



Local Government (State) Award Update

IT'S TIME TO HAVE YOUR SAY

UPDATE NUMBER 10 | 5 June 2017

As members know the USU has been involved in ongoing local government Award negotiations for many months.

These negotiations have been difficult with every aspect of your Award - including some of your most basic working conditions - targeted by Local Government NSW.

Now it is your turn. It is time to vote on your new Award. We have prepared this extensive summary of the proposed new Award changes.

We believe it is a good deal and recommend our members vote to accept the new Award.

USU SUMMARY OF PROPOSED AWARD VARIATIONS

1) Added new dot point to the Statement of Intent of Award Clause 2:

"Promote the health and safety of workers and other people in the workplace."

This places a new focus on ensuring safety in the workplace which will link in well with other award changes including those that now refer to issues such as mental health issues in the award for the first time.

2) Superficial cross-reference to Clause 44, Area Incidence and Duration.

This has no negative impact on our members but merely is updating to be consistent in wording to other changes within this award.

3) Included a new category in the definitions clause in the award to finally recognise RDO's in the State award.

This is long overdue, as while almost all Councils have some form of an RDO system in place for most staff, such as a 19 day month, 9 day fortnight etc., the fact that these have previously only been recognised by local workplace policy or in some cases by a local workplace agreement meant that the previous lack of recognition of RDO's in the award led to an inability to resolve a breach in the award on RDO's such as when Kempsey Shire Council started absorbing RDO's into any public holiday they fell on for some staff, instead of moving the RDO to another scheduled working day as a result in the end the IRC was unable to rule in our favour to compel Council to overturn its decision, as RDO's were not recognised in the State award.

This new clause will now prevent this from happening again for employees taking RDO's on a 9 day fortnight, 19 day month, or on an RDO every 3 week roster.

The inclusion of this change in the award will also see those employees currently affected at Kempsey Council protected from seeing their RDO's lost when they fall on a public holiday in the future.

Employees who work a four day week and who have the same day off each week are not considered to be working on an RDO system as they are not accruing time on one week to be taken off on another week, which is the case with RDO's. However those who currently work a four day week and who have been able to move their scheduled day off when it falls on a public holiday will continue to have that right as per *Clause 20, Holiday A General (viii)*.

4) Minor amendment to Clause 9, Performance Evaluation and Reward, out of date language deleted.

This has no negative impact on members.

5) Clause 10, Payment for relief duties/work.

This change reflects the existing custom and practice across most workplaces which commenced when most RDO systems were adopted in the past, going right back to the early 1980's when RDO's were intended to be cost neutral on being adopted. More often than not this meant that higher grade pay would not be paid while relieving for a person on an RDO.

Employees who have been receiving higher grade pay for relieving in a higher grade position for a person on an RDO will still retain that right.

This is part of the change to the award to protect workers from losing RDO's if they fall on public holidays.

6) Clause 15, Allowances, Additional Payment and Expenses.

New provision which will now cap sewer choke claims to 'per shift' and not 'per day'. The 'per day' cap limited claims to one per day. This change will see workers who have completed their shift and who have knocked off and been called back to work entitled to claim another sewer choke even if they had claimed one earlier that day on their ordinary shift.

7) Clause 15, Allowances, Additional Payment and Expenses.

Due to technological change more workers are being provided with, or are using a mobile phone as their primary means of phone contact.

This change recognises that fact, but also continues to provide the fixed line rental allowance where there is agreement between the employee and employer that the fixed line can be used as a means of communication to the employee and there is no reliable accessible mobile network coverage to the residence.

8) Clause 15, Allowance, Additional Payment and Expenses.

This change now removes the previous award reference that an employer could REQUIRE an employee 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.

It is the view of the USU that the employer should provide transport for employees and their equipment to worksites away from their normal fixed starting point e.g depot or building etc.



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The USU argued in the award negotiations to have any time currently paid as a travel allowance to instead be paid as overtime for employees who agree to transport other workers and/or Council equipment to start and/or finish at worksites using their own vehicles. Overtime is paid for staff driving Council vehicles outside of ordinary hours to travel to and from work and in our view, should be paid to employees who, by agreement, provide their own vehicle to transport other employees and/or Council equipment.

By removing the word 'required' from the award clause an employer can no longer compel any employee to provide their own transport for such situations.

Should employees who currently provide vehicles decide not to do so in the future and the employer wants them to, the employee should consider requesting their employer to enter into a workplace agreement which will treat them equally with employees who are required to drive Council vehicles to start and finish, on jobsites regarding the payment of overtime.

