

Local Government NSW

Local Government (State) Award 2020

Employers' Log of Claims – 9 August 2019

'Without Prejudice'

Items:

1. **Subclause 4(viii) [Definition of "Ordinary Pay"]** – Amend the definition of "Ordinary Pay" by deleting "on call allowance" from the composition of ordinary pay.
2. **Subclause 7(viii) [annual performance assessments]** – Amend subclause 7(viii) of the Award to clarify that employers are entitled to assess an employee's work performance at least annually, including employees that have progressed through the salary system to the maximum step/point for their position.
3. **Subclauses 15(i) to 15(v) [Adverse Working Conditions Allowances, Sewer Chokes Allowance, and Sewerage Treatment Works Allowance]** – Update and modernise the allowances to reflect contemporary work practices whilst maintaining fair and reasonable compensation for working under adverse conditions (from both an employee and employer perspective), using the Adverse Working Conditions Allowances under the federal *Local Government Industry Award* as a starting point for such reform.
4. **Subclause 15(ii)(a) [Adverse Working Conditions Allowance – Level 2]** – Clarify which employees are entitled to the Level 2 Adverse Working Conditions allowance by providing examples of duties that fall within the scope of "*garbage, sanitary and sullage collection work*".
5. **Subclause 15(xi) [Camping Allowance]** – Clarify which employees are entitled to camping allowance by deleting the reference to "*camp out*" in subclause 15(xi)(a) and replacing with the words "*stay in mobile caravans or temporary work camps*".
6. **Subclause 15(xv) [Civil Liability Allowance]** – Remove the civil liability allowance by deleting subclause 15(xv) from the Award. In the alternative, amend the provision to grandfather the entitlement for existing employees only.
7. **Clause 18A [Ordinary Hours]** – Delete subclause 18A(ii) of the Award so that the weekly ordinary hours of work for all full-time employees is thirty-eight (38) per week, and grandfather the entitlement (to a 35hr week) for existing full-time employees only.
8. **Subclause 18A [Ordinary Hours / Spread of Ordinary Hours]** – Amend the clause to provide that ordinary hours may be worked from Monday to Sunday for all positions subject to payment of the applicable weekend penalty rate (currently the default spread of ordinary

hours under the Award is from Monday to Sunday, with exceptions. It is proposed that the exceptions be removed by deleting subclause 18A(v) of the Award).

9. **Subclause 18C(ii) [Shift Work / Span of ordinary hours]:**

- a. Amend the subclause to provide that the daily span of ordinary hours for employees engaged in **childcare and community care** is from **6:00am to 8:00pm**.
- b. Amend the subclause to provide that the daily span of ordinary hours for employees engaged in **entertainment, theatres and hospitality** is from **5:00am to 11:00pm**.
- c. Amend the subclause to provide that the daily span of ordinary hours for employees engaged in **museums and galleries** is from **5:00am to 11:00pm** (or in the alternative, from 5:00am to 9:00pm).
- d. Amend the subclause to provide that the daily span of ordinary hours for employees engaged in **media and/or communications** is from **5:00am to 11:00pm**.
- e. Amend the subclause to provide that the daily span of ordinary hours for employees engaged in **events** is from **5:00am to 11:00pm**.
- f. Amend the subclause to provide that the daily span of ordinary hours for employees engaged in **waste and/or recycling** is from **5:00am to 6:00pm**.

10. **Clause 19 [Overtime]** – Amend the clause to clarify when overtime rates apply. The existing overtime provisions are unnecessarily cumbersome leading to confusion between employees' "agreed hours" and "ordinary hours" for the purposes of calculating overtime payments. It is proposed that the clause be simplified to provide that overtime rates apply when an employee is required to work:

- a. In excess of the maximum daily ordinary hours, as specified in subclause 18A(ix)
- b. In excess of the maximum weekly ordinary hours, as specified in subclause 18A(i), or
- c. On days other than ordinary working days, as specified in subclauses 18A(iii) and 18A(iv).

