

**REGISTER OF  
ENTERPRISE AGREEMENTS**

**ENTERPRISE AGREEMENT NO:** EA19/01

**TITLE:** Blacktown City Council Minimum Conditions and Benefits  
Employment Agreement 2018-2021

**CASE NO:** 2018/230151

**DATE APPROVED/COMMENCED:** 3 August 2018 / 1 July 2018

**TERM:** 36 months

**NEW AGREEMENT OR VARIATION:** New

**GAZETTAL REFERENCE:** 31 May 2019

**NUMBER OF PAGES:** 95

**COVERAGE/DESCRIPTION OF EMPLOYEES:**

The agreement applies to all employees employed by Blacktown City Council located at 62, Flushcombe Road, Blacktown NSW 2148, who fall within the coverage of the Local Government (State) Award 2017.

**PARTIES:** New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union; The Local Government Engineers' Association of New South Wales; Development & Environmental Professionals Association of New South Wales



**Blacktown City Council Minimum  
Conditions and Benefits of  
Employment Agreement  
2018-2021**

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# Part A

## 1. ARRANGEMENT

### PART A

<b>Clause No.</b>	<b>Subject Matter</b>
15	Allowances, Additional Payments and Expenses
12	Annualised Salaries
3	Anti-discrimination
33	Appointment and Promotion
43	Area, Incidence and Duration
1	Arrangement
26	Casual Employment
32	Consultative Committees
40	Council Agreements
4	Definitions
36	Disciplinary Procedures
22	Flexibility for Work and Family Responsibilities
35	Grievance and Dispute Procedures
24	Health and Wellbeing
20	Holidays
18	Hours of Work
27	Job Share Employment
30	Junior and Trainee Employment
28	Labour Hire
21	Leave Provisions
42	Leave Reserved
16	Motor Vehicle Leaseback
29	Multiple Employment
19	Overtime
25	Part-time Employment
10	Payment for Relief Duties/Work
11	Payment of Employees
9	Performance Evaluation and Reward
23	Phased Retirement
6	Rates of Pay
17	Residence
13	Salary Sacrifice
7	Salary System
41	Savings and Transitional
5	Skill Descriptors
2	Statement of Intent
14	Superannuation Fund Contributions
34	Term Contracts
38	Termination of Employment
31	Training and Development
8	Use of Skills
37	Work Health and Safety
39	Workplace Change and Redundancy

### PART B

#### MONETARY RATES

Monetary Rates Table 1 – Rates of Pay

Monetary Rates Table 2 – Allowances

**PART C**

Signatories

**Annexures**

Blacktown City Council Guidelines on Workplace Investigations

Annexure A - Terms of Agreement

Annexure B - Addendum to the 2009 Agreement

## 2. STATEMENT OF INTENT

The parties to the Agreement are committed to co-operating positively to increase the productivity, structural efficiency and financial sustainability of Blacktown City Council (Council) and to provide employees with access to more fulfilling, varied and better-paid work by providing measures to, for instance:

- improve skill levels and establish skill-related career paths;
- eliminate impediments to multi-skilling;
- broaden the range of tasks which a worker may be required to perform;
- achieve greater flexibility in workplace practices;
- eliminate discrimination;
- establish rates of pay and conditions that are fair and equitable;
- work reasonable hours;
- promote job security;
- ensure and facilitate flexibility for work and family responsibilities;
- ensure the delivery of quality services to the community and continuous improvement;
- encourage innovation;
- promote cooperative and open change management processes; and
- promote the health and safety of workers and other people in the workplace.

## 3. ANTI-DISCRIMINATION

- (i) It is the intention of the parties bound by this Agreement to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* (NSW) to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Agreement which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977* (NSW), it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - b) offering or providing junior rates of pay to persons under 21 years of age;
  - c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977* (NSW);
  - d) a party to this Agreement from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

## NOTES

a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

b) Section 56(d) of the *Anti-Discrimination Act 1977* (NSW) provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

#### 4. DEFINITIONS

- (i) *Association* means the Local Government and Shires Association of New South Wales, which is also known as Local Government NSW (LGNSW).
- (ii) *Award* means the *Local Government (State) Award* as varied from time to time.
- (iii) *Council* means Blacktown City Council as defined in the *Local Government Act 1993*. This definition shall be read subject to the allocation of responsibilities as specified in the *Local Government Act 1993*.
- (iv) *Competency based training* refers to training concerned with the attainment and demonstration of specified skills, knowledge and their application to meet industry standards.
- (v) *Complying superannuation fund* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* (Cth).
- (vi) *Days* - unless otherwise specified, any reference to 'days' shall mean calendar days.
- (vii) *Employer* means all employers in local government or in the local government industry within NSW that are covered by clause 43, Area, Incidence and Duration of this Agreement.
- (viii) *General Manager* shall mean a person appointed in accordance with section 334 of the *Local Government Act 1993* to discharge the duties and responsibilities of the office of general manager as set out in section 335 of the *Local Government Act 1993* and such other duties that a council may delegate to the general manager. When carrying out these duties, the general manager is acting on behalf of the council.
- (ix) *Ordinary Pay* means remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay. Ordinary pay shall include, but not be limited to the following penalties and allowances where they are regularly received:
- Saturday, Sunday and shift penalties
  - hours of work flexibility agreements allowances
  - adverse working conditions allowances
  - civil liability allowance
  - tool allowances
  - on call allowance
  - first aid allowance
  - community language and signing work allowances.

provided that subject to the exclusions below and at clauses 10(ii) and 21D(ix), an employee's ordinary pay during periods of paid leave under this Agreement shall not be more or less than what the employee would have received had the employee not been on paid leave.

The following allowances shall be excluded from the composition of ordinary pay:

- overtime payments
- camping allowance



- travelling allowances
- sewer chokes allowance
- vehicle allowances
- meal allowances.

(x) *Rostered Day Off* means, a non-working day for full-time employees pursuant to an arrangement of ordinary hours under clause 18A, where the employee:

- a) within two weeks, is granted four days off and one additional day off (the “rostered day off”); or
- b) within three weeks, is granted six days off and one additional day off (the “rostered day off”);
- c) within four weeks, is granted eight days off and one additional day off (the “rostered day off”).

(xi) *Seven day a week rotating roster system* means a work roster system in which the employee is regularly required to work:

- a) ordinary hours on each of the seven calendar days of the week; and
- b) ordinary hours on at least one Saturday and one Sunday in every four, or in the case of a seasonal worker an average of at least twelve Saturdays and twelve Sundays during a twelve month period; and
- c) on Public Holidays; and
- d) at different agreed commencement times during the roster period (i.e. different shifts)

provided that where, prior to the commencement of this Agreement, an employee regularly worked according to a roster system that the employer regarded as a seven day a week rotating roster system, and the employee continues to work according to the same roster system, the roster system shall be deemed to be a seven day a week rotating roster system for that employee.

(xii) *Significant effects* include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the Agreement makes provision for the alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

(xiii) *Superannuation contributions* means all contributions to a complying superannuation fund, and includes (without limitation) any superannuation contributions required to be made under the *Superannuation Guarantee (Administration) Act 1992* (Cth), and any additional superannuation contributions made by way of salary sacrifice.

(xiv) *Union* means the New South Wales Local Government, Clerical Administrative, Energy, Airlines & Utilities Union (USU); the Local Government Engineers' Association of New South Wales (LGEA); and the Development and Environmental Professionals' Association (depa).

(xv) Reference to “BCCMCBE” or “the Agreement” within this Agreement is to be taken as meaning the Blacktown City Council Minimum Conditions and Benefits of Employment Agreement.

## 5. SKILL DESCRIPTORS

The Agreement structure consists of skill based bands and levels that are defined according to the following skill descriptors:

(i) Operational Band 1, Level 1

**Authority and accountability:** Completion of basic tasks with work closely monitored by the team leader or supervisor.

**Judgement and problem solving:** Judgement is limited and coordinated by other workers.

**Specialist knowledge and skills:** Specialist knowledge and skills are obtained through on-the-job training and employer-based induction training. Off-the-job training may lead to trade, technical or professional qualifications.

**Management skills:** Not required.

**Interpersonal skills:** Limited to communications with other staff and possibly, with the public.

**Qualifications and experience:** Completion of School Certificate or the Higher School Certificate may be sought. Completion of an appropriate labour market program or similar short-term work/skills experience is desirable.

(ii) Operational Band 1, Level 2

**Authority and accountability:** Responsible for completion of basic tasks with individual guidance or in a team.

**Judgement and problem solving:** Applies standard procedures with normally few if any options in the application of skills.

**Specialist knowledge and skills:** Job specific skills and knowledge would normally be gained through on-the-job training and experience. Short courses may be completed at TAFE.

**Management skills:** Not required.

**Interpersonal skills:** Frequent communication with other staff and/or the public common but normally at a routine level.

**Qualifications and experience:** Incumbents may have attended short courses in specific work areas or be undertaking a technical college certificate as completion of structured training program in work-related area.

(iii) Operational Band 1, Level 3

**Authority and accountability:** Responsible for completion of regularly occurring tasks with general guidance on a daily basis.

**Judgement and problem solving:** Judgement is required to follow predetermined procedures where a choice between more than two options are present.

**Specialist knowledge and skills:** Application of skills, including machine-operation skills, following training "on the job" or accredited external training over a number of months.

**Management skills:** Some guidance/supervision may be required. May assist a co-ordinator/trainer with on-the-job training.

**Interpersonal skills:** Skills required for exchange of information on straightforward matters.

**Qualifications and experience:** Suitable experience or qualifications in a number of defined skill areas.

(iv) Operational Band 1, Level 4

**Authority and accountability:** Responsible for supervising staff in operational duties or for work requiring independence in the application of skills, subject to routine supervision. Responsible for quality of work function.

**Judgement and problem solving:** Option on how to approach tasks requires interpretation of problems and may involve precise judgement in operational areas.

**Specialist knowledge and skills:** The number of work areas in which the position operates makes the work complicated and a variety of skills are required in its completion. Position may require competence in operation of complex machinery.

**Management skills:** Supervisory skills in the communication of instructions, training and the checking of work may be required.

**Interpersonal skills:** Skills are required to convince and explain specific points of view or information to others and to reconcile differences between parties.

**Qualifications and Experience:** Experience to adapt procedures to suit situations and a thorough knowledge of the most complex operational work procedures to achieve work objectives.

(v) Administrative/Technical/Trades Band 2, Level 1

**Authority and accountability:** Responsible for the completion of work requiring the application of trades, administrative or technical skills.

**Judgement and problem solving:** Skills in assessing situations and in determining processes, tools and solutions to problems. Guidance is available.

**Specialist knowledge and skills:** Positions will have demonstrated competence in a number of key skill areas related to major elements of the job.

**Management skills:** Positions may require skills in the supervision or co-ordination of small groups.

**Interpersonal skills:** Communication skills to explain situations or advise others.

**Qualifications and experience:** Appropriate work-related trade, technical or administrative qualifications or specialist skills training.

(vi) Administrative/Technical/Trades Band 2, Level 2

**Authority and accountability:** Responsibility as a trainer/co-ordinator for the operation of a small section which uses staff and other resources, or the position completes tasks requiring specialised technical/administrative skills.

**Judgement and problem solving:** Skills to solve problems which require assessment of options with freedom within procedural limits in changing the way work is done or in the delegation of work. Assistance may be readily available from others in solving problems.

**Specialist knowledge and skills:** Positions will have specialised knowledge in a number of advanced skill areas relating to the more complex elements of the job.

**Management skills:** May require skills in supervising a team of staff, to motivate and monitor performance against work outcomes.

**Interpersonal skills:** In addition to interpersonal skills in managing others, the position may involve explaining issues/policy to the public or others and reconcile different points of view.

**Qualifications and experience:** Thorough working knowledge and experience of all work procedures for the application of technical/trades or administrative skills, based upon suitable certificate or post-certificate-level qualifications.

(vii) Administrative/Technical/Trades Band 2, Level 3

**Authority and accountability:** May be responsible to provide a specialised/technical service and to complete work which has some elements of complexity. Make recommendations within the employer and represent the employer to the public or other organisations.

**Judgement and problem solving:** Problem solving and judgements are made where there is a lack of definition requiring analysis of a number of options. Typical judgements may require variation of work priorities and approaches.

**Specialist knowledge and skills:** Positions have advanced knowledge and skills in a number of areas where analysis of complex options is involved.

**Management skills:** May supervise groups of operational and/or other administrative/trades/technical employees. Employees supervised may be in a number of different work areas, requiring motivation, monitoring and co-ordination to achieve specific outputs.

**Interpersonal skills:** Skills to communicate with subordinate staff and the public and/or negotiation/persuasive skills to resolve disputes with staff or the public.

**Qualifications and experience:** An advanced certificate, associate diploma, appropriate in-house training or equivalent combined with extensive experience in the application of skills in the most complex areas of the job.

(viii) Professional/Specialist Band 3, Level 1

**Authority and accountability:** Provides specialised/technical services to complete assignments or projects in consultation with other professional staff. May work with a team of technical or administrative employees requiring the review and approval of more complex elements of the work performed by others.

**Judgement and problem solving:** Problems require assessment of a range of options having elements of complexity in reaching decisions and making recommendations. Precedent is available from sources within the employer, and assistance is usually available from other professional/specialist staff in the work area.

**Specialist knowledge and skills:** Positions require considerable knowledge in a specific area with a sufficient level of skills and knowledge to resolve issues having elements of complexity that may not be clearly defined.

**Management skills:** Positions at this entry level to the Professional/Specialist Band are not required to possess management skills.

**Interpersonal skills:** Persuasive skills are required to participate in technical discussions to resolve problems, explain policy and reconcile viewpoints.

**Qualifications and experience:** Professional/specialist positions require professional qualifications to apply theoretical knowledge to practical situations.

(ix) Professional/Specialist Band 3, Level 2

**Authority and accountability:** Provides a specialised/technical service in the completion of work and/or projects which have elements of complexity (composed of many parts that may be more conceptual than definite).

**Judgement and problem solving:** Positions require the interpretation of information and development of suitable procedures to achieve agreed outcomes. Problem solving and decision making require analysis of data to reach decisions and/or determine progress.

**Specialist knowledge and skills:** Experience in the application of technical concepts and practices requiring additional training are required at this level.

**Management skills:** May manage a number of projects involving people and other resources requiring project control and monitoring as well as motivation and co-ordination skills.

**Interpersonal skills:** Interpersonal skills in leading and motivating staff in different teams/locations may be required, as well as persuasive skills to resolve problems or provide specialised advice.

**Qualifications and experience:** Positions at this level would have supplemented base level professional qualifications with additional skills training. Considerable practical experience or skills training would be required to effectively control key elements of the job.

(x) Professional/Specialist Band 3, Level 3

**Authority and accountability:** Provides a professional advisory role to people within or outside the employer. Such advice may commit the employer and have significant impact upon external parties dealing with the employer. The position may manage several major projects or sections within a department of the employer.

**Judgement and problem solving:** Positions have a high level of independence in solving problems and using judgement. Problems can be multi-faceted requiring detailed analysis of available options to solve operational, technical or service problems.

**Specialist knowledge and skills:** The skills and knowledge to resolve problems where a number of complex alternatives need to be addressed.

**Management skills:** May be required to manage staff, resolve operational problems and participate in a management team to resolve key problems.

**Interpersonal skills:** Interpersonal skills in leading and motivating staff may be required. Persuasive skills are used in seeking agreement and discussing issues to resolve problems with people at all levels. Communication skills are required to enable provision of key advice both within and outside the employer and to liaise with external bodies.

**Qualifications and experience:** Tertiary qualifications combined with a high level of practical experience and an in-depth knowledge of work.

(xi) Professional/Specialist Band 3, Level 4

**Authority and accountability:** Accountable for the effective management of major sections or projects within their area of expertise. As a specialist, advice would be provided to executive level and to the employer on major areas of policy or on key issues of significance to the organisation. The position's influence would have an important role in the overall performance of the function.

**Judgement and problem solving:** Positions would determine the framework for problem solving or set strategic plans with minimal review by senior management. At this level, the position may represent senior management or the employer in the resolution of problems. The oversight of problem solving and assessment of the quality of judgements made by less qualified staff will apply at this level.

**Specialist knowledge and skills:** Positions require knowledge and skills for the direction and control of a key function of the employer or major functions within a department. Positions require expert knowledge and skills involving elements of creativity and innovation in addressing and resolving major issues.

**Management skills:** Positions may direct professional or other staff in the planning, implementation and review of major programs, as well as participating as a key member of a functional team.

**Interpersonal skills:** Interpersonal skills in leading and motivating staff will be required at this level. Positions require the ability to negotiate on important matters with a high degree of independence. Positions are required to liaise with the public and external groups and organisations.

**Qualifications and experience:** Specialist tertiary qualifications in an appropriate field of study combined with extensive practical experience in all relevant areas in order to plan, develop and control major elements of work.

(xii) Executive Band 4

**Authority and accountability:** Accountable for the direction and control of the employer or a department or the like. Influence and commit the employer or a department or the like to long-term strategic directions. Lead policy development and implementation.

**Judgement and problem solving:** Positions solve problems through analytic reasoning and integration of wide-ranging and complex information, and have a high level of independence in determining direction and approach to issues.

**Specialist knowledge and skills:** The position requires the application of a range of specialist knowledge and skills, including relevant legislation and policies and other areas of precedent. Ability to provide authoritative advice to the employer.

**Management skills:** Application of corporate management skills in a diverse organisation to establish goals and objectives. Manage and control staff, budgets and work programs or major projects of the employer or a department or the like utilising leadership, evaluation and monitoring skills to facilitate achievement of objectives. Ability to generate innovative approaches to more effectively deploy resources, meet changing circumstances and improve service to the employer's clients.

**Interpersonal skills:** Positions use persuasive skills with external parties on major items of critical importance to the employer. They motivate managers and staff at all levels by leading and influencing others to achieve complex objectives. They influence the development of the employer.

**Qualifications and experience:** Positions will have a relevant degree or equivalent and management experience, combined with accredited management qualifications.

## 6. RATES OF PAY

- (i) The rates of pay are established for positions with the skills descriptors as defined in Clause 5, Skill Descriptors of this Agreement.
- (ii) The rates of pay are set out in Table 1 of Part B of this Agreement and are entry level rates of pay only, except for Operational Band 1, Level 1, which are actual rates of pay.
- (iii) The employer shall introduce a salary system to complement the skills-based structure and rates of pay of the Agreement.

## 7. SALARY SYSTEM

- (i) A salary system determines how employees are paid. An employee shall be paid the salary system rate of pay that recognises the skills the employee is required to apply on the job.
- (ii) The salary system shall have a structure that complements the entry level rates of pay and skill descriptors in the Agreement by identifying grades. Each grade shall contain a number of salary points/steps for progression that are over and above the entry level rates of pay.
- (iii) Positions shall be assigned a salary grade(s) within the structure. A position may extend across more than one grade in the employer's salary system or level as prescribed by Clause 5 Skills Descriptors of this Agreement.
- (iv) Progression through the salary system shall be based upon:
  - a) the acquisition and use of skills; or
  - b) employee performance, provided that progression beyond the Agreement entry level based upon the acquisition and use of skills is also available.
- (v) Where skills based progression is not reasonably available within the salary range for the position, employees shall have access to progression based on the achievement of performance objectives relating to the position. Such performance objectives shall be set in consultation with the employee(s).
- (vi) Subject to subclauses (iv) and (v), skills for progression relevant to the position shall be assigned to each salary point/step within the grade, or set at the annual assessment provided that such criteria shall provide an opportunity to progress through the salary system.
- (vii) Except where otherwise provided, employees shall be assessed for progression through the salary range for their position at least annually or when they are required to use skills that would entitle them to progress in the salary system.
- (viii) The employer shall not be required to conduct annual assessments for those employees who have progressed through the salary system to the maximum point/step for their position, provided that if an employee on or above the maximum point/step for their position requests an annual assessment in writing, the employer will provide one.
- (ix) At the time of assessment, the employer shall advise the employee of the skills and/or the performance objectives required for the employee to progress to the next salary point/step and shall review the employee's training needs.
- (x) The salary system shall include a process by which employees can appeal against their assessment.

- (xi) Employees shall have access to information regarding the grade, salary range and progression steps of the position.
- (xii) Where the employer changes its salary system structure, employees shall not suffer a reduction in pay or salary range. Further, employees shall not suffer a reduction in progression steps based on the acquisition and use of skill, unless otherwise agreed.

## **8. USE OF SKILLS**

- (i) The parties are committed to improving skill levels and removing impediments to multi skilling and broadening the range of tasks that the employee is required to perform.
- (ii) The employer may direct the employee to carry out such duties that are within the limits of the employee's skill, competence and training.
- (iii) An employee shall be paid the salary system rate of pay that recognises the skills the employee is required to apply on the job.
- (iv)
  - a) The skills paid for shall not be limited to those prescribed by the job description and may, where appropriate, include skills possessed by the individual which are required by the employer to be used as an adjunct to the employee's normal duties.
  - b) Subject to subclauses (xi) and (xii) of Clause 15, Allowances, Additional Payments and Expenses, employees who are required by the employer to use such additional skill(s) in the performance of their duties shall have the use of these skill(s) considered in the evaluation of the position.

## **9. PERFORMANCE EVALUATION AND REWARD**

### **A. ENTERPRISE**

- (i) It is the intention of the parties to create a flexible Agreement in which employers can increase the overall efficiency and effectiveness of local government services.
- (ii) Employers should consider the development of enterprise key performance indicators which are specific to local needs.
- (iii) Where the employer develops enterprise key performance indicators regard shall be had to the following:
  - a) measurement of the manner and process by which services are provided; and
  - b) measurement of both qualitative and quantitative aspects of service provision e.g. community satisfaction, timeliness, service quality, output and cost data.
- (iv) Employers shall discuss enterprise key performance indicators relating to human resources activities and/or job redesign with the consultative committee.
- (v) Employee(s) or the employer may seek assistance from the appropriate Union or Association in developing and implementing enterprise key performance indicators.

### **B. INDIVIDUAL/TEAM**

- (i) Enterprise key performance indicators may be used to develop performance targets for teams or individual employees.
- (ii) All employees need to know and have confirmed the role, accountabilities and performance standards that are expected of them. Role clarity, acceptance of goals and



regular feedback are essential to effective performance. A key aim should be to provide a means of recognising and rewarding high performance and to provide an early assessment and response to substandard performance. A review system also provides a basis for identifying development needs for individuals, and can be used as an important input to promotion decisions.

- (iii) This Agreement recognises that all employees shall have on-going feedback about performance. The performance development process can be simplified to three stages:
  - 1) joint development on objectives and performance standards;
  - 2) progress reviews; and
  - 3) a formal performance review which is followed by decisions and outcomes.