Should any employee feel threatened into providing a vehicle, this change will allow us to better dispute the matter in the future.

9) Clause 15, Allowances, Additional Payments and Expenses.

This change merely sees the First Aid Sub Clause being placed in its own Clause, separate from where it had been included in a joint Clause which also included Community Language and Signing.

10) Clause 15, Additional Payments and Expenses.

This sees a new Clause on First Aid, which provides much more detail and certainty than the previous clause as to who and when the clause applies. It also links in with the focus on the new dot point in the Statement of Intent clause, which deals with Health and Safety in the workplace.

These changes should improve safety in the workplace.

11) Updated Clause 16, Motor Vehicle Leaseback, now named Motor Vehicle Arrangements Clause.

These changes move relevant sections regarding private or leaseback vehicle arrangements from the previous Clause 15, Allowances Clause, and puts them together under one clause. The changes see the minimum quarterly payments significantly increased for the first time in many years leading to an amount of \$2145 per quarter.

The changes in this clause also require the employer to justify in writing, any increases in leaseback fees exceeding CPI and also clarifies what a 'novated lease' is and prevents an employer from making it a requirement to enter into a novated lease arrangement.

12) Clause 18, Hours of Work.

In order to achieve the award protection of ensuring RDO's are not absorbed into public holidays when they fall on them, by moving them to the next working day, or other day as agreed, some limited flexibility has been included in the award for the employer to give two weeks' notice if they want to alter a scheduled roster day to another day where there are genuine operational or safety reasons, provided the alteration does not

unreasonably disadvantage the employee.

Where an employee works on their RDO, they are now entitled to the appropriate overtime payments instead of being told they can only have another day off instead.

13) Clause 18, Hours of Work.

These changes deal with unpaid meal breaks and provide some relatively minor wording changes which do not alter significantly the previous application and intent of the award. The wording also updates the reference to Work, Health and Safety, instead of the now superseded Occupational Health and Safety.

14) Clause 18, Hours of Work.

The maximum annual close down period permitted under the award has been capped at 2 weeks, down from 4 weeks.

Other references in the award refer to what the USU would call a limited grandfathering provision, which prevents close downs of more than 2 weeks duration, other than where they currently exist. In those cases employees can request alternative arrangements and cannot be unreasonably refused.

15) Clause 19, Overtime B Excess Hours Agreements – replaces Hours of Work Flexibility Agreements Sub Clause.

This clause will assist those members in Professional/Specialist Band 3 and Executive Band 4 who work additional unpaid hours in meeting or trying to meet the requirements of their job.

Employers will be required where an employee can demonstrate they are working excess unpaid hours to enter into an Excess Hours Agreement, or if denied, the employer must meet and discuss ways to reduce the excess unpaid hours or alternative ways to compensate the employee.

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

Note: very few outdoor staff would be working any unpaid hours, however many indoor staff feel compelled to do so, while their employer often turns a blind eye.

This clause should assist members in dealing with this issue and provide a much healthier workplace in doing so.

16) Clause 19, Overtime C. On-Call

This change merely replaces the old words of 'within a reasonable time', with 'in a timely manner'.

This is in respect to, being contactable, and responding while on-call.

17) Clause 20, Holidays

These changes include a specific change that, where an RDO falls on a public holiday, it shall instead be taken on the next working day, or another day by agreement, excluding employees who are engaged on a seven day a week rotating roster system, as these employees are already granted 5 additional days off under the award.

This change specifically prevents RDO's being absorbed and lost when they fall on a public holiday.

18) Clause 20, Holidays

This new section ensures that any staff member, who at the operative date of this

award (July 2017), was entitled to move their RDO which fell on a public holiday, will retain that right.

This extends the new protections to also apply to employees who work on systems different to the traditional 9 day fortnight, 19 day month, and 1 RDO each 3 week cycles, where they had been able to take their scheduled RDO on another working day when it fell on a public holiday.

19) Clause 20, Holidays

This new section allows for those employees who choose to accrue RDO's, or time in lieu in excess of 1 week, to be directed with at least 2 weeks' notice, to take such accrued leave to reduce the accrual so it does not exceed the maximum of 1 week's accrual.

Alternatively such accruals may also be used for the period of annual shut down.

20) Clause 21, Leave Provisions Sick Leave

The changes in this clause see the word 'sickness' replaced with 'illness' or 'injury'.

The clause will better clarify the employer's right to request proof of injury or illness where there is a pattern of sick leave, or based upon the amount of sick leave taken.

