resignation or termination is at a higher rate of pay than the employee's normal rate of pay, because of a higher duties payment, the higher rate of pay will only be paid as per clause 5.4.

#### 8.5.6 Payment in lieu of leave on cessation of employment in special circumstances:

If at the expiration of a period of not less than 5 years of continuous service, an employee ceases duty in any of the following circumstances:

- (a) retirement on attaining the preservation age;
- (b) retires on the grounds of ill health;
- (c) dies;

there will be paid to the employee, the employee's dependant or representative as applicable, in lieu of long service leave, a sum equal to salary at the rate the employee was receiving at the date of cessation or resignation as the case may be, for a period as calculated on a *pro rata* basis of the entitlement set out in clause 8.5.1:

Provided that if the salary rate the employee is receiving at the date of resignation or termination is at a higher rate of pay than the employee's normal rate of pay, because of a higher duties payment, the higher rate of pay will only be paid as per clause 5.4.

### 8.6 Extension of Long Service Leave on a Half Pay Basis

Notwithstanding the provisions of clause 8.5 of the Agreement, the parties agree that Long Service leave may be granted on half pay.

Granting of the leave on half pay is subject to Company requirements; however requests for leave should not be unreasonably refused.

The standard conditions apply to half pay long service leave arrangements in the following way:

#### 8.6.1 Leave Accrual

While on half pay long service leave, an employee will accrue all leave at the rate at which it was accruing immediately before the employee took half pay long service leave, i.e. leave will accrue as if the employee was engaged in their normal full-time or part-time employment.

#### 8.6.2 Leave Debit

Periods of half pay long service leave will be debited on a full-time equivalent basis. For example, half pay long service leave for a period of 8 weeks will attract a debit of 4 weeks from full pay credits.

#### 8.6.3 Minimum Period of the Leave

Half pay long Service leave must be taken for a minimum 2 calendar weeks. The leave may be taken in conjunction with other forms of leave.

#### 8.6.4 Public Holidays

Half pay long service leave is exclusive of any public holiday that falls during the period of the leave. Half pay long service leave will be extended by any public holiday falling during the period of the leave. A public holiday that falls during a period of half pay long service leave will be paid at half pay.

### 8.7 Parental Leave

#### 8.7.1 Unpaid Parental Leave Entitlement

Employees are entitled to 12 months unpaid Parental Leave and related entitlements in accordance with the Act.

#### 8.7.2 Paid Parental Leave Entitlement

(a) Employees entitled to unpaid Parental Leave are entitled to be paid for a proportion of such leave in accordance with the following:-

- (i) Primary Carer – 16 weeks paid leave;
- (ii) Secondary Carer – 2 weeks paid leave;
- (iii) Adoption – 16 weeks paid leave for the Primary Carer, 2 weeks paid leave for the Secondary Carer

(b) An employee may take accrued annual or long service leave in lieu of or in conjunction with any period of Parental Leave. However, the taking of such leave shall not operate to extend the total period of Parental Leave to which the employee is entitled.

(c) The paid Parental Leave entitlements contained in this clause are in addition to the Commonwealth Government's implementation of a National Paid Parental Leave Scheme pursuant to the *Paid Parental Leave Act 2010*.

### 8.8 Compassionate Leave

8.8.1 In accordance with the Act an employee is entitled to 2 days paid compassionate leave for each occasion (a **permissible occasion**) 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.

8.8.2 The employee will, if required by the employer, establish by production of a medical certificate or statutory declaration that the person concerned is suffering from an illness, injury or has died.

## **8.9 Emergent Leave**

Employees may be entitled to emergent leave for such purposes and under such conditions as determined by the Company.

## **8.10 Defence reserve forces leave**

Defence reserve force leave is provided in respect to attendance at continuous training (continuous training includes camps, field exercises, schools, classes or courses and may involve more than one absence in a financial year) and/or deployment situations.

In respect of their absence from duty, employees may be granted leave of absence up to a maximum of –

- 32 calendar days per financial year (Army Reserve, Naval Reserve and Air Reserve),
- Plus an additional 14 calendar days per financial year during the employee's first year of reserve service, where attending recruit/initial training.

Where possible, at least three (3) months notice prior to commencement of leave should be provided. The granting of such leave will be subject to the Company's convenience.

Evidence of the necessity for the employee's attendance for continuous training in the form of a training notice must be submitted with the employee's application and, at the conclusion of the event, the employee must submit a certificate of attendance from the Commanding Officer.