### **C. BONUS AND ADDITIONAL PERFORMANCE PAYMENTS**

- (i) Employers may make available access to bonus payments or other opportunities for additional reward for those employees who have progressed through the salary system to the maximum point/step for their position.
- (ii) Where a salary system provides for the payment of a performance component separate from a skills component, variations to payments under the performance component shall not affect payments under the skills component.

### **10. PAYMENT FOR RELIEF DUTIES/WORK**

- (i) An employee required to relieve in a position which is at a higher level within the salary system shall be paid for that relief. The rate to be paid shall be determined by considering the skills/experience applied by the employee relieving in the position but shall be at least the minimum rate for that position in accordance with the salary system except where the higher level skills have been taken into account within the salary of the relieving employee.
- (ii) Payment for use of skills relieving in a higher paid position shall be made for the time actually spent relieving in the higher position and is not payable when the relieving employee is absent on paid leave or an Agreement holiday. An employee on annual leave may be entitled to a higher rate of pay in accordance with the provisions of Clause 21D(ix) of this Agreement.
- (iii) An Agreement employee who is required to relieve in a senior staff position, so designated under the *Local Government Act 1993* (NSW), shall be paid an appropriate rate of pay commensurate with the duties and responsibilities of the relief work undertaken.
- (iv) An employee who is required to relieve an employee in a higher level position, who is on a rostered day off, shall not be entitled to be paid for that relief, except for employees who were being paid for such relief prior to the operative date of this Agreement.

### **11. PAYMENT OF EMPLOYEES**

- (i) Employees shall be paid either weekly or fortnightly, or any other period by agreement, on a fixed regular pay day. However, the parties agree that for the nominal term of the Agreement there shall be no changes to existing pay periods.
- (ii) The employer shall fix a regular payday, between Monday and Friday inclusive. The employer may alter the payday if there is prior agreement with the employees affected and the employees shall not unreasonably withhold their agreement.

- (iii) Payment shall be by cash, cheque or direct credit to the employee's nominated account.
- (iv) The employer shall deduct and pay on behalf of the employee from any remuneration payable to the employee union membership fees where authorised by the employee in writing. The employer can deduct and pay on behalf of the employee from any remuneration payable to the employee such other amounts as the employee authorises in writing.
- (v) An employee's ordinary pay shall not be reduced when the employee is prevented from attending work due to bushfire or other climatic circumstances beyond their control, provided that this subclause shall not apply if:
  - alternative duties are available that the employee can usefully perform, or
  - the bushfire or other climatic circumstance occurred outside of the State of New South Wales, or
  - the employee has been unable to attend work for more than one week per bushfire or other climatic circumstance event. The employee may, in exceptional circumstances, apply to the employer for paid special leave and such request shall not be unreasonably refused.
- (vi) Where an employee takes a period of sick leave and subsequently becomes entitled to the payment of workers compensation for the same period but at a lesser amount than the sick leave already paid, the employer shall be entitled to deduct from the employee's remuneration the difference between the sick leave payment and the workers' compensation payment.

## 12. ANNUALISED SALARIES

- (i) Annual salary instead of Agreement provisions.

Notwithstanding any other provision of this Agreement, the employer and an employee may agree that the employer may pay the employee an annual salary in satisfaction of any or all payments arising under the following provisions of the Agreement:

- a) Rates of Pay – clause 6;
- b) Use of Skills – clause 8;
- c) Performance Evaluation and Reward – clause 9;
- d) Payment for Relief Duties/Work – clause 10;
- e) Salary Sacrifice – clause 13;
- f) Allowances, Additional Payments and Expenses – clause 15;
- g) Residence – clause 17;
- h) Hours of Work – clause 18;
- i) Overtime – clause 19;
- j) Holidays – clause 20

- (ii) Annual salary not to disadvantage employees.

- a) The annual salary must be no less than the amount the employee would have received under this Agreement for the work performed over the year for which the salary is paid (or if the employment ceases earlier over such lesser period as has been worked).
- b) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the Agreement provisions which are satisfied by the payment of the annual salary.
- c) Employees shall not be denied the opportunity to apply for new or vacant positions as a result of the operation of this clause.

- (iii) An annual salary agreement must:
  - a) be in writing and signed by both parties;
  - b) state the date on which the arrangement commences;
  - c) be provided to the employee;
  - d) contain a provision that the employee will receive no less under the arrangement than the employee would have been entitled to if all Agreement obligations had been met, taking account of the value of the provision of matters not comprehended by the Agreement such as private use of an employer provided motor vehicle;
  - e) be subject to an annual review;
  - f) contain details of any salary package arrangements, including the annual salary that is payable;
  - g) contain details of any other non-salary benefits provided to the employee such as an employer provided motor vehicle;
  - h) contain details of any performance pay arrangements and performance measurement indicators;
  - i) contain the salary for the purposes of accident make up pay (if applicable); and
  - j) contain the Agreement band and level for the role.
- (iv) An annual salary agreement may be terminated:
  - a) by the employer or the employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
  - b) at any time, by written agreement between the employer and the employee.
- (v) On termination of an annual salary agreement, the employee will revert to the Agreement entitlements unless a new annual salary agreement is reached.
- (vi) Notwithstanding the above, annualised salary arrangements entered into prior to 1 July 2014 may continue to operate in accordance with their terms.

### **13. SALARY SACRIFICE**

- (i) The employer and an employee may agree to enter into a salary sacrifice arrangement, which allows an employee to receive a part of their pre tax salary as a benefit rather than salary. Such agreement shall not unreasonably be withheld.
- (ii) Benefits that may be salary sacrificed include, but shall not be limited to, child care facilities operated by the employer on its premises; and additional superannuation and motor vehicles supplied by the employer under lease back arrangements where the amount to be salary sacrificed for leaseback of the employer's motor vehicle is that part of the lease back fee that exceeds the employer's fringe benefit tax liability.
- (iii) The value of the benefits shall be agreed between the employer and employee and shall include fringe benefits tax where applicable.
- (iv)
  - a) The salary sacrifice arrangement, including the benefits to be salary sacrificed and their value including fringe benefit(s) tax, shall be in writing and signed by both the employer and the employee.

- b) The employee may request in writing to change the benefits to be salary sacrificed once each year and the employer shall not unreasonably refuse the request.
- (v) The employee's gross pay is their pre tax ordinary pay less the values of the salary sacrifice benefit including fringe benefit(s) tax.
- (vi) The value of a salary sacrifice benefit and applicable fringe benefit tax, shall be treated as an approved benefit for superannuation purposes and shall not reduce the employee's salary for employer contributions.
- (vii) The value of salary sacrifice benefits and applicable fringe benefits tax shall be ordinary pay for calculating overtime and termination payments.
- (viii) The employee is responsible for seeking appropriate financial advice when entering into any arrangement under this clause.
- (ix)
  - a) The employer will ensure that the salary sacrifice arrangement complies with taxation and other relevant laws.
  - b) The employer has the right to vary and/or withdraw from offering salary sacrifice to employees with appropriate notice if there is any alteration to relevant legislation that is detrimental to salary sacrifice arrangements.
- (x) A salary sacrifice arrangement shall cease on the day of termination of employment.
- (xi) A salary sacrifice arrangement shall be suspended during periods of leave without pay.
- (xii) The employer may maintain and/or enter into other salary sacrifice arrangements with employees.

## **14. SUPERANNUATION FUND CONTRIBUTIONS**

### **(i) Superannuation Fund Contributions**

- a) Subject to the provisions of the *Industrial Relations Act 1996* (NSW), the employer shall make superannuation contributions to the Local Government Superannuation Scheme and not to any other superannuation fund.

### **(ii) Salary Sacrifice Arrangements specific to Long Service Leave and Superannuation**

- a) For the purposes of this sub-clause:
  1. "Eligible employee" means an employee with at least ten (10) years continuous service with the employer who has an accrued entitlement to long service leave under the Agreement that is in excess of the long service leave entitlement that the employee would have accrued if covered by section 4 of the *Long Service Leave Act 1955* (NSW).
  2. "Excess LSL" means the long service leave that an employee has accrued under the Agreement that is in excess of the long service leave that the employee would have accrued if covered by section 4 of the *Long Service Leave Act 1955* (NSW).
  3. "LSL" means Long Service Leave.
  4. "LSL Act" means the *Long Service Leave Act 1955* (NSW).

5. "Ordinary Time Earnings" has the same meaning as in section 6(1) of the *Superannuation Guarantee (Administration) Act 1992* (Cth).
  6. "Superannuation Fund" means the Local Government Superannuation Scheme.
- b) Subject to this clause, eligible employees may, with the consent of the employer, cash out some or all of their Excess LSL.
  - c) Any Excess LSL cashed out in accordance with clause shall be paid to the employee at the employee's ordinary pay.

**Example:** *A full-time employee with 10 years' continuous service with the employer accrues 13 weeks LSL under the Agreement, whereas they would have only accrued 8 weeks LSL if covered by s4 of the LSL Act. After 10 years' service, the employee would have up to 5 weeks Excess LSL which may, with the consent of the employer, be cashed out.*

- d) Eligible employees who have Excess LSL cashed out under this clause must enter into a Salary Sacrifice Arrangement for the equivalent amount to be paid into the Superannuation Fund as Ordinary Time Earnings, unless the employee has reached their concessional contribution cap.
- e) Notwithstanding clause 13(vi) of the Agreement, any Salary Sacrifice Arrangement made under this clause shall not be treated as an approved benefit for superannuation purposes.

**(iii) Superannuation while on workers' compensation**

- a) The employer will also make the same superannuation contributions as required under the superannuation legislation for a period of absence from work due to a work related injury or work related illness provided that:
  1. the employee is receiving workers' compensation payments; and
  2. the employee remains employed by the employer.

**15. ALLOWANCES, ADDITIONAL PAYMENTS AND EXPENSES**

**(i) Level 1 Adverse Working Conditions Allowances**

- a) A level 1 adverse working conditions allowance in addition to the weekly rate of pay shall be payable to designated employees to compensate for the special disabilities associated with working outdoors and/or for moderately obnoxious, offensive or dirty working conditions.
- b) The level 1 adverse working conditions allowance shall be paid at the rate set out in Table 2 of Part B of this Agreement and shall be paid for all purposes of the Agreement but shall not attract any penalty.
- c) All employees in Levels 2, 3 and 4 of the Operational Band 1 and employees engaged in the gardening, building, metal and mechanical trades of the Administrative/Technical /Trades Band 2 shall be paid the level 1 adverse working conditions allowance for all hours worked, excepting staff engaged in the following functions:
  - Administration
  - Civic Centre, Recreation and Theatre

- Community Services
- Finance
- Garbage, Sanitary and Sullage
- Managing Saleyards
- Noxious Plant Inspection
- Ordinance Control
- Public Relations
- Supervising in Band 2
- Technical Services
- Works Supervisor

d)

1. Designated employees in Operational Band 1 and Administrative / Technical / Trades Band 2 who do not qualify for the allowances at subclauses 15(i)(c) and 15(ii)(a) shall be paid the level 1 adverse working conditions allowance for the actual time worked by direction performing the following work, with a minimum payment of one (1) hour per day on which the work is performed:
  - Childcare employees – whilst changing nappies.
  - Early Childhood Teachers – as and when called upon to manually handle/clean up urine, vomit or faecal matter, on a per incident basis. Payment is subject to employees recording and claiming the allowance for each incident.
  - Employees whose duties involve animal destruction – whilst destroying companion animals. For the purpose of this sub-clause, companion animals means cats and dogs.
  - Aquatics and leisure centre staff – as and when called upon to clean up or remove urine, vomit or faecal matter from pools or changerooms, on a per incident basis. Payment is subject to employees filling out the required Incident Notification Form and claiming the allowance for each incident on their payslips.
2. The employer may make an average payment equivalent to an agreed number of hours per week where the employee is regularly required to perform such work unless otherwise specified in this clause.

**(ii) Level 2 Adverse Working Conditions Allowance**

- a) All employees classified in the Operational Band 1, of this Agreement (except for supervisors), who are employed in garbage, sanitary and sullage collection work or engaged at garbage tips, in street sweeping and in cleaning offensive materials from gutters or storm water drains, shall in addition to their weekly rate of pay, be paid a level 2 adverse working conditions allowance at the rate set out in Table 2 of Part B of this Agreement. This allowance shall be paid for all purposes of the Agreement but shall not attract any penalty.
- b) The level 2 adverse working conditions allowance will also be paid to:
  1. Outdoor workers – as and when required to manually handle faeces. For the purposes of this sub-clause, “*manually handle*” means removal of faeces by hand or shovel but does not include removal of faeces by use of a high-pressure cleaner. Payment is on an hourly basis with a maximum of one (1) hour claimed per day.
  2. Employees who work in Council's Animal Holding Facility and are required by their position descriptions to manually handle animal faeces. However, from

the effective date of the Agreement, employees working in Council's Animal Holding Facility and who were previously receiving the Level 1 adverse working conditions allowance and/or the sewer chokes allowance for manually handling animal faeces, will no longer receive those allowances, if as a result of this Agreement they receive the level 2 adverse working conditions allowance.

- c) The level 2 adverse working conditions allowance is to compensate for the special disabilities associated with the hours worked and the offensive, filthy and obnoxious nature of duties performed by employees engaged in this work.

**(iii) Sewer Chokes**

The sewer choke allowance is to compensate for the highly obnoxious working conditions associated with the clearing of blockages in live sewers, which typically includes:

- a) the clearing of blockages in sewer mains (of any diameter) carrying raw or partially treated sewerage to sewerage treatment plants, often in circumstances where direct contact with the raw sewerage is unavoidable; and
- b) the clearing of blockages in other parts of the sewerage system where disassembly is required and direct contact with raw sewerage is unavoidable.

Employees clearing sewer chokages and/or other parts of the sewerage system as provided above shall be paid at the rate set out in Table 2 of Part B of this Agreement whilst so engaged.

For the purposes of this subclause, a *live sewer* shall mean part of a sewerage system that transports raw or partially treated sewerage from a building to a septic tank or sewerage treatment works, typically at or below ground surface level.

For the purposes of this subclause, a *sewer choke* shall mean a partial or total blockage that may result in a spill to the external environment from the sewer system.

The sewer choke allowance is paid per shift, including overtime shifts which are not continuous with an ordinary shift.

The sewer choke allowance shall not be paid in addition to the septic tanks allowance at subclause 15(iv) or sewerage treatment works allowance at subclause 15(v) of this Agreement.

**(iv) Septic Tanks**

Employees shall be paid treble rates in addition to their normal rates for all time occupied on work in connection with the cleaning of septic tanks, and/or septic closets and/or chemical closets by other than mechanical means. Payments made in accordance with this subclause shall be in substitution of overtime rates and any other penalty.

**(v) Sewerage Treatment Works**

Employees required during their ordinary hours of work to enter and clean or enter and maintain digestion tanks at sewerage treatment works, aeration ponds or wet wells at sewer pump stations, where direct contact with raw sewerage is unavoidable, shall be paid at the rate of double ordinary rates for all time worked. Payments made in accordance with this subclause shall be in substitution of overtime rates and any other penalty.

**(vi) Employee Providing Tools**

- a) Where the employee and the employer agree that the employee shall supply their

own tools, a tool allowance shall be paid as follows: -

	<b>PER WEEK \$</b>
Bricklayer	Table 2 of Part B
Carpenter and Plumber	Table 2 of Part B
Metals and Mechanical Trades	Table 2 of Part B
Painter and Signwriter	Table 2 of Part B
Plasterer	Table 2 of Part B

- b) Complete Tool Kits - allowances paid to employees in accordance with this clause shall be deemed to apply in respect of a full range of tools ordinarily used in carrying out the trade, occupation, duties and functions.
- c) Special Purpose Tools - allowances prescribed by this clause shall not cover tools required for special uses or purposes outside of the ordinary trade functions of the employee's classification.
- d) Compensation of Tools - The employer shall reimburse the employee to a maximum per annum as set out in Table 2 of Part B for loss of tools by breaking and entering whilst securely stored at the employer's premises or on the job site or if the tools are lost or stolen while being transported by the employee at the employer's direction, or if the tools are stolen during an employee's absence after leaving the job because of injury or illness. Provided that an employee transporting their own tools shall take all reasonable care to protect those tools and prevent theft or loss.
- e) Provided for the purposes of this clause: -
1. Only tools used by the employee in the course of their employment shall be covered by this clause;
  2. The employee shall, if requested to do so, furnish the employer with a list of tools so used;
  3. Reimbursement shall be at the current replacement value of new tools of the same or comparable quality;
  4. The employee shall report any theft to the police prior to making a claim on the employer for replacement of stolen tools.

**(vii) Telephone**

Where an employee and the employer agree that a telephone installed at the employee's residence can be used as a means of communication to such employee the employer shall reimburse the employee the annual rental of such telephone and for the actual charge made for all outward calls made on the employer's behalf.

**(viii) Expenses**

All reasonable expenses, including out-of-pocket, accommodation and travelling expenses, incurred in connection with the employee's duties shall be paid by the employer and, where practicable shall be included in the next pay period. The method and mode of travelling or the vehicle to be supplied or to be used shall be arranged mutually between the employer and the employee. Travelling arrangements shall be agreed between the employer and the employee.



**(ix) Certificates, Licences and other Approvals**

- a) Where an employee in Operational Band 1 or Administrative/Technical Trades Band 2 of the Agreement is required by the employer to hold a WorkCover NSW approved certificate or licence the employer shall reimburse the employee for the cost of such certificate or licence.
- b) Where an employee in Operational Band 1 or Administrative/Technical Trades Band 2 of the Agreement is required by the employer to hold a drivers licence other than a Class C (car) or Class R (rider) licence, the employer shall reimburse the employee the difference between the cost of the licence and the cost of a Class C (car) drivers licence.
- c) Where an employee engaged in child-related work is required by the employer to undertake a Working with Children Check as provided by the *Child Protection (Working with Children) Act 2012* (NSW), the employer shall reimburse the employee for the cost of such Working With Children Check.

**(x) Travelling Allowance**

- a) This subclause shall apply to employees who are required to start and/or finish work at a location away from the employer's depot, workshop or other agreed normal place of work, and travel to and/or from such location in their own time.
- b) For the purposes of this subclause "normal place of work" shall mean:
  - 1. the employer's workshop or depot;
  - 2. an office or building of the employer to which the employee is usually assigned;
  - 3. any other agreed starting and/or finishing point.
- c) Unless otherwise provided, each employee will be assigned to one normal place of work only.
- d) An employee may be assigned to more than one normal place of work by agreement.
- e) An employee may be transferred to a different normal place of work at any time by agreement or by the giving of reasonable notice provided that the relocation is reasonable in the circumstances and does not unreasonably disadvantage the employee. In the event of a dispute Clause 35, Grievance and Dispute Procedures, shall apply.
- f) Where an employee is required to commence and/or finish work at a location away from the employee's normal place of work and the distance travelled is greater than the distance usually travelled by the employee between their place of residence and normal place of work, the employee shall be paid a travelling allowance for each journey of excess travel, according to the following scale, provided that reasonable transport is available:

<b>EXCESS DISTANCE TRAVELLED</b>	<b>ENTITLEMENT</b>
Less than 3kms	Nil
3km but not more than 10km	Table 2 of Part B
More than 10km but not more than 20km	Table 2 of Part B

More than 20km but not more than 33km	Table 2 of Part B
More than 33km but not more than 50km	Table 2 of Part B
Plus (See Table 2 of Part B) for each additional 10km in excess of 50kms.	Table 2 of Part B

**Note:** On and from 1 July 2014, an employee may be entitled to two travelling allowances on the one day.

- g) For the purpose of this subclause a residence shall not be reckoned as such unless it is situated within the council area. Where the employee resides outside the council area the travelling allowance is payable from the council boundary of the employer by which they are employed.
- h) For the purpose of this subclause distance shall mean the nearest trafficable route to work.
- i) Where transport is provided by the employer the conveyance shall have suitable seating accommodation and a cover to protect the employees from the weather. Explosives shall not be carried on vehicles which are used for the conveyance of employees.
- j) Where the employer and employee agree that the employee is to use their own vehicle to transport other employee(s) or materials to and/or from a worksite located away from the employee's normal place of work, a vehicle allowance for the use and depreciation of the vehicle shall be paid as follows:

	<b>Kilometres travelled transporting other employee(s) or materials Cents per kilometre</b>
Under 2.5 litres (nominal engine capacity)	Table 2 of Part B
2.5 litres (nominal engine capacity) and over	Table 2 of Part B

Such vehicle allowance shall be paid in addition to travelling allowances provided by this subclause.

For the purposes of this subclause, materials shall not include incidental items (including but not limited to keys, mobile phones, lap-top computers and personal protective clothing).

Where the employer provides transport but the employee elects to make their own travel arrangements, the vehicle allowances in this subclause shall not apply.

- k) This subclause does not apply to employees who travel where management and employees agree on a flat rate per week to be paid for travelling. In the event of a dispute, the Grievance and Disputes Procedure in Clause 35 of this Agreement shall be applied.
- l) This subclause does not apply to travelling involved in after hours on-call work or to employees recalled to work overtime.
- m) Unless otherwise agreed, an employee shall not be entitled to travel related allowances except those provided for in this subclause. Nothing in this subclause shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions under any existing travel arrangements.

n) Employees working under the former Municipal and Shire Council Wages Staff Agreement published on 8th December 1982, (notwithstanding that custom & practice applying these provisions to existing employees as at date of this agreement will be preserved), shall receive travelling allowances as follows:-

1. Any employee required on any working day to work at a location other than Council's Depot in Station Street, Rooty Hill shall be paid a flat rate of \$2.31 per day to cover travelling time. (Amount to be varied in accordance with Agreement, or applicable State Wage case variation).
2. Employees who commenced employment prior to the effective date of the 2011 Agreement shall, if working in Council's Depot in Station Street, Rooty Hill, be paid travelling allowances as prescribed in Clause 8(vi) of the 1997 Agreement. This allowance shall not apply for any employees who commence their employment with Council after the effective date of this agreement, however, this does not prevent an employee from claiming a travel allowance if provided for elsewhere in this Agreement.
3. Drivers and operators of plant (including graders and mowers) will be paid, in addition to any entitlements to travelling allowance twenty minutes each day at overtime rates to enable the vehicles to be brought back to the Depot after normal working hours.
4. All employees including Leading Hands and Working Gangers who are responsible for the custody and putting away of tools after normal working hours, will be paid a flat rate of one quarter of an hour each day at overtime rates.

o) Salaried Staff:

1. In respect of Salaried Staff, Travelling Allowances shall be paid in accordance with the Agreement where an employee is required to provide his/her own transport or, alternatively, may be supplied with a vehicle by the Council for which a lease-back fee is payable weekly, such fee to be set from time to time, provided that the Council may give notice in accordance with the Agreement to vary this as the circumstances warrant.
2. Travelling Allowance at a flat rate of \$2.31 per day to be paid to Plant Foreman and Storekeeper. (Amount to be varied in accordance with Agreement, State Wage Case Decisions as applicable).

