

IN THE SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL

Matter No. 0496/2019

In the matter of a Triennial Review of Awards
Section 99 of the *Fair Work Act 1994* (SA)

**SUBMISSIONS OF THE AMALGAMATED AWU (SA) STATE UNION
RE: LOCAL GOVERNMENT EMPLOYEES AWARD**

1. These submissions are made pursuant to the Tribunal's directions of 25 March 2019 and amended directions of 15 May 2019 inviting general submissions from interested parties on a Triennial Review of Awards.
2. The Amalgamated AWU (SA) State Union (**the AWU**) is a registered employee association under the *Fair Work Act 1994* (SA) and is entitled to represent the industrial interests of employees covered by the *Local Government Employees Award* (**the Award**).
3. **Schedule 1** to these submissions outlines variations to the Award sought by the AWU and a brief explanation for each proposed variation. The AWU may seek to supplement this outline with further submissions if necessary.
4. The AWU reserves its position in relation to any variations sought by other parties.

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SCHEDULE 1

PROPOSED VARIATIONS TO LOCAL GOVERNMENT EMPLOYEES AWARD

Item	Clause	Proposed Variation	Explanation
1.	5.3.2.9	“Any employee required to work on a ladder <u>or Elevated Work Platform</u> at a height in excess of 8 metres will be paid an allowance as prescribed by Schedule 4 of this Award for the time so worked.”	The current height allowance does not recognise the dangers associated with working at heights on elevated work platforms. This is inconsistent with comparable Federal Awards such as the <i>Building and Construction General On-Site Award 2010</i> .
2.	5.3.6	“The employer will reimburse the employee whose duties require them to drive a vehicle during the course of their normal duties the cost of the drivers license fee <u>and any relevant administration fee required to be paid.</u> ”	Service SA charges an administration fee in addition to license renewal fees. Where an employee is required to maintain a driver’s license as part of their employment they should be reimbursed the total cost of obtaining the license, including any administration fee.
3.	6.1.4	Insert clause 6.1.4.3 and renumber subsequent clauses – “ <u>When a rostered day off falls on a Public Holiday the employee will be paid for the public holiday and the rostered day off will move to the next working day, or a day mutually agreed between the employer and the employee.</u> ”	Full-time employees working a 9-day fortnight should not be disadvantaged in accessing public holiday pay compared to full-time employees working a 10-day fortnight. This variation ensures that the benefit that 9-day fortnight workers receive from their rostered days off is not diluted by the loss of public holiday pay.

4.	10.1.2.5	“The employer will supply a hat which provides adequate protection from the sun and sunscreen SPF15 <u>SPF30+</u> which shall be worn/applied as the weather dictates.”	The Cancer Council recommends the use of sunscreen of at least SPF30+ strength. The Award should be updated to reflect this recommendation.
5.	Sch 4(1)	“In respect of Clause 8.1.1.1 the allowance payable pursuant to subclause (c) (i) shall be \$5.15 per day.”	The reference to subclause 8.1.1.1(c)(i) is a drafting error. There is no such clause in the Award.
6.	Sch 5(1)	Amend allowances as follows – “Having an engine of four cylinders or less: 43.6 86 cents per km Having an engine of more than four cylinders or a rotary engine: 56 96 cents per km Motor cycle: 22.4 32 cents per km”	The current mileage rates are substantially lower than under cl 4.4.5 of the <i>South Australian Municipal Salaried Officers Award</i> . These rates should be brought into alignment with the rates under that Award.
7.	Sch 5(2)	“In respect of Clause 5.3.5 the meal allowance shall be \$5.40 <u>\$15.45</u> .”	The meal allowance is substantially lower than under comparable Federal Awards. The allowance should be aligned with the meal allowance of \$15.45 available under cl 14.5(a) of the comparable <i>Local Government Industry Award 2010</i> .
8.	Sch 5(3)	“In respect of Clause 5.3.3.1 the tool allowance payable shall be \$8.10 <u>\$12.00</u> per week.”	The tool allowance is substantially lower than under comparable Awards. For example, cl 15.3 of the <i>Local Government Industry Award 2010</i> provides for \$18.25

			per week, while cl 6.3 of the <i>Adelaide City Corporation Award</i> provides for \$11.13 per week.
9.	Various	Substitute references to the “ <i>Industrial and Employee Relations Act 1994</i> ” with the “ <i>Fair Work Act 1994 (SA)</i> ”. Substitute references to the “Industrial Relations Commission of South Australia” with “South Australian Employment Tribunal, acting as an Industrial Relations Commission”.	The Award should reflect changes in legislation and the constitution of the Industrial Relations Commission since the last Triennial Review.
10.	New	Insert Family and Domestic Violence leave clause set out in Schedule 2 .	Federal system employees have been entitled to unpaid family and domestic violence leave under industry Awards since August 2018, and under the National Employment Standards since December 2018. Family and domestic violence leave should form part of the safety net provided by the Award. The proposed clause in Schedule 2 adopts the wording of the comparable Federal system <i>Local Government Industry Award 2010</i> .

SCHEDULE 2

FAMILY AND DOMESTIC VIOLENCE LEAVE CLAUSE

30. Leave to deal with Family and Domestic Violence

[30 inserted by [PR609446](#) ppc 01Aug18]

30.1 This clause applies to all employees, including casuals.

30.2 Definitions

(a) In this clause:

family and domestic violence means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

(b) A reference to a spouse or de facto partner in the definition of family member in clause 30.2(a) includes a former spouse or de facto partner.

30.3 Entitlement to unpaid leave

An employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:

- (a) the leave is available in full at the start of each 12 month period of the employee's employment; and
- (b) the leave does not accumulate from year to year; and
- (c) is available in full to part-time and casual employees.

Note: 1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.

2. The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

30.4 Taking unpaid leave

An employee may take unpaid leave to deal with family and domestic violence if the employee:

- (a) is experiencing family and domestic violence; and
- (b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

30.5 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

30.6 Notice and evidence requirements

(a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 30. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

(b) Evidence

An employee who has given their employer notice of the taking of leave under clause 30 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 30.4.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

30.7 Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 30.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 30 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

30.8 Compliance

An employee is not entitled to take leave under clause 30 unless the employee complies with clause 30.