



# **CITY OF MITCHAM LOCAL GOVERNMENT EMPLOYEES AWARD ENTERPRISE AGREEMENT No 13 of 2021**

**AGREEMENT BETWEEN:**

**City of Mitcham and Employees of the City of Mitcham who are covered by the Local Government Employees Award and the Amalgamated AWU (SA) State Union**

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This Agreement shall be known as *the “City of Mitcham / Local Government Employees Award Enterprise Agreement No 13 of 2021”*

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### 3. DEFINITIONS

"Agreement"	<i>shall be the City of Mitcham Enterprise Agreement No 13 of 2021 approved by the South Australian Employment Tribunal.</i>
"Award"	<i>shall mean the Local Government Employees Award.</i>
"Consultation"	<i>means the sharing of information and the exchange of views between the parties and includes the genuine opportunity for employees to be heard and have their views taken into consideration on matters which may affect them.</i>
"Continuous Service"	<i>For the purpose of interpretation, service shall be deemed to be continuous where the employee has left the service of one local government authority and, within 13 weeks of having done so, enters the service of another local government authority.</i>
"Cost Effective Service Delivery"	<i>Means ensuring that the agreed policies, systems and processes are put in place to determine the efficiency and effectiveness of services provided. That is a process of comparing the competitiveness of a service or project with others on criteria of quality, cost and customer service.</i>
"Council" and "Employer"	<i>shall mean The City of Mitcham.</i>
"Division"	<i>Shall mean the discrete functional areas within Council headed by a General Manager.</i>
"Employee"	<i>Shall mean an employee of the Council engaged in manual activities in connection with engineering, construction and maintenance, depot operations, waste management, parks and gardens, cleaning, trades and similar activities.</i>
"Essential and Emergency Services"	<p><i>Essential and Emergency Services are services that typically need to occur regardless of weather conditions or when standard services are required to close. Typically, crews will be selected for these periods at the discretion of management and will have the following characteristics of staffing:</i></p> <ul style="list-style-type: none"><li><i>• Key or unique skill sets (such as Waste drivers)</i></li><li><i>• The ability to multi- task (i.e., may have a variety of skills)</i></li><li><i>• No limitation to functions able to be undertaken (within their defined skillset)</i></li></ul> <p><i>Crews for Essential and Emergency services will be formed in the following circumstances:</i></p> <p><i>Heat events where core council works cease. Tasks in this context will typically include;</i></p> <ul style="list-style-type: none"><li><i>• Waste Collection</i></li><li><i>• Tree Maintenance – high community risk</i></li><li><i>• Water tanker</i></li><li><i>• Street Sweeping</i></li><li><i>• Irrigation tasks</i></li><li><i>• Risk mitigation works for urgent hazards (i.e., damaged footpath, tree down)</i></li><li><i>• Workshop</i></li></ul> <p><i>Rain/Storm events where core council works cease. Tasks in this context will typically include;</i></p> <ul style="list-style-type: none"><li><i>• Waste Collection</i></li></ul>

- *Tree Maintenance – high community risk*
- *Risk mitigation work for urgent hazards (i.e., damaged footpath, tree down)*
- *Workshop*

*Events which are not weather related where core council works cease. Tasks in this context will typically include;*

- *Waste Collection*
- *Tree Maintenance – high community risk*
- *Water tanker*
- *Street Sweeping*
- *Risk mitigation work for urgent hazards (i.e., damaged footpath, tree down)*
- *Workshop*

**"Fixed Term Contract"**

*shall mean a contract of employment made with an individual in accordance with this Agreement for a defined duration.*

**"Immediate Family"** *Immediate Family or "Household Member" shall mean:*

- *Spouse or partner (including same sex partners, defacto spouse)*
- *Child (including an adult child, adopted child, stepchild, foster child, or an ex nuptial child)*
- *Parent/guardian, partners parents, stepparent*
- *Grandparent, grandchild*
- *Sibling or stepsibling of an employee*
- *A member of the household*
- *Person you are a nominated carer for*

**"Merit"**

*In relation to selection processes for the filling of vacancies means -*

- the extent to which each of the applicants has abilities, aptitude, skills, qualifications, knowledge, experience and achievement (including community experience), characteristics and personal qualities relevant to the position, and*
- the extent to which each of the applicants has potential for development necessary to fulfil the position within reasonable time and resources.*

**"Executive Leadership Group"**

*Shall mean the group of General Managers, led by the Chief Executive Officer.*

**"Union"**

*Shall mean the Amalgamated AWU (SA) State Union, an organisation of employees registered pursuant to the Fair Work Act 1994 SA.*

#### **4. PARTIES BOUND**

This Agreement shall apply to the City of Mitcham (the employer), the Amalgamated AWU (SA) State Union (the Union), and all employees of the City of Mitcham covered by the terms and conditions of the Local Government Employees Award.

#### **5. DURATION**

This Agreement shall commence from 1 July 2021 (notwithstanding the actual date of approval by the South Australian Employment Tribunal) and shall remain in force for a period of three (3) years.

This Agreement will be reviewed, and negotiations commenced no less than six (6) months prior to the expiry of this Agreement.

#### **6. PARENT AWARD**

This Agreement replaces City of Mitcham Local Government Employees Award Enterprise Agreement No. 12 of 2018. This Agreement will be read in conjunction with the South Australian Local Government Employees Award. Where there is any inconsistency with the Award, the terms of this Agreement will prevail to the extent of the inconsistency.

#### **7. FURTHER CLAIMS**

The parties agree that there will be no further wage increases sought during the period of this agreement including increases from sources such as Award variations or decisions of the South Australian Employment Tribunal other than increases that are consistent with this Agreement.

#### **8. INTENT AND OBJECTIVES**

Council is focused on meeting community and customer needs, improving business processes, developing capable employees and ensuring viable financial outcomes.

Employees recognise the need to ensure that Council remains financially responsible, utilising a flexible and adaptive workforce of capable, competent and committed employees to provide competitive, value for money, quality services to our community and customers.

This Agreement will provide certainty during the next Three (3) years for Council employees regarding:

- employment arrangements, pay rates and conditions.
- consultative processes, joint problem-solving and dispute resolution procedures, without recourse to industrial action.
- continuous improvement and delivery of better service value while providing secure employment.

Working together, we aim through the implementation of this Agreement to:

- provide secure and sustainable employment for employees.
- continue to identify and meet customer and community needs.
- create equitable and inclusive workplaces in which we all contribute to the provision of valued, efficient and effective services.
- continuously improve the quality of Council services and programs.

#### **9. IMPLEMENTATION OF AGREEMENT**

Within one month of the Agreement being approved by the SA Employment Tribunal, the Single Bargaining Unit (SBU) shall meet to:

- 9.1 identify clauses in the document that require action to be taken in regard to either review or implementation.
- 9.2 agree on an implementation plan. The implementation plan must include all actions resulting from the Enterprise Agreement and identify timelines, human and financial resources and responsible officers.

## **10. SINGLE BARGAINING UNIT (SBU)**

The Single Bargaining Unit (SBU) was established in response to the enterprise bargaining process, its principal function being to operate in the best interests of the City of Mitcham and its employees in:

- negotiating a Collective Agreement for the workplace, and
- providing a vehicle for employees to raise issues and concerns.

### **10.1 The SBU consists of:**

- 10.1.1 Employer representatives, nominees of the Chief Executive Officer.
- 10.1.2 Employee representatives nominated or elected by employees who are covered by this Agreement.
- 10.1.3. An Employee representative from each of the following work areas; Civil Works, Horticulture, Stores/Workshop, Domestic Waste Collection.

### **10.2 The agreed objectives for the SBU are:**

- 10.2.1 To work in partnership through the processes of continuous improvement to make the City of Mitcham successful for:
  - management,
  - staff, and
  - the community.
- 10.2.2 To oversee the implementation of the Collective Agreement.
- 10.2.3 To create an environment for employee and management representatives to come together to review the current operations and agree on strategies for improvement.
- 10.2.4 To ensure that the views and issues of the workforce are represented at the meeting and are fairly heard
- 10.2.5 To create opportunities for continuous improvement to be generated from the workforce and presented to the SBU for consideration.
- 10.2.6 To ensure that accurate and timely information is communicated to management and the workforce.
- 10.2.7 The SBU will participate in training to ensure its effectiveness as a negotiating and consulting body.
- 10.2.8 The agreed Terms of Reference are as follows:
  - i. In consultation with the persons represented, negotiate, make, vary and terminate a Collective Agreement.
  - ii. To act as a forum for consultation/negotiation in the development of organisational plans for workplace reform.
  - iii. To examine current and proposed work methods and techniques including technological change.

- iv. To canvas workplace input and to examine proposed improved work arrangements.
- v. To receive reports on organisational performance and consumer satisfaction and to examine means of improving both.
- vi. To assist in the promotion of fair treatment at work initiatives and objectives.
- vii. To assist in the development of the organisational vision and values that promote appropriate workplace behaviours.
- viii. To function as the primary bargaining unit in collective agreements.

10.2.9 All members are bound to respect all confidential information and not to disclose information that could be damaging either to an individual, employee, work group or organisation.

## 11. UNION WORKPLACE REPRESENTATIVES

The employer acknowledges and accepts the right of employees to belong to the Union and to be represented by their Workplace Representatives, and by Union officials.

Workplace Representatives will be allowed reasonable paid time to carry out their work as Union Representatives.

- 11.1 To enable them to represent their members, Union Workplace Representatives may have access to:
- Use of company telephones, photocopier, internet and email.
  - Access to the Award and/or Enterprise Agreement(s).
  - A notice board provided in a prominent location in each worksite for the posting of Union information.
  - Secure filing facilities to keep Union materials.
  - Use of meeting rooms for Union meetings.

## 12. RIGHT OF ENTRY

- 12.1 An accredited Officer of the Amalgamated AWU (SA) State Union will be permitted to enter the premises of an employer subject to the Award, or any other premises where employees of Council may be working for the following purposes:
- To inspect time books and wage records as Council is required to keep or cause to be kept at those premises.
  - To inspect the work carried out by the employees and note the conditions under which the work is carried out.
  - To interview employees (being employees who are members or are eligible to become members of the Union) in relation to membership and business of the Amalgamated AWU (SA) State Union.
- 12.2 No right of entry is exercised under this clause unless:
- An accredited Officer of the **Amalgamated AWU (SA) State Union** (in normal circumstances and where practicable) gives at least 24-hour notice to Council whose premises are to be entered of the Officer's intention and states to the **Amalgamated AWU (SA) State Union** the purpose for which right of entry is sought.
  - The accredited Officer of the Union complies with all security and safety procedures and restrictions normally in force on the employer's premises.
  - Where practicable the exercise of any right of entry under this clause on an employer's premises will take place during meal or tea breaks.
- 12.3 Where an accredited Officer of the Amalgamated AWU (SA) State Union seeks to interview employees either individually or as a group during meal or tea breaks at the Council premises, the accredited Officer will make arrangements with Council for the time and place of

the interview as necessary to prevent disruption to Council's business.

- Interviews will either be held in the meal/lunchroom on Council's premises, or another suitable place nominated by Council. If no suitable place is nominated by the Council, interviews may take place at an employee's workstation or current location of work.
- Any interviews by an accredited Officer of the Union during working hours (exclusive of meal and tea breaks), shall be kept to the minimum time necessary.

### **13. EMPLOYEE/UNION OFFICIAL ATTENDANCE AT UNION MEETINGS**

Employees who hold official union positions, shall be granted paid leave to attend official union meetings on the following conditions:

- 13.1 Two (2) hours leave per month, (accumulates if not taken), equivalent to three (3) days leave per year commencing from the date the union advises Council of the employee holding an official union position.
- 13.2 A maximum of six (6) days can be taken over a two (2) year period, leave not taken in the two (2) year period does not accrue.
- 13.3 A minimum of seven (7) days' notice is to be given by the union of the meeting and the employee's requirement to attend.
- 13.4 Leave is granted at the organisation's convenience and work will not be adversely affected.
- 13.5 Leave will not be unreasonably withheld.

### **14. TRADE UNION TRAINING LEAVE**

Employees who are members of the Union are allowed leave with pay up to a maximum of five (5) days per annum to attend Trade Union Training Courses conducted by the Trade Union Training Authority in South Australia and the Union subject to the following conditions:

- 14.1 Not less than four (4) weeks- notice is given to the employing council of the date of commencement of the training course including an agenda with the times on which the course is to be conducted, such notice to be endorsed by the Secretary of the Union. The employee will provide to the Secretary of the Union and the employer a report on the course at a reasonable time after its completion.
- 14.2 The Council is able to make adequate staffing arrangements during the period of leave.
- 14.3 At any one time no more than one (1) employee of Council is on leave pursuant to this clause.
- 14.4 Where a Council employs 100 employees or less, no more than one (1) employee is allowed leave in any one year.
- 14.5 Where a Council employs more than 100 employees and up to 200 employees, no more than two (2) employees are allowed leave in any one year.
- 14.6 Where a Council employs more than 200 employees, no more than two (2) employees are allowed leave in any, one (1) year.
- 14.7 Leave taken pursuant to this clause is counted as continuous service for all purposes of the award and for purposes of long service leave entitlements.
- 14.8 An employee must have completed a period of 12 months service with a Council before proceeding on leave under this clause.