This will assist in dealing with alleged abusers of sick leave.

The clause now allows for the use of Statutory Declarations as proof of illness.

This now rectifies the inconsistency in the previous awards where carer's leave allowed for the use of Statutory Declarations, but sick leave did not.

21) Clause 21, Leave Provisions C. Emergency Services Leave.

The change to this clause refers to a new ability to seek access to special leave should a worker engaged in emergency services work not qualify under this clause.

22) Clause 21, Leave Provisions D. Annual Leave.

This change ties in with the reduced annual close down period of 4 weeks, down to 2 weeks, by limiting the close down in excess of 2 weeks to only those who were required to take leave for annual close down periods in excess of two weeks as at the operative date of this award. In such cases however, affected employees can request a change which cannot unreasonably be refused.

Employers who did not have an annual close down period in excess of 2 weeks during the past award period will not be able to adopt them in the future.

23) Clause 21, Leave Provisions E. Long Service Leave.

This change now allows for workers to cash in any long service leave accrual in excess of the minimum entitlement of 0.8 weeks per year of service under the Long Service Leave Act.

Under the award, employees accrue LSL at a rate of 1.3 weeks for each year of service up until 15 years, and then 2.2 weeks per year of service accrual after 15 years.

This means for example that an employee, with the consent of the employer, may cash out up to 5 weeks LSL after 10 years' service, and a further 2.5 weeks' up to 15 years' service, then an amount of 1.4 weeks per year of service after 15 years of service.

Workers who want to access additional funds from their accrued LSL won't have to take LSL at double pay to access extra cash by utilising this new provision but can cash out the excess LSL component with the consent of their employer.

Employers should not refuse such requests as they have complained about the burden of excessive LSL accruals.

24) Clause 21, Leave Provisions E. Long Service Leave.

The new clause contains a new section (c) which states that LSL can be taken after 5 years with accruals after 5 years calculated monthly on a pro rata basis. This clears up any confusion which some councils had in only allowing LSL to be taken after each 5 years of completed service.

25) Clause 21, Leave Provisions E. Long Service Leave.

This change limits the portability of Long Service Leave from one employer to another (unless otherwise agreed) to the equivalent amount of 5 years accrual, based upon the length of service at the time. For example an employee with up to 15 years' service can only take up to 6.5 weeks across, but an employee with 20 years can take up to 11 weeks.

Should a potential employer want to recruit an employee from another Council they are likely to agree to higher levels of portability, as the leave transferred, comes from the previous employers funds and has to be paid out anyway.

26) Clause 21, Leave Provisions G. Requests for Flexible Working Arrangements.

This section has been deleted.

The intent of this clause has now been moved to other sections of the award.

27) Clause 21, Leave Provisions K. Bereavement Leave

This change sees the addition of the spouse or de-facto partner of a sibling of the employee added to the extended family section of the award regarding bereavement leave. This will allow up to 2 days leave for this purpose on any occasion.

Previously there was no recognition for those relationships in the award.

28) Clause 21, Leave Provisions K. Other Paid Leave (ii) Union Training Leave.

These changes allow for specific non-accredited union training to be covered under the award.

Previously the award restricted training to accredited union training only.

This will now officially allow for delegates who have already completed relevant accredited training, or who only want to participate in the non-accredited training to be released with pay under the award.

The clause now contains a cap of 5 union training days per 3 years per employee for future training after the operative date of a new 2017 award.

Additional training days may be granted by agreement.

Union training is also now limited to nominated union delegates and not employees as per previous wording.

The Union will need to provide minimum

notice of the training of 4 weeks, including the type, content, and duration of training.

The ability to provide non-accredited training will allow the Union to develop and provide specific training for industries and awards in a timely manner when factors require the training to be updated and or modified, etc.

29) Leave Provisions L. Special Leave now replaces Leave Without Pay Clause.

This new provision allows for leave to be approved on request either with or without pay, unlike the previous clause which only provided for leave without pay.

The purpose of this leave includes but is not limited to:

- Leave for victims of family or domestic violence.
- Leave for engaging in voluntary emergency management activity
- Compassionate leave for employees facing unforeseen circumstances such as injury or terminal illness.
- Leave to attend duties as a member of the Australian Defence Force.

This new clause should result in Council's having to adopt relevant workplace policy to deal with issues such as Family and Domestic Violence Leave, to ensure fair and consistent access and application of this clause in the workplace.

30) Clause 22, Flexibility for Work and Family Responsibilities.

