



CONSENT ORDER

Fair Work Act 2009

s.418 - Application for an order that industrial action by employees or employers stop etc.

s.739 - Application to deal with a dispute

Viterra Operations Pty Ltd T/A Viterra

v

Construction, Forestry, Maritime, Mining and Energy Union

(C2018/4181)

(C2018/4146)

Stevedoring industry

COMMISSIONER HAMPTON

ADELAIDE, 31 JULY 2018

Application for an Order to prevent industrial action – Alleged dispute about any matters arising under the enterprise agreement and the NES;[s186(6)].

1. TITLE

1.1 This order shall be known as the Viterra Operations Pty Ltd/CFMMEU Consent Order No 1 of 2018 (the Order).

2. APPLICATION AND PARTIES BOUND

2.1 This Order is binding on and applies to:

(a) Viterra Operations Pty Ltd (the **Applicant**);

(b) the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**), including its office-holders and delegates of the CFMMEU who are employees; and

(c) employees of the Applicant at Port Adelaide, Port Giles, Port Lincoln, Wallaroo, Thevenard and Outer Harbor engaged under the *Viterra Operations Pty Ltd Bulk Loading Plants Enterprise Agreement 2016* and who are members or eligible to be members of the CFMMEU (the **Employees**).

3. INDUSTRIAL ACTION MUST STOP, NOT OCCUR AND NOT BE ORGANISED

3.1 The CFMMEU must not organise any industrial action involving any of the Employees.

3.2 Each Employee must:

- (a) immediately stop engaging in, or threatening to engage in, industrial action; and
- (b) not continue, recommence or organise any industrial action during the period of operation of the Order.

3.3 For the purposes of the Order, the expression '**industrial action**' means action of any of the following kinds:

- (a) the performance of work by an Employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by an Employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work;
- (b) a ban, limitation or restriction on the performance of work by an Employee or on the acceptance of or offering for work by an Employee;
- (c) a failure or refusal by Employees to attend for work or a failure or refusal to perform any work at all by Employees who attend for work;

but does not include the following:

- (d) protected industrial action within the meaning of section 408 of the *Fair Work Act 2009*;
- (e) action or conduct by Employees that is authorised or agreed to by or on behalf of the Company; or
- (f) action by an Employee if:
 - (i) the action was based on a reasonable concern by the Employee about an imminent risk to his or her health or safety; and
 - (ii) the Employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.

4. OTHER AGREED TERMS

- 4.1 Continuity of loading shall not be interrupted for the purposes of the briefing to the oncoming operator as he or she takes over at change of shift.
- 4.2 Hot seat changeover will take place on the job.
- 4.3 Clause 3.2.2 of the *Viterra Operations Pty Ltd Bulk Loading Plants Enterprise Agreement 2016* applies according to its terms.

5. COMPLIANCE

- 5.1. The CFMMEU and the Employees will take all and any steps necessary and available to ensure compliance with the Order.

6. SERVICE OF ORDER

- 6.1. It will be sufficient service of this Order upon the parties bound by this Order if a copy is sent by email to the State Secretary of the The Maritime Union of Australia Division - South Australian Branch, Jamie Newlyn, and it is posted in a prominent place at each workplace it relates to.

7. TERM AND DATE OF EFFECT

- 7.1 The **stop period** for the purposes of section 418(1) of the Act is specified as being the period from the commencement of this order until 7.00 pm 31 January 2019.
- 7.2 This order shall come into effect from 9.00 pm Tuesday 31 July 2018 and in accordance with section 418(1) of the Act will continue in operation for the stop period.
- 7.3 General liberty to apply is granted.



COMMISSIONER

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