



# 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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