14.9 Any disputes arising out of this clause shall be resolved in accordance with the Dispute Resolution Procedure contained in Clause 22.

## **15. ORGANISATIONAL DEVELOPMENT AND CULTURE**

We are committed to, and employees will participate in developing Organisational Development and Culture that will improve and strengthen Council's organisational capability. This strategy will enable the City of Mitcham to develop and implement practices and policies to achieve the following key goals:

- To be recognised as a leading-edge local government employer, through developing, promoting and branding the distinctiveness of the City of Mitcham as an employer.
- To align the City of Mitcham's staffing profile against community service delivery expectations by implementing workforce planning tools and systems to enable analysis of data and metrics to map current and future workforce profiles.
- To encourage, foster and instil a culture of leadership excellence, accountability, and sustained performance.
- Fostering lifelong learning by the provision of training and career development opportunities for employees.
- Providing opportunities for employees to maintain and develop their professional knowledge, skills and expertise.
- Establishing employee development and appraisal mechanisms that assist employees to achieve professional satisfaction through their work consistent with the Council's present and future goals.
- Developing individual capabilities to expand the Council's capacity and assist the attainment of strategic goals.
- Developing a culture of civility, service, quality and performance across the organisation which includes the ongoing implementation of the Fair Treatment at Work process and acceptable workplace values and behaviours.

## **16. EFFICIENCY AND EFFECTIVENESS**

Initiatives have been, and will continue to be, introduced to improve the efficiency and effectiveness across Council and provide quality services to City of Mitcham customers.

In making and applying this Enterprise Agreement, the parties are committed to implementing initiatives aimed at achieving ongoing improvements in productivity and efficiency and/or enhanced performance of the City of Mitcham, including:

- Introduction of business reforms across the Council and in particular the Engineering and Horticultural portfolios.
- Continuous improvement initiatives such as process improvement, benchmarking and improved quality and value of our services and programs.
- Undertaking service and/or efficiency reviews and market testing of services to determine their cost effectiveness.
- Facilitating the assessment and reform of service delivery and maintenance strategy, work processes and practices, and optimising the utilisation of plant and equipment.
- Facilitating the achievement of organisational performance goals and performance measures outlined in the Council Plan and further described in the portfolios annual planning framework.
- Supporting employees to participate in performance or skills development and workplace related training/retraining (including accredited training).
- Improvements in cost effectiveness, leadership accountability, decision-making, and delegation.
- Introduction of new systems and/or technology.
- Introduction of workplace health and safety initiatives.

## **17. INTRODUCTION OF CHANGE**

It is an accepted principle that effective workplace relationships can only be achieved if appropriate consultation between the parties occurs on a regular basis.

Where Council has made a firm decision to implement changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, Council will as soon as practicable, notify the employee/s who may be affected by the proposed changes and their representative/s.

### **17.1 Significant Effects include:**

17.1.1 termination of employment.

17.1.2 major changes in the composition, operation or size of the employer's workforce or in the skills required.

17.1.3 the elimination or diminution of job opportunities, promotion opportunities or job tenure.

17.1.4 the alteration of hours of work.

17.1.5 the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

### **17.2 Council shall discuss with the employees affected, among other things:**

17.2.1 the introduction of the changes referred to in clause 16.

17.2.2 the effects the changes are likely to have on employees.

17.2.3 measures to avert or mitigate the adverse effects of such changes on employees.

### **17.3 Council will give prompt consideration to matters raised by the employee(s) and /or their representative(s) in relation to the changes. The discussions will commence as early as practicable after a firm decision has been made by management to make the changes referred to in this clause.**

### **17.4 For the purposes of such discussion, Council will provide in writing to the employee(s) concerned:**

- all relevant information about the changes including the nature of the changes proposed; and
- the expected effects of the changes on employee(s) and any other matters likely to affect them.

### **17.5 Council is not required to disclose confidential information disclosure of which, when looked at objectively, would be against Council's interests.**

## **18. EMPLOYMENT SECURITY**

Council is committed to ensuring security of employment and as such supports the principle of 'no forced redundancies' and there shall be no forced redundancies of permanent employees during the life of this Agreement. However, demands in ensuring that effectiveness and efficiency is maintained may require that flexibility and change in the workforce occurs.

### **18.1 In circumstances such as these, Council has a moral responsibility to find alternative work which:**

- i. is as suitable as possible to the worker's skills and current rate of pay,

- ii. does not unduly disadvantage the employee, and
- iii. is within the employee's capacity to perform either with or without training.

## **19. REDEPLOYMENT**

Where organisational change results in positions being no longer required, occupants of the position/s will be dealt with in one of the following ways:

- 19.1 Within three (3) months from the date of the position being declared redundant, Council will:
  - 19.1.1 Make an offer of a permanent position at the same classification level; or if no such position is available.
  - 19.1.2 Make an offer of a permanent position at a lower classification level with income maintenance as per clause 19.3
  - 19.1.3 Should the offered position not be acceptable; make an offer of a voluntary separation package calculated in accordance with sub-clause 19.6 and an offer of independent financial advice regarding accepting the separation package.
- 19.2 One option must be accepted within six (6) months from the date offered. Should the lower classified position be accepted, income maintenance will commence from the date of acceptance. The employee will, as a matter of priority, be provided with training to assist the redeployee into the new position.
- 19.3 Where the position attracts a lower rate of pay, the worker will receive income maintenance to make up the difference between his/her ordinary rate of pay and the rate for the new job.
  - Employees who have less than ten (10) years employment with the City of Mitcham will receive 12 months of Income Maintenance.
  - Employees who have more than ten (10) years employment with the City of Mitcham will receive 24 months of Income Maintenance.
- 19.4 An employee transferred to a position with a lower rate of pay, whilst in the income maintenance period will be assisted with training. The Manager: People and Culture will assist in identifying other job opportunities which arise, should they assist the employee's return to their original classification level.
- 19.5 Where further education or attainment of a qualification is likely to result in the employee retaining their original classification level, consideration will be given to providing assistance. The education assistance will be negotiated between all parties and may include time off with/without pay, reimbursement of fees, training opportunities provided in-house.
- 19.6 The separation package will be calculated at eight (8) weeks remuneration (in lieu of notice) plus three (3) weeks salary for each completed year of continuous service in local government. This package will be limited to a maximum of 104 weeks and must be applied for by the employee within six (6) months from the date offered.
- 19.7 Once a separation package has been accepted and upon termination of employment, the employee is entitled to an approved outplacement assistance of up to \$5,000, payable to the mutually agreed outplacement agency.
- 19.8 Non-Work-Related Injuries. Where medical evidence is received confirming an employee's medical condition due to non-work-related injuries or illness redeployee status will not be given to the employee but where appropriate and where available alternative work, (either on a short term or long term) will be considered.
- 19.9 Where the injury or illness is work related the employee's rehabilitation will be managed in accordance with the Return-to-Work Act and related Council Policy.

## **20. FAIR TREATMENT AT WORK**

The parties agree that respectful behaviours and fair treatment are important features in ensuring an organisational culture that provides staff with a safe workplace. To this end it is agreed that applicable administrative procedures will be developed in consultation with the SBU.

## **21. DISPUTE RESOLUTION PROCEDURE**

The purpose of this Dispute Resolution Procedure is to allow all parties to this Agreement a system through which to discuss and resolve all matters of grievance and dispute related to this Agreement. Parties agree to use all stages in the Grievance/Dispute Resolution Procedure to ensure that all issues receive prompt attention and are resolved where possible by conciliation at the Enterprise level.

- 21.1 At all stages of the procedure the parties to the dispute shall endeavour to resolve the matter promptly and work shall continue in the status quo until the matter is resolved. No party shall be prejudiced by the status quo remaining during the process.

### Stage One

The employee(s) and/or staff/union representative(s) will contact the relevant manager and attempt to settle the issue.

### Stage Two

If not settled at Stage One, the employee(s), the staff/union representative(s) (which may include the representative of employee's choice), will meet with the Manager and Manager People and Culture and if necessary, the relevant General Manager.

### Stage Three

If the matter is not settled at Stage Two, the employee, staff/union representative(s) will meet with the Manager, Department General Manager, Manager People and Culture and the Chief Executive Officer (CEO). Stages 1, 2 & 3 should be completed in seven (7) days.

### Stage Four

If the matter is not resolved at Stage Three, the Manager People and Culture and the staff representative(s) shall seek conciliation or arbitration, as the case may be, through the South Australian Employment Tribunal.

## **TERMS AND CONDITIONS OF EMPLOYMENT**

## **22. CASUAL EMPLOYMENT**

A casual employee is an employee who is engaged under an hourly contract of hire and paid a casual loading of 25% in addition to the applicable rates of pay prescribed under this Agreement.

- 22.1 A casual employee is paid for time worked only and is not entitled to the various types of leave prescribed in Part 6 of this Agreement. Provided however that where a casual employee performs work at a time which attracts penalty rates under the Agreement, the penalties will also apply for the work performed by the casual employee.
- 22.2 The minimum engagement for a casual is two (2) consecutive hours.
- 22.3 Where the work is stopped by rain or dust, up to 20 minutes will be allowed for shelter, and, if such weather conditions improve sufficiently to permit resumption of work, the time will be paid for, but if by direction of the employer, work does not resume, the employees will be paid for that day, no less than two (2) hours pay for the day.
- 22.4 Where a casual employee, on any day, reports for duty without having received notice before

leaving their home, when work has been unavoidably stopped, they will be paid for that day, no less than two (2) hours pay.

## **22.5 Conversion of Employment Status.**

22.5.1 Notwithstanding any other provisions of clause 22, where a position has been filled by a casual employee for a period of 12 months, and the position is required on a permanent basis it is to be advertised and filled by a merit-based process (with the exception of annual seasonal work).

For the purpose of this clause 22.5.1 the reference to *annual seasonal type employment* shall mean work on behalf of the council normally carried out at a particular time of each year and for a limited period having regard to the work operation.

The operation of clause 22.5.1 shall not apply in the case of casual employees who are engaged to perform work on an occasional, non-systematic or irregular basis or who are relieving other workers who are on workers compensation or other such long-term absences.

## **23. FIXED TERM EMPLOYMENT**

Council may engage employees for a fixed term to cover special or additional projects/work and to cover the long-term absences of other employees provided that any such fixed term is clearly identified at the time of engagement.

## **24. PART TIME EMPLOYMENT**

The parties recognise that there may be valid reasons for a part-time employee to vary their normal working hours. However, given that part-time workers often have other commitments outside of their normal hours of work, any variation to normal working hours must be agreed between the employer and employee.

## **25. POSITION PROFILES**

All Council positions must have an approved Position Profile which accurately reflects the position duties and scope of responsibility. It does not need to have comprehensive, complete and/or an exhaustive list of responsibilities and accountabilities but must describe it in a form which can be used to compare the job with the classification criteria outlined in Schedule 7 of the Award.

## **26. RECRUITMENT**

Council confirms its preferred position is to recruit from within rather than to recruit external applicants. This results in assisting employee career paths, provides opportunities for employees "down the line" to progress to more senior levels and benefits the Council by utilising the expertise within the existing employee group.

26.1 Where a choice of suitably qualified and experienced competitive applicants exists within the Council who are likely to apply for the vacant position, the vacancy will be advertised internally within Council.

26.2 Selection to all vacancies shall be made on the basis of 'merit' except where redeployees, and / or work injured are available who may, either with or without training, be able to satisfactorily perform the duties, in which case preference shall be afforded to redeployees and / or work injured.

26.3 Where the recruitment base is considered unduly restrictive, a vacancy may be simultaneously advertised in the outside media and within Council.

26.4 Existing employees who meet essential criteria outlined in the Position Profile will be granted

an interview and their ability to do the job tested. Providing the employee is not redeployed and / or work injured, selection shall be based on 'merit'.

- 26.5 Where an internal and external applicant is considered equal on merit following the selection process, preference will be given to the internal candidate if covered by this agreement.
- 26.6 Internal applicants who are unsuccessful in gaining an advertised vacancy will be provided with feedback from the selection panel and, where applicable, with appropriate training to further their career opportunities.
- 26.7 The recruitment and selection process will be guided by Council's policies and procedures.

## **27. CONTRACTING OUT**

The arrangements in Clause 28 provide an understanding and recognition by the parties regarding the need for Council to provide efficient and effective services to the community. The parties recognise that in this regard Council work will continue to be undertaken by a mix of internal Council labour and external service providers. The parties acknowledge the right of Council and the Executive Leadership group (ELG) to make decisions relating to service delivery having regard to cost implications, efficiency and effectiveness of service delivery together with any other relevant considerations.