11. **Subclause 19D(ii) [Call Back / 4hr minimum engagement period]** – Amend subclause 19D(ii) by deleting the "four" hour minimum engagement period for a call back and replacing it with a "three" hour minimum engagement period.

12. **Subclause 20A(iv) [Holidays / 4hr minimum engagement period]** – Amend subclause 20A(iv) to provide fair and reasonable conditions of employment for employers. Currently, a casual gym instructor engaged to perform a one (1) hour gym class on a public holiday

is required to be paid the equivalent of ten (10) ordinary hours for the one (1) hour of work (i.e. 4 hours at double time and a half). They also receive a 25% casual loading for 4 hours notwithstanding that they've only worked for one (1) hour. The following specific amendments are sought:

- a. Amend subclause 20A(iv) to provide that casuals are not entitled to the minimum payment of four hours for work on a public holiday (that is, they should only be paid for the hours that they work).
 - b. Amend subclause 20A(iv) by deleting the "four" hour minimum engagement period for work on a public holiday and replacing it with a "three" hour minimum engagement period.
13. **Clause 20B [Union Picnic Day]** – Amend the clause to provide that to be eligible for a union picnic day public holiday, employees must be a financial union member on a prescribed date (e.g. 1 March) or for a prescribed minimum qualification period (e.g. 12 months) so as to prevent employees from joining the union only for a short period (e.g. 1 week) to get a day off work.
14. **Subclause 30C(iv) [Trainee Employment and Apprenticeships]** – Amend subclause 30C(iv) to highlight that where a trainee or apprentice successfully completes their training and employment is to be continued, such continued employment (and appointment to a higher-level position within the council's organisation structure) is subject to the requirements of the *Local Government Act 1993* (NSW). Subclause 30C(iv), in its current form, is inconsistent with the advertising and merit selection requirements contained in sections 348 and 349 of the *Local Government Act 1993* (NSW).
15. **Subclause 39(i)(c) [Workplace Change]** – Amend the subclause to clarify that the requirement for employers to give at least twenty-eight (28) days' notice to employees and unions before implementing workplace change only applies in relation to workplace changes concerning "*termination of employment, major changes in the composition, operation or size of the employer's workforce*".
16. **Subclause 40(i)(a)(2) [Termination of employment due to the introduction of technology]** – Delete subclause 40(i)(a)(2) of the Award so that all employees whose employment is terminated due to redundancy receive five (5) weeks' notice to terminate or pay in lieu, regardless of the reason(s) for the redundancy.
17. **Clause 44 [Area, Incidence and Duration]** – Consolidate the *Local Government (Electricians) (State) Award* ("Electricians Award") with the *Local Government (State) Award*.

Other suggested changes:

- A. **Clause 1 [Arrangement]** – Amend the arrangements table to include the relevant page numbers for each clause.

- B. Clause 10 [Holidays]** – Amend the clause to better reflect the requirements of the *Public Holidays Act 2010*. In particular, clarify that where Australia Day falls on a Saturday or Sunday there will be no public holiday on that day as the following Monday becomes the declared Australia Day public holiday, and insert “Easter Sunday” as a public holiday.
- C. Clause 21D [Annual Leave]** – Pursue legislative change, consistent with the leave reserved provision at subclause 43(ix) of the Award, to allow for the taking of annual leave at either full pay, half pay or double pay by agreement. Alternatively, pursue legislative amendments to the *Annual Holidays Act 1944* (NSW) to reflect sections 93 and 94 of the *Fair Work Act 2009* (Cth) which allow for the cashing out of annual leave in limited circumstances.
- D. Clauses 21G [Paid Parental Leave and Paid Maternity Leave]** – Amend the clause to include the preserved entitlement to paid maternity leave under clause 19F of the *Local Government (State) Award 2007* (so that all paid parental leave and paid maternity leave entitlements are contained within the one document).

Note: LGNSW reserves the right to seek further award variations to those identified above. This may include, for example, suggesting award variations that relate to and/or arise in response to award variations sought by the union parties to the award.