**(xi) Community Language, and Signing Work**

- a) Employees using a community language skill as an adjunct to their normal duties to provide services to speakers of a language other than English, or to provide signing services to those with hearing difficulties, shall be paid an allowance in addition to the weekly rate of pay as set out in Table 2 of Part B. The allowance may be paid on a regular or irregular basis, according to when the skills are used.
- b) Such work involves an employee acting as a first point of contact for non-English speaking residents or residents with hearing difficulty. The employee identifies the resident's area of inquiry and provides basic assistance, which may include face-to-face discussion and/or telephone inquiry.
- c) Such employees convey straightforward information relating to services provided by the employer, to the best of their ability. They do not replace or substitute for the role of a professional interpreter or translator.
- d) Such employees shall record their use of a community language according to the

employer's established policy.

- e) Where an employee is required by the employer to use community language skills in the performance of their duties:
- The employer shall provide the employee with the opportunity to obtain accreditation from a language aide accreditation agency
  - Such training shall form part of the employer's training plan and budget, in accordance with the requirements of Clause 31 of this Agreement.
  - The employee shall be prepared to be identified as possessing the additional skill(s)
  - The employee shall be available to use the additional skill(s) as required by the employer.
- f) Savings

These provisions identify minimum criteria only, and shall not be construed so as to require the reduction or alteration of more advantageous benefits or conditions under any written existing arrangement at the date the Agreement was varied to give effect to this clause. They shall not however be cumulative upon such existing payments.

## **(xii) First Aid in the Workplace**

### General

- a) The parties to the Agreement recognise that providing immediate and effective first aid to employees or others who have been injured or become ill at the workplace may reduce the severity of the injury or illness and promote recovery. In some instances it could mean the difference between life and death.
- b) All employees must be able to access a first aid kit.
- c) First aid requirements will vary from one workplace to the next, depending on the nature of the work, the type of hazards, the workplace size and location, as well as the number of people at the workplace. These factors must be taken into account when deciding what first aid arrangements need to be provided.
- d) Employers must ensure that an adequate number of employees are trained to administer first aid at the workplace or that employees have access to an adequate number of other people who have been trained to administer first aid.
- e) Employers are encouraged to make available to employees, training in basic first aid, which may include, for example, training in:
- administering first aid;
  - Cardio Pulmonary Resuscitation (CPR); or
  - use of defibrillators.
- For further information, refer to the SafeWork NSW 'First aid in the workplace code of practice'.

### First aid work allowance

- f) Where an employee who holds an appropriate first aid qualification is appointed by the employer to perform first aid duty and be in charge of a first aid kit, such employee shall be paid an allowance in addition to the weekly rate, as set out in Table 2 of Part B.
- g) This clause shall not apply where it is a requirement of the position for the employee

to hold an appropriate first aid qualification and perform first aid duty, if the skills have been paid for in accordance with the employer's salary system.

**(xiii) Service Payment**

a) Employees engaged prior to the signing of the 1998 Enterprise Agreement, in addition to the minimum rates of wages prescribed by the said Agreement or any Agreement varying or replacing the same, the Council shall pay as wages to:

1. Each existing employee who has completed or who, subsequent to the date of making of Agreement No. 7045 and who completes six month's service, shall be paid the sum of one dollar per week.
2. Each existing employee who has completed or who, subsequent to the date of making the above Agreement, completes twelve months service, shall be paid the sum of one dollar per week above the rate prescribed in subclause (a) of this clause.
3. Each existing employee who has completed or who, subsequent to the date of making the above Agreement, completed two years' service, shall be paid the sum of one dollar per week above the rates prescribed in subclause (a) and (b) of this clause.
4. Each existing employee who has completed or who, subsequent to the date of making the above Agreement, completed five years' service, shall be paid the sum of one dollar per week above the rates prescribed in subclause (a), (b) and (c) of this clause. (e) The provisions of paragraphs (i) (a), (b), (c) and (d) of this clause shall not apply to employees employed after the date of signing this agreement.

b) An over Agreement payment shall be made of \$1.50 per week commencing from year 1982, an additional 50 cents per week for the next year and \$2 per week each year of satisfactory service thereafter reaching \$10.00 after six years then an additional amount of \$1.00 per week after ten years' service, for each year of satisfactory service for the next five years reaching a maximum of \$15.00 at fifteen years of satisfactory service; subject, however to such payments being indexed in accordance with C.P.I. variations each year commencing from year 1982.

i.e.,	1982	-	\$1.50 per week (i.e. first year of service)
		-	\$2.00 per week for next year of service
	then up to 6 years	-	increasing at a rate of \$2.00 per week per year up to a maximum of \$10.00 per week.
	6 to 10 years	-	no increase
	10 to 15 years	-	An extra \$1.00 per week per year in Addition to the above building up to an maximum of \$15.00 per week at year 15.

But subject to C.P.I. Indexation. (Base year 1982)

This Subclause shall apply to all employees engaged prior to the date of signing this agreement.

c) Employees engaged prior to the signing of the 1998 Enterprise Agreement and continuously employed thereafter, shall be entitled to the option of \$9 per week in addition to the entitlements of the former, or new salary systems, whichever provides the best result.

d) All payment due under this clause shall be applied for all purposes e.g. overtime etc.

**(xiv) Meal Allowance**

a) A meal allowance set out in Table 2 of Part B shall be paid to employees instructed to

work overtime:

1. for two hours or more prior to their agreed commencing time, or
2. for two hours immediately after their agreed finishing time and after subsequent periods of four hours, or
3. after each four hours on days other than ordinary working days

provided that a meal allowance is not payable where, by agreement, a meal is provided by the employer.

**(xv) Civil Liability - Engineering Professionals**

- a) Subject to this clause, engineering professionals directly involved in the application of engineering principles to the asset management of the employer's assets that give rise to liability under the *Civil Liability Act 2002* (NSW) shall be paid a 3.5% allowance in addition to the weekly salary system rate of pay.
- b) This allowance was introduced to ensure that engineering professionals whose work value had changed in response to the *Civil Liability Act 2002* (NSW) are paid for that change in work value. This allowance applies to functional management positions as well as engineering professionals working in asset management at the operational level.
- c) This allowance is not payable where such responsibilities and the exercise of such skills have been specifically and demonstrably paid for in accordance with the salary system established by the employer.
- d) Direct involvement in the application of engineering principles to the management of the employer's assets includes:
  - the planning for;
  - designing;
  - maintenance;
  - replacing;
  - rehabilitation; or
  - disposingof the employer's assets which may give rise to liability under the *Civil Liability Act 2002* (NSW).
- e) To qualify for the payment of this allowance the position in question must be evaluated in accordance with the skill descriptors for Professional/Specialist Band 3 or Executive Band 4 of the Agreement.
- f) The parties to the Agreement acknowledge that implementation of this allowance has been guided by the *Joint Statement on the Implementation of the Civil Liability Allowance* issued by the parties in October 2007. The parties remain committed to this document as a guide for the application of the allowance.
- g) From 1 January 2015, claims for the payment of the civil liability allowance under this clause shall be made within 30 days of the work being performed, and any claims for back-payment of the civil liability allowance shall be limited to the date on which the employee made the claim. This sub-clause does not apply where it can be demonstrated that the employer incorrectly made representations to an employee that the civil liability allowance had already been paid for in accordance with their rate of pay and/or the salary system established by the employer.
- h) This clause shall not be construed so as to require the reduction or alteration of more advantageous benefits or conditions under any arrangements existing at the date the

Agreement was varied to give effect to this clause.

**(xvi) Accreditation of employees as Chartered Professional Engineers**

- a) Where an engineering employee is required by the employer to be accredited as a Chartered Professional Engineer the employer shall:
  - 1. pay the reasonable costs associated with obtaining and/or maintaining such accreditation, including the cost of accreditation fees and compulsory continued professional development training/course fees, and
  - 2. grant leave, without loss of pay, to attend course requirements in accordance with subclause (iv) of Clause 31, Training and Development, of this Agreement.
- b) Subclause (a) shall continue to be observed while the employee is on paid leave and/or unpaid parental leave.
- c) The employer may grant an engineering employee undertaking a course to obtain accreditation as a Chartered Professional Engineer, although not at the employer's request, assistance in accordance with subclause (v) of Clause 31 of this Agreement.

**(xvii) Accreditation of employees by the Building Professionals Board**

- a) Where an employee is required by the employer to be accredited by the Building Professionals Board under the *Building Professionals Act 2005* (NSW) the employer shall:
  - 1. pay the reasonable costs associated with obtaining and/or maintaining such accreditation, including the cost of accreditation fees and compulsory continued professional development training/course fees, and
  - 2. grant paid leave to attend course requirements in accordance with subclause (iv) of Clause 31, Training and Development, of this Agreement.
- b) Subclause (a) shall continue to be observed while the employee is on paid leave and/or unpaid parental leave.

**(xviii) Mechanics' Allowance**

- a) A mechanics' allowance set out in Table 2 of Part B shall be paid to nominated mechanics holding appropriate certificates and qualifications for the carrying out of inspection of Council vehicles for registration and disposal under the provisions of the appropriate legislation.
- b) The relevant Director shall be authorised to increase the complement of mechanics authorised to carry out such inspections depending on demand and to authorise payment.

**(xix) Technology and Mobility Allowance**

- a) Based on the existing 1% technology allowance (set out in the Addendum to the 2009 Agreement - a copy of which is annexed to this Agreement), from the effective date of the Agreement, Council will continue to implement and maximise the functionality of electronic and automated solutions provided by Council's various corporate business systems. All employees will be required to use the systems and Council provided devices to perform their duties.
- b) Employees are required to access corporate and personal work-related information including, but not limited to, Council's organisational charts, policies and procedures, Insite, reward and recognition, the WHS management system, corporate communication and pay and leave data.

- c) Employees will be provided with unique user logins to access email addresses for the corporate business systems and a personal Council email address.

## **16. MOTOR VEHICLE LEASEBACK**

### **A. VEHICLE ALLOWANCES**

- (i) Where, by agreement, the employer requires an employee to use their own vehicle in or in connection with the performance of their duties for official business, such employee will be paid an allowance for each kilometre of authorised travel as follows:
  - a) motor vehicle under 2.5 litres (normal engine capacity) – refer to Table 2 of Part B; and
  - b) 2.5 litres (normal engine capacity) and over – refer to Table 2 of Part B.
- (ii) The employer may require an employee to record full details of all such official travel requirements in a log book.
- (iii) Minimum quarterly payment – Where the vehicle is used for official business and is available continuously when the employee is on duty the employee shall be paid the allowance in subclause 16A(i)(b) but with a minimum payment as set out in Table 2 of Part B. Periods of sick leave in excess of 3 weeks, annual leave in excess of 4 weeks, long service leave, paid and unpaid parental or maternity leave shall not be counted when calculating the minimum quarterly payment.
- (iv) Where the vehicle is used for official business on an intermittent, irregular or casual basis, the employee shall be paid the allowance for the number of kilometres travelled on official business as set out in paragraph (i) only and shall not be entitled to the minimum payment as set out in paragraph (iii).
- (v) Any agreement to pay the allowance under this clause may only be terminated by 12 months' notice by either party or by the employee's termination of employment.

### **B. LEASEBACK VEHICLES**

#### **(i) GENERAL**

The parties to this Agreement recognise that leaseback vehicles may be provided to employees as a condition of employment (e.g. as an incentive for accepting employment) or as a discretionary benefit that is not a condition of employment.

A leaseback vehicle will be considered to be a condition of employment for an employee unless it was clearly identified that it was not being provided on such a basis at the time that it was provided.

#### **(ii) TERMINATION OF LEASEBACK VEHICLE ARRANGEMENT**

- a) **Condition of employment** – Unless otherwise provided in this clause, where the employer and an employee enter into a leaseback vehicle arrangement and the employee is entitled to a leaseback vehicle as a condition of employment, the arrangement may only be terminated by agreement.
- b) **Not a condition of employment** – Unless otherwise provided, where the employer and an employee enter into a leaseback vehicle arrangement and the employee is not entitled to a leaseback vehicle as a condition of employment, the employer shall give a minimum of six (6) months written notice of termination of the arrangement.



Notwithstanding the above, where the leaseback vehicle agreement was entered into prior to 1 November 2010, the employer shall give a minimum of 12 months' notice to terminate the agreement.

- c) **Other** – The employer may terminate or suspend access to a leaseback vehicle arrangement immediately on termination of employment, loss of licence, serious breach of the leaseback vehicle agreement or if the employee accepts a new position with the employer that does not include access to a leaseback vehicle. The employer may also terminate or suspend a leaseback vehicle arrangement where an employee is demoted, for the period of demotion, provided that at least two weeks' notice is given.

(iii) **VARIATION OF LEASEBACK VEHICLE ARRANGEMENTS**

- a) **Variations to leaseback arrangements** – Proposals to vary leaseback vehicle arrangements, including the formula for calculating the leaseback vehicle fees shall be referred to the consultative committee in accordance with clause 32 of this Agreement, before a definite decision is made.
- b) **Variations to leaseback fees** - Where an employer proposes to increase the leaseback fee an employee is required to pay in any twelve (12) month period by more than 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), the employer shall provide in writing to the employee the reasons for the increase.

In any event the employer shall not increase the leaseback vehicle fee an employee is required to pay in any twelve (12) month period by more than 10%.

This subclause shall not apply where the leaseback vehicle fee is adjusted to reflect changes in the type of vehicle being used (including changes in vehicle options, the class, model or make of vehicle).

- c) **Variations in hours of work and/or extended periods of absence** – Where an employee's hours of work change significantly or the employee is absent on approved leave for an extended period, the employer and the employee shall discuss whether the employee will be allowed to retain possession of the vehicle and/or whether the leaseback vehicle fee is to be adjusted. In the event that the leaseback vehicle fee is to be adjusted, subclause (v) above shall not apply.

In the absence of agreement, clause 35, Grievance and Disputes Procedures, shall apply.

## **C. NOVATED LEASES**

A novated lease is a type of motor vehicle lease common in Australia between an employee, employer, and finance company, with the responsibility for the lease lying with the employee and the lease payments being made from the employee's pre-tax income.

The employer shall not make it a job requirement that an employee enter into a novated lease agreement for the use of a motor vehicle. Novated lease arrangements may be offered to employees at the employer's discretion.

## **17. RESIDENCE**

Where an employee is supplied by the employer with a residence, it shall be of a reasonable standard. The rental value of such residence shall be agreed upon between the employer and the employee. The rental value as agreed may be deducted from the pay of the employee.

## **18. HOURS OF WORK**

### **A. ORDINARY HOURS**

- (i) Except as otherwise provided, the ordinary hours of work shall be 38 hours per week arranged on one of the following bases:
- 38 hours within one week provided that at least two days off shall be granted; or
  - 76 hours within two weeks provided that at least four days off shall be granted; or
  - 114 hours within three weeks provided that at least six days off shall be granted; or
  - 152 hours within four weeks provided that at least eight days off shall be granted.
- (ii) The ordinary hours of work for employees engaged in the following functions shall be 35 hours per week:
- Administration;
  - Building Surveying;
  - Community Services (Professional/Specialist Band 3);
  - Engineering (Professional and Trainees);
  - Executive Band;
  - Finance;
  - Health Surveying;
  - Library;
  - Public Relations;
  - Technical Services; and
  - Town Planning.

The ordinary hours for employees working 35 hours per week shall be arranged on one of the following bases:

- 35 hours within one week provided that at least two days off shall be granted; or
  - 70 hours within two weeks provided that at least four days off shall be granted; or
  - 105 hours within three weeks provided that at least six days off shall be granted; or
  - 140 hours within four weeks provided that at least eight days off shall be granted.
- (iii) Except as otherwise provided, the ordinary hours for all employees shall be between Monday and Sunday.
- (iv) The ordinary hours for employees engaged in the following functions shall be between Monday and Friday:
- a) Building Surveyors;  
Crematoriums and Cemeteries;  
Engineering (Professional and Trainees);  
Finance;  
Health Surveyors;  
Road Construction and Maintenance;  
Sale Yards;  
Stores and Depots;  
Town Planning; and  
Trade functions.
- b) The ordinary hours for employees engaged in general administration shall be between Monday and Friday except where such administrative duties are associated with work in functions where a different spread of hours is applicable.
- (v) An employee's commencement and/or finishing times may be altered by agreement or by the employer with the provision of reasonable notice where there are genuine operational or safety reasons supporting the variation. For the purpose of this sub-clause, reasonable notice shall be determined having regard to:
- the employee's personal circumstances including any family and carer responsibilities; and

- the needs of the workplace, including any genuine operational or safety reasons.

Unless otherwise agreed, at least four weeks prior to the proposed alteration the employer shall provide the employee with the reasons for the proposed alteration to commencement and/or finishing times in writing. At least two weeks prior to the proposed alteration the employee shall provide reasons in writing if they do not agree with the proposed alteration, provided that an employee shall not unreasonably withhold agreement. In the event of a dispute, Clause 35, Grievance and Disputes Procedures, shall apply.

This subclause only applies in relation to changes to commencement and/or finishing *times* and does not apply to changes in the *days* that an employee is required to work.

- (vi) The day of a rostered day off can be altered by mutual consent at any time and may be altered by the employer on two weeks' notice where there are genuine operational or safety reasons and the alteration does not unreasonably disadvantage the employee. This sub-clause cannot be used to effect a permanent change to a rostered day off. Where an employee works on a rostered day off, Clause 19A Overtime shall apply. Any dispute arising under this sub-clause shall be dealt with under Clause 35, Grievance and Dispute Procedures.
- (vii) An unpaid meal break of a minimum of 30 minutes shall be given and taken within the first five hours of continuous work. Thereafter, a paid meal break not exceeding 20 minutes shall be given and taken after a further five hours continuous work. In the case of unforeseen circumstances, the meal break may be delayed and shall be taken as soon as practicable, subject to the observance of appropriate occupational health and safety standards.
- (viii) Ordinary hours of work shall not exceed twelve (12) hours in any one-day exclusive of unpaid meal breaks.

## **B. SATURDAY AND SUNDAY WORK**

- (i) Except as otherwise provided, ordinary hours worked on a Saturday shall attract a 25% penalty in addition to the ordinary hourly rate of pay and ordinary hours worked on a Sunday shall attract a 50% penalty in addition to the ordinary hourly rate of pay.
- (ii) The ordinary hours worked by employees engaged in the following functions shall attract a 50% penalty in addition to the ordinary hourly rate of pay for work on a Saturday and a 100% penalty in addition to the ordinary hourly rate of pay for work on a Sunday:
  - Beach inspectors;
  - Cleaning;
  - Garbage;
  - Mechanical Trades (Workshops);
  - Parks and Reserves;
  - Rangers and parking officers;
  - Sanitary;
  - Sewerage;
  - Stores and Depots;
  - Sullage;
  - Waste; and
  - Water
- (iii) An employee may request to work ordinary hours on a Saturday and/or a Sunday in lieu of the ordinary hours the employee would otherwise be rostered to work.
  - a) An employee's request must be in writing and must outline a period within which the arrangement is to be reviewed;

- b) The employer will not unreasonably withhold agreement to such a request;
- c) Any such agreement shall not apply to new or vacant provisions;
- d) Where an employee requests to work ordinary hours on a Saturday and/or a Sunday under the provisions of this subclause, the employer shall not be required to pay the penalty rate provided by subclauses (i) and/or (ii).

**C. SHIFT WORK**

- (i) Except as otherwise provided ordinary hours worked outside the span of 6:00am to 6:00pm Monday to Friday shall attract a 20% shift penalty in addition to the ordinary hourly rate of pay for the actual time worked outside the span of hours specified in this subclause.
- (ii) Employees engaged in the following functions will be entitled to a 20% shift penalty in addition to the ordinary hourly rate of pay for the actual time worked outside the following times:

Caretakers	5.00am to 10.00pm
Childcare	6.00am to 7.00pm
Cleaners	5.00am to 9.00pm
Entertainment, Theatres and Hospitality	6.00am to 11.00pm
Libraries	8.00am to 9.00pm
Leisure Centres	5.00am to 11.00pm
Parking Station Attendants	6.00am to 10.00pm
Pools	5.00am to 11.00pm
Rangers and parking officers	5.00am to 10.00pm
Security/watchpersons	5.00am to 10.00pm

- (iii) Shift penalties shall be payable for ordinary work performed between Monday and Friday and shall not be paid on weekends.
- (iv) With the exception of staff engaged in the function of street sweeping, employees in receipt of the Level 2 Adverse Working Conditions allowance provided under clause 15(ii) of this Agreement shall not also receive shift penalties for work performed outside the hours of 6:00am to 6:00pm Monday to Friday as provided by sub-clause (i).
- (v) An employee may request to work ordinary hours outside the span of 6:00am and 6:00pm or any of the other spans detailed in clause 18C(ii), in lieu of the ordinary hours the employee would otherwise be rostered to work.
  - a) An employee's request must be in writing and must outline a period within which the arrangement is to be reviewed;
  - b) The employer will not unreasonably withhold agreement to such a request;
  - c) Any such agreement shall not apply to new or vacant positions;
  - d) Where an employee requests to work ordinary hours outside the relevant span of hours the employer shall not be required to pay a shift penalty for the actual time worked.

## D. FACILITATIVE PROVISIONS

The employer and the Union may agree on hours of work, weekend penalties and shift penalties other than those prescribed in this clause.

## 19. OVERTIME

### A. GENERAL

- (i) Except where otherwise provided all time worked by direction before the agreed commencement of ordinary hours, or later than the agreed completion of ordinary hours, shall be paid for at the rate of time and a half for the first two hours and double time thereafter.
- (ii) Overtime worked on Saturday shall be paid for at the rate of time and a half for the first two hours and double time thereafter, provided any overtime worked after 12 noon Saturday shall be at double time.
- (iii) Overtime worked on Sunday shall be paid for at the rate of double time.
- (iv) Overtime shall be claimed within 30 days of it being worked. The employer shall keep a record of such overtime. Accrued time in lieu of overtime shall not be forfeited and shall be paid at the appropriate overtime rate on termination or at other agreed time.
- (v) An employee (other than a casual) who:
  - a) works four or more hours overtime after the completion of an ordinary shift and does not receive ten (10) consecutive hours off duty in the fourteen (14) hours immediately preceding the commencement of their next ordinary shift, or
  - b) works overtime after the completion of two consecutive ordinary shifts without receiving ten (10) consecutive hours off duty,

shall be released after the completion of such overtime until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If an employee is instructed to resume work without receiving the ten consecutive hours off duty, the employee shall be paid at double ordinary rates until released from duty and then shall be entitled to a ten hour break without loss of pay.

**Remote response** – This subclause shall not apply where an employee works for less than four hours remote response on any one day.