- 27.1 The use of outside service providers by Council will generally have at least one of the following characterisations:
- to supplement the Council labour force in the performance of seasonal, maintenance or other short-term work requirements to undertake new or renewable construction work and / or projects.
  - circumstances that require specialist skills, and / or the operation of plant and equipment not readily available through existing Council resources.
  - other Council operations as may be resolved by Council.
- 27.2 Management will fully consult with relevant employees and their representatives prior to the implementation of any significant change to existing working / operational arrangements. In particular the Agreement requirements pursuant to Clause 17 (Introduction of Change), and Clause 18 (Employment Security) are acknowledged as being relevant and applicable to the change process.

## **28. SUPPLEMENTARY LABOUR**

Council undertakes to employ staff to undertake work, which is of a permanent, ongoing basis and to limit the use of supplementary labour to:

- Replace employees on leave or extended absence from duty;
- Undertake seasonal or other short-term project work;
- Undertake project work where Council is unable to resource its performance from within existing staff resources; or
- Replace existing staff temporarily assigned to undertake project work.

- 28.1 Where supplementary staff are engaged, Council will ensure Enterprise Agreement rates of pay will apply.
- 28.2 Management Representatives will consult with the Team Leader in charge of the team, prior to the work being undertaken by supplementary labour to ensure that the work could not be undertaken in-house at a competitive rate. The Management Representative will report all instances at the SBU meeting to monitor its performance.

## 29. WAGE RATES

Upon approval of this Agreement the employer agrees to pay the following wage increases to all employees covered by the Award.

Wage adjustment will be based on the rates of pay in accordance with the Schedule of Wages as agreed in the City of Mitcham Local Government Employees Award Enterprise Agreement No. 13 of 2021.

Payments will be made as follows:

Item	Year 1 (c) 1 <sup>st</sup> full pay on or after 01.07.2021	Year 2 (b) 1 <sup>st</sup> full pay on or after 01.07.2022	Year 3 (b) 1 <sup>st</sup> full pay on or after 01.07.2023
Wage Increase	1.5% (CPI was 1.2%)	2.0% or CPI	1.5% or CPI + 0.5%

### Explanations:

- (a) Increases apply from 1<sup>st</sup> full pay period on or after 1<sup>st</sup> July each year.
- (b) % increase OR the Australian Bureau of Statistics South Australian CPI as forecasted at the March quarter for the upcoming year, whichever is greater.
- (c) The existing Tool and Towing Allowances will be absorbed into wage rates upon ratification of this Agreement; \$15.00 per week will be added to the base wage for each classification covered by this Agreement.

## 30. ANNUAL LEAVE LOADING

Annual Leave Loading (representing 17.5% of four (4) weeks wages of the employee's substantive classification) shall continue to be paid to employees as an annual payment and shall form part of the employees' wage thus increasing the wage rate by 1.35% ( $4/52 * 17.5\%$ ).

## 31. MIXED FUNCTIONS

An employee engaged for two (2) hours or more on anyone (1) day on duties carrying a higher rate than their ordinary classification will be paid the higher rate for such day. If for less than two (2) hours on anyone (1) day the higher rate for the time so worked is paid. Provided, however, that where the actual performance of such work becomes a normal and constant feature of the employee's substantive position (for an accumulated period of 600 hours in a 12-month period) then the employee will be reclassified to that level.

## 32. UNION DEDUCTIONS

Upon application the Council may deduct Union fees.

## 33. PUBLIC HOLIDAYS

An employee is entitled to full payment for any statutory or gazetted public holiday, which falls on a normal work day if the employee has attended for duty on the working day preceding such holiday and attends for duty on the working day immediately following such holiday:

- 33.1 Provided that if an employee is absent on either of those working days with reasonable excuse (the onus of proof being on the employee) an entitlement to payment for the holiday exists as if the employee had attended as aforesaid.

- 33.2 Any employee who works on any statutory or gazetted holiday is paid for the time so worked at the rate of double time and a half and receives a minimum payment of three (3) hours. The rate of double time and a half includes the ordinary time rate which would normally apply for the day's work.

### **34. THREE (3) GRACE DAYS**

This clause provides for Grace Days for all employees, excluding casual employees, and is provided in addition to other leave entitlements. Grace Days for part time employees will be based on their hours of duty averaged out over the preceding 12 months and their agreed and documented days of work.

Employees will be entitled to three (3) additional days off work per 12 months (referred to as 'Grace Days'). These three (3) days can be taken at any time during the 12-month period to which they relate but as they are not regarded as Annual Leave. The Grace Days will be provided at an equivalent daily rate of 8.45 hours each.

The three (3) Grace Days must be taken within the 12-month period to which they relate. Any Grace Days that have been awarded but not taken will be paid out upon termination.

### **35. SUPERANNUATION**

The parties agree that all employees shall have their choice of superannuation fund. Statewide Super will remain the default fund where employees do not advise an alternative superannuation fund for receipt of contributions.

All new employees will be provided with a standard choice form to select their preferred fund. For any new employee who does not provide a choice form within an appropriate period, as determined by the employer, all contributions will be paid to Statewide Super.

'Statewide Super' means the superannuation scheme that merged with the Local Government Superannuation Scheme ('Local Super') which was established under *the Local Government Act 1934 (SA)*, continued in existence under Part 2 of Schedule 1 of the *Local Government Act 1999 (SA)* (1999 Act) and then continued in existence under a trust deed dated 25 November 2008 (Trust Deed) pursuant to amendments to the 1999 Act that took effect on 1 January 2009, before merging with Statewide Super pursuant to the provisions of the *Local Government (Superannuation Scheme) (Merger) Amendment Act 2012*.

35.1 The amount of the Employer superannuation contribution will be:

a) For each employee who is making "Salarylink Contributions" to Statewide Super:

- i) 3% of the employee's salary (or as amended); and
- ii) any additional contributions which the employer is required to pay in respect of the employee pursuant to the Trust Deed as advised by Statewide Super from time to time to finance the Salarylink benefit for the employee; and
- iii) any additional superannuation contributions which the employer agrees to pay in respect of the employee.

"Salarylink Contributions" has the meaning given to that term under the Trust Deed.

b) For each other Employee:

- i) contributions which the employer must pay to a superannuation fund in respect of the employee in order to avoid becoming liable for a shortfall in respect of the employee under the Superannuation Guarantee (Administration) Act 1992 (Cth); and
- ii) any additional superannuation contributions which the employer agrees to pay in respect of the employee.

## **36. SALARY SACRIFICING**

Employees may sacrifice additional salary to their Superannuation Scheme should they wish to do so.

During the life of this Agreement, Council will maintain or introduce salary sacrifice arrangements for employees to lease vehicles and other goods by mutual agreement, as allowed by the Australian Taxation Office.

## **37. INCOME PROTECTION SCHEME**

It is recognised by both Parties that long term sickness or injuries can happen to anyone and can have a devastating effect on the individual's personal and financial affairs. One way of addressing this is to provide some form of income protection at a reasonable cost. This cost will be borne by the employer.

- 37.1 Council will contribute up to 1.83% (includes GST component) of employee's wages to a Sickness and Accident Plan for all employees covered under this agreement. The scheme will run for the length of this Agreement.
- 37.2 The Terms and Conditions of the Plan Administrator will prevail.
- 37.3 An employee shall not be entitled to continue to accrue further entitlements to annual leave and sick leave on a paid period of absence under the income protection provisions of this clause.

## **38. DRIVERS LICENCE**

### **Reimbursement**

Council will reimburse employees whose duties require them to drive a vehicle during the course of their normal duties.

- 38.1 Reimbursement to the employee will be made on presentation of proof of payment for a driver's licence renewal.
- 38.2 Upon termination from Council, payment of the employee's driver's licence shall be deducted from the employee's termination payment for each full year outstanding (the residual period).

### **Loss of Licence**

Where Council requires an employee to have a current unencumbered driver's licence and drive the Council's vehicles as part of their duties, the parties accept that, where an employee loses their licence for a period of time, they will:

- 38.3 Utilise any eligible accrued leave should they desire or take unpaid leave until such time as the employee provides proof of reinstatement of licence up to a period not exceeding 12 months.
- 38.4 In the event of an employee's dishonesty regarding loss of licence or where the loss of licence is greater than 12 months, or permanent, the Council retains the discretion to terminate the employee's employment.

## **39. TRANSITION TO RETIREMENT**

Council supports employees over the age of 55 who are considering a transition to retirement. Support will be in the form of flexible work arrangements and may include:

- 39.1 A once off payment of \$500 towards financial planning advice, to be paid by reimbursement,

or payment on presentation of invoice to Council.

#### **40. PROFESSIONAL DEVELOPMENT**

The parties support the provision of training as a means of assisting employees to perform their role to their highest standard. Council recognises the value placed by employees on training and development as a means of ensuring job performance and thereby greater job satisfaction and establishing career paths within local government.

- 40.1 A training plan derived from the annual MyPlan process will be used for all employees and will form the basis of the Council's annual Training and Development Program. Training identified using MyPlan will be given priority over other training requests.
- 40.2 During the life of this Agreement the parties agree to work cooperatively in identifying any barriers to the access of training and development which may lead to the under-representation of women in management positions across the organisation.
- 40.3 Council is committed to providing adequate funds to enhance the skills of its workforce through the provision of equitable training and development opportunities.
- 40.4 Council will provide employees with easy access to information on training courses and seminars.
- 40.5 Employees who are unsuccessful in obtaining promotional positions within Council will be provided with feedback on their application and where appropriate, offered training to improve their competitiveness.
- 40.6 Council will encourage mentoring as a training and development strategy.

#### **41. HIGHER DUTIES**

An employee acting or relieving in a position higher than IE-C1 (ME-5) Level is entitled to be paid in accordance with 41.1 and 41.2 thereof.

- 41.1 An employee who is predominantly engaged in the relief of regular short-term absences such as sick leave, rostered days off, Long Service Leave, Workers Compensation and annual leave and such relief is a regular and constant feature of the employees position (for an accumulated period of 1500 hours in a 12 month period) then the employee will be reclassified to that level. This subclause shall only apply to employees relieving at IE-C1 Level and below.
- 41.2 Where an employee acts or relieves in a position higher than IE-C1 Level, the following arrangements will apply:
  - Where the work is specific and of limited nature, the employer and employee will agree on the overall period of acting up.
  - Where the period is unknown, the employer and employee will review the acting up arrangements after four (4) months with a view to either confirming the classification or agreeing on the continuation of the higher duties and the time frames regarding the performance of such work.
  - These arrangements will be made in writing and shall include the period of acting up or date of review.
- 41.2.1 Where an employee acts in a position higher than IE-C1 Level for an accumulated period of six (6) months within a 12-month period, the period of approved leave taken shall be paid at the higher rate, provided such leave is actually taken within the period of acting up.

## **42. PERFORMING WORK OUTSIDE THE SCOPE OF THIS AGREEMENT**

An employee directed by their employer to perform duties of higher value exceeding the classification grades of this Agreement shall be paid in accordance with the following for time so worked:

- The minimum wage rate for the higher paid classification if he or she substantially performs the duties thereof; or
- A wage rate commensurate with the value of the duties he or she is so directed to perform.

42.1 Provided that the employee directed to perform such duties will perform them on the first occasion for a continuous period of five (5) working days or more, and on any other occasion, subsequent to having performed those duties for the aforesaid period, for one (1) working day or more, in order to become entitled to higher duties pay as aforesaid.

42.2 This clause applies to the performance of duties supplementing those of an employee or employees in a higher paid classification, as well as to duties performed in relieving such a person on sick leave, annual leave, etc.

42.3 Any dispute as to whether an employee is substantially performing the duties of a higher paid classification, or whether a wage rate is commensurate with the value of duties performed outside or exceeding those of the classification to which an employee has been appointed, shall be dealt with through discussions between Council and the employee, and if agreement cannot be reached then the matter shall be determined in accordance with the Dispute Resolution Procedure contained in Clause 20.

## **43. MY PLAN (PERFORMANCE APPRAISAL)**

All employees will participate in the MyPlan process and will be guided by the MyPlan Procedure. This system of performance appraisal ensures all employees are provided with timely, accurate feedback on their performance as a means to facilitating career development opportunities and appropriate training and development activities.

## **44. PROFESSIONAL DEVELOPMENT LEAVE**

Employees who make application may be granted (by the Chief Executive Officer or his/her delegate) up to twelve (12) months leave without pay to undertake a course of study or to take up a vocational or professional development placement subject to the employee having five (5) years continuous service at the time of commencing the leave.

44.1 Council will consider all applications on their merits taking into account operational arrangements and practicalities, and the demonstrated benefits to Council.

44.2 Absence on professional development leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose defined in this Agreement.

44.3 An employee on professional development leave for up to three months is entitled to return to the position they held immediately before proceeding on professional development leave.

44.4 An employee upon returning to work after development leave of more than three (3) months duration, shall be entitled to a position at the same classification.

44.5 An employee on professional development leave may terminate their employment at any time during the period of leave by notice given in accordance with this Agreement.

44.6 Professional development leave shall not be taken 'back-to-back', i.e. An employee must have completed the qualifying period of service (five (5) years continuous service) to be

eligible for each instance of professional development leave.