## **8.11 Jury Service**

8.11.1 An employee summoned to perform jury service or to attend any Court as a witness on behalf of the Crown will be granted leave in accordance with the Company's Jury Service Policy. An employee has to be paid 'make-up pay' for the first 10 days of jury selection and jury duty. Make-up pay is the difference between any jury duty payment the employee receives (excluding any expense related allowances) from the court and the employee's base pay rate for the ordinary hours they would have worked. Before paying make-up pay, the Company may request evidence from the employee to show the total amount of jury duty pay that has been paid or will be payable to the employee for the period.

If the employee cannot provide evidence, they may not be entitled to make-up pay. Any travel and meal costs associated with Jury Service are reimbursed by the Justice Department, not the Company.

**9.1 Learning and Development**

9.1.1 *Career paths* – It is the objective of the Company to provide employees with the opportunity to develop their skills and experience through training and work experience. Employees will also be encouraged to attain higher formal qualifications which will assist in their endeavours to attain more responsible positions within the Company as vacancies become available. The Company, whenever possible, promotes employees from within the organisation. Merit and capability will be the sole basis for promotion.

9.1.2 *Training* – The parties to this Agreement recognise that in order to increase the efficiency, productivity and competitiveness of the Company, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

- (a) developing a more highly skilled and flexible workforce;
- (b) providing employees with career opportunities through appropriate training to acquire additional skills; and
- (c) removing barriers to the utilisation of skills acquired.

9.1.3 Following proper consultation, the Company will develop training pathways consistent with:

- (a) the current and future skill needs of the Company;
- (b) the size, structure and nature of the operations of the Company; and
- (c) the need to develop vocational skills relevant to the Company through both Industry courses and courses conducted by accredited educational institutions and providers.
- (d) PBPL's Marine Training Plan.

The Company may alter the Marine Training Plan after consulting the employees affected by the proposed alteration and their relevant Union representatives. Any dispute about the alteration may be resolved through the Grievance and Dispute Settling Procedure contained in this Agreement

9.1.4 Study assistance will be provided in accordance with the Company's Education Training Standard.

**9.2 Mandatory Qualifications**

9.2.1 The Company will provide relevant training and pay any statutory or licencing fee where an employee requires such training or licence to perform work which the company requires the employee to perform as part of the employee's duties. This applies to professional certifications and registrations necessary for the role. The provision of training and payment of fees will be limited to occupation specific training and licences and excludes an employee's personal driver's licence.

9.2.2 To minimise the impact of mandatory training on the operations of the vessel, PBPL usually schedules mandatory training for employees onboard the TSHD Brisbane to occur during their 'home leave'. In recognition of the impact on home time, employees who complete up to six (6) hours of training in one day of their 'home leave' will be credited six (6) hours of annual leave. In instances where the employee attends mandatory training for more than six (6) hours in one day of their 'home leave' will be credited twelve (12) hours of annual leave.

9.2.3 In instances where an employee elects to be paid for the time spent in mandatory training in lieu of 9.2.2, the employee will be paid for the actual time spent in training at the ordinary rate. For clarity, if an employee spends two (2) hours in training, they are paid two (2) hours of ordinary time. If an employee spends seven (7) hours in mandatory training, they are paid seven (7) hours of ordinary time.

9.2.4 The company will reimburse employees for mileage to attend the above training using the cents per kilometre rate set annually by the ATO

### **9.3 Leave to Sit for Examinations**

9.3.1 Leave to sit for examinations is provided on the basis of the conditions outlined in the Company's Education Training Standard.

9.3.2 An employee will be granted leave on full pay to sit for all examinations which are required for a subject which has been accepted as part of an approved course of study by the Company for the employee.

9.3.3 One-half day's leave only may be granted when the examination involves one-half day.

9.3.4 An employee who is on annual leave at the time of sitting for such an examination may be allowed leave without charge for the day (or half day) on which the examination is held.

### **9.4 Leave to Study for Examinations**

9.4.1 Leave to study for examinations is provided on the basis of the conditions outlined in the Company's Education Training Standard.

9.4.2 An employee may be granted up to 5 working days' leave in any one year for each examination subject or up to a maximum of 15 working days' leave provided:

- (a) The subjects have been accepted as part of an approved course of study by the Company for the employee.
- (b) The granting of leave is subject to the Company's convenience and is restricted to a period just prior to the date of examination.

The leave to be at the option of the employee either without pay or deductible from the employee's annual leave entitlement.

### **9.5 Training Bond**

9.5.1 Where the Company subsidises an employee to upgrade to a new certification, it may request that the employee agrees to a "return of service" bond of no more than 3 years from the completion of the study subsidised. For the avoidance of doubt: the date of completion is the date of the final exam, or of the final date that costs are incurred by the Company (this includes lodgement of the application for the certificate or oral exams), whichever is last.