- (vi)
  - a) Where there is prior agreement between the employer and the employee, an employee directed to work in excess of ordinary hours may elect either to be paid the appropriate overtime rate or be granted time in lieu equivalent to the actual hours worked.
  - b) The employer may direct an employee to take accrued time in lieu of overtime by the giving of at least two (2) weeks' notice in the following circumstances:
    - 1. Where the employee has accumulated in excess of one (1) weeks' time in lieu of overtime or,
    - 2. A period of annual close down of up to and including two (2) weeks where the employee does not have sufficient annual leave to cover the relevant close down period. The employer shall be able to rely on this provision prior to considering the provision of meaningful alternate duties.

- c) Time in lieu of overtime accruals standing to an employee's credit on termination of employment shall be paid at the appropriate overtime rate.
- (vii) Employees classified in the Executive Band 4 of this Agreement may be required, in addition to their ordinary hours, to attend meetings of council and standing and/or special committee meetings. For the purpose of this subclause, an employee who is required to attend meetings of the council and standing and/or special committee meetings shall be entitled to claim overtime for actual hours worked after 11.00 pm.
- (viii)
  - a) Subject to paragraph (b), the employer may require an employee to work reasonable overtime at overtime rates.
  - b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
  - c) For the purposes of paragraph (b), what is unreasonable or otherwise will be determined having regard to:
    - any risk to the employee;
    - the employee's personal circumstances including any family and carer responsibilities;
    - the needs of the workplace;
    - the notice, if any, given by the employer of the overtime and by the employee of their intention to refuse it; and
    - any other matter.

## **B. EXCESS HOURS AGREEMENTS**

- (i) Subject to subclause (ii) of this clause, the employer and an individual employee in Professional/Specialist Band 3 or Executive Band 4 may agree to an 'Hours of Work Flexibility Agreement' whereby the employee is paid an allowance of at least ten (10) percent of the employee's weekly salary system rate of pay in substitution for all overtime penalties under this Agreement.
- (ii) An employee shall be entitled to overtime in accordance with Clause 19A of this Agreement where the employee is directed to work additional hours that are in excess of the hours of work reasonably contemplated by the employer and the employee at the time the Hours of Work Flexibility Agreement was made. The hours of work reasonably contemplated by the employer and the employee shall be determined having regard to the quantum of the allowance paid.
- (iii) Where the employer and an engineering professional employee who satisfies the eligibility criteria for payment of the civil liability allowance at subclause 15(xv) of this Agreement agree to an Hours of Work Flexibility Agreement, the employee shall continue to be paid the civil liability allowance in addition to any allowance that is payable under the Hours of Work Flexibility Agreement.
- (iv) An Excess Hours Agreement is subject to the following conditions:
  - a) An employee who can demonstrate that they are required to routinely work unpaid additional hours in order to fulfil the requirements of their position has the right to request, in writing, to enter into an Excess Hours Agreement. Where the employer does not agree to the request the employer shall discuss the request with the employee with a view to reaching agreement on:
    1. reasonable ways to reduce the excess unpaid hours or
    2. alternative ways of compensating the employee for the excess hours in accordance with the provisions of the Agreement.

In the event that no agreement is reached, the employer shall advise the employee, in writing, of the arrangements that will be made so that they are no longer required to work the excess hours.

- b) The employer and the individual employee must have genuinely made the agreement without coercion or duress.
- c) The agreement between the employer and the individual employee must:
  - 1. be in writing;
  - 2. name the parties to the agreement and be signed by the employer and the individual employee;
  - 3. result in the employee being better off overall in comparison to the Agreement at the time the agreement is made than the employee would have been if no Hours of Work Flexibility Agreement had been agreed to;
  - 4. state the date the agreement commences to operate.
- d) The employee shall work such reasonable hours as are necessary to carry out the duties and functions of the position and the employee's obligations under their contract of employment, provided that the employee may refuse to work additional hours in circumstances where the working of such additional hours would result in the employee working hours which are unreasonable. For the purposes of this subclause, what is unreasonable or otherwise will be determined having regard to:
  - any risk to the employee;
  - the employee's personal circumstances including any family and carer responsibilities;
  - the needs of the workplace;
  - the notice, if any, given by the employer of the requirement for the employee to work additional hours and by the employee of their intention to refuse it; and
  - any other matter.
- e) The employer may require the employee to attend work for the employer during core business hours and to attend meetings of the council/employer and standing and/or special committee meetings, provided that such requirement does not result in the employee working hours which are unreasonable.
- f) The employer must give the individual employee a copy of the agreement and keep the original signed agreement as a time and wages record.
- g) An employer seeking to enter into an agreement under this clause must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- (v) An Hours of Work Flexibility Agreement may be terminated:
  - a) by the employer or the individual employee giving 28 days' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
  - b) at any time, by written agreement between the employer and the individual employee.
- (vi) The allowance paid under this clause shall be paid for all purposes of the Agreement but shall not attract attract any penalty.

### **C. ON CALL**

- (i) For the purposes of this Agreement, an employee shall be deemed to be on-call if required by the employer to be available for duty outside of ordinary hours at all times in order to attend emergency and/or breakdown work and/or supervise the call-out of other employees.
- (ii) Employees who are required to be on-call are not required to remain at their usual place of residence or other place appointed by the employer. However, an on-call employee must be able to be contacted and be able to respond in a timely manner.
- (iii) Employees required to be on call on days when they would ordinarily work, or would have ordinarily worked but for a public holiday, in accordance with Clause 18, Hours of Work shall be paid an on call allowance at a rate set out in Table 2 of Part B of this Agreement for each such day the employee is required to be on call.
- (iv) Employees required to be on call on days other than their ordinary working days shall be paid an on call allowance at a rate set out in Table 2 of Part B of this Agreement for each such day the employee is required to be on call.
- (v) Provided that the on call allowances in subclauses (iii) and (iv) of this clause shall not total more than the rate set out in Table 2 of Part B of this Agreement for any one week.
- (vi) Employees on call who are required to work outside their ordinary hours shall be entitled to be paid overtime at the appropriate rate for hours worked and such rate shall be paid from the time that the employee departs for work. On call employees are not subject to the minimum payment provisions on a public holiday.
- (vii) Unless otherwise provided, the overtime paid to an employee that is required to work whilst on-call shall not be less than thirty (30) minutes per day on which they are called out.
- (viii) For each public holiday an employee is required to be on-call, the employee shall be granted one-half day's leave to be taken at an agreed time, provided that where there is prior agreement the employer may pay the employee an additional one-half day's pay in lieu of the one-half day's leave.

#### **D. CALL BACK**

- (i) For the purposes of this Agreement, an employee shall be deemed to be on a call back if the employee is recalled to work overtime without receiving notice before ceasing work.
- (ii) Any employee who is called back to work as defined in subclause (i) shall be paid for a minimum of four hours work at the appropriate overtime rate for each time so recalled. Provided that any subsequent call backs occurring within a four hour period of a call back shall not attract any additional payment. An employee working on a call back shall be paid the appropriate overtime rate from the time that such employee departs for work.

Except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job that the employee was recalled to perform is completed within a shorter period. This subclause shall not apply in cases where the call back is continuous subject to a reasonable meal break with the commencement of ordinary hours.

#### **E. REMOTE RESPONSE**

- (i) An employee who is in receipt of an on call allowance and available to immediately:
  - a) respond to phone calls or messages;
  - b) provide advice ('phone fixes');



- c) arrange call out/rosters of other employees; and
- d) remotely monitor and/or address issues by remote telephone and/or computer access,

will be paid the applicable overtime rate for the time actually taken in dealing with each particular matter, except where the employee is recalled to work (**Note:** subclause 19C(vi) applies where an on-call employee is recalled to work).

- (ii) An employee remotely responding will be required to maintain and provide to the employer a time sheet of the length of time taken in dealing with each matter remotely for each day commencing from the first remote response. The total overtime paid to an employee for all time remotely responding in any day commencing from the first response will be rounded up to the nearest 15 minutes.
- (iii) The employer may, by agreement, make an average payment equivalent to an agreed period of time per week where the employee is regularly required to remotely respond as defined in subclause (i) of this clause.

## **F. FLEXTIME REVIEW**

- (i) Council will review the "Flexitime Working Hours Manual - Salaried Staff June 1999" in the second half of 2018 in consultation with the SCC and Union.
- (ii) Council will not remove the cap on flexitime as part of this review. However, the expectation is that once employees reach the flexitime cap (currently 27 hours over 3 weeks), if required to work reasonable additional hours, employees will be paid either overtime rates or time in lieu under Clause 19. This practice ensures that no employee will be required to work additional hours without compensation.
- (iii) The Flexitime Review will also involve training managers in the consistent application of the Flexitime Manual. A training forum for managers and written memorandums will ensure there are no inconsistencies in application and no circumstances where employees are required to work additional hours without compensation.

## **20. HOLIDAYS**

### **A. GENERAL**

- (i) The days on which holidays shall be observed are as follows: New Years' Day; Australia Day; Good Friday; Easter Saturday; Easter Monday; Anzac Day; Queen's Birthday; Labour Day; Christmas Day; Boxing Day and all locally proclaimed holidays within the council's area, and all special days proclaimed as holidays to be observed throughout the whole of the State of NSW.
- (ii) In addition to subclause (i), employees who are Aboriginal and Torres Strait Islanders shall be entitled to one day during NAIDOC week so that they can participate in National Aboriginal and Islander Day celebrations. Eligible employees shall provide the employer with at least seven (7) days' notice of their intention to take the holiday in accordance with this subclause, provided that if less than seven (7) days' notice is given such leave shall not be unreasonably refused.
- (iii) Where any of the holidays prescribed by this Agreement fall on a day ordinarily worked by the employee, the employee shall not have a reduction in ordinary pay.
- (iv) Except as otherwise provided, where an employee is required to work on a holiday as prescribed by this Agreement, the employee shall be paid at double time and a half inclusive of payment for the day with a minimum payment of four hours worked.
- (v) All employees classified in the Operational Band 1 of this Agreement employed in garbage, sanitary and sullage (other than the supervisor) who are required to work on

Good Friday or Christmas Day shall be paid at triple time inclusive of payment for the day with a minimum payment of four hours work.

- (vi) Where an employee is required to work ordinary hours on a holiday as prescribed by this Agreement, the employer and the employee may agree that the employee be paid time and a half for the hours worked on a holiday and in addition, be granted equivalent time off in lieu to be paid at ordinary time for each holiday worked. Such leave shall be taken at a mutually convenient time.
- (vii) If a rostered day off falls on a public holiday as prescribed in clause 20A(i), the next working day will be substituted, or another day by agreement, except for employees engaged on a seven (7) day a week rotating roster system.
- (viii) An employee who prior to the operative date of this Agreement was entitled to move a day off which was not a rostered day off where it fell on a public holiday shall retain that right.

## **B. UNION PICNIC DAY**

- (i) Union Picnic Day shall for the purposes of this Agreement be regarded as a holiday for employees who are financial members of the union(s). The Union Picnic Day shall be on such day as is agreed between the employer and the union(s).
- (ii) The union(s) shall advise the employer of financial members as at the time of the Union Picnic Day. Such advice must be given at least two weeks prior to the Union Picnic Day.
- (iii) Employees who are not financial members of the union(s) and who *are* required to work on Union Picnic Day, shall be paid ordinary pay for their normal working day.
- (iv) Employees who are not financial members of the union(s) and who are not required to work on Union Picnic Day, may apply to the employer to take annual leave, long service leave, time off in lieu of overtime, leave without pay, such other leave as may be approved by the employer, or may be required by the employer to make up time.

## **21. LEAVE PROVISIONS**

### **A. SICK LEAVE**

- (i) Employees who are unable due to illness or injury to attend for duty shall be entitled during each year of service to sick leave of 3 weeks at the ordinary rate of pay.
- (ii) Where a person is employed on a fixed-term or temporary basis of less than twelve (12) months duration the employee shall be entitled to one (1) weeks sick leave on commencement. The employee shall be entitled to a further one (1) weeks sick leave after each four (4) months of continuous service.
- (iii) The entitlement to sick leave is subject to the employer being satisfied that the illness or injury;
  - a) is such that it justifies the time off; and
  - b) does not arise from engaging in other employment.
- (iv) The employer may require an employee to provide proof that the illness or injury is such that it justifies the time off work, subject to the following:
  - a) In each year of service proof of illness or injury to justify payment shall not be required for the first 3 separate periods of absence, provided such periods are not more than 2 working days, unless:

1. It is reasonable for the employer to require the employee to provide proof of illness or injury having regard to the employee's pattern of sick and/or amount of sick leave taken by the employee, and
  2. The employer has provided the employee with prior written notice of the requirement to provide proof of illness or injury.
- b) The type of proof of injury or illness required by the employer must be reasonable having regard to the circumstances of the employer and the employee and may include, for example, certification from a qualified medical/health practitioner registered with the appropriate government authority or statutory declaration; and
  - c) when requested, proof of illness shall indicate the employee's inability to undertake their normal duties.
- (v) The employer may require employees to attend a qualified medical/health practitioner nominated by the employer at the employer's cost.
  - (vi) Sick leave shall accumulate from year to year so that any balance of leave not taken in any one year may be taken in a subsequent year or years.
  - (vii) The employer may, at its discretion, grant an employee sick leave at half pay if satisfied that extenuating circumstances exist. Where a public holiday falls during a period of sick leave at half pay, the public holiday shall also be paid at half pay. Further, all entitlements shall accrue during periods of sick leave at half pay on a proportionate basis.
  - (viii) Accumulated sick leave shall be transferable on change of employment from employer to employer within New South Wales up to 13 weeks, provided that an employee shall only be entitled to transfer sick leave accumulated since the employee's last anniversary date on a pro-rata basis. Such accumulated sick leave shall only be transferable if the period of cessation of service with the employer and appointment to the service of another employer does not exceed three months. The sick leave entitlement transferred shall not exceed the maximum amount transferable as prescribed by the appropriate award at the time of transfer.
  - (ix) Where an employee has had five (5) years' service with the present employer and the sick leave entitlement as prescribed has been exhausted, that employer may grant such additional sick leave as, in its opinion, the circumstances may warrant.
  - (x) Section 50 of the *Workers Compensation Act 1987* (NSW) dealing with the relationship between sick leave and workers compensation applies.
  - (xi) Where an employee had an entitlement under awards rescinded and replaced by this Agreement for the payment of unused sick leave arising out of the termination of employment due to ill-health or death and where such entitlement existed as at 15 February 1993 the following provisions shall apply
    - a) In the event of the termination of service of an employee on account of ill health and the employer is satisfied that such ill-health renders the employee unable in the future to perform the duties of such appointed classification, the termination shall not be effected earlier than the date on which the employee's credit of leave at full pay shall be exhausted unless the employee is paid any accrued sick leave at full pay to which such employee would be entitled under this clause.
    - b) When the service of an employee is terminated by death, the employer shall pay to the employee's estate, the monetary equivalent of any untaken sick leave standing to the employee's credit at the time of death.
    - c) Payment under this clause is limited to sick leave calculated to retirement age in accordance with relevant legislation and shall not be payable if the injury or illness arises

out of or in the course of employment such that it is compensable under the *Workers Compensation Act 1987* (NSW).

- d) For the purposes of this subclause such entitlement to payment of untaken sick leave shall be paid in accordance with clause 14 of Schedule 4 of the *Industrial Relations Act 1996* (NSW).
- (xii) An employee who has completed at least 12 months' service with the employer as at the first full pay period to commence on or after 1 April in each year, will be eligible to participate in the Cash Attendance Bonus ('bonus') scheme.
- a) Employees who choose not to participate in the bonus scheme must apply in writing to the pay office at least two (2) weeks prior to the close of the calculation period.
- b) The terms of the Cash Attendance Bonus are:
1. All absences taken from an employee's accumulated sick leave balance, (including but not limited to carer's leave, health and well-being leave and emergency services leave) are taken into account;
  2. The period between the first pay period in April and the last pay period in March of each calendar year is used as the basis for calculating the cash attendance bonus ('calculation period');
  3. The bonus will be paid at employees' ordinary pay, as defined in clause 4(v) of the Agreement;
  4. Entitlement to the bonus is calculated on a pro-rata basis as follows during the calculation period:
    - No sick leave used:  
80% of 5 days' ordinary pay – 4 days' sick leave deduction
    - 1 days' sick leave used:  
80% of 4 days' ordinary pay – 3.2 days' sick leave deduction
    - 2 days' sick leave used:  
80% of 3 days' ordinary pay – 2.4 days' sick leave deduction
    - 3 days' sick leave used:  
80% of 2 days' ordinary pay – 1.6 days' sick leave deduction
    - 4 days' sick leave used:  
80% of 1 day's ordinary pay – 0.8 days' sick leave deduction
    - 5 or more days' sick leave used – no bonus

## **B. CARER'S LEAVE**

- (i) Use of Sick Leave: An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subclause (v)(b) below who needs the employee's care and support shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 21A, Sick Leave of this Agreement, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

- (ii)
  - a) Carer's leave is not intended to be used for long term, ongoing care. In such cases, the employee is obligated to investigate appropriate care arrangements where these are reasonably available.
  - b) Where more than two weeks sick leave in any year of service is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.
  - c) Where the parties are unable to reach agreement the grievance and disputes procedures at Clause 35 of this Agreement should be followed.
- (iii) In normal circumstances, an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.
- (iv) The employer may require the employee to provide proof of the need for carer's leave as follows:
  - a) Less than two weeks – Where less than two weeks sick leave in any year of service is sought to be used for caring purposes the employer may require the employee to establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person; or
  - b) More than two weeks – Where more than two weeks sick leave in any year of service is sought to be used for caring purposes the employer may require the employee to produce a medical certificate from a qualified medical/health practitioner showing the nature of illness of the person concerned and such other information as may be reasonably necessary to demonstrate that the illness is such as to require care by the employee and that no other appropriate care arrangements are reasonably available, or
  - c) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.
- (v) The entitlement to use sick leave in accordance with this subclause is subject to:
  - a) the employee being responsible for the care of the person concerned; and
  - b) the person concerned being:
    1. a spouse of the employee; or
    2. a defacto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person, or
    3. a child or an adult child (including an adopted child, a step child, foster child or an ex nuptial child), parent (including a foster parent, step parent and legal guardian), parents of spouse, grandparent, grandchild or sibling (including half, foster and step sibling) of the employee or spouse or de facto spouse of the employee; or
    4. a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    5. a relative of the employee who is a member of the same household, where for the purposes of this paragraph:

- a. *'relative'* means a person related by blood, marriage or affinity;
  - b. *'affinity'* means a relationship that one spouse because of marriage has to blood relatives of the other; and
  - c. *'household'* means a family group living in the same domestic dwelling.
- (vi) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in subclause (v)(b) above who is ill or who requires care due to an unexpected emergency.
- (vii) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
- (viii) Carer's Entitlement for Casual Employees
  - a) Subject to the evidentiary and notice requirements in subclauses (iv) and (vii) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause (v)(b) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - c) The employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of the employer to engage or not to engage a casual employee are otherwise not affected.
- (ix) Time off in Lieu of Payment for Overtime: An employee may, with the consent of the employer, elect to take time in lieu of payment of overtime accumulated in accordance with the provisions of Clause 19A of this Agreement for the purpose of providing care and support for a person in accordance with subclause (v) above.
- (x) Make-up time: An employee may elect, with the consent of the employer, to work 'make-up time', under which the employee takes time off during ordinary hours, and works those hours at a later time, within the spread of ordinary hours provided in the Agreement, at the ordinary rate of pay for the purpose of providing care and support for a person in accordance with subclause (v) above.
- (xi) Annual Leave and Leave Without Pay: An employee may elect with the consent of the employer to take annual leave or leave without pay for the purpose of providing care and support for a person in accordance with subclause (v) above. Such leave shall be taken in accordance with Clause 21D, Annual Leave and Clause 21M, Leave Without Pay of this Agreement.

### **C. EMERGENCY SERVICES LEAVE**

- (i) An employee, other than a casual, who engages in a 'voluntary emergency management activity' is entitled to paid emergency services leave.

- (ii) For the purposes of this clause, an employee engages in a 'voluntary emergency management activity' if, and only if:
  - a) the employee engages in an activity that involves dealing with an emergency or natural disaster; and
  - b) the employee engages in the activity on a voluntary basis (Note: the activity is not on a voluntary basis if the employee receives remuneration from the recognised emergency management body for lost wages or salary); and
  - c) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
  - d) either:
    - 1. the employee was requested by or on behalf of the body to engage in the activity; or
    - 2. no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.
- (iii) For the purposes of this clause, a 'recognised emergency management body' is:
  - a) body, or part of a body, that has a role or function under a plan that:
    - 1. is for coping with emergencies and/or disasters; and
    - 2. is prepared by the Commonwealth, a State or a Territory; or
    - 3. a fire-fighting, civil defence or rescue body, or part of such a body; or
  - b) any other body, or part of a body, a substantial purpose of which involves:
    - 1. securing the safety of persons or animals in an emergency or natural disaster; or
    - 2. protecting property in an emergency or natural disaster; or
    - 3. otherwise responding to an emergency or natural disaster.
- (iv) For the purposes of this clause, an 'emergency' means an event, actual or imminent, which endangers or threaten to endanger life, property or the environment and which requires a significant and coordinated response.
- (v) Employees must notify their supervisor as soon as practicable and seek approval to access emergency services leave.
- (vi) Employees must provide confirmation of their attendance (by a senior officer of the relevant emergency services body) to justify payment under this clause.

## **D. ANNUAL LEAVE**

### **Amount of Annual Leave**

- (i) For each year of service an employee (other than a casual) is entitled to:
  - a) 4 weeks of paid annual leave; or
  - b) 5 weeks of paid annual leave if the employee is regularly required to work a seven day a

week rotating roster system.

### **Accrual of leave**

- (ii)
  - a) An employee's entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.
  - b) Paid annual leave accrues up to when the employment ends.

### **Taking paid annual leave**

- (iii) Unless otherwise provided, paid annual leave may be taken for a period agreed between the employee and the employer.
- (iv) The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

### **Requirement to take annual leave**

- (v) The employer may direct an employee to take annual leave by giving at least four weeks prior notification in the following circumstances:
  - a) where the employee has accumulated in excess of eight weeks annual leave
  - b) a period of annual close-down of up to and including two (2) weeks.

Provided that:

1. Where an employee has accrued more annual leave than the period of the annual close down, the balance of such leave shall be taken in accordance with subclause (i) of this clause.
2. In the case of employees who are not entitled to annual leave or do not have an entitlement sufficient to cover the period of the close-down, the employer shall endeavour to provide meaningful duties as are within the limits of the employee's skill, competence and training for the whole or part of the close-down.
3. In the event that meaningful duties are not available the employee may be directed to take leave without pay, or by agreement with the employer may take annual leave in advance of the entitlement provided that in the event of the employee leaving employment before the entitlement becomes due, such annual leave shall be repaid by a deduction from the employee's termination pay.
4. In the event that leave without pay is directed to be taken, such leave shall be regarded as service for the purpose of the accrual of long service leave, sick leave and annual leave.
5. Any arrangements concerning annual close down made under previous Agreements will continue to apply unless otherwise agreed, provided that any request to change the arrangement shall not be unreasonably refused.