## **WORK PRACTICES**

### **45. HOURS ARRANGEMENTS (NINE (9) DAY FORTNIGHT)**

Notwithstanding any of the provisions contained under this Clause, Hours Arrangements may be negotiated and agreed between Council and employees which involve the working of longer daily hours and the taking of accrued time. The following arrangements are available under this Clause.

45.1 Standard Hours. The standard working hours of employees shall be 76 per fortnight in accordance with the nine (9) day fortnight roster provisions (i.e., working 8.45 hours per day with ½ hour lunch break), Monday to Friday (excluding Public Holidays) worked within the span of hours 6.00am – 6.00pm, unless other arrangements have been allowed.

45.1.1 The rostered day off each fortnight shall be taken on the nominated day.

45.1.2 By mutual agreement between the works management and a work team or other group of employee(s), the standard working hours may be altered on either a permanent or temporary basis, providing that such standard hours are carried out within the span 6.00am to 6.00pm Monday to Friday inclusive.

45.1.3 Public Holidays and Bereavement Leave will be allowed for the number of ordinary hours that the employee would normally work on the day at the appropriate total daily rate.

45.1.4 Any arrangement made does not alter or vary the number of hours leave with full pay that an employee would be entitled to receive pursuant to this Agreement if the arrangement had not been made; and in particular, it is expressly agreed that 'day' for the purposes of calculating annual leave and personal leave credit means 7.6 hours and that no employee is entitled to receive more than 152 hours of annual leave per annum or to accrue more than 76 hours of sick leave credit per annum.

45.1.5 Annual Leave and paid personal leave are debited as actual time lost.

45.1.6 A deduction from wages is made equal to actual time lost for unauthorised absence from duty.

45.1.7 By mutual agreement the rostered day off is allowed to accumulate and to be taken at a mutually agreed time. Provided that such accrued days are taken within 12 months from the date of accrual.

45.1.8 Where an employee is required to work on a normally rostered day off (and no mutually acceptable arrangements are made to take the time off at some future time) the overtime rates as prescribed in Clause 46 will apply.

45.1.9 Seasonal / Peak Work Periods. The following periods are recognised as seasonal / peak work periods for the purpose of this clause:

- Grass Cutting. (September to March inclusive). The operation covers tractor mowing and ride-on mowers but excludes brush cutters.
- Watering. (September to March inclusive). Water tanker driving and associated watering duties.

45.1.10 During the above peak periods the standard hours of employees involved in such work may be increased from 8.45 hours to ten (10) hours per day.

45.1.11 Such additional time shall accrue on a time-for-time basis and be banked in credit

for each employee.

- 45.1.12 The accrued time shall be allowed and taken in conjunction with periods of annual leave and taken outside of the Seasonal Peak periods, unless otherwise agreed.
- 45.1.13 No employee will be required to work in excess of three (3) months in the performance of seasonal work.
- 45.2 Daily Hours Flexibility. The parties recognise the need to provide for short-term and / or daily hours flexibility to cover the following situations:
- Completion of a particular job or work at the end of the standard working day.
  - Completion of a special project/work, or to ensure progress and completion according to schedule.
- 45.2.1 The parties recognise that the arrangements regarding the completion of work at the end of the day will normally require communication and approval from a Manager. The works management will facilitate appropriate communication processes and resources.
- 45.2.2 Where the arrangements involve special projects / works, a minimum of 48 hours' notice will be given regarding the requirement to work flexible hours.
- 45.2.3 Flexible hours in the above circumstances may be worked according to the following conditions:
- i) An employee shall not be required to work more than ten (10) hours per day under the flexible hours arrangements.
  - ii) The work shall be undertaken within the span of 6 am to 6 pm, Monday to Friday inclusive (excluding public holidays).
  - iii) The additional flexible hours shall be worked with the mutual agreement of the Manager and the work team(s) or individual employees. Provided, however, that an employee or work team shall not unreasonably refuse to work the flexible hours when the need arises.
  - iv) The additional hours shall be recorded as TOIL (Time Off In Lieu) and taken off or paid (on request) on a time for time basis.
  - v) Time taken off will be allowed within the current or subsequent fortnightly work cycle, and attached to an RDO or weekend, or otherwise by mutual agreement at the request of the employee.
- 45.2.4 These flexible hours arrangements shall be regularly reviewed through the SBU meetings.
- 45.3 Emergency Work. Employees requested to attend to emergency work 30 minutes or less prior to their normal finishing time shall be granted overtime for time so worked after their normal finishing time.
- 45.3.1 Employees requested to attend to emergency work at any other time (on a normal workday) shall do so in accordance with these TOIL arrangements provided that no more than ten (10) hours is worked in one (1) day. Hours worked over ten (10) will be paid at overtime rates.
- 45.4 Cleaning of Civic Centre. It is preferable for the Civic Centre to be cleaned after hours. The agreed span of hours of this position is Monday to Friday, 5.30 p.m. to 12.00 midnight (29.5 hours per week). In recognition of the evening work, the employer agrees to classify the position at ME-4 to compensate for the non-payment of penalties. These hours may be varied by mutual agreement.
- 45.5 Council Community Bus Drivers (ME-4)  
The ordinary time hours are 38 in seven days to be worked on any five or six of those days

with a maximum of 7.6 hours and a minimum of 6 hours on any one day. Waiting time as provided in clause 45.6.6 will not form part of ordinary hours.

- 45.5.1 Work performed before 6.30am or after 6.30pm will be paid at the appropriate rate plus 15 per centum. Such additional rate is not cumulative upon the rates for overtime, Saturday, Sunday or Public Holiday work.
- 45.5.2 Ordinary time hours shall be worked within a spread of 11 hours on any one day, provided that one break (which will include a meal break of not less than 30 minutes) will be permitted.
- 45.5.3 No employee will be required to work for more than five (5) hours without a break for a meal provided however, when a shift does not exceed six (6) hours, a crib break of 15 minutes will be allowed before the expiration of five (5) hours in substitution for a meal break, without loss of pay.
- 45.5.4 An employee other than casual employee, who works so much overtime between the termination of their ordinary work on one (1) day and the commencement of their ordinary work on the next day, that they have not at least ten (10) consecutive hours off duty between those times, will, subject to this subclause, be released after completion of such overtime until they have had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- 45.5.5 If on the instructions of Council, an employee resumes or continues work without having such ten (10) consecutive hours off duty they will be paid at twice ordinary time until they are released from duty for such period and will be entitled to be absent until they have had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.  
A driver on overtime or on Saturday work outside their rostered hours or a driver on single day charter whose ordinary hours of duty may be broken into two (2) or more than two (2) separate working periods who is required to wait with their vehicle will be paid the current casual rates for all waiting time (exclusive of the minimum period of 30 minutes allowed for their meal break) that does not go to the calculation of the minimum daily hours prescribed in subclause 45.5, provided that during the time, no demand for work is made upon them.  
Provided that the waiting time so paid for will not come into computation of hours for general overtime purposes.
- 45.5.6 Saturday and Sunday Work. For all ordinary hours worked as a Community Bus Driver, an employee will be paid at the rate of time and a half on a Saturday and double time on a Sunday with a minimum payment of four (4) hours. These rates are in substitution of and not cumulative upon the rates prescribed in clause 45.5, 45.5.2, and 45.5.6.

## **46. WORK BREAKS**

- 46.1 Paid Break (Morning Tea). Employees are allowed a 15- minute morning tea break (at a time fixed by the employer) which is counted as time worked.
- 46.2 Unpaid Break (Afternoon Tea). If the majority of employees agree an afternoon tea break (at a time fixed by the employer) may be taken which is an unpaid break.
- 46.3 Meal Break. No employee is required to work for more than five (5) hours without taking an unpaid meal break of at least 30 minutes.
- 46.4 The provisions of this subclause apply in respect of ordinary hours, overtime, and weekend work performed.

## **47. OVERTIME**

47.1 Ordinary Overtime (Monday to Friday). All time worked in excess of the ordinary hours of work, the span of hours (as established under Clause 45, and beyond the flexible work hours arrangement detailed in 45.2, 45.3, 45.4 and 45.5 hereof, shall be paid for at the rate of time and a half (T½) for the first 2 hours and double time (T2) thereafter.

47.1.1 In computing overtime each day stands alone.

47.1.2 Saturday. Overtime where Previously Advised Morning. The normal overtime rates shown above in 47.1 apply for Saturdaymorning overtime.

47.1.3 Afternoon. Saturday afternoon/night overtime is paid at the rate of double time.

47.1.4 Minimum Period of Payment. A minimum period of payment for a period of two (2) hours applies (at the am/pm rate whichever being relevant).

47.2 Sunday Overtime where Previously Advised or Callouts.

47.2.1 All overtime worked on a Sunday is paid for at the rate of double time.

47.2.2 A minimum period of payment of three (3) hours applies for Sunday callouts or overtime.

47.3 Call Outs

47.4.1 Monday to Friday- an employee recalled to work after the expiration of the employees working time (whether notified before or after leaving the premises) for the day and after leaving work for the day, will be paid for a minimum of four (4) hours work at one and a half times the ordinary prescribed rate for each time so recalled. Provided that the employee if required to work for two (2) hours or more, will be paid for a minimum of four (4) hours work calculated at one (1) and a half times the ordinary prescribed rate for the first three (3) hours and at double the ordinary rate prescribed thereafter.

47.4.2 Saturdays. An employee called out to work on a Saturday, will be paid for a minimum of three (3) hours work calculated at one and a half times the ordinary prescribed rate for each time so called out. Provided that the employee, if required to work for two (2) hours or more, will be paid for a minimum of four (4) hours work calculated at one and a half times the ordinary prescribed rate for thefirst three (3) hours and at double the ordinary prescribed rate thereafter.

47.4.3 Overlapping Callouts. Each call-out stands alone provided however that where an employee is notified of a subsequent call-out prior to returning to his/her place of residence (after performing the first call-out), the total time taken will be treated as a single call-out.

47.5 Overtime / Meals Associated with Work Breaks.

47.5.1 Unless the period of overtime is less than one and a half hours an employee before starting overtime after working ordinary hours is allowed a meal break of 20 minutes paid for at ordinary rates. An employer and employee may agree to any variation of this provision to meet the circumstances of the work in hand provided that the employer is not required to make payment in respect of any timeallowed in excess of 20 minutes.

47.5.2 An employee who is required to work during any portion of a recognised meal break will be paid at the appropriate overtime rate until released for the full periodof the

employee's meal break.

47.5.3 An employee working overtime is allowed a crib time of 20 minutes without deduction of pay after each four (4) hours of overtime worked if the employee continues work after such crib time.

47.5.4 An employee required to work overtime in excess of one and a half hours after working ordinary hours is paid by their employer an amount prescribed by Schedule 6 of this Award to meet the cost of a meal, or at the option of the employer, will be provided by the employer with an adequate and suitable meal.

- (a) Banking Overtime Hours Approved overtime hours worked may, at the employee's request, be banked as time off in lieu (TOIL) in lieu of payment as follows: time equivalent to the amount of overtime worked multiplied by the appropriate penalty rate; or
- (b) time equal to the amount of overtime worked together with a payment representing the difference between the normal time rates and the appropriate penalty rate.

#### 47.6 Rest Period After Performing Overtime

47.6.1 When overtime work is necessary it will wherever reasonably practicable, be so arranged that employees have at least eight (8) consecutive hours off duty between the work of successive days.

47.6.2 An employee who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day so that the employee has not had at least eight (8) consecutive hours off duty between those times, he/she will be released after completion of such overtime until they have had eight (8) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If, on the instructions of the employer, the employee resumes or continues work without having had eight (8) consecutive hours off duty, he/she will be paid at double rates until released from duty for such period, and the employee is then entitled to be absent until having had eight (8) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

#### 47.7 Weekend Work in Ordinary Time

The following weekend penalties will apply to employees who work part of their ordinary hours of work over the weekend:

47.7.1 Saturday Morning a 25% loading for time worked prior to noon.

47.7.2 Saturday Afternoon a 50% loading for time worked after noon.

47.7.3 Sunday Work a 100% loading for the time worked.

## LEAVE ARRANGEMENTS

### 48. ANNUAL LEAVE

48.1 Entitlement to Annual Leave. An employee (other than a casual employee) is entitled to four (4) weeks' annual leave for each completed year of continuous service.

48.2 The maximum amount of annual leave which can be accrued as at the 30<sup>th</sup> June each year is 304 hours (or 40 days). Employees with more than 304 hours as at 1 July each year, may be directed to take leave subject to operational requirements and in accordance with the Excessive Leave Accrual Policy.

48.3 Employees may cash out excess accrued annual leave by agreement of the Council.

- 48.4 Taking Annual Leave - Employees submitting leave requests will provide a minimum of two (2) weeks' notice of their proposed leave.

An employee may elect with the consent of their manager, to take annual leave in single days providing the total does not exceed five (5) days in any calendar year.