## **PART 10. OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES**

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### **10.1 Safety and clothing**

- 10.1.1 Safety is of vital concern to both the employee and the Company and it is the responsibility of all employees and the Company management to ensure compliance with the provisions of the *Work Health and Safety Act 2011 (Cth)* and Regulations.
- 10.1.2 Failure by an employee to use safety equipment, articles, or clothing, in the manner for which it was designed, that has been provided by the Company, or the adoption of unsafe working practices such as not promptly reporting damage to electrical equipment, where an employee or the employee's fellow employees could be liable to suffer injury, will render an employee liable to show cause as to why the employee's services should not be terminated.
- 10.1.3 Where articles of clothing or footwear are supplied it will be a condition of employment that those articles will be worn in the manner for which same was designed.
- 10.1.4 Any employee issued with protective clothing, wet weather gear, safety equipment, footwear, or tools, will be responsible for its continuing good condition and serviceability, subject to fair wear and tear and will hand in such issue on being supplied with a replacement or on the termination of employment, or at such other times as the Company may require.

The Company may make a deduction from the wages of any employee who, having received issue to which this clause relates, does not account for it as required. The rate of deduction will be the cost of the item not accounted for after due allowance has been made for fair wear and tear.

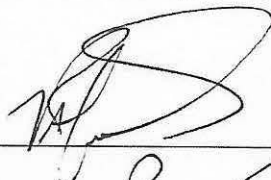
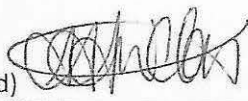
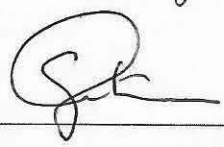
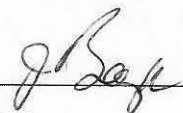
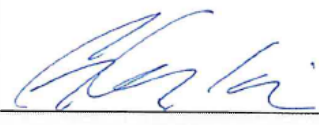

### **10.2 Amenities**

- 10.2.1 The company agrees to maintain onboard custom and practice in relation to TSHD *Brisbane* Shipboard Facilities as outlined in the TSHD Brisbane Amenities Standard.
- 10.2.2 The company will meaningfully consult and engage with employees and their representatives in relation to alterations or changes which improve shipboard amenities through the Shipboard Management Committee.

### **10.3 Dry Docking**

- 10.3.1 The company will consult with employees and their representatives about dry docking/refits at least 3 months prior to any refit/dry docking as per clause 3.2 and where possible work with employees to mitigate/avert the adverse effect of refit/dry docking on employees leave balance, by considering shore based opportunities if available at the Operations Base, refit or other areas within PBPL with no disadvantage to their salary.
- 10.3.2 The company has documented the standards for dry docking/refit which are outlined in the TSHD Brisbane Dry Docking/Refit Standard. The company will meaningfully consult and engage with employees and their representatives to discuss any additional logistical matters prior to each refit including but not limited to travel, accommodation, and voyage arrangements. Additional matters raised by employees or their representatives will be addressed by the company as part of the refit consultation.

**SIGNATORIES:**

Signed for and on behalf of the Port of Brisbane Pty Ltd	(Signed) 
	(Print Name) Roy Cummins
	(Address) 3 Port Central Ave, Port of Brisbane QLD 417.
	(Position) Chief Executive Officer
In the presence of -	(Signed) 
	(Print Name) Steffany Sinclair
Signed for and on behalf of the Australian Institute of Marine and Power Engineers	(Signed) 
	(Print Name) Gregory J. Yates.
	(Address) Suite 14 "Rockton" 40 Brooks St Davae N.S.W.S
	(Position) Senior National Organiser
In the presence of -	(Signed) 
	(Print Name) JILL BOYD.
Signed for and on behalf of the Construction, Forestry, Maritime, Mining and Energy Union	(Signed) 
	(Print Name) Paddy Crumlin
	(Address) L2, 365 Sussex Street Sydney
	(Position) National Secretary Maritime Union of Australia Division
In the presence of -	(Signed) 
	(Print Name) Kerry McGuire

Signed for and on behalf of the Australian Maritime Officers Union	(Signed) 
	(Print Name) MARK DAVIS
	(Address) 52 BUCKINGHAM STREET SURRY HILLS, NSW 2010
	(Position) EXECUTIVE OFFICER
In the presence of -	(Signed) 
	(Print Name) Sam Littlewood

## SCHEDULE A

### PORT OF BRISBANE – REDUNDANCY AGREEMENT

#### A1 GENERAL

An employee is entitled to the Package contained in this Schedule if the employee's employment with the Company is terminated as a result of a Redundancy. Entitlements normally due on termination such as payment of the cash equivalent of accrued annual leave will be paid in addition to all entitlements due under the Package.