### **Employee not taken to be on paid annual leave on Public Holidays**

- (vi) If the period during which an employee takes paid annual leave includes a day or part-day that is a declared public holiday in the place where the employee is based for



work purposes, the employee is taken not to be on paid annual leave on that declared public holiday.

#### **Payment for annual leave**

- (vii) Unless otherwise provided, if an employee takes a period of paid annual leave, the employer must pay the employee at the employee's ordinary rate of pay for the period of annual leave either before the commencement of the employee's annual leave, or by agreement through the usual pay periods.

#### **Resignation or termination of employment**

- (viii) On resignation or termination of employment, the employer shall pay to the employee their ordinary rate of pay for all accrued untaken annual leave.

#### **Varying rates of pay**

- (ix) Where an employee receives a varying rate of pay for 6 months or more in the aggregate in the preceding 12 month period, the employee's ordinary rate of pay shall be deemed to be the average weekly rate of pay earned during the period actually worked over the 12 months immediately preceding the annual leave or the right to payment under this clause.

#### **Purchasing additional annual leave**

- (x) Subject to operational needs and managerial approval, employees have the option to purchase an additional two (2) weeks of annual leave per year and that leave must be taken within 12 months of its approval.

### **E. LONG SERVICE LEAVE**

- (i)
  - a) An employee shall be entitled to Long Service Leave at the ordinary rate of pay as follows:

<b>LENGTH OF SERVICE</b>	<b>ENTITLEMENT</b>
After 5 years' service	6.5 weeks
After 10 years' service	13 weeks
After 15 years' service	19.5 weeks
After 20 years' service	30.5 weeks
For every completed period of 5 years' service thereafter	11 weeks

- b) Where an employee has completed more than five years service with the employer and is terminated for any cause, long service leave shall be deemed to have accrued for the employee's total length of service and an amount equivalent to such long service leave, less such leave already taken, computed in monthly periods and equivalent to 1.3 weeks for each year of service up to 15 years and 2.2 weeks for each year of service from 15 years onwards.
  - (ii)
    - a) An employee who is entitled to long service leave may, with the consent of the employer, take long service leave:
      - 1. on full pay; or

2. on half pay; or
  3. on double pay.
- b) When an employee takes long service leave, the leave entitlement will be deducted on the following basis:
1. a period of leave on full pay – the number of days so taken; or
  2. a period of leave on half pay – half the number of days so taken; or
  3. a period of leave on double pay – twice the number of days so taken.
- c) When an employee takes long service leave, the period of service for the purpose of leave accruals shall be as follows:
1. a period of leave on full pay – the number of days so taken; or
  2. a period of leave on half pay – half the number of days so taken; or
  3. a period of leave on double pay – the number of days so taken.
- d) Employees that take long service leave at half pay or double pay shall not be disadvantaged nor obtain a windfall gain in relation to superannuation contributions.
- (iii)
- a) Long service leave shall be taken at a time mutually convenient to the employer and employee, provided that all long service leave accruing on or after 23 June 1988 shall be taken within five years of it falling due. The employer may direct an employee to take long service leave accrued on or after 23 June 1988 and not taken within five years of it falling due provided that at least four weeks' notice is given to the employee.
  - b) Payment to an employee proceeding on long service leave shall be made by the employer at the employee's ordinary rate of pay calculated according to how the leave is taken (i.e. either full, half, or double ordinary pay) for the period of long service leave either before the commencement of the employee's long service leave, or by agreement through the usual pay periods.
  - c) An employee who has become entitled to a period of leave and the employee's employment is terminated by resignation, death or dismissal for any cause shall be deemed to have entered upon leave at the date of termination of the employment and shall be entitled to payment accordingly.
- (iv)
- a) For the purpose of calculating long service leave entitlement in accordance with subclause (i) of this clause all prior continuous service with any other employer within New South Wales shall be deemed to be service with the employer by which the employee is currently employed.
  - b) Continuity of service shall be deemed not to have been broken by transfer or change of employment from one employer to another provided the period between cessation of service with one employer and appointment to the service of another employer does not exceed three months and such period is covered by accrued annual and long service leave standing to the credit of the employee at the time of the transfer, provided further that the employee concerned does not engage in work of any kind during the period of paid leave between the cessation of service with one employer and appointment to the service of another employer.
- (v)
- a) An employee who is entitled to long service leave, may, with the consent of the employer,

cash out a particular amount of Excess Long Service Leave. Excess long Service Leave means the long service leave that an employee has accrued under the Agreement that is in excess of the long service leave that the employee would have accrued if covered by section 4 of the *Long Service Leave Act 1955* (NSW).

- b) Each cashing out of a particular amount of Excess Long Service Leave must be by separate agreement between the employer and the employee.
- (vi) For the purpose of this clause, service shall include the following periods: -
  - a) Any period of service with any of Her Majesty's Forces provided that the employee enlisted or was called up direct from the service of the employer.
  - b) In the case of an employee, transferred to the service of an employer of a new or altered area - any period of service with the employer from which such employee was transferred.
  - c) Service shall mean all service with the employer irrespective of the classification under which the employee was employed.
- (vii) There shall be deducted in the calculation of the employee's service all leave of absence without payment not specifically acknowledged and accepted by the employer as service at the time leave was taken.
- (viii) When an employee transfers from one employer to another, the former employer shall pay to the newly employing employer the monetary equivalent of all long service leave accruing to the employee at the time of transfer, up to a maximum of five (5) years of accrual, calculated at the rate(s) of accrual applying to leave accrued in the five (5) years immediately prior to the transfer. By agreement between the former employer and the newly employing employer, more than the monetary equivalent of five (5) years of accrued long service leave may be transferred. However an employee who at the time of transfer has completed at least five years continuous service may elect to be paid the monetary equivalent of the entitlement. Employees who at the time of transfer elect to be paid the monetary equivalent of their long service leave entitlement shall have that entitlement calculated by multiplying in completed years and months their period of continuous service with the employer(s). A statement showing all prior continuous service with the employer(s) of the employee concerned shall be furnished together with details of the assessment of the amount of money that shall be paid into a Long Service Leave Reserve Account and appropriate notations made in the employer 's Long Service Leave Record.
- (ix) The employer which has received under subclause (viii) of this clause a monetary equivalent of long service leave entitlement to cover an employee's period of service with a previously employing employer(s) shall if the employee subsequently leaves the service of that employing employer to seek employment outside New South Wales Local Government before a long service leave entitlement has become due, refund to such previously employing employer (s) the amount paid.
- (x) Long service leave shall be exclusive of annual leave and any other holidays as prescribed by clause 20, Holidays of this Agreement, occurring during the taking of any period of long service leave, provided that where a public holiday falls during a period where the employee has taken long service leave on half pay, the public holiday shall also be paid at half pay.
- (xi) When the service of an employee is terminated by death the employer shall pay to the employee's estate the monetary equivalent of any untaken long service leave standing to the employee's credit at the time of the employee's decease.
- (xii) Where an employee's service is terminated at the end of a season or through shortage of work, material or finance or through illness certified by a duly qualified medical practitioner

and such employee is re-employed by the same employer within 12 months of termination of service, prior service shall be counted for the purpose of this clause.

## F. PARENTAL LEAVE (GENERAL)

**Relationship with federal legislation** – Clauses 21F, 21G, 21H and 21J of this Agreement shall apply in addition to:

- (i) Chapter 2, Part 2-2, Division 5 – ‘Parental leave and related entitlements’ of the National Employment Standard (**NES**) under the *Fair Work Act 2009* (Cth); and
- (ii) the *Paid Parental Leave Act 2010* (Cth).

**Note:** Division 5 of the *Fair Work Act 2009* (Cth) relates to:

- unpaid parental leave, including unpaid adoption leave
- unpaid special maternity leave
- transfer to a safe job and no safe job leave

## G. PAID PARENTAL LEAVE

- (i) **Definitions** – in this clause:
  - a) **PPL instalments** shall mean instalments paid during the paid parental leave period under the *Paid Parental Leave Act 2010* (Cth).
  - b) **parental leave make-up pay** shall mean the employee’s ordinary pay, inclusive of PPL instalments. Where an employee works a varying number of ordinary hours for 6 months or more in the aggregate in the 12 month period immediately preceding leave associated with the birth of a child, the employee’s ordinary hours shall be deemed to be the average weekly number of ordinary hours worked during the 12 month period.
- (ii) **Eligibility**

This clause shall apply to an employee who is receiving PPL instalments as a primary or secondary claimant under the *Paid Parental Leave Act 2010* (Cth) and who has had 12 months continuous service with the employer immediately prior to the commencement of paid parental leave.
- (iii) **Entitlement to parental leave make-up pay**
  - a) An employee shall be entitled to parental leave make-up pay for the period that they are receiving PPL instalments, up to a maximum of 18 weeks.
  - b) The period of parental leave make-up pay shall be counted as service for the purposes of long service, annual and sick leave accruals and superannuation. Superannuation is calculated on the employee’s ordinary rate of pay.
  - c) Requalification period – An employee shall not be entitled to a further period of parental leave make up pay unless the employee has returned to work for the employer for at least 3 months since their previous period of parental leave.
- (iv) **Employee’s right to choose**
  - a) An employee who satisfies the eligibility criteria for paid maternity leave or paid special maternity leave under Clause 21F, Paid Maternity Leave, of this Agreement, may elect to receive paid maternity leave and / or paid special maternity leave of 16 weeks at full pay or 32 weeks at half pay, in lieu of the entitlement to parental leave makeup pay under this

Agreement, provided that the requalification period in subclause (iii) above shall apply.

- b) This subclause shall not apply where another employee of council receives parental leave make-up pay in connection with the pregnancy or birth of the child.
- (v)
  - a) Annual leave, long service leave, unpaid maternity leave and any accumulated time in lieu may be taken in conjunction with paid maternity leave and special maternity leave, subject to council approval, provided that the total period of leave does not exceed 104 weeks.
  - b) Employees may take periods of annual leave and long service leave during unpaid maternity leave at half pay, provided the total period of all leave does not exceed 104 weeks.
  - c) The period of paid maternity leave and special maternity leave is taken into account in calculating the employee's long service, annual and sick leave accruals.
  - d) Paid maternity leave may not be extended beyond the first anniversary of the child's birth.
- (vi) Payment for maternity leave and special maternity leave is at the ordinary rate applicable prior to the commencement of the leave period. Employees working as permanent part time employees will be paid at their ordinary part time rate of pay calculated on the regular number of hours worked. A casual employee's rate of pay will be calculated by averaging the employee's weekly wage in the 12 months immediately prior to the employee commencing paid maternity leave or special maternity leave.
- (vii) Paid maternity leave and paid special maternity leave shall be exclusive of public holidays. Where a public holiday falls during a period where the employee has taken either paid maternity leave or annual or long service leave on half pay, the public holiday shall also be paid at half pay. Further, all entitlements shall accrue during periods of leave at half pay on a proportionate basis.
- (viii) Notice of intention to take paid maternity leave the employee must:
  - provide council with certification of the expected date of confinement at least 10 weeks before the child is due. This is known as the first notice.
  - advise council in writing of her intention to take paid maternity leave and the proposed start date at least 4 weeks prior to that date. This is known as the second notice.
  - provide a signed statutory declaration that the employee will be the primary care giver to the child and that the paid maternity leave will not be taken in conjunction with any partner accessing paid parental leave entitlements.
- (ix) The employee will not engage in any other form of paid work during the period of paid maternity leave without the approval of the General Manager.
- (x) Subject to an application by the council and further order of the Industrial Relations Commission of New South Wales, a council may pay a lesser amount (or no amount) of maternity leave or special maternity leave than that contained in this clause where council can demonstrate economic hardship.

## **H. CONCURRENT PARENTAL LEAVE**

An employee, other than a casual, who is a supporting parent shall be entitled to up to two weeks paid concurrent parental leave from their accrued sick leave balance at the time their partner gives birth to a child or at the time the employee adopts a child provided that the employee has had 12 months continuous service with the employer immediately prior to the commencement of their concurrent parental leave.

## I. ADOPTION LEAVE

(i) **Eligibility**

This clause applies to an employee who is entitled to adoption-related leave under the *Fair Work Act 2009* (Cth).

(ii) **Pre-adoption Leave**

- a) An employee, other than a casual, who is entitled to unpaid pre-adoption leave under the *Fair Work Act 2009* (Cth) is entitled to up to 2 days paid pre-adoption leave at ordinary pay for the period of such leave.
- b) An employee who is entitled to a period of paid pre-adoption leave is entitled to take the leave as:
  1. single continuous period of up to 2 days; or
  2. any separate periods to which the employee and the employer agree.

(iii) **Adoption Leave**

- a) Subject to subclause (c), an employee, other than a casual, who has or will have primary responsibility for the care of an adopted child is entitled to paid adoption leave at ordinary pay from the date the child is placed with the employee for adoption according to the following scale:

AGE OF CHILD AT THE DATE OF PLACEMENT	ENTITLEMENT
Less than 5 years of age	<ul style="list-style-type: none"><li>• 9 weeks full pay, or</li><li>• 18 weeks half pay</li></ul>
Between 5 years of age and less than 16 years of age	<ul style="list-style-type: none"><li>• 4 weeks full pay, or</li><li>• 8 weeks half pay</li></ul>

- b) Notwithstanding the above, where the adopted child is aged between 5 years of age and less than 16 years of age at the date of placement with the employee and there are special needs and reasons in the child's life, the employer shall not unreasonably refuse to grant up to nine weeks paid adoption leave at full pay or 18 weeks paid adoption leave at half pay.
- c) An employee is not entitled to paid adoption leave under this clause where the employee receives parental leave make-up pay in connection with the adoption of the child.

(iv) **Family reunion leave**

- a) An employee, other than a casual, able to establish that they were adopted under a "closed adoption" practice shall be entitled to up to five (5) days family reunion leave from their accumulated sick leave balance to reunite with their biological parent(s) for the first time.
- b) For the purpose of this sub-clause "closed adoption" means an adoption whereby the record of the biological parent(s) is kept sealed and the adopted child is thereby prevented from knowing the identity of such biological parent(s).

## J. BEREAVEMENT LEAVE

- (i) Subject to this clause, where an employee, other than a casual, is absent from duty because of the death of a person and provides satisfactory evidence to the employer of such, the employee shall be entitled to bereavement leave as follows:
  - a) Up to four days paid bereavement leave upon the death of a member of the employee's immediate family; or
  - b) Up to two days paid bereavement leave upon the death of a member of the employee's extended family;
- (ii) For the purposes of this clause, immediate family shall mean the following:
  - a) a spouse or de facto partner of the employee;
  - b) a child of the employee;
  - c) a parent of the employee;
  - d) a sibling of the employee;
  - e) a grandchild of the employee;
  - f) a child of the spouse or de facto partner of the employee;
  - g) a parent of the spouse or de facto partner of the employee;
  - h) a sibling of the spouse or de facto partner of the employee; ~~or~~
  - i) a grandchild of the spouse or de facto partner of the employee; or
  - j) a member of the employee's extended family living in the same domestic dwelling as the employee.
- (iii) For the purposes of this clause, extended family shall mean the following:
  - a) a niece of the employee;
  - b) a nephew of the employee;
  - c) an uncle of the employee;
  - d) an aunt of the employee;
  - e) a grandparent of the employee;
  - f) a grandparent of the spouse or de facto partner of the employee;
  - g) the spouse or de-facto partner of a sibling of the employee;
  - h) the spouse or de-facto partner of the employee's child (son in law or daughter in law).
- (iv) The employer may grant an employee up to 10 days additional bereavement leave upon request where circumstances warrant it, provided the employer is satisfied that extenuating circumstances exist. This request must be approved by the relevant Director or the Manager People & Culture.
- (v) **Bereavement Entitlements for Casual Employees**

- a) Subject to providing satisfactory evidence to the employer, casual employees are entitled to not be available to attend work, or to leave work upon the death of a person as provided in subclauses (i) to (iv) of Clause 21, Part K, Bereavement Leave.
- b) The casual employee is not entitled to any payment for the period of non-attendance.
- c) The employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of the employer to engage or not engage a casual employee are otherwise not affected.

## **K. OTHER PAID LEAVE**

### **(i) Jury Service Leave**

An employee required to attend for jury service during the employee's ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount in respect of the employee's attendance for such jury service and the amount of wage the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on jury service. An employee shall notify the employer as soon as possible of the date upon which the employee is required to attend for jury service. Further the employee shall give the employer proof of attendance, the duration of such attendance and the amount received in respect of such jury service.

### **(ii) Union Training Leave**

The employer shall agree to release employees to attend an accredited trade union training course without loss of pay and such agreement shall not unreasonably be withheld.

### **(iii) Union Conference Leave**

Accredited delegates to the unions' annual conferences shall be granted paid leave for the duration of the conference provided that the employer's operational requirements are met and the union notifies the employer of the accredited delegates nominated to attend the conference at least one month prior to the commencement of the conference.

### **(iv) Christmas Leave**

All employees shall in addition to their normal annual holidays whether granted pursuant to an Award, Agreement or contract of employment, be entitled to three days on full pay between Boxing Day and New Year's Day each year.

Employees who are on leave or who are required to work during this period shall be entitled to receive the extra three days as leave in lieu.

### **(v) Study Leave**

Entitlements shall be in accordance with Council's Policy.

Up to four (4) hours leave with pay each week may be approved by the General Manager subject to the applicant complying with the following requirements;

- a) The application is for the purpose of attending a Certificated course or Tertiary Qualification at a Technical College or College of Advanced Education or University. Such Course to be directly related to their then present occupation.
- b) Clause (v)(i) shall also apply to indentured apprentices, qualified tradesmen, and Trainee Health Surveyors.



- c) The application is for a Tertiary Course being conducted by an education establishment under the Department of Education or allied thereto or a recognised University or College of Advanced Education and must be related to the position the employee holds with Council.
- d) Where leave in excess of four (4) hours is required to attend lectures during normal working hours, such additional time shall be taken in accordance with "Flexi time" hours.
- e) All time required to attend examinations of the approved Course shall be granted as leave with pay. Further, if the examination is in the afternoon or evening, the morning or the afternoon respectively, before such examination shall be granted as Leave with Pay.

#### **L. SPECIAL LEAVE**

- (i) The employer may grant special leave, either with pay or without pay, to an employee for a period as determined by the employer to cover any specific matter approved by the employer, including but not limited to:
  - a) compassionate leave for employees facing unforeseen circumstances such as injury or terminal illness; or
  - b) leave to attend to duties as a member of the Australian Defence Force.
- (ii) Periods of leave without pay shall not be regarded as service for the purpose of computing entitlements under this Agreement. Such periods of leave without pay shall not however, constitute a break in the employee's continuity of service.

#### **M. OTHER SPECIAL LEAVE**

- (i) Special leave of two days in any one year with pay shall be granted to an employee by the General Manager in the case of serious injury or sickness of a relative of the employee (as listed below):
  - a) a spouse of the employee; or
  - b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
  - c) a child or an adult child (including an adopted child, a step child, foster child or an ex nuptial child), parent (including a foster parent, step parent and legal guardian), parents of spouse, grandparent, grandchild or sibling (including half, foster and step sibling) of the employee or spouse or de facto spouse of the employee; or
  - d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
  - e) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
    1. 'relative' means a person related by blood, marriage or affinity;
    2. 'affinity' means a relationship that one spouse because of marriage has to blood relatives of the other; and
    3. 'household' means a family group living in the same domestic dwelling.
- (ii) A statutory declaration under the Public Oaths Act, Doctor's Certificate or a statement in a newspaper shall be deemed as sufficient proof that the leave is necessary.

- (iii) Where an employee has urgent personal business they may be granted one half day with pay subject to approval by the General Manager.
- (iv) Employees shall be entitled to Special Leave with pay up to four hours to attend funerals of work colleagues, the number of persons to attend on such occasions are at the discretion of the General Manager.

## **N. UNION MEETINGS**

- (i) The Annual General Meetings and approved Union Meetings will be paid meetings.
- (ii) The Half Yearly Meetings will also be paid meetings, but at the rate of half pay.
- (iii) Notice of meetings:
  - a) The Union will provide Council with at least four (4) weeks' notice of the Annual General Meetings and Half Yearly Meetings.
  - b) The Union will provide Council with at least 24 hours' notice (where practicable) of approved Union Meetings.
- (iv) Provision of other information:
  - a) In addition to providing appropriate notice of the meetings referred to in this clause, the Union(s) will also provide Council with the date, time, location and expected duration of the meetings.
- (v) Duration of meetings:
  - a) The parties agree that the meetings referred to in this clause will normally run for one (1) hour, however in some cases it will not be possible to cap these meetings at (1) one hour. In such cases, the Union must obtain Council approval for the paid meeting to extend beyond one (1) hour.

## **O. DOMESTIC VIOLENCE LEAVE**

- (i) Employees who are victims of family and/or domestic violence are entitled to up to ten (10) days of paid domestic violence leave per calendar year.
- (ii) The taking of paid domestic violence leave under this clause is subject to Council's Family and Domestic Violence Leave Policy, as varied from time to time.

## **22. FLEXIBILITY FOR WORK AND FAMILY RESPONSIBILITIES**

- (i) In recognition of the commitment to provide flexibility for work and family responsibilities and the need to retain skills and experience within the industry, employers are encouraged to develop and promote flexible work and leave arrangements to enable their employees to better manage their work and family responsibilities.

### **RIGHT TO REQUEST CHANGES IN WORKING ARRANGEMENTS**

- (ii) An employee may request a change in working arrangements if:
  - a) The employee is the parent, or has responsibility for the care, of a child who is of school age or younger;
  - b) The employee is a carer (within the meaning of the *Carer Recognition Act 2010*);
  - c) The employee has a disability;

- d) The employee is 55 or older;
  - e) The employee is experiencing violence from a member of the employee's immediate family;
  - f) Such other circumstances where an employee can demonstrate a genuine need for flexible work and leave arrangements to attend to work and family responsibilities.
- (iii) The employee is not entitled to make the request unless:
- a) For an employee other than a casual employee- the employee has completed at least 12 months of continuous service with the employer immediately before making the request.

#### **Formal requirements**

- (iv) The request must:
- a) be in writing: and
  - b) set out the details of the change sought and of the reasons for the change

#### **Considering the request**

- (v) The employer must give the employee a written response to the request within 21 days, stating whether the employer grants or refuses the request.
- (vi) The employer may refuse the request only on reasonable business grounds. Business grounds will include but not be limited to:
- a) that the new working arrangements requested by the employee would be too costly for the employer;
  - b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
  - c) that it would be impractical to change the working arrangement of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;
  - d) that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity; and
  - e) that the new working arrangements requested by the employee would be likely to have significant negative impact on customer service.
- (vii) If the employer refuses the request, the written response must detail the reasons for the refusal.
- (viii) Flexible work and leave arrangements include but are not limited to:
- a) make up time;
  - b) flexi time;
  - c) time in lieu;
  - d) leave without pay;
  - e) annual leave;
  - f) part-time work;
  - g) job share arrangements;
  - h) variations to ordinary hours and rosters;
  - i) purchased additional annual leave arrangements;
  - j) working from home arrangements; and

- k) arrangements to accommodate breastfeeding women.
- (ix) The terms of agreed changes to working arrangements, including flexible work and leave arrangements shall be in writing and may be varied from time to time, by agreement, to suit the specific needs of either party.