The changes to this clause replace the deleted provisions under the previous Clause 21, G Requests for Flexible Work Arrangements clause, by creating a new Clause B. Right to Request Changes in Working Arrangements:

- (i) 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 years of age 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.

The employee needs to have at least 12 months continuous service with the employer and excludes casual employees.

The employer cannot unreasonably refuse such requests.

Requests are to be in writing, setting out details and reasons for the changes sought.

This clause improves significantly on the previous award clauses and supports carer's responsibilities, phased retirement, e.g. over 55 years of age, and should employees who need flexibility in dealing with family and domestic violence issues.

31) Clause 24, Health and Wellbeing.

This clause reduces the required minimum balance of sick leave accrual required to access this leave from 3 weeks to 2 weeks accrual.

This will allow more employees to access this leave.

32) Clause 30, Junior and Trainee Employment

These changes seek to update the wording to better reflect contemporary language regarding appropriate training and qualifications.

It provides more certainty to apprentices and trainees, and also makes it very clear that the employment of trainees and apprentices cannot result in the displacement of existing employees from employment.

This clause protects existing workers from being displaced by trainees and apprentices while also seeking to facilitate more traineeship and apprenticeship opportunities in local government workplace which are crucial in needing to address the approaching skills loss due the retirement of the current ageing workforce.

The average age of employees covered by this award employed in local government is now in the mid 50's.

33) Clause 31, Training and Development

New wording to assist Band 3 and Band 4 employees complete their required professional qualifications.

34) Clause 31, Training and Development.

Minor change – replace outdated words with new reference to the relevant National Training Package.

35) Clause 31, Training and Development.

Further minor changes to refer to the appropriate Vocational Educational Training System, rather than the now superseded one.

36) Clause 32, Consultative Committee.

New addition to the scope of the Consultative Committee to include Health and Wellbeing programs.

This will give the Unions, through the Consultative Committee, a means to push for the adoption of suitable Health and Wellbeing programs in the workplace.

37) Clause 36, Disciplinary Procedures B. Employers Rights and Obligations.

These changes update the award clause which deals with workplace suspensions, by seeking to limit workplace investigations to a reasonable period of time and to limit suspensions to issues which would be considered of a serious nature.

Employers would not be able to suspend staff on minor issues.

Furthermore, the employer can request the presence of their Association as well as the Union at any stage of the disciplinary process.

This has been the case regarding a request for their employers Association anyway, but it was not referred to in the award.

New guidelines have also been drafted and agreed to regarding workplace investigations at the instigation of the Unions.

These guidelines provide a clearer,

prescriptive and fair process for employers and employees involved in workplace investigations.

They may also lead to decisions by employers not to conduct an unnecessary investigation where other factors have contributed to the alleged performance issues. Issues such as drug and alcohol dependency, health issues including mental health, or issues of family and domestic violence should be considered before deciding to put the employee through an unnecessary investigation or process which may only exacerbate the problem.

A new requirement under *D. Disciplinary Procedures* is also now included to facilitate discussions at the earliest stage of discussing alleged performance issues in seeking to determine if external factors as referred to in the changes under workplace investigations such as drug and alcohol dependence, health, including mental health issues or family and domestic violence, may be the main reason or contributing factor in alleged performance issues, where instead of disciplining a person, the provision of training, counselling, or referral to an EAP, may assist in resolving the issue(s), rather than exacerbating them.

Further changes are included in the *Section E. Penalties*, which provide another alternative to transferring an employee to a lower paid position, by instead allowing them to be transferred to a lower salary point/step.

This should result in outcomes where the employee retains their position instead of being demoted and merely has to address their alleged performance issue in the future to be able to progress back to their original salary point/step.

38) Clause 39, Workplace Change.

This clause has been amended by first removing the previous words "and Redundancy", and placing the workplace redundancy provisions in a new clause which deals specifically with termination of employment.

The purpose of this change was to recognise that Workplace Change does not necessarily lead to redundancy and that all reasonable efforts to consider alternative options which do not result in redundancy are considered and dealt with first.

The clause also clarifies the notice requirements in the event of a change in organisation structure or the reduction in the size of an employer's workforce.

39) Clause 40, Termination and Redundancy.

This new clause deals specifically with termination of employment, whether it be by resignation, termination for disciplinary reasons or redundancy.

There is no reduction in entitlements in this new clause.

40) Clause 40, Termination and Redundancy.

The job search allowance will now be indexed with annual award increases rather than being a flat \$2,500 payment. This will see the job search allowance increase in line with wage increases.

