



2023 Local Government State Award

LOG OF CLAIMS

Clause 2 Statement of Intent

- 1 Introduce a new first dotpoint of commitment to provide *“fair employment practices, employment security and protections against unfair termination for all employees in the industry.”*

Clause 5 Skill Descriptors

- 2 Revisit the concept of mandating either the Local Government Job Evaluation System as enhanced by Mastertek or 00-Soft with a suitable clause about job evaluation systems, like:

Where an employer proposes to use a job evaluation system to evaluate positions under the Award to be placed in the Salary System, then the employer shall use the Local Government Job Evaluation System (Mastertek) or 00-Soft job evaluation system in agreement with the council’s consultative committee.

- 3 Discuss options to ensure that when current senior staff (other than general managers) return to coverage under the Award, that the Executive Band in its current form does not reduce salaries or remuneration levels of former senior staff.

Clause 6 Rates of Pay

- 4 Acknowledge the effective reduction in salaries during the life of the 2020 Award due to increases in the cost of living, the current inflationary pressures and the desirability of ensuring that local government employees keep pace with inflationary pressure and increases in the cost of living, and commit to annual increases reflecting movements in the CPI.

Clause 7 Salary System

- 5 Add new subclause (iv) on market rates, as follows and renumbering subsequent subclauses:

Where an employer has advertised twice, but failed to attract suitably qualified candidates, the employer shall establish a market rate of pay and package of employment conditions sufficient to advertise the position to attract suitably qualified candidates, to allow an appointment to be made.

- 6 And consequently, a further subclause (v), as follows:

Where an employer has appointed new staff with a market rate of pay and package of employment conditions consistent with clause 7(iv) which are higher and more beneficial than those provided to existing employees, then those existing employees must be transferred to the new salary and conditions.

- 7 Consider the wording of clause 7(xii) in view of attacks upon its effectiveness and potentially reinforce its intention.

Clause 9 Resourcing and Directing Employees

- 8 Reach agreement on wording, possibly for a new 9 (ii), to manage councils that intentionally don't fill vacancies but may still reject leave applications, deny annual or long service leave at half pay or double pay, flexible part-time returns to work from parental leave, purportedly based on operational reasons, but essentially because of the refusal of the employer to properly resource.

Clause 11 Payment for Relief Duties/Work

- 9 Acknowledge the inconsistency and unfairness inherent in 11(iv) denying an employee who works at a higher level for a period that also includes an RDO, has their rate of pay reduced for that RDO, by deleting subclause 11(iv).

Clause 15 Superannuation and Related Arrangements

- 10 Require employers to forward employee contributions to their superannuation fund on a weekly or fortnightly basis, consistent with those deductions having been withdrawn from the employee's pay, by introducing a new clause 15 (ii) as follows, and renumbering subsequent subclauses:

The employer shall make superannuation contributions to the employee's superannuation fund on the same weekly or fortnightly pay cycle.

Clause 16 Allowances, Additional Payments and Expenses

- 11 Introduce a new allowance, following clause 16(xiii) First Aid in the Workplace, consistent with section 42 and particularly section 43 of the *Work Health and Safety Regulation 2017 (NSW)* for employees with an identified role as Emergency Fire Warden, or similar title, and the requirements (43(1)(c)) to provide "information, training and instruction to relevant workers in relation to implementing the emergency procedures." Note: Emergency Wardens undertake training in accordance with AS 3745.
- 12 Acknowledge that the current investigation by the NSW Building Commissioner into accredited certifiers in nine councils, may well provide an argument sufficient to allow the setting of a suitable allowance to compensate for additional accountability

to be incorporated in a new (xvii) Accreditation of employees by the Department of Fair Trading.

- 13** Acknowledge the transfer of the accreditation regime of those accredited previously by the Building Professionals Board to Fair Trading, by deleting “*Building Professionals Board*” and replacing with “*NSW Fair Trading*”.

Clause 17 Motor Vehicle Arrangements

- 14** Acknowledge the desirability of local government motor vehicles reducing emissions by moving to electric vehicles, as they become more financially accessible and supported by an expansion of charging infrastructure (which they will during the life of this Award) and commit to establish an “*Electric Vehicle Group*” comprised of the parties the Award.

The EVG will assist the development of policy to enable the transfer to no emission electric vehicles, ensure continuing access to leaseback holders and prepare recommendations on the myriad complications involved – ensuring sufficient charging infrastructure and council offices so cars can be charged during working hours, the employer paying charging costs from home, etc.