## **23. PHASED RETIREMENT**

- (i) In recognition of the ageing workforce in local government and the need to retain skills and experience within the industry, employers are encouraged to develop and promote flexible work and leave arrangements to enable their employees to better manage their transition into retirement.
- (ii) Examples of flexible work and leave arrangements include:
  - a) Part-time work;
  - b) Flexi time;
  - c) Leave without pay;
  - d) Job sharing arrangements;
  - e) Variations to ordinary hours and rosters;
  - f) Job redesign; and
  - g) Purchased additional annual leave arrangements.
- (iii) The terms of a flexible work and leave arrangements shall be in writing and may be varied from time to time, by agreement, to suit the specific needs of either the employer or the employee.

## **24. HEALTH AND WELLBEING**

- (i) To support health and wellbeing, Council will offer health and wellbeing leave for the duration of this Agreement.
- (ii) An employee may apply for up to two (2) days' paid leave per calendar year from their accrued sick leave balance to participate in a health and/or wellbeing activity, subject to the following:
  - a) Leave must be requested at least one (1) week in advance.
  - b) Council will have discretion whether or not to approve health and wellbeing leave. Factors that may lead to health and wellbeing leave being refused include:
    - 1. The employee has outstanding sick leave certificates; or
    - 2. The requested leave date will adversely affect business needs, applying the same approach as requests for annual leave and long service leave.
- (iii) The taking of paid health and wellbeing leave under this clause must not result in the employee having a total accumulated sick leave balance of less than two (2) weeks.
- (iv) Council may require proof of participation in the activity to justify payment.
- (v) Health and wellbeing leave is deducted from employees' accumulated sick leave balances and is therefore included in the calculation of the sick leave/cash attendance bonus.

## **25. PART-TIME EMPLOYMENT**

- (i) A part-time employee shall mean an employee who is engaged on the basis of a regular number of hours which are less than the full-time ordinary hours in accordance with Clause 18, Hours of Work of this Agreement.

- (ii) Prior to commencing part-time work the employer and the employee shall agree upon the conditions under which the work is to be performed including:
  - a) The hours to be worked by the employee, the days upon which they shall be worked and the commencing times for the work.
  - b) The nature of the work to be performed.
  - c) The rate of pay as paid in accordance with this Agreement
- (iii) The conditions may also stipulate the period of part-time employment.
- (iv) The conditions may be varied by consent.
- (v) The conditions or any variation to them must be in writing and retained by the employer. A copy of the conditions and any variations to them must be provided to the employee by the employer.
- (vi)
  - a) Where it is proposed to alter a full-time position to become a part-time position such proposal shall be referred to the consultative committee for information.
  - b) In such cases the employer and the employee shall agree upon the conditions, if any, of return to full-time work.
- (vii) A part-time employee may work more than their regular number of hours at their ordinary hourly rate by agreement. Where an employee works hours outside the spread of hours in clause 18, Hours of Work of this Agreement, the provisions of clause 19, Overtime, shall apply.
- (viii) Part-time employees shall receive all conditions prescribed by the Agreement on a pro-rata basis of the regular hours worked. An adjustment to the accrued leave entitlements may be required at the conclusion of each service year based on the proportion of actual hours worked.
- (ix) Where a public holiday falls on a day where a part-time employee would have regularly worked the employee shall be paid for the hours normally worked on that day.
- (x) A change to full-time employment from part-time employment or to part-time employment from full-time employment shall not constitute a break in the continuity of service. All accrued entitlements shall be calculated in proportion to the hours worked in each employment arrangement.

## **26. CASUAL EMPLOYMENT**

- (i) A casual employee shall mean an employee engaged on a day to day basis.
- (ii) A casual employee shall be paid the hourly rate for ordinary hours worked in accordance with clause 18, Hours of Work.
- (iii) Casual employees who work on Saturday and/or Sunday are entitled to penalty rates prescribed by clause 18B. The penalties are calculated on the ordinary hourly rate.
- (iv) Casual employees who work outside the relevant spread of hours identified at clause 18C(i) and (ii) are entitled to a shift penalty. The penalty is calculated on the ordinary hourly rate.
- (v) Subject to clause 19A(viii), a casual employee will not be offered to work overtime in a position held by a permanent employee of the employer, if such permanent employee is available to work that overtime. Overtime shall be paid where a casual employee works outside the ordinary hours for that position. In cases where there are no ordinary hours for

the position, overtime shall be paid for the hours worked in excess of those prescribed in Clause 18, Hours of Work.

- (vi) In addition to the amounts prescribed by subclause (ii) of this clause, a twenty-five percent loading, calculated on the ordinary hourly rate, shall be paid. This loading shall not attract any penalty. This loading shall be paid in lieu of all leave (including but not limited to annual leave, long service leave and sick leave) and severance pay, except for paid parental leave prescribed by the Agreement. Casual loading is not payable on overtime.
- (vii) Casual employees engaged on a regular and systematic basis shall:
  - a) Have access to annual assessment under the employer's salary system.
  - b) Have their service as a casual counted as service for the purpose of calculating long service leave where the service as a casual employee is continuous with their appointment to a permanent position on employer's structure. In calculating the long service leave entitlement in such cases there shall be a deduction of the long service leave accrued whilst the employee was employed as a casual.
- (viii) A casual employee shall not replace an employee of the employer on a permanent basis.
- (ix) Carer's entitlements shall be available for casual employees as set out in subclause 21B(viii) of this Agreement.
- (x) Bereavement entitlements shall be available for casual employees as set out in subclause 21J(v) of this Agreement.

## **27. JOB SHARE EMPLOYMENT**

- (i) Job sharing is a form of part-time employment where more than one employee shares all the duties and responsibilities of one position.
- (ii)
  - a) Job sharing shall be entered into by agreement between the employer and the employees concerned.
  - b) Such agreement shall be referred to the consultative committee for information.
- (iii) The employer and the job sharers shall agree on the allocation of work between job sharers.
- (iv)
  - a) The ordinary hours of work of the position shall be fixed in accordance with clause 18, Hours of Work of this Agreement.
  - b) The job sharers in conjunction with the employer shall agree on the hours to be worked. Such agreement shall specify the regular number of ordinary hours to be worked by each job sharer.
- (v)
  - a) In the absence of a job sharer the remaining job sharer(s) may be required by the employer to relieve the absent job sharer provided the remaining job sharer(s) are reasonably available.
  - b) In such cases the relieving job sharer(s) shall be paid their ordinary rate of pay for the time relieving.
- (vi) A job sharer may work more than their regular number of hours at their ordinary hourly rate by agreement. Where an employee works hours outside the spread of hours in clause 18, Hours of Work of this Agreement the provisions of clause 19, Overtime, shall apply.
- (vii) The employer must establish appropriate communication mechanisms between the job sharers to facilitate the handing over of tasks from one job sharer to another.

- (viii)
  - a) Job sharers shall have access to all provisions of this Agreement including training and development.
  - b) Job sharers shall receive pro-rata pay and conditions in proportion to the ordinary hours worked by each job sharer.
  - c) An adjustment to accrued leave entitlements may be required at the conclusion of each service year based on the proportion of actual hours worked.
  - d) A change to job sharing from full-time or part-time employment or from job sharing to full-time or part-time employment shall not constitute a break in the continuity of service. All accrued entitlements shall be calculated in proportion to the hours worked in each employment arrangement.
- (ix) In the event of a job sharer vacating the position the employer shall review the position and shall consider filling the vacancy or offering the remaining job sharer(s) increased hours.
- (x) The terms of a job share arrangement or any variation to it must be in writing. A copy of the arrangement and any variation to it must be provided to the job sharer(s) by the employer.

## 28. LABOUR HIRE

- (i) An employee of a labour hire business shall not replace an employee of the employer on a permanent basis.
- (ii) This clause does not apply to the employment of apprentices and/or trainees by a group training business.
- (iii) For the purpose of this clause:
  - a) a "*labour hire business*" is a bona fide labour hire business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which supplies staff employed or engaged by it to the employer on an on-hire basis for the purpose of such staff performing work or services for that employer. Provided that a business is not a labour hire business if:
    - 1. the staff of that business are not performing the specific duties of a position(s) covered by the employer's organisation structure;
    - 2. the business is providing professional business services which cannot reasonably be fulfilled by the employer's employees, for a specified period of time or for a specific task (for example, legal, financial or accounting services);
    - 3. the business is a bona fide contractor providing both equipment and employees to the employer; or
    - 4. the business is another entity covered by this Agreement.
  - b) a "*group training business*" is a bona fide group training business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply apprentices and/or trainees to the employer for the purpose of such staff performing work or services as an apprentice or trainee for that employer

- (iv) Notwithstanding the provisions of subclause (i), the employer and the relevant union may agree in writing that the employer may replace an employee of the employer on a permanent basis with the employee of a labour hire business.

## **29. MULTIPLE EMPLOYMENT**

Where an employee is employed in a second position with the employer the second position may, for all purposes of the Agreement, be regarded as a separate and distinct employment engagement from the original employment provided that:

- (i) the positions involve different duties or are in different work function areas; and
- (ii) the employee agreed to the employment in the second position.

## **30. JUNIOR AND TRAINEE EMPLOYMENT**

### **A. GENERAL**

- (i) The rates of pay specified in Band 1/Level 1 are actual not minimum rates.
- (ii) Employees engaged at the T3 rate of pay or above may be required to possess a Provisional or Class C Drivers Licence.

### **B. JUNIOR EMPLOYMENT**

- (i) The rates of pay as provided in Band 1/Level 1 are payable to juniors (15-18 years old).
- (ii) A junior employee shall be appointed to Band 1/Level 1 according to either their age or educational qualification, whichever provides for the higher rate of pay.
- (iii) Progression along the scale is automatic up to and inclusive of T4, according to the employee's age.

### **C. TRAINEE EMPLOYMENT AND APPRENTICESHIPS**

- (i) The rate of pay as provided for in Band 1/Level 1 are payable to employees undertaking entry level training.
- (ii) An employee shall be appointed to Band 1/Level 1 according to either their age or educational qualification, whichever provides for the higher rate of pay.
- (iii) Progression along the scale is not automatic, but is subject to successful completion of appropriate training modules and satisfactory service.
- (iv) Upon successful completion of entry level training, the employee shall proceed to the appropriate band and level in the structure, if the employment is to be continued beyond the training period.
- (v) In addition to the vocational training direction, the employer shall provide an apprentice with the conditions of the apprenticeship in writing and these conditions shall include:
  - a) the term of the apprenticeship;
  - b) the course of studies to be undertaken by the apprentice;
  - c) the course of on the job training to be undertaken by the apprentice.

### **D. SCHOOL BASED APPRENTICES**



- (i) The object of Part D of this clause is to assist persons who are undertaking traineeship or apprenticeship under a training contract while also enrolled in the Higher School Certificate. Such school based traineeships/apprenticeships are undertaken at a minimum Certificate II Australian Qualifications Framework (AQF) qualification for traineeship level and a minimum Certificate III Australian Qualifications Framework (AQF) qualification for apprenticeship level as specified in the relevant Vocational Training Order pursuant to the *Apprenticeship and Traineeship Act 2001*.
- (ii) The hourly rates for school based trainees/apprentices for total hours worked including time deemed to be spent in off-the-job training shall be calculated by dividing the applicable weekly rate for full time apprentices as set out in Band 1/Level 1 by 38 or 35 in accordance with clause 18, Hours of Work.
- (iii) For the purpose of subclause (ii), where a school based trainee/apprentice is a full time school student, the time spent in off-the-job training for which the school based trainee/apprentice is paid is deemed to be 25 per cent of the actual hours worked on-the-job each week. The wages paid for training time may be averaged over the school term or year.
- (iv) School based trainees/apprentices progress through the rates of pay set out in Band 1/Level 1 subject to successful completion of appropriate training modules and satisfactory service.
- (v) Except as provided by this Agreement, school based trainees/apprentices are entitled to pro rata entitlements of all other conditions of employment.

## **E. GOVERNMENT FUNDED TRAINEESHIPS**

- (i)
  - a) The objective of Part E of this clause is to assist in the establishment of a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees.
  - b) The system is neither designed nor intended for those who are already trained and job ready.
  - c) Nothing in this subclause shall be taken to replace the prescription of training requirements for all other employees bound by this Agreement.
- (ii) Except as in hereinafter provided, all other terms and conditions of this Agreement shall apply.
- (iii)
  - a) This subclause shall apply to trainees engaged to undertake a traineeship which is a system of training approved by the relevant state training authority. The trainee and the employer shall be bound by a training agreement made in accordance with this Agreement and shall not operate unless this condition is met.
  - b) A traineeship shall not commence until the relevant Traineeship Agreement has been registered with the relevant State Training Authority.
- (iv) The employer shall ensure that the trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the trainee receives the appropriate on-the-job training in accordance with the Traineeship Agreement.
- (v) The employer shall provide a level of supervision in accordance with the Traineeship Agreement during the traineeship period.
- (vi) Training shall be directed at:

- a) the achievement of key competencies required for successful participation in the workplace and/or
  - b) the achievement of competencies required for successful participation in an industry.
- (vii) Until consultation and negotiations with the relevant industry union(s) upon the terms of the proposed Traineeship Scheme and the Traineeship has occurred a Traineeship Scheme shall not be given approval. An application for approval of a Traineeship Scheme shall identify the relevant industry union(s) and demonstrate to the satisfaction of the approving authority that the abovementioned consultation and negotiations have occurred.
- (viii) Part E of this clause does not apply to apprentices.
- (ix) Any existing employment arrangements for the Australian Traineeship System (ATS) or the Career Start Traineeship (CST) shall not apply to any employer bound by this Agreement, except in relation to ATS or CST trainees who commenced a traineeship with the employer before the employer was bound by this Agreement.
- (x)
- a) Trainees shall not displace existing employees from employment.
  - b) Trainees shall only be engaged in addition to existing staff positions and employment levels.
  - c) The provisions of subclause (b) above do not apply to the engagement of Indigenous trainees and trainees paid at Band 1/Level 1 of the Agreement. This subclause shall not be used to reduce the core number of employees at the employer.
- (xi) A trainee shall be engaged on a full time basis for the period of at least twelve months. By agreement in writing, and with the consent of the relevant State Training Authority, the relevant employer and the trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship Scheme. This clause shall not restrict the employer's ability to engage a trainee under a school-based traineeship.
- (xii)
- a) The employer shall not terminate the trainee's service without providing written notice of termination in accordance with the training agreement and subsequently to the relevant State Training Authority as appropriate.
  - b) Where the employer chooses not to continue the employment of a trainee upon the completion of the traineeship, it shall notify the relevant state training authority as appropriate, of its decision.
- (xiii) A trainee who fails to complete the traineeship or who cannot for any reason be placed in full-time employment with the employer on the successful completion of the traineeship, shall not be entitled to any severance payments payable pursuant to termination, change or redundancy provisions or provisions similar thereto.
- (xiv) The trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Agreement.
- (xv) Where the employment of a trainee by the employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service with the employer for the purposes of this Agreement or any other legislative entitlements.
- (xvi) Wages:
- a) The weekly amount of pay payable to trainees shall be as provided in Table 1 of Part B,

Traineeship Rates, of this Agreement.

- b) The trainee wage rates contained in this Agreement are minimum rates and shall only apply to trainees while they are undertaking an approved traineeship which includes approved training as prescribed above.

### **31. TRAINING AND DEVELOPMENT**

- (i) The parties to this Agreement recognise that increasing the efficiency and productivity of the industry requires an ongoing commitment to education, training and skill maintenance, development and enhancement. Accordingly, the parties commit themselves to:

- a) developing a more highly skilled and flexible workforce
- b) providing employees with opportunities through appropriate education and training to acquire additional skills and
- c) removing barriers to the utilisation of skills in accordance with employers' training plans.

- (ii)

- a) All employees shall have reasonable and equitable access to education and training, such education and training shall:

1. be consistent with the employer's training plan
2. enable employees to acquire the range of skills they are required to apply in their positions
3. enhance employees' opportunities for career path development and mobility through employer's organisation structures, through participation in the employers' training plans.
4. Employees who are required to either hold professional qualifications or complete further professional qualifications and whose positions are evaluated in Band 3 or Band 4 of this Agreement, shall have access to continuing professional development (CPD) that is consistent with the training plan for their position as follows:
  - i. 14 hours per annum, or
  - ii. in accordance with legislated CPD requirements,

whichever is the greater.

- b) Nothing in this clause prevents an employer and employee from agreeing to additional CPD training, provided such agreement is reached in the course of consultation and meetings business needs.

- (iii) Training Plan and Budget

- a) The employer shall develop a training plan and budget consistent with:

1. the current and future skill requirements of the employer.
2. the size, structure and nature of the operations of the employer.
3. the need to develop vocational skills relevant to the employer and the Local Government industry.

- b) In developing the training plan, the employer shall have regard to corporate, departmental and individual training needs.

- c) The training plan shall be designed in consultation with the consultative committee.
  - d) The training plan shall, where appropriate, provide for training that is consistent with the relevant National Training Package.
  - e) The training plan, shall provide for the assessment and recognition of employee's current competencies where possible.
  - f) Selection of participants to receive the employer's required training in accordance with employer's training plan is to be based on merit and the needs of the employee as identified in the employee's performance appraisal.
- (iv) If an employee is required by the employer to undertake training in accordance with the employer's training plan:
- a) the employer shall grant the employee paid leave to attend course requirements, including examinations, where the training is undertaken during ordinary working hours;
  - b) where the course requirements contain more than a 15% off-the-job component calculated over any 12 month period the extent to which the employer will grant paid leave to attend such course requirements shall be specified in the training plan;
  - c) the employer shall pay course fees at the commencement of each stage but shall not pay course fees if the employee is repeating;
  - d) the employer shall either provide transport or pay reasonable travelling expenses to enable employees to attend course requirements;
  - e) reasonable travel arrangements shall be agreed; and
  - f) where an employee is required to complete major assignment(s) the employer and the employee shall agree upon appropriate flexible work and study arrangements as are practicable.
- (v) The employer may grant an employee undertaking a course consistent with the employer's training plan, although not at the employer's requirement, leave with pay or leave without pay to attend course requirements provided that the employee gives reasonable notice of such requirements. Where the employee is not granted such leave the employer shall give preference in granting annual leave or other accrued leave to attend course requirements provided that the employee gives reasonable notice of such requirements. The employer may pay course fees at its discretion.
- (vi) Development of a Competency Based Training System.
- a) The parties to the Agreement are committed to the development of a competency based system of vocational education and training for local government. Such a system involves the delivery, assessment and certification of training being related to the identification and demonstrated attainment of the knowledge, skills and their application required for effective performance in work at the required level, as defined in industry endorsed competency standards.
  - b) The parties shall continue to participate in the development of a competency based training system to ensure that the following are achieved:
    1. that competency standards developed provide the specification of the knowledge and skill and the application of that knowledge and skill to the standards of performance required in employment;
    2. that competency standards are reviewed in a systematic manner to ensure that they remain relevant to the actual needs of the industry;

3. that accredited courses and training programs deliver the required competencies and to ensure that assessment processes measure an employee's competency against prescribed standards of performance. These processes involve recognition of prior learning and assessment mechanisms;
4. that certification provides employees with formal recognition of the competencies they have achieved and demonstrated.

## **32. CONSULTATIVE COMMITTEES**

### **A. AIM**

The parties to the Agreement are committed to consultative and participative processes. There shall be a consultative committee at each employer which shall:

- (i) provide a forum for consultation between the employer and its employees that encourages a free and open exchange of views;
- (ii) positively co-operate in workplace reform to enhance the efficiency and productivity of the employer and to provide employees with access to career opportunities and more fulfilling, varied and better paid work.

### **B. SIZE AND COMPOSITION**

- (iii) The size and composition of the consultative committee shall be representative of council's workforce and agreed to by council and the local representatives from the following unions: USU; depa; and the LGEA and such agreement shall not be unreasonably withheld.
- (iv) The consultative committee shall be established in accordance with Blacktown City Council's Consultative Committee constitution.
- (v) Management representative(s) on the consultative committee shall be nominated by council.
- (vi) Officers of the union(s) or Association(s) may attend and provide input to meetings of the consultative committee, at the invitation of the consultative committee or their respective members.

### **C. SCOPE OF CONSULTATIVE COMMITTEES**

- (i) The functions of the consultative committee include:
  - a) agreement implementation
  - b) training
  - c) consultation with regard to organisation restructure
  - d) job redesign
  - e) salary systems
  - f) communication and education mechanisms
  - g) performance management systems
  - h) changes to variable working hours arrangements for new or vacant positions

- i) local government reform
  - j) proposed variations to leaseback vehicle arrangements.
  - k) Consultation with regard to the appointment of staff on a fixed term basis, where that appointment contemplates retention against a role or function other than a role or function for which Council has an established position description and placement within the salary system.
  - l) proposed alterations to the spread of ordinary hours.
  - m) health and wellbeing programs.
- (ii) The consultative committee shall not consider matters which are being or should be processed in accordance with Agreement clause 35, Grievance and Disputes Procedures.

#### **D. MEETINGS AND SUPPORT SERVICES**

- (i) The consultative committee will make recommendations based upon consensus. Where there is no consensus on a particular item, the recommendation to the employer should note the dissenting views.
- (ii) The consultative committee shall meet as required.
- (iii) The consultative committee shall adopt a constitution which shall include, but not be limited to, the election of a chairperson and secretary, meeting frequency, support services, access to information and communication with constituents.
- (iv) All members of the consultative committee should undergo appropriate training and education to effectively understand and participate in the consultative committee.

#### **33. APPOINTMENT AND PROMOTION**

- (i) Where an internal applicant has applied for a new or vacant position and their application is unsuccessful, the employee may:
  - a) request in writing the reason(s) as to why they were not appointed, and upon such request, the employer shall provide the reason(s) in writing; and
  - b) request a review of their individual education and training needs.