Each employee who is being made redundant will be given a statement showing the calculation of the severance payment as prescribed under this Package.

#### A2 EXCEPTIONS

This Package does not apply in any of the following circumstances:-

- Where an employee is employed for a specified period of time or for a specified project; or
- Where an employee unreasonably refuses an offer of acceptable alternative employment arranged by the Company; or
- Where an employee terminates their employment before the end of the period of notice without prior arrangement with the Company. The Company's approval shall not be unreasonably withheld; or
- Where an employee's services are terminated by reason of neglect of duty or misconduct; or
- Where an employee is a casual employee; or
- Where employees are on WorkCover; or
- Where employees have previously notified the Company in writing of their intention to retire/resign.

#### A3 REDUNDANCY PACKAGE BENEFITS

##### A3.1 EARLY SEPARATION INCENTIVE PAYMENT (ESIP)

The ESIP is an amount of thirteen (13) weeks pay, calculated at the ordinary rate of pay. This payment includes payment in lieu of notice. A "cap" of 75 weeks total pay continues to apply in these circumstances. That is, for some employees, it is not possible to access the full 13 weeks pay.

### **A3.2 SEVERANCE PAYMENTS**

Employees who are made redundant will receive on separation a lump sum calculated at the ordinary rate of pay in terms of the scale contained in Appendix I, **provided that**, the total amount of severance payment does not exceed 75 (seventy five) weeks pay.

### **A3.3 ADDITIONAL PAYMENT FOR EMPLOYEES WITH AN EXCESS OF 25 YEARS OF SERVICE**

An employee will receive an additional amount of \$2,000 (gross before tax) for each completed year of service in excess of 25 years with the Company. This amount will be in addition to any entitlement listed in Appendix I.

### **A3.4 LONG SERVICE LEAVE**

An employee who has completed at least five (5) years continuous service shall be entitled, on separation, to a long service leave payment of 1.3 weeks for each completed year of service and pro rata for any part of a year, less any long service leave already taken.

### **A3.5 JOB SEARCH AND TRAINING ASSISTANCE**

The Company will pay on behalf of an employee an amount of up to \$3,000.00 for job search assistance and external training. The Company will pay such expenses upon the presentation of a receipt or other acceptable evidence within 3 months of the employee's employment ceasing.

### **A3.6 FINANCIAL COUNSELLING SERVICES**

The Company will arrange for officers from Q Invest, Centrelink and/or such other appropriate body to provide employees with relevant information pertaining to their superannuation, redundancy and social security benefits.

### **A6 CERTIFICATE OF SERVICE**

The Company, on request, shall give to an employee a certificate in writing indicating the period of employment of the employee and that the employee's employment was terminated by reason of redundancy.

### **A7 DEFINITIONS**

**"Ordinary rate of pay"** means the rate of pay applying to the position permanently held at the time of termination. It shall not include payment of allowances or penalty rates.

**"Package"** means the Port of Brisbane– Redundancy Package.

**"Redundancy"** means the Company has decided that it no longer requires the job done by an employee to be done by anyone (except where this is due to the ordinary and customary turnover of labour) or because of the insolvency or bankruptcy of the Company.



**APPENDIX I – Scale of Severance Payments and  
Early Separation Incentive Payment (ESIP)**

<b>Completed* Years of Service</b>	<b>Severance Payment Entitlement in Weeks</b>	<b>Early Separation Incentive Payment</b>	<b>Total Number of Weeks</b>
1	4	13	17
2	6	13	19
3	9	13	22
4	12	13	25
5	15	13	28
6	18	13	31
7	21	13	34
8	24	13	37
9	27	13	40
10	30	13	43
11	33	13	46
12	36	13	49
13	39	13	52
14	42	13	55
15	45	13	58
16	48	13	61
17	51	13	64
18	54	13	67
19	57	13	70
20	60	13	73
21	63	12	75
22	66	9	75
23	69	6	75
24	72	3	75
25 and over	75	Nil	75

\* A proportionate amount is payable for an incomplete year of service.

## **Schedule 2.3—Model consultation term**

(regulation 2.09)

### **Model consultation term**

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

#### *Major change*

- (2) For a major change referred to in paragraph (1)(a):
  - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
  - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
  - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
  - (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
  - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

- (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
  - (i) all relevant information about the change including the nature of the change proposed; and
  - (ii) information about the expected effects of the change on the employees; and
  - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is ***likely to have a significant effect on employees*** if it results in:
  - (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.

*Change to regular roster or ordinary hours of work*

- (10) For a change referred to in paragraph (1)(b):
  - (a) the employer must notify the relevant employees of the proposed change; and
  - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

- (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.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion—provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
- relevant employees* means the employees who may be affected by a change referred to in subclause (1).