- 15** Add new third dot point in 17A as follows:

If an employee has had a leaseback motor vehicle for a minimum period of 10 years, then the motor vehicle shall be regarded as a condition of employment, and shall override any assertion made that it was not provided as a condition of employment.

- 16** Add a new fourth dot point in 17A as follows:

If an employee with a leaseback vehicle as a condition of employment pursuant to 17B(i) reaches agreement with the employer to transfer across to either the vehicle allowances provided in this clause, or to a novated lease, then those new motor vehicle arrangements will be a condition of the employee’s employment.

- 17** Amend 17B(iii)(b) to prevent increases of leaseback fees beyond the percentage movement in the “*Eight Capitals*” index, by deleting the first two paragraphs and substituting the following:

Variations to leaseback fees - *an employer may only increase leaseback fees an employee is required to pay in any twelve (12) month period by the percentage movement in the index figure published by the Australian Bureau of Statistics for Eight Capitals, private motoring sub- group (Cat No 6401.0)*

Clause 20 Overtime

- 18** Sometimes employees are asked to work overtime on weekends and because they trust those who are asking them, they don’t confirm what overtime payment they would receive. This may be a trap for young players, but it makes sense to incorporate a clear obligation on the employer in directing/requesting an employee to work overtime to disclose the compensation that would be paid. Here is a proposal for a new 20A(ii), with other provisions to be renumbered:

In arranging overtime on a weekend for an employee which would not qualify as a Call Back under 20D(i), the employer must advise the employee of what overtime payment will apply to the work required and obtain the employee's agreement to do the work.

Clause 21 Holidays

- 19** Delete the words, "*Australia Day*", where they appear in 21A(i) and replace with "*26 January*". The *Public Holidays Act* provides that if Australia Day (sic) falls on a Saturday or Sunday, it is transferred to the following Monday, and this should continue to apply.

Clause 22 Leave Provisions

- 20** Redefine the definition of "*continuity of service*" for employees who have been terminated as a redundancy pursuant to clause 42 of the Award, where it appears in 20A Sick Leave (viii) and 20A Long Service Leave (iv)(a), to provide a longer period than three months.

22A. Sick Leave

- 21** Acknowledge the inherent unfairness of employees who are on either annual leave or long service leave but due to illness or injury, and with appropriate proof of illness or injury, "*are unable to derive benefit from the leave*" being able to "*swap*" sick leave for the period of illness or injury and have their annual or long service leave recredited. In the olden days, this was done with a clause like, but not identical to this:

If the employee becomes sick or injured whilst on annual or long service leave and produces at the time satisfactory proof of that illness or injury and that the employee was unable to derive benefit from the leave, Council shall grant at a time convenient to the Council, additional leave equivalent to the period of sickness or injury occurring within the scheduled period of leave.

- 22** Introduce clause 12.1 and 12.2 from the Splinter Award to provide "*leave, without loss of pay, for the time reasonably required to receive a Therapeutic Goods Administration approved vaccination for COVID 19, the Flu, and anything else by NSW Health and/or TGA as a pandemic requiring vaccination.*

And, The employer may require proof to justify payments under this clause".

Clause 22D Annual Leave

- 23** Add the words "*the consent of the employer is not to be unreasonably withheld*" in 22D(v)(b), when the employee is making application for annual leave at half pay or double pay.

Clause 21E Long Service Leave

- 24** Add the words *“the consent of the employer is not to be unreasonably withheld”* in 22E(ii)(a) when the employee is making application for long service leave at half pay or double pay.

Clause 21G Paid Parental Leave

- 25** Delete subclause 21G(iv)(b) which prevents two parents employed by the same employer to both claim the entitlement, but where they would be entitled if the parents worked for different councils.

Clause 21J Bereavement Leave

- 26** Stop councils making judgements about the appropriateness of an employee’s grieving and bereavement by abandoning categories of family or kinship where someone at some time thought it was appropriate to grieve, and allow employees to make application for bereavement leave with an explanation of the relationship. The explanation would be similar to that required in 21J(iv) where *“the employer may grant an employee additional bereavement leave if satisfied that extenuating circumstances exist”*. *“Extenuating circumstances”* can also include considerations like significant travel to funerals.