#### **34. TERM CONTRACTS**

- (i) The employer may only employ a person on a term contract of employment in the following situations:
  - a) for the life of a specific task or project that has a definable work activity, or
  - b) to perform the duties associated with an externally funded position where the length of the employment depends on the length of the funding, or
  - c) to perform the duties associated with a vacant position until the vacant position is filled on a permanent basis, provided that the duration is not longer than is reasonably necessary to undertake recruitment for the vacant position, or
  - d) to temporarily replace an employee who is on approved leave, secondment, workers compensation, or acting in a different position or working reduced hours under a flexible work and leave arrangement, or

- e) to undertake training and work as part of an apprenticeship, traineeship or student work experience program in conjunction with an education institution, or
  - f) to trial a new work area, provided that the duration is not longer than is reasonably necessary to trial the new work area, or
  - g) to perform the duties associated with a vacant position during the intervening period between when the employer has made a definite decision to introduce major changes in production, program, organisation structure or technology that are likely to have significant effects on the employment in the vacant position and the date that the changes are implemented; or
  - h) to accommodate time limitations imposed by law or sought by the employee (e.g. visa restrictions); or
  - i) to perform seasonal work (also see subclause 21E(xi) of this Agreement).
- (ii) Notwithstanding the above, all term contracts of employment entered into prior to 1 November 2010 may continue until the expiry of their fixed or maximum term.

### **35. GRIEVANCE AND DISPUTE PROCEDURES**

- (i) At any stage of the procedure, the employee(s) may be represented by their union or its local representative/delegate and the employer represented by the Association.
- (ii) The union delegate shall have reasonable time, without loss of pay, to discuss a grievance or dispute with management at the local level where prior approval is sought. Such approval shall not be unreasonably withheld.
- (iii) A grievance or dispute shall be dealt with as follows:
  - a) The employee(s) shall notify the supervisor, or other person to whom the employee(s) directly report, of any grievance or dispute and the remedy sought, in writing, except where the supervisor and/or person to whom the employee(s) directly report are the subject of the grievance or they would be exposed to a conflict of interest upon being notified of the grievance. In those circumstances employee(s) shall notify the next most appropriate level of management.
  - b) A meeting shall be held between the employee(s) and the supervisor to discuss the grievance or dispute and the remedy sought within two working days of notification.
  - c) If the matter remains unresolved, the employee(s) may request the matter be referred to the head of the department or other authorised officer for discussion. A further meeting between all parties shall be held as soon as practicable.
  - d) If the matter remains unresolved the general manager shall provide the employee(s) with a written response. The response shall include the reasons for not implementing any proposed remedy.
  - e) Where the matter remains unresolved, it may be referred to the employee's union or representative and by the general manager or other authorised officer to the Association for further discussion between the parties.
- (iv) The Industrial Registrar may be advised of the existence of a dispute at any stage of this procedure.
- (v) During this procedure and while the matter is in the course of negotiation, conciliation and/or arbitration, the work practices existing prior to the dispute shall as far as practicable proceed as normal.

## **36. DISCIPLINARY PROCEDURES**

### **A. EMPLOYEE'S RIGHTS**

Notwithstanding the procedures below, an employee shall:

- (i) Have access to their personal files and may take notes and/or obtain copies of the contents of the file.
- (ii) Be entitled to sight, note and/or respond to any information placed on their personal file which may be regarded as adverse.
- (iii) Be entitled to make application to delete or amend any disciplinary or other record mentioned on their personal file which the employee believes is incorrect, out-of-date, incomplete or misleading.
- (iv) Be entitled to request the presence of a union representative and/or the involvement of their union at any stage.
- (v) Be entitled to make application for accrued leave for whole or part of any suspension during the investigation process.

### **B. EMPLOYER'S RIGHTS AND OBLIGATIONS**

Notwithstanding the procedures contained below, the employer shall:

- (i) Be entitled to suspend an employee with or without pay during the investigation process provided that:
  - a) suspension without pay during an investigation shall be for a period of not more than two weeks, except where the progress of the investigation is delayed due to the unavailability of the employee and/or their representative in which case the period of suspension without pay may be extended for a further period of up to 7 days or such greater period by agreement.
  - b) If, after investigation, the reasons for the suspension are found to be inappropriate, the employee shall not suffer any loss of pay for the period under suspension.
  - c) The suspension shall not affect the employee's continuity of service for the purposes of accruing leave entitlements.
  - d) The employer shall not unreasonably refuse an application for paid leave under this provision.
  - e) By agreement an employee may be transferred to another position or place of work.
- (ii) Properly conduct and speedily conclude an investigation into the alleged unsatisfactory work performance or conduct.
- (iii) Be entitled to take other disciplinary action before and/or during the procedures in cases of misconduct or where the employee's performance warrants such action.
- (iv) In appropriate circumstances be entitled to terminate an employee's services in accordance with Clause 38, Termination of Employment of this Agreement.
- (v) Be entitled to request the presence of a union representative at any stage.



## **C. WORKPLACE INVESTIGATIONS**

- (i) The parties to the Agreement have agreed on guidelines concerning workplace investigations.
- (ii) Failure to comply with the guidelines may be used as evidence that a person or employer has failed to properly conduct or speedily conclude a workplace investigation. However, a person or employer cannot be prosecuted only because of a failure to comply with the guidelines.
- (iii) Upon becoming aware of possible unsatisfactory work performance or conduct by an employee the employer may decide to investigate.
- (iv) Workplace investigations are a process by which employers gather information to assist the employer to make an informed decision. Workplace investigations typically involve enquiring, collecting information and ascertaining facts.
- (v) When deciding whether to investigate possible unsatisfactory work performance or conduct, factors that the employer should consider include:
  - The seriousness of the possible unsatisfactory work performance or conduct;
  - How recent the possible unsatisfactory work performance or conduct occurred;
  - Potential implications in not undertaking an investigation; and
  - Whether there are any mitigating factors (for example drug/alcohol dependency, health issues including mental health issues, or family/domestic violence issues).
- (vi) Employers shall properly conduct and speedily conclude workplace investigations concerning possible unsatisfactory work performance or conduct.

## **D. PROCEDURES**

- (i) Where an employee's work performance or conduct is considered unsatisfactory, the employee shall be informed in the first instance of the nature of the unsatisfactory performance or conduct and of the required standard to be achieved, by the employee's immediate supervisor or other appropriate officer of the employer.
- (ii) Unsatisfactory work performance or conduct shall include, but not be limited to, neglect of duties, breach of discipline, absenteeism and non-compliance with safety standards. A written record shall be kept on the appropriate file of such initial warning. The employee shall be entitled to sight and sign such written record and add any notations regarding the contents of such record.
- (iii) Where there is re-occurrence of unsatisfactory work performance or conduct, the employee shall be warned formally in writing by the appropriate officer of the employer and counselled. Counselling should reinforce the standard of work or conduct expected and, where the employee is failing to meet these required standards, a suitable review period for monitoring the employee's performance; the severity of the situation; and whether disciplinary action will follow should the employee's work performance or conduct not improve. A written record shall be kept of such formal warning and counselling. The employee shall be entitled to sight and sign such written record and add any notations regarding the contents of such record.
- (iv) If the employee's unsatisfactory work performance or conduct continues or resumes following the formal warning and counselling, the employee shall be given a final warning in writing giving notice of disciplinary action should the unsatisfactory work performance or conduct not cease immediately.
- (v) If the employee's work performance or conduct does not improve after the final warning further disciplinary action may be taken.
- (vi) All formal warnings shall be in writing.

- (vii) Delegates shall be provided reasonable time without loss of pay, to represent members in disciplinary matters at the local level, provided prior approval is sought. Such approval shall not be unreasonably withheld.

## **E. PENALTIES**

After complying with the requirements above, the employer may:

- (i) Demote the employee to a lower paid position, provided that the employee shall not suffer a reduction in the rate of pay for 2 weeks from the date of the demotion.
- (ii) Suspend an employee without pay from work for a specified period of time.
- (iii) Terminate the employment of the employee.

## **37. WORK HEALTH AND SAFETY**

### **A. STATEMENT OF INTENT**

The parties to the Agreement are committed to co-operating positively to:

- (i) promote the safety and welfare of workers and other people in the workplace;
- (ii) eliminate unsafe work practices; and
- (iii) ensure that employers and employees understand and comply with their obligations under the *Work Health and Safety Act 2011 (NSW)*, *Work Health and Safety Regulation 2011 (NSW)* and associated codes of practice.

### **B. SPECIFIC PROVISIONS**

In the case of extreme and unusual weather conditions which could be assessed as hazardous, employers will review and conduct a risk assessment to determine what action, if any, needs to be put in place to minimise unnecessary exposure and risks to its employees during such unusual occurrences.

### **C. FURTHER INFORMATION AND RESOURCES**

Further information and resources are available from the following organisations:

- (i) Workcover NSW: [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)
- (ii) Safe Work Australia: [www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au)

## **38. TERMINATION OF EMPLOYMENT**

- (i)
  - a) An employee in Operational Band 1 or the Administrative/Technical Trades Band 2 shall give to the employer 2 weeks' notice of their intention to terminate their employment.
  - b) The notice of intention to terminate for an employee in Professional/Specialist Band 3 or Executive Band 4 of the Agreement shall also be a minimum of 2 weeks.

If no such notice is provided, the employer shall be entitled to deduct pay equivalent to the required notice from any entitlements payable under this Agreement.

- (ii) The employer and an employee may agree to a shorter period of notice for the purpose of this subclause.

- (iii) In cases of serious misconduct, the employer may summarily dismiss an employee following a proper investigation and provided the employee is afforded procedural fairness. Where an employee is summarily dismissed, subclause (iv) shall not apply.
- (iv) The employer shall give to an employee a period of notice of termination in accordance with the following scale or by payment in lieu thereof:

<b>EMPLOYEE'S PERIOD OF CONTINUOUS SERVICE</b>	<b>PERIOD OF NOTICE</b>
Less than 2 years	At least 2 weeks
2 years and less than 3 years	At least 3 weeks
3 years and less than 5 years	At least 4 weeks
5 years and beyond	At least 5 weeks

- (v) The provision of this clause shall be read subject to the provisions of Clause 39, Workplace Change and Redundancy, of this Agreement.

### **39. WORKPLACE CHANGE AND REDUNDANCY**

#### **(i) Employer's Duty to Notify**

- a) Where the employer has made a definite decision to introduce major changes in production, program, organisation structure or technology that are likely to have significant effects on employees, the employer shall notify the employee(s) who may be affected by the proposed changes and the union(s) to which they belong.
  1. Where a proposed change in organisation structure is likely to have significant effects on employees and/or result in a reduction in the size of the employer's workforce, the employer shall notify the union(s) whose members may be adversely affected by the proposed change at least twenty-eight (28) days before the change is implemented.
  2. Notification of a proposed change may be given either before or after a definite decision is made. The union(s) may, on being notified of the proposed change, respond to the employer in writing within the twenty-eight (28) days, addressed to the general manager. Any such response(s) received by the general manager shall be provided to the decision maker(s) within seven (7) days. Where the decision to implement the change has already been made, the decision maker(s) may, in accordance with subclause (ii)(a) of this clause, reconsider their original decision.
  3. Notice to the union(s) of a proposed change in organisation structure under subclause 39(i)(b) shall not form part of any notice of termination under subclause 39(v).
- b) Nothing in this clause prevents the employer from immediately implementing a change in organisation structure with the consent of the affected employee(s), where the union(s) to which they belong have been provided at least seven (7) days' notice of the proposed change.

#### **(ii) Employer's Duty to Discuss Change**

- a) The employer shall discuss with the employee(s) affected and the union(s) to which they belong, inter alia, the introduction of the changes referred to in sub-clauses (i)(a) and (b) of this clause, what affects the changes are likely to have on the employee(s) and measures to avert or mitigate the adverse changes on the employee(s) and shall give prompt consideration to matters raised by the employee(s) and/or their union in relation to

the changes and may reconsider its original decision.

- b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (i)(a) and (b) of this clause.
- c) For the purposes of the discussion, the employer shall provide to the employee(s) concerned and the union to which they belong, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on the employee(s) and any other matters likely to affect the employee(s).
- d) **Competitive tendering** – Where employee(s) who are adversely affected by the proposed changes request the employer's assistance to submit an in-house bid and the employer refuses that request, the employer shall provide the reason(s) in writing.

(iii) **Discussion Before Termination**

- a) Where the employer has made a definite decision that it no longer wishes the job the employee has been doing done by anyone pursuant to subclause (i)(a) and (b) of this clause and that decision may lead to the termination of employment, the employer shall hold discussions with the employee(s) directly affected and with the union(s) to which they belong.
- b) The discussion shall take place as soon as it is practicable after the employer has made a definite decision which shall invoke the provision of paragraph (a) of this subclause and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of the terminations of the employee(s) concerned. Measures to mitigate the adverse effect on employees may include consideration of re-training opportunities, redeployment, recruitment advice, the payment of relocation allowances, provision of additional notice, access to an employee assistance program, financial advice and such other assistance as may be reasonably available.
- c) The employer shall not unreasonably refuse a request by an employee to work through the notice of termination period in subclause 39(v) to better enable the employee to explore opportunities to mitigate the adverse effects of workplace change. During such notice period, whilst the employee is able to undertake tasks and duties associated with their position, priority shall be given to activities that may enable the employee to find employment. Such activities may include, but not be limited to, training, redeployment opportunities, job interviews, financial advice and recruitment advice.
- d) For the purposes of the discussion, the employer shall, as soon as practicable, provide to the employee(s) concerned and the union to which they belong, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and category of employee(s) likely to be effected and the number of employee(s) normally employed and the period over which the terminations are likely to be carried out. Provided that the employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(iv) **Notice to Centrelink**

Where a decision has been made to terminate fifteen (15) or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons, the employer shall notify Centrelink as soon as possible giving relevant information as provided at section 530 of the *Fair Work Act 2009* (Cth).

(v) **Notice of Termination**

- a) Five weeks' notice to terminate or pay in lieu thereof shall be given.
- b) Where an employee is to be terminated because of the introduction of technology the

employee shall be entitled to the following:

1. Three (3) months' notice of termination or
2. Payment in lieu of the notice in paragraph 1 above. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
3. Notice or payment of notice under this paragraph shall be deemed to be service with the employer for the purposes of calculating leave entitlements under this Agreement.

(vi) **Redundancy**

- a) This subclause shall apply where an employee is terminated due to redundancy except where the employee concerned has been offered, but has refused to accept, an alternative position within the employer's organisation structure of comparable skill and accountability levels and remuneration no less than the position previously held by the employee.
- b) In addition to any required period of notice, and subject to subclause (v) of this Clause, the employee shall be entitled to severance pay as follows:

COMPLETED YEARS OF SERVICE WITH THE EMPLOYER	ENTITLEMENT
Less than 1 year	Nil
1 year and less than 2 years	5 weeks pay
2 years and less than 3 years	9 weeks pay
3 years and less than 4 years	13 weeks pay
4 years and less than 5 years	16 weeks pay
5 years and less than 6 years	19 weeks pay
6 years and less than 7 years	22 weeks pay
7 years and less than 8 years	25 weeks pay
8 years and less than 9 years	28 weeks pay
9 years and less than 10 years	31 weeks pay
10 years and thereafter	34 weeks pay

- (vii) An employee who resigns during the period of notice is entitled to the same redundancy payments provided in this clause as if they had remained in the employer's employment until the expiry of the notice period.
- (viii) During a period of notice of termination given by the employer, an employee shall be allowed up to one day off without loss of pay during each week of notice for the purpose of seeking other employment. Where required by the employer the employee shall provide proof of attendance at an interview.
- (ix) A redundant employee shall be entitled to the payment of a job search allowance of up to \$2,500 to meet expenses associated with seeking other employment subject to proof of expenditure or on production of an invoice, and/or other appropriate documentation. The employee's entitlement to claim the job search allowance is limited to a period of up to 12 months from their termination of service with the employer or until the employee secures alternative employment, whichever is the sooner.
- (x) If the employee agrees to be redeployed by the employer into a lower paid position, the employee's existing salary and conditions shall be maintained for a period equivalent to

the amount of notice and severance pay that the employee would be entitled to under this Agreement. Provided that should the employee resign during the period of salary maintenance, as provided for by this subclause, the balance of any notice and severance pay that the employee would have been entitled to for the remainder of the period of salary maintenance shall be paid on termination.

- (xi) The employer shall, upon receipt of a request from an employee to show employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification or the type of work performed by the employee.
- (xii) The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by the Department of Human Services.
- (xiii) In the event that the employer determines that a position is redundant, the employer where practicable, shall firstly offer such redundancy on a voluntary basis.
- (xiv) Nothing in this Agreement shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the industry unions and the employers bound by this Agreement.
- (xv) Subject to an application by the employer and further order of the Industrial Relations Commission of New South Wales, the employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (vi) above if the employer obtains acceptable alternative employment for an employee.
- (xvi) Nothing in this clause shall restrict an employee with ten years' service or more and the employer from agreeing to further severance payments.
- (xvii) Nothing in this clause restricts the elected council from exercising its right under the *Local Government Act 1993* to determine and/or re-determine its organisation structure from time to time, and to implement such determinations.

#### **40. COUNCIL AGREEMENTS**

- (i) The parties agree to review operations at the council level on an ongoing basis with a view to providing enhanced flexibility and efficiency and to meet the particular working needs of the employer and its employees.
- (ii) The terms of any agreement reached between the parties shall substitute for the provisions of the Agreement provided that:
  - a) the extent of the agreement shall be limited to the Agreement's Clause 9, Performance Evaluation and Reward; Clause 11, Payment of Employees; Sub-clause 15(xi), Travelling Allowance; Clause 18, Hours of Work; Clause 19, Overtime, Clause 20, Holidays; Clause 25, Part time Employment; and Clause 27, Job Share Employment.
  - b) the agreement does not provide less than the entry level rates of pay;
  - c) the agreement is consistent with the *Industrial Relations Act 1996* (NSW) and current wage fixing principles; and
  - d) the agreement shall be processed in accordance with subclause (iii) of this clause. Provided further that, where the agreement proposes to vary Agreement provisions other than those nominated in paragraph (a) above, the agreement shall be processed in accordance with the Enterprise Arrangement Principle.
- (iii) A council agreement shall be processed as follows:

- a) the unions shall be notified prior to the commencement of negotiations;
  - b) the agreement has been genuinely arrived at by negotiation without compulsion;
  - c) the agreement shall be committed to writing and shall include a date of operation and a date of expiration;
  - d) the employer and the appropriate union(s) shall sign the agreement and a copy sent to the Association;
  - e) Any party to a council agreement may at any stage during the above process refer the matter to the Industrial Relations Commission of NSW.
- (iv)
- a) Section 44 of the *Industrial Relations Act 1996* (NSW) relating to the termination of enterprise agreements shall apply to the termination of council agreements made in accordance with this clause, and a council agreement may be terminated in the same manner as an enterprise agreement.
  - b) Where a council agreement is terminated at or after the end of its nominal term by the giving of written notice to each other party to the agreement, at least three (3) months' notice shall be given. The notice may be served before the end of the nominal term.
  - c) Termination of a council agreement is not effective until all of the parties to the agreement have been given written notice of the approval to terminate or of service of the notice of intention to terminate.

#### **41. SAVINGS AND TRANSITIONAL**

- (i) The employer must ensure that employees engaged on incremental scales on or before 8 June 1992, continue to be paid in accordance with the incremental scales as adjusted. This subclause does not apply in the following circumstances:
  - a) if the employer has an operative training plan which is sufficient to allow progression at least equal to that under the previous incremental scales;
  - b) if an employee chooses not to undertake training consistent with the employer's training plan; and
  - c) if the incremental scale provides a rate of pay less than the Agreement entry level rate of pay.
- (ii)
  - a) No employee shall receive a reduction in pay as a result of the implementation of this Agreement or transfer to a salary system.
  - b) Unless otherwise agreed, employees, including seasonal workers, who are in regular receipt of penalty rates and/or shift penalties, aggregate rates of pay or other arrangements that compensate for hours of work shall either continue to receive such benefits or the payments prescribed by clause 18, whichever is the higher.
  - c) The provisions in subclause (ii)(b) shall apply where council and enterprise agreements are terminated.
  - d) The provisions in subclause (ii)(b) shall apply in addition to the Agreement increases prescribed by clause 43.
- (iii) Where an employee prior to 11 May 1995, had an entitlement to transfer accumulated sick leave from one employer to another employer in New South Wales, under the *Local Government Senior Officers' Agreement* the employee shall retain this entitlement.

- (iv) The implementation of this Agreement shall not result in the removal of any existing arrangement for an additional payment made by the employer for the payment of wages, excepting when such payment relates to FID.

## **42. LEAVE RESERVED**

- (i) Leave is reserved for the parties to the Agreement to apply to vary tool allowances as set out in Clause 15(vi)(a) and compensation of tools as set out in Clause 15(vi)(d) of this Agreement in line with the *Crown Employees (Skilled Trades) Award*.
- (ii) Leave is reserved for the parties to the Agreement to apply to vary Clause 30, Junior and Trainee Employment, to reflect industry training needs.
- (iii) Leave is reserved for the parties to apply to vary the Agreement consistent with the principles of the Industrial Relations Commission of New South Wales in relation to the accreditation of employees by the Building Professionals Board.
- (iv) Leave is reserved for the parties to apply to vary the Agreement to reflect legislative changes that relate to parental leave.
- (v) Leave is reserved for the parties to apply to vary Clause 16B, variations to leaseback fees, to reflect future changes to fringe benefits tax.
- (vi) Subject to the necessary legislative changes occurring, leave is reserved for the parties to apply to vary Clause 21D, Annual Leave, to provide that employees may, with the consent of the employer, take annual leave at either full, half or double pay.

## **43. AREA, INCIDENCE AND DURATION**

- (i) This Agreement shall apply to Blacktown City Council.
- (ii) This Agreement shall rescind and replace the *Blacktown City Council Enterprise Agreement 2015* published on the 8th day of May 2015 (Agreement No: EA15/7) and all variations thereof.
- (iii) This Agreement shall operate from the commencement of the first full pay period on or after 1 July 2018 and shall remain in force for a period of three years.
- (iv) The Agreement in column (a) of Table 1 of Part B provides for a 3.0% increase in rates of pay per week to operate from the first full pay period to commence on or after 1 July 2018.
- (v) The Agreement in column (b) of Table 1 of Part B provides for a 3.0% increase in rates of pay per week to operate from the first full pay period to commence on or after 1 July 2019.
- (vi) The Agreement in column (c) of Table 1 of Part B provides for a 2.85% increase in rates of pay per week to operate from the first full pay period to commence on or after 1 July 2020.
- (vii) The increases in rates of pay provided by this Agreement shall apply to the rates of pay in employer's salary system.
- (viii) The allowances as set out in clauses 16A and 15(x)(j) shall automatically increase in line with the percentage increases applied to the vehicle allowance in the Award.
- (ix) The meal allowance set out in clause 15(xiv) shall automatically increase in line with the percentage increases applied to the meal allowance in the Award.
- (x) The traineeship wage rates in clause 30E(xvi) shall automatically increase in line with the percentage increases applied to the traineeship wage rates in the Award.