## **49. LONG SERVICE LEAVE**

Long Service Leave will be administered in accordance with the SA Long Service Leave Act, 1987 with the provisions of this Act incorporated in this Agreement. The intent of this provision is that there should be no diminution of entitlements currently provided by the Long Service Leave Act for the lifetime of this Agreement. The following exceptions will apply: -

- 49.1 Long Service Leave may be taken at a time mutually convenient or may be cashed in at the employee's request and subject to approval, after seven (7) years of service.
- 49.2 An employee may take Long Service Leave in the following manner:
- i. normal pay for the period taken;
  - ii. half pay, thus doubling the period of leave taken; or
  - iii. double pay, thus halving the period of leave taken.

## **50. COMPASSIONATE LEAVE**

An employee (other than a casual employee), on the death or in the event of a life-threatening injury or illness of a member of their immediate family or household is entitled, on reasonable notice, to paid leave of two days duration per occasion. This leave can be extended up to four (4) days where the relationship is of a direct nature, i.e., partner, mother, father, child. This leave is without deduction of pay for a period not exceeding the number of hours worked by the employee in four (4) ordinary days' work.

- 50.1 Proof of death or life-threatening illness or injury must be furnished by the employee to the satisfaction of Council if requested.
- 50.2 This Clause has no operation where the period of entitlement to this leave coincides with any other period of leave.

## **51. PERSONAL (INCL. SICK & CARER'S) LEAVE**

An employee (other than a casual employee) is entitled to paid Personal Leave for any genuine purpose relating to his/her sickness, ill-health, domestic caring responsibilities, the serious illness or death of someone close to the employee or for any other reason of a genuine personal nature that, by its nature, does not permit an employee to attend work where the circumstances are of an urgent nature and are neither foreseeable or capable of being planned in advance.

An employee who is on annual leave is entitled to take personal leave if the employee is too sick to work for a period of at least three (3) days. In this case, the annual leave taken while sick would be reimbursed and the leave deducted from the employee's personal leave entitlement.

- 51.1 Accrual of Personal Leave Entitlement. An employee's entitlement to personal leave accrues as follows:
- a) for the first year of continuous service - at the rate of 1.46 hours for each completed 38 ordinary hours of work to a maximum of 76 hours; and
  - b) for each later year of continuous service, at the beginning of each year:
    - a full-time employee accrues 76 hours;
    - a part-time employee accrues pro rata hours in accordance with the following formula  $76 \times \text{average weekly ordinary hours} \div 38$  over the previous 12 months.
  - c) an employee's personal leave accumulates from year to year and any personal, sick

or carer's leave taken by the employee is deducted from the employee's personal leave credit.

- 51.2 Conditions for the Payment of Personal Leave. The employee is not entitled to payment for personal leave unless:
- a) the employee gives Council notice of the leave, its nature and estimated duration before the period for which personal leave is sought begins. However, if the nature of sudden onset of the sickness makes it impracticable to give the notice before the period begins (for instance hospitalisation), the notice is validly given if given as soon as practicable and not later than 24 hours after the period begins; and
  - b) applies in writing by completing a prescribed form together with any supporting documentation and forwarding such to their immediate supervisor,
  - c) the employee, at the request of Council, provides a medical certificate or other reasonable evidence of sickness (which may include but is not limited to a statutory declaration, or a pharmacy sick certificate).
- 51.3 The employee is entitled to payment at the employee's ordinary rate of pay (not including payments in the nature of penalty rates, overtime, allowances or loadings) for a period of personal leave.
- 51.4 Consecutive personal leave of more than 16.9 hours two (2) days shall be supported by a medical certificate.
- 51.5 Where the amount and/or frequency of personal leave (which is not supported by Medical Certificate) taken by an employee is beyond that which is acceptable as gauged by direct comparison with the organisations employee average, the employee and their manager may discuss the issue and develop strategies to assist achieving an improved attendance rate.
- 51.6 Compassionate leave as provided under clause 50 of this Agreement is not affected by this leave provision.

## **52. DOMESTIC AND FAMILY VIOLENCE LEAVE**

The City of Mitcham recognises that some of its employees may experience situations of violence in their personal life which may impact on their attendance or performance at work.

Domestic and Family Violence means any violence between family members including current or former partners whenever and wherever the violence occurs. It encompasses any behaviour that is violent, threatening, controlling or intended to make a person feel scared and unsafe. The violence may be physical, emotional, verbal, financial, social, sexual, stalking, spiritual and image-based abuse.

### **52.1 Leave for Employees experiencing Family Violence:**

An employee experiencing family violence may make an application for the following non-cumulative leave:

- 52.1.1 Additional paid leave of up to three (3) days per calendar year.
  - 52.1.2 Where necessary, further additional paid leave of up to two (2) days per calendar year for the purposes of attending related medical appointments, legal proceedings, seeking safe housing or other activities related to dealing with family violence.
  - 52.1.3 Where personal and genuine needs exceed an employee's accrued leave entitlements, special paid leave may be granted in exceptional circumstances at the discretion of the Chief Executive Officer.
- 52.2 Council, at its discretion, may request the employee to provide relevant supporting evidence

of the need to take leave, which can take the form of a document issued by law enforcement, a court, a medical practitioner, a family violence support service, a lawyer, or a counselling professional.

- 52.3 The employee's personal information concerning domestic and family violence will be kept confidential in line with applicable legislation and the City of Mitcham's policies and procedures. No information will be kept on the employee's personnel file without their express written permission.
- 52.4 Council will identify a contact in the People and Culture team who will be trained in supporting employees experiencing domestic or family violence and related privacy issues. The contact person's details will be advertised within the workplace.

### **53. 48/52 PURCHASED LEAVE**

The parties agree to a 48/52 Purchased Leave without pay model. The parties expect the model to increase staff retention, produce savings and provide greater flexibility to employees in meeting family and personal interests. Under the 48/52 Purchased Leave model, an employee can apply and be granted a maximum of four (4) weeks leave without pay each year. However, by spreading the 48 weeks' pay over a working year (52 weeks), the employee receives the same fortnightly pay for the whole year.

- 53.1 Eligibility All employees may apply for Purchased Leave including contract employees providing they have at least one (1) years employment remaining. The 48/52 model is a voluntary mode of employment. This mode of employment is not automatic with each application being considered on its merit. (There will be no retrospectivity of 48/52 periods).
- 53.2 Application Employees shall apply for Purchased Leave in writing on a form provided.
- 53.3 Leave Entitlements Purchased Leave does count as service and therefore leave accruals and increment dates will not be affected.

### **54. PARENTAL LEAVE (INCL. MATERNITY, PATERNITY & ADOPTION LEAVE)**

- 54.1 An employee (excluding casual employees) shall be granted parental/adoption leave on full pay:
- 54.1.1 in the case of the primary carer, a consecutive period of twelve (12) weeks absence; and
  - 54.1.2 in the case of the partner of the primary carer, a period two (2) weeks absence.
- 54.2 Access to the parental/adoption leave is conditional upon the following:
- 54.2.1 The employee has completed 12 months of continuous service with the City of Mitcham immediately prior to qualifying for the paid parental/adoption leave;
  - 54.2.2 The employee applies in writing to the Council for paid parental/adoption leave, including a certificate from a qualified medical practitioner stating the expected date of birth of the child (or a statutory declaration of scheduled adoption leave date). The application must be received by the Council:
    - 54.2.2.1 In the case of a primary carer, at least ten (10) weeks before the expected date of starting parental/adoption leave; and
    - 54.2.2.2 In the case of the partner of the primary carer, at least five (5) weeks before the expected date of starting parental/adoption leave.
    - 54.2.2.3 Where both prospective parents are employees of the City of Mitcham, the

period of paid parental leave may be shared by the employees provided that the total period of paid parental leave does not exceed the maximum entitlement of 12 weeks.

54.2.3 In the case of parental/adoption leave for the primary carer, the period of 12 weeks absence shall be taken in one (1) consecutive block or in 24 weeks at halfpay within the 12-month parental/ adoption period to commence immediately following the birth/adoption of the child.

54.2.4 Any public holiday or other statutory holiday that falls within the period of parental/adoption leave shall be counted as a day of such parental leave; and

54.2.5 An employee may instead of or in conjunction with parental leave, take other leave entitlements which they have accumulated, such as annual leave or long service leave. The total amount of leave taken must not be more than 52 weeks unless a longer period is agreed in writing with the Council.

54.3 This clause shall be read in conjunction with Clause 7.4 of the Award.

54.4 The Paid Parental Leave Act 2010 (Cth) will have no effect on the obligation of the employer to make payment in accordance with this clause, providing that doing so is not unlawful.

## **55. SPECIAL LEAVE (UNPAID)**

Upon application to the Chief Executive Officer or their delegate, employees may be granted up to 12 months leave without pay to care for an immediate family member subject to employee having five (5) years continuous service at the time of taking the leave.

## **56. DEFENCE RESERVE LEAVE**

Council recognises the importance of Defence Reserve Service and the need to provide appropriate benefits to Reserve members who are employees of this organisation. Benefits are provided in two (2) forms via paid leave for periods of peace time training and via unpaid leave during periods of full-time service as provided in the Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001.

56.1 Leave Entitlement During Periods of Peacetime Training. Employees who are Reserve members shall be granted additional leave for the purposes of participating in training camps, or equivalent continuous duty as follows:

56.1.1 In their first year as members of the Australian Defence Force shall be entitled to an additional six (6) weeks paid leave.

56.1.2 In subsequent years, leave not exceeding two (2) weeks in any one (1) year will be granted.

56.2 This leave will be in addition to annual leave entitlements.

56.3 During the period of approved "training" leave, Council will make up the difference in pay between what the employee would have normally received as standard pay and the amount paid by the Defence Force for the whole period of absence.

56.4 The period of absence will be treated as continuous service for the purposes of calculating annual leave, long service leave, sick leave, or any other entitlements.

56.5 Superannuation will be paid by Council on the Reservist employee's normal weekly salary.

56.6 Prior notice of the requirements to attend, and certification of attendance and completion of the training will be required.

- 56.7 Leave Entitlement during Periods of Full-time service (call outs). The Employer Support Payment (ESP) assists employers to offset the costs and consequences of releasing Reserve members for full-time service, (call outs). In the event of a call out, a reservist employee normally would be granted special leave without pay for the whole period of their absence with Council claiming the Employer Support Payment as provided for in the Defence Reserve Service (Protection) Act (Commonwealth) 2001.
- 56.8 Council undertakes to re-employ the reservist employee after Defence service, and
- 56.8.1 not to compel reservist employees to use annual leave or long service leave for Defence service, and
- 56.8.2 to treat the period of Defence service as continuous service for the purposes of calculating annual leave, long service leave, sick leave, or other entitlements.

## **57. EMERGENCY SERVICES LEAVE**

The City of Mitcham supports participation by employees in the Country Fire Service (CFS) and the State Emergency Service (SES), both of which provide valuable community protection against loss of life and property.

- 57.1 The Chief Executive Officer is authorised to approve special leave with full pay for employees who participate in authorised activities at a time of genuine and substantial emergency or crisis during normal working hours. Approval will not normally be extended to casual or contract staff.
- 57.2 Voluntary attendance at incidents would not normally qualify for approval. Leave without pay, recreation leave or Rostered Days Off would be utilised in such situations.
- 57.3 Employees who are members of the CFS and SES should give prior advice of their membership to their manager and the payroll officer.
- 57.4 Where possible, employees should advise their manager/supervisor in advance by telephone if they are required to participate in CFS/SES activity which could involve an absence from work.
- 57.5 Leave applications must be in writing and must be approved by the CEO before being referred to the payroll officer. Such leave shall count as service for leave purposes.

## **58. JURY SERVICES LEAVE**

A full-time or part-time employee who is called to serve on a jury shall be entitled to leave for that purpose without loss of pay, provided that:

- 58.1 The employee notifies the Council as soon as possible of the date(s) involved in jury service.
- 58.2 The employee supplies proof of jury attendance including the relevant dates and times together with full details of the amounts received in respect of the attendance.
- 58.3 The employee claims from the relevant court the full amount payable in respect of jury service and (excepting amounts reimbursed for travelling) repays such amounts in full to the Council.
- 58.4 The employee, as far as is practicable shall return to work if the jury attendance ceases prior to the end of the normal day's work.
- 58.5 Jury service shall count as service for all purposes of the Agreement.

## **59. BLOOD DONORS LEAVE**

A full-time employee who is absent during ordinary working hours for the purpose of donating blood, and who could not donate blood unless provision was made for an absence during the employee's ordinary working hours, shall be allowed up to a maximum of two (2) hours on each occasion to a maximum of four (4) attendances each calendar year.

- 59.1 Providing that the employee shall arrange for the absence to be at a time suitable to the operations of the employee's work unit and be as close as possible to the beginning or ending of the employee's ordinary working hours.
- 59.2 Proof of attendance at a recognised place for the purpose of donating blood and the duration of such attendance shall be furnished when requested to the satisfaction of the CEO or his delegate.
- 59.3 The employee shall request such leave as soon as possible of the appointment being made providing evidence where required

## **60. ABSENCE FROM DUTY**

An employee not attending for duty will lose pay for the actual time of such non-attendance except in the case of an employee who is absent from duty in accordance with the provisions of this Agreement, or by special leave specifically agreed with Council.