Clause 23 Flexibility for Work and Family Responsibilities

- 27** Introduce as a default that a reasonable business case presented by an employee for flexible working arrangements, which is not consented to within the 21 days required pursuant to clause 21G Requests for Flexible Working Arrangements, shall constitute an agreement by the employer for those arrangements to be introduced.
- 28** Introduce a Working from Home Clause.

Clause 24 Phased Retirement

- 29** Add the words *“An application by an employee to move into a phased retirement consistent with the Council’s flexible work and leave arrangements shall be accepted by the employer, and there shall be no requirement to nominate a firm date for retirement”*, to 24(i).

Clause 25 Health and Wellbeing

- 30** Add the words *“and the needs and wellness practices of the employee”* to 25(ii).
- 31** Delete *“up to two (2) days”* in 25(iii) and replace with *“up to four (4) days”*.
- 32** Rewrite the LGNSW HR template by agreement to provide greater flexibility and less focus on medical appointments.

Clause 32 Consultative Committees.

- 33** Acknowledge that the unions are the primary representative bodies of employees by amending clause 32B(ii) by adding the words *“and if agreement is reached to provide additional employee representation, then the number of employee representatives, together with management representatives, shall not outnumber the union representatives”*.

Clause 37 Disciplinary Procedures

- 34** Review the amendments made in 2017 to clause 36, and the experiences of the parties, to ensure that they have provided investigations and processes that were properly conducted and speedily concluded.

- 35** Reinforce the principle that nothing which could be regarded as adverse can be placed on an employee’s personal file, by adding the following wording as a new paragraph where an employee’s rights are listed under 37A, probably as (iii) and then renumber subsequent provisions:

Be entitled to have removed from their personal file any information that may be regarded as adverse but has been placed on their personal file without the employee citing, noting or having had the opportunity to respond.

- 36** And add the following words as a new paragraph under 37B Employer’s Rights and Obligations:

Not place any information on an employee’s file that may be regarded as adverse without the employee citing, noting or having the opportunity to respond.

- 37** add the following words as a new dot point in 38C Workplace Investigations at (v):

Whether a complainant making a complaint against their supervisor has made previous similar complaints against previous supervisors that have been dismissed as reasonable management action carried out in a reasonable manner.

- 38** Review the 2017 Local Government Industry Guidelines on Workplace Investigations to ensure that the expectations of the parties have been met, the principles of procedural fairness listed above have been applied and, in particular, that the wording agreed in **Step 1: Undertake a Preliminary Assessment** has ensured that councils have not proceeded with frivolous, vexatious, punitive or unnecessary investigations and amend accordingly.

- 39** If claim 25 is agreed, then the wording be incorporated in the relevant section of the Guidelines.

Clause 41 Workplace Change

- 40** Acknowledge that usually a 28 day notice period for proposed workplace changes, starting at the level of management below the GM and providing little further detail, can require subsequent 28 day notice periods as the restructure is implemented down the organisation, and amend clause 41 accordingly. (And try to avoid the word “cascading”, which apparently frightens people.

Clause 42 Termination of Employment and Redeployment Due to Redundancy

- 41** Amend clause 42(i)(a)(1) to ensure that the employer and the employee reach agreement on arrangements for the notice period, or payment in lieu, by adding the words “*by agreement with the employee*” so that 40(i)(a)(1) concludes with the words “*five (5) weeks’ notice to terminate or pay in lieu thereof, by agreement with the employee;*” and
- 42** Amend clause 42(i)(b) by adding the words “*by agreement with the employee*” so that 42(i)(b) concludes with the words “*that the employment may be terminated by part of the period of notice specified and part payment in lieu thereof, by agreement with the employee.*”
- 43** Acknowledge that as a career industry, employees with more than ten years’ service can be made redundant, and the maximum of “*9 years and less than 10 years*” is an arbitrary cut-off that is inequitable treatment of those employees, and extend the scale of entitlements provided at 42 (iii)(b) as follows:

<i>10 years and less than 11 years</i>	<i>34 weeks pay</i>
<i>11 years and less than 12 years</i>	<i>37 weeks pay</i>
<i>12 years and less than 13 years</i>	<i>40 weeks pay</i>
<i>13 years and less than 14 years</i>	<i>43 weeks pay</i>
<i>14 years and less than 15 years</i>	<i>46 weeks pay</i>

Clause 45 Leave Reserved

- 44** Subject to the fortunes of claim 11, remove the words “*Building Professionals Board*” in 45(vi) and replace with *NSW Fair Trading*.

Ian Robertson
Secretary
depa

8 September 2022