- (xi) The mechanics' allowance in clause 15(xviii) shall automatically increase on 1 January each year in accords with the prior September quarter CPI for Sydney, noting that this practice has occurred since 1992 without formalisation.
- (xii) The increases granted by this Agreement may be absorbed into enterprise increases granted since 29 May 1991 exceeding any Agreement increases since that date, that is an \$8 safety net adjustment and increases of 6%, 2.5%, 2.5%, 3.5%, 3.25%, 3.25%, 2.7%, 3.3%, 3.25%, 3.25%, 3%, 3.2%, 2.0%, 3.75%, 4%, 2.0%, 3.25%, 3.5% and 2.6% provided that the following increases shall not be absorbed:
  - a) placement or progression within the employer's salary system;
  - b) increases in hours of work; and
  - c) incorporation of penalty rates and shift or other allowances into the employee's rate of pay.
- (xiii) In agreeing to increases in rates of pay for the term of this Agreement, the parties recognise that employers and employees have and shall continue to engage in enterprise bargaining.

## Part B

### MONETARY RATES – TABLE 1

#### CLAUSE 6 – RATES OF PAY

Band/Level	(a) Rate Per Week \$	(b) Rate Per Week \$	(c) Rate Per Week \$
	First Full Pay Period on or after 1 July 2018 (3.0%)	First Full Pay Period on or after 1 July 2019 (3.0%)	First Full Pay Period on or after 1 July 2020 (2.85%)
Operational Band 1			
Level 1 (Juniors and Trainees)			
T1 at 15 years of age	439.20	452.40	465.30
T2 at 16 years of age or School Certificate	540.00	556.20	572.10
T3 at 17 years of age	629.90	648.80	667.30
T4 at 18 years of age or over or HSC	730.70	752.60	774.00
T5	832.20	857.20	881.60
T6	896.00	922.90	949.20
T7	938.40	966.60	994.10
T8	982.30	1011.80	1040.60
T9	1026.10	1056.90	1087.00
T10	1071.10	1103.20	1134.60
Level 2	875.90	902.20	927.90
Level 3	951.70	980.30	1008.20
Level 4	1082.80	1115.30	1147.10
Administrative/Technical/Trades Band 2			
Level 1	1045.80	1077.20	1107.90
Level 2	1194.50	1230.30	1265.40
Level 3	1423.30	1466.00	1507.80
Professional/Specialist Band 3			
Level 1	1194.50	1230.30	1265.40
Level 2	1423.30	1466.00	1507.80
Level 3	1652.20	1701.80	1750.30
Level 4	1996.10	2056.00	2114.60
Executive Band 4			
Level 1	1881.10	1937.50	1992.70
Level 2	2438.00	2511.10	2582.70
Level 3	3042.40	3133.70	3223.00
Level 4	3646.80	3756.20	3863.30

Note: T stands for Trainee

**CLAUSE 30E(XVI)- TRAINEESHIP WAGE RATES**

	Highest Year of School Completed		
	Year 10 \$	Year 11 \$	Year 12 \$
School Leaver	371.50	404.40	480.10
Plus 1 year out of school	404.40	480.10	552.00
Plus 2 years	480.10	552.00	637.10
Plus 3 years	552.00	637.10	724.70
Plus 4 years	637.10	724.70	
Plus 5 years or more	724.70		

## MONETARY RATES – TABLE 2 ALLOWANCES

	First Full Pay Period on or after 1 July 2018 \$	First Full Pay Period on or after 1 July 2019 \$	First Full Pay Period on or after 1 July 2020 \$
Clause 15(i) Level 1 Adverse Working Conditions Allowance	0.43p.h. or	0.44p.h. or	0.45p.h. or
	16.50p.w.	17.00p.w.	17.50p.w.
Clause 15(ii) Level 2 Adverse Working Conditions Allowance	1.14p.h. or	1.17p.h. or	1.20p.h. or
	43.40p.w.	44.70p.w.	46.00p.w.
Clause 15(iii) Sewer Chokes	10.20p.s.	10.50p.s.	10.80p.s.
Clause 15(vi)(a) Tool Allowances			
Bricklayer	23.90p.w.	24.60p.w.	25.30p.w.
Carpenter & Plumber	33.90p.w.	34.90p.w.	35.90p.w.
Metal & Mechanical Trades	35.00p.w.	36.10p.w.	37.10p.w.
Painter & Signwriter	8.10p.w.	8.30p.w.	8.50p.w.
Plasterer	26.40p.w.	27.20p.w.	28.00p.w.
Clause 15 (vi)(d) Insurance Value	1676.80p.a	1727.10p.a	1776.30p.a
Clauses 16A and 15(x)(j) Vehicle Allowances (cents per km)			
(a) Under 2.5 litres	0.90p.km.	0.90p.km.	0.90p.km.
2.5 litres and over	1.00p.km.	1.00p.km.	1.00p.km.
(b) Minimum quarterly payment	2288.00	2288.00	2288.00
Clause 15(xi)(f) Travelling Allowances			
3 - 10 km	5.15p.d.	5.30p.d.	5.45p.d.
11 - 20 km	8.14p.d.	8.38p.d.	8.62p.d.
21 - 33 km	11.77p.d.	12.12p.d.	12.47p.d.
34 - 50 km	14.98p.d.	15.43p.d.	15.87p.d.
Each additional 10kms	3.99p.d.	4.11p.d.	4.23p.d.
Clause 15 (xi)(a) Community Language Allowance	23.30p.w.	24.00p.w.	24.68p.w.
Clause 15(xii)(f) First Aid Allowance	15.90p.w.	16.40p.w.	16.87p.w.
Clause 15(xiv) Meal Allowance	16.02		
Clause 15(xv) Civil Liability Loading (payable from the first pay period commencing on or after 15 December 2006)	3.5%	3.5%	3.5%
Clause 15 Mechanics' Allowance	25.60p.w.		
Clause 19C (iii) On Call Allowance on ordinary working days	30.60p.d.	31.50p.d.	32.40p.d.
Clause 19C (iv) On Call Allowance - on other days	60.50p.d.	62.30p.d.	64.10p.d.
Clause 19C (v) On Call Allowance - maximum per week	180.60p.w.	186.00p.w.	191.30p.w.

Key: p.h. = per hour  
p.a. = per annum  
p.d. = per day  
p.w. = per week  
p.n. = per night  
p.km. = per kilometre  
p.s. = per shift

# PART C

## SIGNATORIES TO THE AGREEMENT

### 1. Signed on behalf of Blacktown City Council

.....  
Kerry Robinson  
General Manager  
Blacktown City Council

Witness: .....

Date: .....

### 2. Signed on behalf of the United Services Union

.....  
Graeme Kelly  
General Secretary  
United Services Union

Witness: .....

Date: .....

### 3. Signed on behalf of the Local Government Engineers' Association of NSW

.....  
Gordon Brock  
Director  
Local Government Engineers' Association of NSW

Witness: .....

Date: .....

**4. Signed on behalf of the Development and Environmental Professionals Association**

.....

Ian Robertson  
Secretary  
Development and Environmental Professionals Association

Witness: .....

Date: .....

# BLACKTOWN CITY COUNCIL GUIDELINES ON WORKPLACE INVESTIGATIONS

These Guidelines are adopted from the Award.

## Purpose

These Guidelines are a practical guide on how to properly conduct and speedily conclude workplace investigations concerning possible unsatisfactory work performance or conduct by an employee.

Failure to comply with these guidelines may be used as evidence that a person or employer has failed to properly conduct or speedily conclude a workplace investigation. However, a person or employer cannot be prosecuted only because of a failure to comply with these guidelines.

These Guidelines should be followed when conducting a workplace investigation into possible unsatisfactory work performance or conduct by an employee unless compliance with the Guidelines could reasonably be expected to have one or more of the following effects:

- expose a person to a risk of harm, serious harassment, serious intimidation or a workers' compensable injury under the *Work, Health and Safety Act 2011*;
- result in the disclosure of information for which there is an overriding public interest consideration against disclosure under the *Government Information (Public Access) Act 2009*;
- found an action against the employer for breach of confidence; or
- Result in the contravention of any Act or law.

## STEP 1: UNDERTAKE A PRELIMINARY ASSESSMENT

Not every complaint or allegation requires investigation. Upon becoming aware of possible unsatisfactory work performance or conduct by an employee the employer may decide to investigate.

Some workplace investigations are subject to particular legislative requirements. The assessment of the possible unsatisfactory work performance or conduct and the determination of the nature of the investigation must be undertaken within the relevant framework and having regard to the particular requirements. Examples include complaints or allegations arising under:

- the *Model Code of Conduct* and the *Procedures for the Administration of the Model Code of Conduct*, made pursuant to Chapter 14, Part 1, Division 1, of the *Local Government Act 1993* (NSW);
- the *Public Interest Disclosures Act 1994* (NSW); and
- the *Independent Commission Against Corruption Act 1988* (NSW).

When deciding whether to investigate possible unsatisfactory work performance or conduct, factors that the employer should consider include:

- The seriousness of the possible unsatisfactory work performance or conduct;
- How recent the possible unsatisfactory work performance or conduct occurred;
- Potential implications in not undertaking an investigation; and
- Whether there are any mitigating factors (for example drug/alcohol dependency, health issues including mental health issues, or family/domestic violence issues).



Following the preliminary assessment, the employer should decide whether to:

- resolve the possible unsatisfactory work performance or conduct by use of alternative means and/or appropriate strategies (e.g. informal discussion, counselling, mediation and/or training);
- commence an investigation;
- suspend an employee (with or without pay) during an investigation, in accordance with subclause 36B(i) of the Agreement;
- refer the possible unsatisfactory work performance or conduct to another investigative agency (e.g. OLG, ICAC);
- take no action.

Factors to consider when deciding whether to suspend an employee during an investigation include:

- the seriousness of the possible unsatisfactory work performance or conduct;
- whether the suspected unsatisfactory work performance or conduct, if substantiated, is likely to constitute a serious breach of the employer's code of conduct, policies, procedures, contract of employment and/or other legal obligations;
- potential impacts on the employee (e.g. financial, reputation);
- potential impacts on the employer (e.g. financial, security of property, reputation, WHS, and the potential for evidence to be disturbed).

## **STEP 2: DETERMINE WHETHER THE INVESTIGATION WILL BE DONE INTERNALLY OR REFERRED TO AN EXTERNAL INVESTIGATOR**

Where the employer decides to undertake an investigation into possible unsatisfactory work performance or conduct, the employer needs to decide whether the investigation will be done internally or referred to an external investigator. Factors to consider include:

- the time and other resources needed to properly conduct and speedily conclude the investigation;
- the availability of staff with the necessary skills and/or experience to properly conduct and speedily conclude the investigation;
- whether the person(s) conducting the investigation has a conflict of interest in the matter being investigated.

## **STEP 3: DEVELOP AN INVESTIGATION FRAMEWORK**

Sufficient resources should be provided by the employer with the objective that the investigation should take no longer than is reasonably necessary to conduct a proper investigation. The time taken to conclude an investigation will depend on the nature of the investigation and the issues to be investigated. There are some investigations which can be concluded within one month.

The framework for the investigation should include:

- the appropriate authorisation to conduct the investigation; and
- the scope and timing of the investigation (including an estimated timeframe).

## **STEP 4: GATHERING INFORMATION**

The task of an investigator is to gather information to assist the employer to make an informed decision. Workplace investigations typically involve enquiring, collecting information and ascertaining facts.

### Gather potential sources of information

Lawfully gather potential sources of information which may assist with ascertaining the fact(s) in issue (e.g. documents, video footage, and witness statements).

Legislation which may be relevant includes, for example:

- *Privacy and Personal Information Protection Act 1998* (NSW)
- *Workplace Surveillance Act 2005* (NSW)
- *Public Interest Disclosures Act 1994* (NSW)
- *Independent Commission Against Corruption Act 1988* (NSW)

### Who should be interviewed, and in what order?

Determine who should be interviewed and the order in which witnesses are to be interviewed.

It is often preferable to interview the person(s) who made the complaint or allegation first as this can assist with obtaining further and better details which may need to be put to other witnesses at a later stage.

### Meet with witnesses face-to-face, unless it is not practicable to do so

Witnesses should be interviewed during a face-to-face meeting. Where it is not reasonably practicable to interview witnesses during a face-to-face meeting it may be necessary for the investigator to explore other options, such as conducting an interview by telephone, videoconference (e.g. Skype) and/or by obtaining a written statement from the witness.

### Provide reasonable notice to witnesses who are required for an interview

Employers can require their own employees to cooperate with workplace investigations into possible unsatisfactory work performance or conduct by an employee, which may include requiring employees to attend interviews with the investigator(s).

### **When informing an employee that they are required to attend an interview:**

- Advise the employee that the employer has commenced a workplace investigation and provide a summary of the issue(s) under investigation.
- Advise the employee of the person(s) conducting the investigation.
- Advise the employee of any applicable requirements in relation to confidentiality; and
- Provide reasonable notice of the requirement to attend an interview (date, time and location).

Employees may request the presence of a union representative and/or a support person during the interview.

### **In addition to the above, where the employee to be interviewed is alleged to have engaged in unsatisfactory work performance or conduct:**

- inform the employee of the substance of the alleged unsatisfactory work performance or conduct in sufficient detail so as to enable the employee to properly understand the allegation(s); and
- remind the employee that the employer has an Employee Assistance Program (EAP) and how it may be accessed.

### Commencement of interviews

At the commencement of each interview the investigator should:

- Provide an introduction
- Explain the purpose of the interview
- Explain the role of the union representative or support person
- Explain the investigation process (in general terms).

#### Special requirements when interviewing an employee who is alleged to have engaged in unsatisfactory work performance or conduct

When interviewing an employee who is alleged to have engaged in unsatisfactory work performance or conduct, before concluding the investigation (how and when this is done is up to the investigator, depending on the circumstances):

- Inform the employee of the main points of the allegation(s) in sufficient detail so as to enable the employee to properly understand the allegation(s).
- Provide the employee with a reasonable opportunity to respond to the allegation(s).
- Subject to applicable legal requirements, show the employee relevant evidence, if any, which contradicts the employee's version of the facts (e.g. documents, emails and/or video footage).

#### Role of the union representative or support person during interviews

Subclause 36A(iv) of the Agreement provides that an employee shall:

*"Be entitled to request the presence of a union representative and/or the involvement of their union at any stage."*

During fact finding interviews, union representatives and support persons should not:

- Advocate on behalf of the interviewee;
- Answer questions on behalf of the interviewee;
- Investigate;
- Interfere with or obstruct the investigation process.

Where a person assisting an employee is a union representative, they may have skills and/or experience that can assist in ensuring an effective investigation. In such instances, the industrial parties to the Agreement recommend that investigators extend professional courtesies to the union representative, which may include, for example, allowing the union representative to suggest that particular questions be asked which may have been overlooked, provided that they do not interfere with or obstruct the investigation process.

#### Review

After the initial round of information gathering, consider whether it is necessary, in order to ascertain a fact in issue, to re-interview a witness, interview further witnesses or gather additional information from other sources.

If the anticipated length of the investigation needs to be extended the employer should notify the employee and explain the reason(s) for the extension, and where the employee has requested the involvement of a union representative, such notice should also be provided to the union representative.

#### **STEP 5: APPLY THE APPROPRIATE STANDARD OF PROOF**

In workplace investigations concerning alleged unsatisfactory work performance or conduct the appropriate standard of proof is “the balance of probabilities”. This means it must be more probable than not that the allegation(s) are made out.

## **STEP 6: PREPARE AN INVESTIGATION REPORT**

Once the investigator(s) has concluded the investigation they should prepare an investigation report.

The decision on what, if any, disciplinary action should be taken against an employee is a matter for the employer and not the investigator as it often involves consideration of information that is not available to external investigators, such as an employee’s previous work performance, length of service, and whether the employee has received prior warnings or commendations.

## **AFTER THE INVESTIGATION**

Whilst an investigation report produced following a properly conducted investigation may contain useful information to assist the employer to make an informed decision on whether possible unsatisfactory work performance has occurred, other information may need to be considered before a final decision is made on what, if any, disciplinary action should be taken. For example, are there any mitigating circumstances?

- (i) Before deciding whether an employee’s work performance or conduct is unsatisfactory the employer shall:
  - a) provide the employee with the relevant findings of the investigation and any other relevant information (evidence and/or relevant extracts from the report) upon which the employer may seek to rely to demonstrate that the employee’s work performance or conduct is unsatisfactory;
  - b) provide the employee with a reasonable opportunity to respond;
  - c) consider any response by the employee, including mitigating factors.

## **CONFIDENTIALITY**

Workplace investigations should remain confidential. This includes information related to the investigation including the nature and details of allegations of unsatisfactory work performance or conduct, correspondence, witness statements/interviews, and investigation reports.

## **FURTHER INFORMATION**

For further information:

- Employees should contact their union, and
- Employers should contact the Industrial Relations Unit, LGNSW

**Annexure A**  
**Terms of Agreement**  
**Blacktown City Council**  
**2018-2021 Enterprise Agreement**

The following matters do not form part of the Agreement. These log items were agreed to in the course of negotiations for the Agreement and as such are recorded in the following “Terms of Agreement”.

**1. Establishment of a working group – 35 hour week**

- (i) Over the course of this Agreement, the parties will establish a working group to investigate the feasibility and practicality of introducing a 35-hour week for more employees.
- (ii) The working group will have regard to the following:
  - a) The financial viability of any reduction in hours, including any future changes to existing terms and conditions that may make a reduction in hours feasible;
  - b) The requirement that service levels must be maintained; and
  - c) The practical impacts a reduction in hours may have on service levels.

**2. Technology and mobility allowance**

Annexed is a copy of the Addendum to the 2009 Agreement which sets out the terms and conditions of the technology and mobility allowance (this allowance is referred to in sub-clause 15(xix) of the Agreement).

**3. Leaseback vehicle refuelling times**

From the effective date of the Agreement, the allowable leaseback refuelling times will be 24 hours/7 days a week and the geographical boundaries will also be extended to Central Coast, Katoomba and Wollongong.

**4. Provision of council documentation**

See sub-clause 15(xix)(b) of the Agreement.

**5. Academic scholarships**

From the effective date of the Agreement, Council will increase the number of academic scholarships to five on the basis that one scholarship will be awarded per directorate. The value of the scholarships will be increased to \$3,500.00 each.

**6. Fitness passports**

From the effective date of the Agreement, Fitness Passports will be extended to casual employees.

**7. Council gym and leisure facilities**

From the effective date of the Agreement, eligible employees will be entitled to a \$400 contribution to a membership at Council owned and operated gym and leisure facilities in line with Council's procedures (up from \$375 in Agreement No: EA15/7).

## **8. Phased retirement**

Over the course of this Agreement, the parties will discuss the ways in which long term employees who enter into phased retirement plans and provide Council with at least 12 months' notice of retirement, may be compensated.

## **9. Savings and efficiencies**

To fund the above-Award pay increases contained in the Agreement, the following savings and efficiencies will be rolled out throughout the life of the Agreement. The specifics pertaining to these savings and efficiencies will be addressed by the parties at a later date: the Terms of Agreement provide a general overview only.

- (i) The parties will work collaboratively to achieve a 5% improvement in training attendance;
- (ii) By the end of 2018, Council will cease with paper payslips and transition to electronic payslips for all employees, subject to the provision of suitable equipment, technology and training to aid employees;
- (iii) From the effective date of the Agreement, Council will commence rolling out electronic employee self-service functionality across Council, subject to the provision of equipment, technology and training;
- (iv) Over the first six (6) months of the Agreement, the parties agree to consult intensively over a range of matters relating to improved utilisation of plant and equipment, including the following:
  - a) The establishment of KPIs to drive improvements in plant utilisation; and
  - b) The use of mobility to improve plant utilisation, vehicle scheduling and vehicle maintenance. In considering mobility to improve utilisation of plant and equipment, the parties will consider reviewing the Addendum to the 2009 Agreement (which sets out the terms and conditions of the technology and mobility allowance) and/or provision of a policy or procedure.
- (v) Over the first six (6) months of the Agreement, the parties agree to establish a working party to review open space rostering and work arrangements subject to the following terms:
  - a) This working group will be comprised of one (1) union delegate representing open space supervisors, one (1) union delegate representing open space employees, two (2) elected open space employee representatives, (1) union organiser and Council representatives, so that there is an equal number of representatives for both the union and Council;
  - b) This working group will provide annual updates to the Executive and Elected Council;
  - c) This working group will consult in particular on the development of KPIs that, over the course of the Agreement, will be used to inform decision making around the open space service.

## **10. Salary system**

- (i) Council agrees that eighteen (18) months from the effective date of the Agreement, a new salary system will be finalised. Upon completion of this eighteen (18) month period, the new salary system will be ready for implementation.

- (ii) As part of this process, the current salary system will be reviewed and recommendations for potential new systems will be considered. A new system will be selected and approved by the Executive. An implementation plan will be completed with work ready to commence on implementing the new system.
- (iii) If the new salary system is not ready for implementation by this time, the unions will be entitled to hold a combined paid meeting of members to explain to members why this target has not been met.

## Annexure B

### Addendum to Blacktown City Council Enterprise Agreement 2009 IRC Matter no:

#### A)

**1%** - As a pre-requisite condition to settlement of terms for the Enterprise Agreement 2009 Council needs to resolve this issue in order to support OH&S enhancement, as well as enabling efficiency and effectiveness improvements.

Payment of 1% from 1 November 2007 to date and continuing for those not already in receipt or subject to specific agreement, on the basis of acceptance of the following terms and conditions:

- Recognition that the intention of technological upgrade is to improve work practices for all Council facilities.
- Field technology will be implemented with the ability to be switched on or off by the user as appropriate, but will not involve the use of GPS for the purpose of tracking of staff.
- Field technology will not be used as a tool for individual performance management or performance assessments.
- No disciplinary action will be taken as a result of the implementation and operation of these new technologies.
- Payment will only be applicable to staff currently employed at Council including new employees from their date of commencement.
- Joint staff-management committees will be established within Council including appropriate local staff representation, to oversee the implementation of new technologies in the future, including milestones and timeframes.
- Field technology will only be implemented once the joint staff-management committees have engaged in a consultative process with either party able to invoke the Grievance and Dispute procedures, including the ability to refer the matter to the Industrial Registrar at any stage of the procedure.
- Orientation will be conducted to enable staff to familiarise themselves with the actual hardware and software including experience of operational examples. The local committees will co-ordinate times and venues as appropriate.
- Training will be provided to staff on paid time – a timetable will be established for this as necessary.
- The 1% amount will be payable as an allowance applicable to the 'All Purpose Rate', so it is included in leave calculations and superannuation etc.

#### B)

Contingent upon resolution of "A" above, Council can amend, entirely without prejudice, settlement of the Enterprise Agreement 2009 terms incorporating the following provisions:

#### Wages:

- 1.11.2009 = 3.75%
  - 1.11.2010 = 4%
- } In lieu of award variations.

However, if the award in the aggregate, between 1 November 2009 – 1 November 2010, varies by more than 7.75%, Council will make up the shortfall.

#### 35 Hour Week

- It is not believed that this is financially sustainable or competitive.