## **61. PERSONAL (INCLUDING SICK) LEAVE INCENTIVE**

Both parties commit themselves to the reduction of unwarranted personal leave and in challenging the prevailing culture in the taking of personal leave. Our strategy in addressing this is to provide some form of financial incentive which encourages regular work attendance, the accumulating of personal leave credits and commitment to the work unit.

- 61.1 In the absence of any agreement to the contrary, the scheme will continue during the life of the Agreement.
- 61.2 To ensure equity in treatment all employees shall be granted their personal leave entitlement of ten days (10) on 1st July each year. In making this adjustment, personal leave to 30th June will be allocated on a pro-rata basis from their anniversary date.
- 61.3 On termination, (resignation, death, redundancy, or permanent disability) payment of a percentage of the accumulated leave as at termination of employment will be made. The following rates are to apply.

<b>PERSONAL (INCL SICK) LEAVE ACCUMULATED</b>	
<b>HOURS</b>	<b>% CONVERTED TO DOLLARS</b>
less than 76 hours (10 days)	nil
less than 190 hours (25 days)	10
less than 380 hours (50 days)	25
less than 760 hours 100 days	40
Over 760 hours (100 days)	50

Termination on the grounds of serious and wilful misconduct and/or other grounds for dismissal will not be eligible for payment.

- 61.4 These incentives are based on current trends and should not be seen as a precedent in determining any future bonus or incentive. Bonuses and incentives will be set at each

agreement negotiation stage based on past and current trends.

## **WORKPLACE HEALTH AND SAFETY**

### **62. WORKPLACE HEALTH AND SAFETY (WHS)**

Council and employees recognise the importance of an effective workplace health and safety program in providing a safe work environment for all employees. Improved WHS will ultimately increase productivity throughout Council by reducing the number of incidents / accidents and therefore lost time.

- 62.1 Council and employees will at all times meet their respective obligations and duty of care required of them under the WHS Act and Regulations. All employees shall be assured of a safe and healthy work environment at all times. The parties shall co-operate in the achievement of high standards of workplace health and safety
- 62.2 Council and employees will strive to continually improve WHS performance in accordance with the WorkCover Exempt Employer Performance Standards and provide the highest level of rehabilitation and support processes for employees who sustain a work-related injury or illness.
- 62.3 The parties recognise safety education and safety programs shall be fundamental in achieving this objective. On all projects there shall be strict compliance with the relevant WHS guidelines so as to provide and maintain a safe working environment.

### **63. CLOTHING & PERSONAL PROTECTIVE EQUIPMENT (PPE)**

Council will provide protective clothing and safety equipment to employees having regard to the employer's duty of care and obligations under the WHS Act and Regulations and documented in the City of Mitcham's WHS policies, procedures, safe operating and work procedures. Where provided, employees shall wear the clothing or PPE as appropriate.

- 63.1 As a minimum, Council will provide:
  - a) upon commencing employment with Council, two (2) sets of work clothes consisting of two (2) long sleeved shirts and two (2) pairs of long trousers, or two (2) pairs of overalls, plus one (1) windcheater, one (1) winter jacket and one (1) pair of safety boots, appropriate head wear (broad brimmed hat) and sunglasses.
  - b) on an annual basis, two (2) sets of work clothes consisting of two (2) long sleeved shirts and two (2) pairs of long trousers, or two (2) pairs of overalls, plus one (1) windcheater; and
  - c) on a bi-annual basis, one (1) winter jacket.

Such clothing will be replaced on a fair wear and tear basis. Tar and bitumen soiled clothing, including mechanics' overalls, shall be laundered fortnightly at Council's expense.

- 63.2 Wet weather gear will be provided on an as required basis as agreed.

- 63.3 Hi-visibility (hi-vis) clothing is to be worn at all times during work hours.

### **64. TOILETS**

Portable toilets will be provided for construction / maintenance gangs (on-site) of four (4) or more employees excepting where an available toilet is in close proximity and if necessary, a vehicle is available for transportation purposes.

## **65. INCLEMENT WEATHER**

The arrangements regarding finishing work due to inclement weather are to be considered in conjunction with Council's relevant WHS policies and procedures.

65.1 Where the Team Leader (acting in accordance with the Council's WHS Policy and Procedure) is of the opinion that, weather conditions existing at the time are such that continuing to work at the assigned task and in the assigned location would be: -

- detrimental to the employee's health, safety and welfare (detailed within WHS Policy/Procedure).
- dangerous to the public; or
- impractical for operational reasons.

The Team Leader shall, subject to approval from the Line Manager (or nominee), after ensuring the safety of the worksite, direct the work team (or individuals as appropriate) to cease this work. The Team Leader shall make every effort to ensure that employees are then relocated to other productive and meaningful functions or tasks, (which may or may not be within their team's normal scope of duties) and are within the capabilities of the employees. Where alternative productive and meaningful work is not available, the Line Manager (or nominee) may decide that work will cease for the remainder of the day.

65.2 Time lost due to employees being stood down under extreme weather conditions shall be adjusted hour for hour whereby 50% of the time shall be taken from the individual employees accumulated TOIL bank and 50% of the time is paid by Council. For example, if the employee normally works an 8.5-hour day and is stood down due to extreme weather conditions after 4.5 hours, then two (2) hours will be paid by the Council to the employee and two (2) hours will be deducted from the employee's TOIL bank.

65.3 Within any financial year the maximum number of hours that any employee can be stood down under the terms of the weather extremes clause shall be 33.8 hours (i.e., no employee shall be required to offset their TOIL hours bank by any more than 16.9 hours in the financial year). Should the stand down hours be greater than 33.8 hours in a financial year, the Council will pay 100% of wages for the hours greater than 33.8. The following provisions apply in respect of these arrangements; -

- the employee will be provided with an opportunity to accrue TOIL having regard to the operational areas in which they work.
- where employee/s are not provided with such opportunity to accrue TOIL, the employee/s may alternatively access their annual leave, personal leave entitlements or convert up to two (2) x Grace Days in any 12-month period (provided that the TOIL is used within the same 12-month period within which the Grace Days were provided) to offset the time referred above.
- Provided that an employee/s shall not access personal leave entitlements where the accrued entitlement is ten (10) days or less and provided further that the debits to all sick leave and annual leave shall be deducted in full days.

65.4 This clause shall not apply to employees working on essential or emergency services/situations, who will be required to remain at work. Provided however, (subject to sub clause 66.5) that where an employee as aforesaid is required to leave the Depot to attend emergency work, the employee shall receive an allowance of 25% per hour for time spent attending to the emergency

65.5 Employees operating suitably air-conditioned plant or able to continue work by working in air-conditioned buildings will remain at work.

## SIGNATORIES TO AGREEMENT

For and on behalf of the **Amalgamated AWU (SA) State Union**



PETER LAMPS  
BRANCH SECRETARY

DATE: 13<sup>th</sup> APRIL 2022



WITNESS

For and on behalf of the **City of Mitcham**



MATT PEARS  
CHIEF EXECUTIVE OFFICER

DATE: 27/4/2022



WITNESS  
Amee Yardley

## **SCHEDULE 1 – CLASSIFICATION STRUCTURE, DEFINITIONS & ALLOWANCES**

### **SCHEDULE 1 – PART S1 - CLASSIFICATION STRUCTURE**

For indicative tasks, refer to the Local Government Employees Award

### **SCHEDULE 1- PART S2 - DEFINITIONS**

#### **S2.1 Senior Store-person**

Has the responsibility for a large council store and may be required to supervise or provide guidance and direction to other employees. The employee would have highly developed interpersonal and communication skills and required to exercise skills attained through the successful completion of a store/warehousing certificate.

#### **S2.2 General Chainperson**

Has the responsibility for the general care and maintenance of tools and survey equipment, accurately carrying out survey measurements, and the recording of routine data. The employee could be expected to acquire an elementary knowledge of basic geometry and capable of using normal survey equipment e.g., theodolite, levels etc.

### **SCHEDULE 1 -PART S3 - ABSORPTION OF ALLOWANCES**

Payment of the following allowances is no longer applicable as a result of previous Enterprise Agreement negotiations:

- Disability Allowance
- Burning off Grass
- Cleaning Public Lavatories
- Handling Money on behalf of Employer
- Removal of Dead Animals
- Confined Spaces
- Portable Wood Chipping Machine
- Height Allowance
- Toxic Substances
- Hotmix
- Tool
- Towing

## **SCHEDULE 1 PART S4 – PAYMENT OF ALLOWANCES**

The following allowances shall continue to be paid: (Where the Award payment is higher than that provided below, the higher amount shall be paid.)

### **S4.1 Stand-by Allowance for Call Outs.**

Employees who qualify and volunteer to be rostered on stand-by to attend after hours call outs, shall receive an allowance at a daily rate for the seven (7) day shift in addition to the use of Council's vehicle for commuter use. The daily allowance rate will be paid at a gross rate of:

<b>Allowance as at 06/07/2020</b>	<b>Allowance as at 1<sup>st</sup> Full Pay after 01/07/2021 1.5% Increase</b>	<b>Allowance as at 1<sup>st</sup> Full Pay after 01/07/2022 2.0% Increase</b>	<b>Allowance as at 1<sup>st</sup> Full Pay after 01/07/2023 1.5% Increase</b>
<b>\$29.65</b>	<b>\$30.09</b>	<b>\$30.69</b>	<b>\$31.15</b>

If an employee is rostered on standby on a gazetted public holiday, the standby allowance will be paid at a gross rate below for the public holiday worked:

<b>Allowance as at 06/07/2020</b>	<b>Allowance as at 1<sup>st</sup> Full Pay after 01/07/2021 1.5% Increase</b>	<b>Allowance as at 1<sup>st</sup> Full Pay after 01/07/2022 2.0% Increase</b>	<b>Allowance as at 1<sup>st</sup> Full Pay after 01/07/2023 1.5% Increase</b>
<b>\$104.448</b>	<b>\$106.01</b>	<b>\$108.13</b>	<b>\$109.75</b>

### **S4.2 Working in the Rain.**

Working in the Rain, means a place where the clothing of an employee becomes saturated, or a place where the employee has to stand in water or slush over one inch in depth so that his/her feet would become wet if not protected.

Employees who are required to work in the rain, at the Team Leaders / Coordinators discretion, shall be paid an allowance of 25% for time so worked. This arrangement is to cover emergency work occurring during normal working hours that must be completed in the rain, for example drain maintenance / flooding, emergency tree work, collection of garbage using side loader, rendering job site safe, completing concrete pours and bituminous concrete.

### **S4.4 Meal Allowance**

An employee required to work overtime in excess of one and a half hours after working ordinary hours on that day will be paid a meal allowance by Council to meet the cost of a meal, or at the option of Council, be provided with an adequate and suitable meal.

<b>Allowance as at 06/07/2020</b>	<b>Allowance as at 1<sup>st</sup> Full Pay after 01/07/2021 1.5% Increase</b>	<b>Allowance as at 1<sup>st</sup> Full Pay after 01/07/2022 2.0% Increase</b>	<b>Allowance as at 1<sup>st</sup> Full Pay after 01/07/2023 1.5% Increase</b>
<b>\$21.82</b>	<b>\$22.15</b>	<b>\$22.59</b>	<b>\$22.93</b>

#### **S4.5 Travelling, Starting and Finishing on the Job.**

An employee required by Council to commence work at the normal time and finish at the normal time at any worksite being within the Council's boundaries will be paid an allowance:

Allowance as at 06/07/2020	Allowance as at 1 <sup>st</sup> Full Pay after 01/07/2021 1.5% Increase	Allowance as at 1 <sup>st</sup> Full Pay after 01/07/2022 2.0% Increase	Allowance as at 1 <sup>st</sup> Full Pay after 01/07/2023 1.5% Increase
\$4.78	\$4.85	\$4.95	\$5.02

S4.5.1 In lieu of making the payment, Council may decide to allow the employee(s) to either commence work 15 minutes later or finish work 15 minutes earlier.

#### **S4.6 Travelling Time Outside Normal Working Hours.**

An employee required by the employer to report to their normal departmental depot or workshop or other permanent starting point prior to proceeding to the work site is paid at their ordinary rate, for all time outside normal working hours reasonably spent in travelling from the departmental depot or workshop or permanent starting point to and from the job.

#### **S4.7 Returning Plant Outside Normal Hours.**

An employee returning a vehicle or plant to a depot outside normal working hours, under the direction of Council, shall be paid overtime as set out in Clause 47.

#### **S4.8 Mileage Reimbursement.**

An employee who at the direction of the employer is required to use his/her privately owned motor vehicle for official use in connection with the business of the council will be reimbursed the mileage rate as per the LGE Award.

#### **S4.9 Working Around Powerlines Allowance.**

An employee holding a current Elevated Work Platform (EWP) ticket together with a current certificate in Electro Technology and who works from an EWP or insulated cherry picker in clearing tree branches, will be paid an allowance.