41) Clause 40, Termination and Redundancy

A reference has been included to a 'general manager' in cl 40(xiv) in order to reflect recent legislative changes in the *Local Government Act*.

42) Table 2 Allowances, Camping Allowance.

This change sees the current camping allowance increase in 3 yearly increases from the amount of \$54.16 to \$58.00 in July 2017, to \$63.00 in July 2018 and to \$67.55 in July 2019. This is an increase over the 3 years of \$13.39 per night.

This equates to an increase of 27.72 % over the 3 years.

43) Table 2 Allowances, Sewer Choke

This change reflects the new clause which will pay the allowance as per shift instead of per day. This will allow employees called back to work after knocking off to claim another sewer choke on each occasion, they are called back instead of being capped at 1 per day.

44) Table 2 Allowances,

This change will result in the majority of allowances to increase by the award percentages excluding camping which has increased by a significantly higher rate and those such as vehicle allowances, tool allowances, etc which are adjusted based upon other relevant industrial instruments such as the federal modern award and the crown employees award increases.

45) Table 1 Monetary Rates,

This clause deals with the award increases.

While this issue regarding pay increases is the most important issue in negotiations, it is always the last matter to be finalised in negotiations as we need to understand the full financial implications of the total package of award changes.

For this award the negotiations regarding the pay increases have been the most difficult in decades. The industrial policies of the federal coalition governments under John Howard, Tony Abbott and Malcolm Turnbull have seen millions of workers awards stripped bare, penalty rates reduced and wages stagnate or decline.

The Australian Bureau of Statistics records state that wage growth is at its lowest point going back to the war years and depression.

Coupled with this we have had over 6 years of NSW Liberal/National governments which have adopted extremely low rate caps for NSW Councils on top of Federal Assistance Grants which had been either reduced or frozen.

The State Government also used legislation to cap the public sector wages to a maximum cap of 2.5% unless conditions were traded off.

Remember this is a maximum cap not the minimum.

Many Federal Public Sector Workers have gone without increases now for several years as they refused to accept offers of 1% on top of trade-offs.

This award protects existing conditions regarding income and allowances while delivering increases above the current CPI rates of under 2%.

The employers had sought to reduce or remove some weekend penalties and to remove allowances such as on call and first aid from the definition of ordinary pay.

This would have seen a worker who receives these allowances have their pay reduced by over \$170.00 pw when taking annual leave in the future as well as some workers losing

their weekend penalty rates altogether.

The employers did not achieve any of the claims which sought to reduce workers income.

In the face of all of this we have secured an offer of:

3 annual award increases to commence from the first full pay periods in July 2017, 2018 and 2019.

We have again secured guaranteed minimum weekly increases for our lowest paid members which are above the 3 annual percentage increases.

The offer we have achieved as part of this award package has been difficult to achieve and to do any better we would have to arbitrate the award which could see all of the benefits of this package removed by the employers while we seek an arbitrated outcome where the onus would be on us as the applicants to justify the increases.

This process would take well over a year and may not result in a better outcome.

In fact even if it did result in a slight increase it is not guaranteed that the increase would be backdated to July 2017.

The Increases in this award are;

2.35% or a minimum increase of \$20.40 pw from July 2017

2.5% or a minimum increase of \$21.80 pw from July 2018

2.5% or a minimum increase of \$22.30 pw from July 2019

This equates to a minimum non compound increase of 7.35% over 3 years or a compound increase of 7.53%.

The minimum safety net increase is the amount of \$64.50 pw over the 3 years which equates to a compound minimum increase of 8.126% based on Band 1 Level 2 entry level and a compound minimum increase of 7.591% based on Band 1 Level 3 entry level.

Employees who are paid slightly above the entry level at Band 1 Level 3 would receive increases in excess of the minimum dollar amount of \$64.50 over the 3 years for example;

An employee on \$1000.00 pw would receive a total increase of \$75.31 pw over the 3 years.

USU MEMBERS SHOULD CAREFULLY CONSIDER THE PROPOSED AWARD PACKAGE AND PREPARE TO VOTE AT THE UPCOMING MASS MEETINGS WHICH WILL BE SCHEDULED TO OCCUR BETWEEN JUNE 8TH AND JUNE 28TH.

Should the majority of USU members vote in favour of this proposed award, it is expected to be ratified in the IRC on the 30th of June to come into effect on July 1 2017 with each award increase to be paid from the first full pay period after July 1.

Should the vote be a majority No vote we will need to recommence negotiations and or prepare for a lengthy arbitration.

THE USU RECOMMENDS THIS AWARD PACKAGE TO OUR MEMBERS.