



**Embargoed until 6pm**

Tuesday 26 October 2021

### **Patrick Applies to Terminate Agreement with MUA**

Patrick Terminals has lodged an application with the Fair Work Commission to terminate its Enterprise Agreement with the MUA.

The agreement is no longer fit for purpose, as it contains a number of operational restrictions that have limited the ability of Patrick to meet customer requirements at a time of congestion in global supply chains.

Patrick has been negotiating with its employees and the MUA since February 2020 to seek to address these restrictions and has held more than 70 meetings in pursuit of a new enterprise agreement.

The MUA has launched more than 220 industrial actions against Patrick Terminals nationally during the negotiation period. This has intensified recently with further action launched at all four of Patrick's terminals in Sydney, Melbourne, Brisbane and Fremantle for the coming days and weeks.

Michael Jovicic, CEO Patrick Terminals said, "Enough is enough. We have presented the MUA with an attractive national offer on top of their already very generous agreement including a 10% pay increase across four years coupled with protections addressing concerns over the use of casuals and job security.

"Negotiations have been ongoing for close to two years and frankly there seems to be no agreement to be had, particularly in Sydney, where the union is still demanding we hire from a selected list of family and friends.

"We have today lodged an application with the FWC for an order terminating our current agreement.

"We are at the end of the road and need to have an agreement with our employees that works for our customers, and that allows us to remain competitive in the future market."

Terminating the agreement will allow Patrick to recruit and train employees without needing the agreement of the Union and remove any "friends and family" Union imposed restrictions.

"The world has changed, and we need to be able to recruit and promote the best people for the job rather than be hamstrung by antiquated Union-led processes and policies that restrict our business," Mr Jovicic said.

"Our market share and business operations have suffered due to this relentless industrial campaign by the MUA and their insidious 'jobs for the boys' stance. We need to provide our customers with operational certainty and that includes a workable agreement with our employees. Our customers are demanding that we take action to resolve this situation."

Patrick Terminals has guaranteed not to change leave entitlements, salaries and other rates of pay that are applicable under the Enterprise Agreement for employees for a period of 6 months from the date of any termination order, probably next year.

Patrick Terminals has requested an expedited hearing of this application with the Fair Work Commission.

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***Extract from the Termination Submission to FWC:***

**The Consequences of Termination**

1. The immediate consequence of terminating the Enterprise Agreement is that it would cease to cover or apply to Patrick, and to the 1081 stevedoring Employees to whom it applies.
2. The Employees are all covered by the *Stevedoring Industry Award 2020*. That modern award will apply to them if the Enterprise Agreement is terminated.
3. Patrick proposes to undertake that for a period of 6 months on and from the date that any termination takes effect, it will continue to apply the leave entitlements, salaries and other rates of pay that are applicable under the Enterprise Agreement as at the date of this application. The precise form of this undertaking will be provided when Patrick files its evidentiary material. It is intended that Employees will not suffer any immediate financial detriment as a result of any termination order.
4. Notwithstanding these undertakings, the termination of the Enterprise Agreement would allow Patrick to implement further measures which are currently prohibited. These include, for example:
  - (a) Recruiting additional employees, without the need for the agreement of the Union;
  - (b) Determining the composition of the workforce so as to best meet operational requirements, without the need for the agreement of the Union, following consultation;
  - (c) Making changes to rosters to meet changes in operational requirements, without the need for the agreement of the Union, following consultation;
  - (d) Avoiding significant accumulation of hours that have been paid for in the annual salaries provided to employees, but not worked by them;
  - (e) Where there is an accumulation of unworked hours that have been paid for, enabling the more effective recovery of the hours through the debits/credits system (that is, by employees being obliged to work the hours);
  - (f) Recruiting the best person for the job regardless of their union affiliation/association (avoiding restrictions currently imposed from what is in practice a union 'family and friends' recruitment restriction);
  - (g) Selecting employees for training and promotion based on merit and operational requirements, instead of mechanistic and restrictive selection criteria which in reality focus on length of service only;
  - (h) Where redundancies are necessary, being able to select on the basis of merit and the needs of the business, rather than having to explore complex and time consuming procedures for volunteers and transfers of employees between states;
  - (i) Removing complex 'order of pick' rules which restrict Patrick from allocating to meet operational needs that arise from fluctuating volumes and shipping schedules;
  - (j) Realising productivity efficiencies through the removal of minimum manning clauses (which while they are called 'safe manning' levels are really just Union vetos on headcount);



- (k) Removing cumbersome clauses that make the implementation of new technology and operational upgrades difficult (and, even where they become possible, significantly delay them);
- (l) Choosing the most beneficial provider for income protection insurance (rather than being forced to insure with a union affiliated and mandated provider);
- (m) Removing from the Enterprise Agreement matters which should be subject to policy, for example, provision of Foxtel, protective clothing, gym allowances, prescription glasses, tea/coffee & Milo, quiet rooms & WiFi, notice boards, microwaves, fridges, chairs, grills, lounges and recliner seats.

### **The public interest**

It would not be contrary to the public interest if the Commission were to terminate the Enterprise agreement, because:

- (n) It would directly affect a group of only approximately 1,000 Employees.
- (o) In any event, having regard to the undertakings proposed, there should be no immediate financial detriment to the Employees in the short term.
- (p) Termination would promote the ability of Patrick to operate more efficiently, with benefits for all participants in the import/export supply chain who depend on container stevedoring (noting that the logistics chain is currently under heavy strain due to the pandemic).

Given the coverage of these Employees by the *Stevedoring Industry Award 2020* and the terms of that instrument, there is adequate industrial coverage of the Employees in any event. The Commission has, including through the four-yearly modern award review, concluded that this award represents an appropriate safety net for employees in the stevedoring industry.



## BACKGROUND

Patrick has offered the following to the MUA over the past 12 months:

- 2.5% year on year increase for four years
- Guaranteed job security with no forced redundancies
- Commitment to preserving jobs with a focus on permanent roles
- Caps on usage of casual labour

### Existing pay and conditions before pay-rise.

#### Port Botany

On average a full-time employee at Port Botany on a 35-hour roster earns \$172,124 per annum inclusive of bonuses and overtime. The average number of days worked for this is 198.

#### Melbourne

On average a full-time employee at East Swanson Dock on a 35-hour roster earns \$151,048 per annum inclusive of bonuses and overtime. The average number of days worked for this is 162.

#### Brisbane

On average a full-time employee at Brisbane on a 35-hour roster earns \$153,880 per annum inclusive of bonuses and overtime. The average number of days worked for this is 173.

#### Fremantle

On average a full-time employee at Fremantle on a 35-hour roster earns \$166,464 per annum inclusive of bonuses and overtime. The average number of days worked for this is 181.

#### Top 10 earners (full-time) – Average gross, including OT & bonus

Port Botany - \$212,325 – 224.8 days worked

East Swanson Dock - \$187,920 – 178.2 days worked

Brisbane - \$166,227 – 180.3 days worked

Fremantle - \$192,373 – 203.8 days worked