Allowance as at 06/07/2020	Allowance as at 1 <sup>st</sup> Full Pay after 01/07/2021 1.5% Increase	Allowance as at 1 <sup>st</sup> Full Pay after 01/07/2022 2.0% Increase	Allowance as at 1 <sup>st</sup> Full Pay after 01/07/2023 1.5% Increase
\$18.52	\$18.80	\$19.18	\$19.47

# SCHEDULE 1 PART S5 – IE STRUCTURE AND WAGE POINTS

IE Structure	<u>Infrastructure Employee – IE Summary</u>	Wage Points	Progression / Classification Criteria
<u>IE A</u>	<ul style="list-style-type: none"> <li>• <u>Entry level</u> (inexperienced, unskilled and/or without driver's license).</li> <li>• License obtained and basic competencies, (2 increments)</li> <li>• Progress to Wage Point Two after 12 months of satisfactory performance/service Previously ME-3.</li> <li>• Progress to IEB -ME-4 after 24 months satisfactory performance.</li> </ul>	<u>TWO WAGE POINTS</u>	
<u>IE A 1 - Entry</u>		<u>Wage Point 1</u>	Entry level for employee without driver's licence (Class C). Entry level for inexperienced, trainee or unskilled employee.
<u>IE A 2</u>		<u>Wage Point 2</u>	Progress to wage point 2 after 12 months satisfactory service
			<u>Progress to IE B after 24 months</u> providing that: <ul style="list-style-type: none"> <li>• Class C drivers licence obtained</li> <li>• Demonstrated basic competencies in any of the below:               <ul style="list-style-type: none"> <li>○ Construction</li> <li>○ Maintenance</li> <li>○ Gardening /</li> <li>○ Parks and reserves work.</li> </ul> </li> <li>• Satisfactory performance review for the period.</li> </ul>
<u>IE B</u>	<ul style="list-style-type: none"> <li>• Entry level (license, basic relevant skills and/or experience)</li> <li>• Multi-skilling and relevant skills development, LT license, Achieved Certificate III (or equivalent qualification) (2 increments)</li> </ul>	<u>TWO WAGE POINTS</u>	

	<ul style="list-style-type: none"> <li>• Progress to first wage point of IE C after 24 months of satisfactory performance/service</li> <li>• Previously ME-4. Progress to IEC - ME-5 after Cert III completed</li> </ul>		
<b><u>IE B 1 - Entry</u></b>		<b><u>Wage Point 1</u></b>	Entry level for employee who has driver's licence (Class C) and basic relevant experience and / or skills for the proposed work area.
<b><u>IE B 2</u></b>		<b><u>Wage Point 2</u></b>	<p>Progress to IE C after <b>24 months</b> providing that:</p> <ul style="list-style-type: none"> <li>○ multiskilled in relevant council work and operations;</li> <li>○ competency levels achieved;</li> <li>○ MR Class license (formerly LT);</li> <li>○ TAFE Certificate 3 in horticulture/ construction / maintenance (or equivalent);</li> <li>○ Continuous (assessed) satisfactory performance reviews over the 24-month period. Where any aspect of work or service is deemed "unsatisfactory" the employee (from that point) will need to serve a further 24 months of satisfactory service prior to progression to IE C.</li> </ul>
<b><u>IEC</u></b>	<ul style="list-style-type: none"> <li>• Entry level (horticulture trades, Cert III, range of skills associated with qualification, specialist on heavy plant operation.</li> <li>• Wage Point Two after 12 months satisfactory performance/service. Final wage point for specialised or small plant operators</li> <li>• Wage Point Three for Certificate or trade after further 12 months (previously ME-5)</li> <li>• Wage Point Three is entry level for specialised trades with limited experience. (previously ME-6)</li> <li>• Wage Point Four is specialised trade with significant experience</li> </ul>	<b><u>FIVE WAGE POINTS</u></b>	

	<ul style="list-style-type: none"> <li>Wage Point 5 is final wage point for specialised trades after 12 months of satisfactory performance /service at Wage Point Four.</li> </ul>		
<b><u>IE C 1 - Entry</u></b>		<b><u>Wage Point One</u></b>	<ul style="list-style-type: none"> <li>Employee progressing from IE B.</li> <li><u>Entry point</u> for new employee who: <ul style="list-style-type: none"> <li>is required to operate specialised or small plant machinery e.g.Skid-steer, hot-mix, woodchipper and is skilled, experienced and qualified to undertake such work.</li> <li>is required to hold a horticulture trade qualification or relevant TAFE Certificate 3 in construction / maintenance or horticulture and undertakes a range of trade or similar level work operations associated with such qualification</li> </ul> </li> </ul>
<b><u>IE C 2</u></b>		<b><u>Wage Point Two</u></b>	<ul style="list-style-type: none"> <li>Employee who has served 12 months of (assessed) satisfactory performance at <u>IE C (wage point one)</u>.</li> <li><u>Final wage point</u> for Specialised or Small plant operators e.g., Weed unit, Skid-steer, Hot-mix, Woodchipper and is skilled, experienced and qualified to undertake such work.</li> </ul>
<b><u>IE C 3</u></b>		<b><u>Wage Point Three (Certificate or Trade)</u></b>	<ul style="list-style-type: none"> <li><u>Final Wage point</u> for employee who has served 12 months of (assessed) satisfactory service at <u>IE C (wage point two)</u>.</li> <li><u>Entry level for specialised trades</u> e.g., Plumber (including irrigation mechanic as defined), Electrician with limited experience.</li> <li><u>Final Wage point</u> for Heavy specialist plant operators, Articulated loader, Excavator, EWP operator, Mobile ladder with insulated power ticket, Line</li> </ul>

			marker, Sweeper, Weed Unit operator.
<b><u>IE C 4</u></b>		<b><u>Wage Point Four (Specialist Trades)</u></b>	<p>Entry level for Specialist tradesperson with significant relevant experience, e.g., Electrician, Plumber, including Irrigation mechanic as defined below.</p> <p><b><u>Irrigation Mechanic definition</u></b></p> <p>An irrigation mechanic is an employee who is principally and normally engaged in irrigation plumbing and is capable and required to undertake the following range of duties:</p> <p>The installation of irrigation systems to distribute water or similar liquids from any source for such purposes as growth, leaching, cooling, misting, fogging, recycling, treating, disposal or water replenishment of the soil or other areas, or substances used to sustain plant life.</p> <p>The installation of any pipes, fittings, pumps, tanks, valves, control valves, main valves or ferrules, pressure control devices, flow control devices, back flow prevention devices, filters, water meters, flow control system, all types of hydraulic, electric and electronic extra low voltage control controls and other ancillary controls up to 32 volts AC and DC, including the associated writing for such equipment and all other components required to form a complete system of irrigation.</p> <p>The installation of any irrigation drainage including any system of channels, pipes, pits, sub-soil agriculture pipes and the like, installed for such purposes as receiving and removing water, preventing water saturation of the soil or other medium, reducing salt and chemical build up in the soil or other medium as a result of irrigation.</p> <p>Associated excavation, levelling and trenching work including the operation of manual or mechanical equipment require.</p>

<b><u>IE C 5</u></b>		<b><u>Wage Point Five</u></b>	Specialised tradespersons final wage point.
<b><u>MEC</u></b>	<ul style="list-style-type: none"> <li>• <u>Entry level</u> (trade qualified workshop specialist)</li> <li>• Wage Point Two after 12 months satisfactory performance/service.</li> </ul>	<b><u>TWO WAGE POINTS</u></b>	
<b><u>MEC 1</u></b>		<b><u>Wage Point One</u></b>	Entry level (Trade qualified workshop specialist)
<b><u>MEC 2</u></b>		<b><u>Wage Point Two</u></b>	Wage point after 12 months satisfactory performance/service.
<b><u>MEC- LW</u></b>	Workshop Leading Worker, trade qualified workshop specialist with significant experience.		<p>Workshop Leading Worker, trade qualified workshop specialist with significant experience.</p> <p>In the exercise of its discretion council may classify a "Mechanic" as a "Senior Mechanic" having due regard to the experience and ability of the employee in the performance of his/her duties.</p> <p>A senior mechanic so classified shall be capable (when required) of each of the following:</p> <ul style="list-style-type: none"> <li>• The application of the full range of mechanical trade skills and responsibilities,</li> <li>• The ability to competently perform repairs and maintenance on the full range of council's plant and equipment,</li> <li>• The ability to perform other work beyond normal mechanical trade skills,</li> <li>• The ability to effectively work alone without the need for direct supervision,</li> <li>• Supervising the work or training of apprentices.</li> </ul>
<b><u>IE RACV</u></b>	RACV Operators	<b><u>ONE WAGE POINT</u></b>	RACV Operators
<b><u>IE RS</u></b>	<ul style="list-style-type: none"> <li>• <u>Entry level</u> specialist Road Sweeper operator</li> <li>• Wage Point Two after 12 months satisfactory performance/service.</li> <li>• Wage Point Three after further 12 months</li> </ul>	<b><u>THREE WAGE POINTS</u></b>	

	(for specialist operator with substantial experience).		
<b><u>IE RS 1</u></b>		<b><u>Wage Point One</u></b>	Road Sweeper Operator
<b><u>IE RS 2</u></b>		<b><u>Wage Point Two</u></b>	Progress to 2 <sup>nd</sup> wage point after 12 months satisfactory service
<b><u>IE RS 3</u></b>		<b><u>Wage Point Three</u></b>	Progress to 3 <sup>rd</sup> wage point after 24 months. Final wage point for Specialist operator with substantial experience.
<b><u>IE LW (Leading Worker)</u></b>  Appointment to IE-LW, Leading Worker positions shall be made by management having regard to the appropriate level Leading Worker Position Profile and IE classification structure.	Appointed Leading Workers. (previously ME-7) <ul style="list-style-type: none"> <li>• Demonstrates effective supervisory and organisational skills</li> <li>• Wage Point Three Leading Worker based on effective performance. (previously ME-7 to ME-8)</li> </ul>	<b><u>THREE WAGE POINTS</u></b>	
<b><u>IE LW 1</u></b>		<b><u>Wage Point One</u></b>	Appointed Leading Worker of work group. A Leading Worker will be appointed when two workers performing relevant council work, (construction / maintenance and / or gardening / parks and reserves work) are required to work together and be classified at IE-LW Wage Point One.
<b><u>IE LW 2</u></b>		<b><u>Wage Point Two</u></b>	Employee who has served 12 months of (assessed) satisfactory performance at <u>IE LW (Wage Point One)</u> and demonstrates effective supervisory and organisational skills (where appropriate).

<b><u>IE LW 3</u></b>		<b><u>Wage Point Three</u></b>	<p><b><u>Leading Workers only progress to the 3<sup>rd</sup> wage point as per our criteria:</u></b></p> <ul style="list-style-type: none"> <li>• This grading shall be applied to a worker who has responsibilities similar to those detailed under IE-C Wage Point Five but is considered by Council to be operating at a constantly high level of efficiency and effectiveness.</li> <li>• This wage point is discretionary, and progression is subject to maintaining the following standards: <ul style="list-style-type: none"> <li>○ Work Team is out of the Depot consistently before 7.15am.</li> <li>○ Work Team is not back in Depot, consistently until after 3.40pm, unless preparing for the next day and 3.30pm is agreed to with Team Leader.</li> <li>○ Work Team are onsite working and begin onsite clean-up and pack up at 3.30pm.</li> <li>○ Ability to make decisions and solve problems on the job.</li> <li>○ Punctuality and reliability in attendance. Less than five days sick leave per year however medical certificates accepted for longer absences.</li> <li>○ Being proactive in carrying out repairs, ordering materials for onsite delivery completing all associated paperwork including and not limited to CRMs, Risk Assessments.</li> <li>○ No breaches of the WHS Act.</li> <li>○ No disciplinary action</li> <li>○ No substantial complaints</li> <li>○ Demonstrates care of plant and equipment.</li> <li>○ Takes responsibility for cleanliness and road worthiness, fit for purpose ensuring no careless damage, loss, or theft.</li> <li>○ Promotes and displays behaviours consistent with Council's Culture Brand and Values in all aspects of work undertaken.</li> </ul> </li> </ul> <p>In determining what constitutes a high level of efficiency and effectiveness, the Key Performance Indicators (KPI's) listed above are to be used. Over the period of 12</p>
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			<p>months prior to the review, the Leading Worker has demonstrated and can provide evidence of consistent achievement of these KPIs.</p> <p>Should performance decline, counselling by Team Leader/ Manager will be undertaken to return to satisfactory level. Where no improvement is evident within a reasonable timeframe, the Leading worker will revert to IE – C Wage Point Five classification with wages adjusted accordingly. In such instances the employee may request review if they believe performance in the area(s) of concern have been addressed and maintained for at least six months.</p>
<b><u>IE Active Scoper</u></b>		<b><u>THREE WAGE POINTS</u></b>	
<b><u>IE AS 1</u></b>		<b><u>Wage Point One</u></b>	Appointed as an Active Scoper. Responsible for the assessment and creation of work tasks using Council prioritisation and planning criteria. Incumbents would also work within the field to establish, preserve and maintain the amenity of the council area. Will work 40% as an Active Scoper and 60% in the field
<b><u>IE AS 2</u></b>		<b><u>Wage Point Two</u></b>	Employee who has served 12 months of (assessed) satisfactory performance at IE-AS (first wage point) and who demonstrates effective assessment skills and creation of work tasks, as well as behavioural requirements in accordance with the CultureBrand and Organisational Values.
<b><u>IE AS 3</u></b>		<b><u>Wage Point Three</u></b>	<p>This wage point is discretionary and will usually be applied in the case of consistently demonstrating work at a high level resulting in effective and efficient results at the IE-AS second wage point. Defined criteria need to be met and maintained:</p> <p>This grading shall be applied to a worker who consistently demonstrates work at a high level</p>

		<p>which results in effective and efficient results over the 12 months prior to the review. The following Key Performance Indicators (KPI's) are to be used to measure the work performance:</p> <ul style="list-style-type: none"> <li>• Role models positive behaviours which promote effective working relationships both internally and externally in accordance with the Culture Brand and Organisational Values.</li> <li>• Actively participate in reviews for improvement opportunities relevant to the work area.</li> <li>• Record keeping is consistently completed accurately and within required timeframes.</li> <li>• Actively work within the field to establish, preserve and maintain the amenity of the council area.</li> <li>• No disciplinary action has been taken against the staff member.</li> <li>• Punctuality and reliability (for example, less than 5 days sick leave per year; however medical certificates would be accepted to support longer periods of absence).</li> <li>• No WHS breaches.</li> <li>• No substantiated complaints.</li> <li>• Demonstrates care of plan and equipment, for example, no careless damage, loss or theft.</li> </ul> <p>The re-classification to ME8 is subject to maintaining the above KPI's. Should performance or behaviour start to decline, counselling by the Team Leader/Manager would take place and should there be no improvement within a reasonable period of time, the worker will be returned to the ME7 classification with wages adjusted accordingly. In such instances the worker could ask for a review once they believe the performance/behaviour in the area(s) of concern have been addressed and maintained for at least 6 months.</p>
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<p><b><u>IE-FC (Field Coordinator)</u></b> Appointment to IE-FC – Field Coordinator positions shall be made by management having regard to the appropriate level Field Coordinator Position Profile.</p> <p>The Field Coordinator promotes and displays behaviours consistent with Council's Culture Brand and Values in all aspects of work undertaken.</p>	<ul style="list-style-type: none"> <li>• Appointed at discretion</li> <li>• -various criteria stated</li> <li>• -work beyond Award structure -previously ME-9.</li> </ul>	<p><b><u>ONE WAGE POINT</u></b></p>	<p>The position will be made available at the discretion of Council having regard to the following factors:</p> <ul style="list-style-type: none"> <li>• The position is considered beyond the scope of the existing Award</li> <li>• The position will involve some aspect of "hands on work" when required</li> <li>• It may involve considerable supervisory responsibilities including planning and reporting requirements</li> <li>• It may involve highly specialised and / or technical operations</li> <li>• <u>Promote and display behaviours consistent with Council's Culture Brand and Values in all aspects of work undertaken.</u></li> </ul>
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**Note: Where progression is granted on the basis (assessed) satisfactory performance / service the employee is expected to continue at a satisfactory standard to warrant the higher classification or wage level. If the performance / service is subsequently assessed as unsatisfactory the employee will revert to the preceding wage level under the classification and performance reviewed again in three months.**

**An employee who is aggrieved by a performance ranking may appeal the ranking in writing to the Group Manager City Operations.**

**The Manager's decision is final.**

## SCHEDULE 2 - SCHEDULE OF WAGES, CLASSIFICATION STRUCTURE

<b>AWARD CLASSIFICATION</b>	<b>CLASSIFICATION</b> <i>(See Schedule 1 Part 3 re progression/ classification criteria and Entry points)</i>	<b>Wage as at 06/07/2020</b>	<b>Wage as at 1<sup>st</sup> Full Pay after 01/07/2021 1.5% increase then \$15.00 per week in lieu of Tool and Towing Allowance</b>	<b>Wage as at 1<sup>st</sup> Full Pay after 01/07/2022 2.0% Increase</b>	<b>Wage as at 1<sup>st</sup> Full Pay after 01/07/2023 1.5% Increase</b>
ME-3	IE-A, Entry	\$1104.30	\$1135.86	\$1158.58	\$1175.96
	2 <sup>nd</sup> Wage Point	\$1130.50	\$1162.46	\$1185.71	\$1203.49
ME-4	IE-B, Entry	\$1170.70	\$1203.26	\$1227.33	\$1245.74
	2 <sup>nd</sup> Wage Point	\$1197.60	\$1230.56	\$1255.18	\$1274.00
ME-5	IE-C, Entry	\$1207.00	\$1240.11	\$1264.91	\$1283.88
	2 <sup>nd</sup> Wage Point	\$1252.90	\$1286.69	\$1312.43	\$1332.11
ME-6	3 <sup>rd</sup> Wage Point	\$1267.90	\$1301.92	\$1327.96	\$1347.88
ME-7	4 <sup>th</sup> Wage Point	\$1272.10	\$1306.18	\$1332.31	\$1352.29
ME-7	5 <sup>th</sup> Wage Point	\$1298.50	\$1332.98	\$1359.64	\$1380.03
	MEC1	\$1321.80	\$1356.63	\$1383.76	\$1404.52
	MEC2	\$1341.20	\$1376.32	\$1403.84	\$1424.90
	IE-RACV	\$1347.00	\$1382.21	\$1409.85	\$1431.00
	IE-RS1	\$1286.70	\$1321.00	\$1347.42	\$1367.63
	IE-RS2	\$1347.00	\$1382.21	\$1409.85	\$1431.00
	IE-RS3	\$1407.20	\$1443.31	\$1472.17	\$1494.26
ME-7	IE-LW	\$1272.10	\$1306.18	\$1332.31	\$1352.29
	2 <sup>nd</sup> Wage Point	\$1298.50	\$1332.98	\$1359.64	\$1380.03
ME-8	3 <sup>rd</sup> Wage Point	\$1326.30	\$1361.19	\$1388.42	\$1409.24
ME-7	IE-AS	\$1272.10	\$1306.18	\$1332.31	\$1352.29
	2 <sup>nd</sup> Wage Point	\$1298.50	\$1332.98	\$1359.64	\$1380.03
ME-8	3 <sup>rd</sup> Wage Point	\$1326.30	\$1361.19	\$1388.42	\$1409.24
	MECLW	\$1364.60	\$1400.07	\$1428.07	\$1449.49
ME-9	IE-FC	\$1442.60	\$1479.24	\$1508.82	\$1531.46

Note: Salary table will be updated for years 2 and 3 should CPI apply.

*In the application for approval of an enterprise agreement by the Corporation of the City of Mitcham and others (Amalgamated AWU (SA) State Union, CFMMEU SA Branch) [2022]*  
**SAET 178**

## **SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL**

In the application for approval of an Enterprise Agreement by the Corporation of the City of Mitcham and others (Amalgamated AWU (SA) State Union, CFMMEU SA Branch)

**JURISDICTION:** **South Australian Employment Tribunal**  
Fair Work Act 1994 – Chapter 3, Part 2 –  
Regulation of industrial matters by Enterprise  
Agreements

**CASE NO/S:** ET-22-01924

**HEARING DATE:** 17 May 2022 and  
written submissions up to 28 June 2022

**JUDGMENT OF:** Commissioner McMahon

**DELIVERED ON:** 30 December 2022

### **CATCHWORDS:**

*Application for approval of Enterprise Agreement pursuant to s 79 of the Fair Work Act 1994 (SA) ('FW Act') – Whether the procedural requirements for the approval of the agreement have been met – Whether clauses contained within the proposed agreement, in particular clauses which the CFMMEUSA submit purport to exclude it, indicate that the agreement should not be approved – Whether there is 'serious doubt' as to approval pursuant to s 79(6) of the FW Act. **HELD:** Procedural requirements for requisite proportion of employees voting in favour of the agreement met – Clauses within proposed agreement do not exclude the CFMMEUSA – Clauses do not suggest that the agreement should not be approved – Enterprise Agreement approved.*

*Fair Work Act 1994 (SA) ss 75, 76A, 77 and 79*

## **APPEARANCES**

Corporation of the City of Mitcham:

Counsel: Mr A Lazarevich

Solicitors: Norman Waterhouse Lawyers

Construction, Forestry, Maritime, Mining and Energy Union SA Branch:

Mr P Russell

Amalgamated AWU (SA) State Union:

Counsel: Ms K Eaton

## **Introduction**

- 1 This matter concerns an application from the Corporation of the City of Mitcham (City of Mitcham) seeking approval of the City of Mitcham Local Government Employees Award Enterprise Agreement Number 13 of 2021 (the enterprise agreement). The enterprise agreement is for employees covered under the Local Government Employees Award. The application was received by the South Australian Employment Tribunal (SAET) on 28 April 2022.
- 2 On 22 April 2022, SAET received correspondence from the Construction, Forestry, Maritime, Mining and Energy Union SA Branch (CFMMEUSA) in which the CFMMEUSA requested confirmation that the within application had been lodged. The CFMMEUSA indicated they sought to be heard on the matter before SAET approved the enterprise agreement.
- 3 The CFMMEUSA indicated that it opposed the approval of the enterprise agreement for various reasons. Accordingly, SAET determined to list the matter for hearing on 17 May 2022.
- 4 During the hearing, the parties indicated that, given the similarity of this matter and the process for the approval of the City of Unley Enterprise Agreement (ET-21-01137), both the applicant and the CFMMEUSA agreed to follow the process agreed upon in the hearing of that matter. Namely, that the parties would have the opportunity to provide further written submissions following the hearing.
- 5 The issue here is whether the criteria under ss 77 and 79 of the *Fair Work Act 1994* (SA) (FW Act) have been met to enable SAET to approve the enterprise agreement. In particular, whether the process for negotiating and approving the agreement were met, and whether clauses within the enterprise agreement that purport to exclude the CFMMEUSA are such that SAET should not approve the enterprise agreement.

## **Fair Work Act 1994 (SA)**

- 6 An enterprise agreement may be made between one or more employers and a group of employees. Section 75(2) of the FW Act provides for a registered association to enter into an enterprise agreement on behalf of:
  - (a) any member or members of the association who have given the association an authorisation to negotiate the enterprise agreement on their behalf; or

(b) any group of employees (whether or not members of the association) if the association is authorised, after notice has been given as required by the regulations, by a majority of the employees constituting the group to negotiate the enterprise agreement on behalf of the group.

(3) A member of an association is taken to have given the association an authorisation for the purposes of subsection (2) for as long as the member remains a member of the association unless the member, by written notice given to the association, withdraws the authorisation.

7 The form and content of an enterprise agreement is provided for in s 77 of the FW Act. The requirements include: it be in writing, specify the employer to be bound by the enterprise agreement, and define the group of employees to be bound by the enterprise agreement.

8 Further, s 77(1)(d) provides:

if a majority of at least two-thirds of the total number of employees to be covered by the agreement agree—may include a provision giving an association of employees that is able to represent the industrial interests of the employees' rights to represent the industrial interests of those employees to the exclusion of another association of employees.

9 Once parties to an enterprise agreement have agreed on the terms, pursuant to s 77 of the FW Act, it is to be submitted to SAET for approval within 21 days. Pursuant to s 78 of the FW Act, an enterprise agreement has no force or effect unless approved by SAET.

10 Section 79 relevantly provides:

**Approval of enterprise agreement**

(1) Except as otherwise provided, SAET must approve an enterprise agreement if, and must not approve an enterprise agreement unless, it is satisfied that—

(a) before the application for approval was made, reasonable steps were taken—

(i) to inform the employees who are covered by the agreement about the terms of the agreement and the intention to apply to SAET for approval of the agreement; and

- (ii) to explain to those employees, the effect the agreement will have if approved and, in particular—
  - to identify the terms of an industrial instrument (if any) that currently apply to the employees and will, if the agreement is approved, be excluded by the agreement; and
  - if the agreement supersedes an earlier enterprise agreement, to identify the differences in the terms of the agreements; and
  - to explain the procedures for preventing and settling industrial disputes as prescribed by the agreement; and
  - to inform the employees of their right to representation in the negotiation, and proceedings for approval, of the agreement and, in particular, that an employee may be represented by an agent of an employee's choice, or an association of employees; and
- (b) the agreement has been negotiated without coercion and a majority of the employees covered by the agreement have genuinely agreed to be bound by it; and
- (c) if the agreement is entered into by a registered association as representative of 1 or more employees bound by the agreement—SAET is satisfied (in such manner as it thinks fit) that the association is authorised to act in accordance with the provisions of this Act; and
- (d) the agreement provides for consultation between the employer and the employees bound by the agreement about changes to the organisation and performance of work or the parties have agreed that it is not appropriate for the agreement to contain provision for such consultation; and
- (e) the agreement—
  - (i) is, on balance, in the best interests of the employees covered by the agreement (taking into account the interests of all employees); and
  - (ii) does not provide for remuneration or other conditions of employment that are inferior to the standards that apply under Part 1 Division 2; and
  - (iii) does not provide for remuneration or conditions of employment that are (considered as a whole) inferior to remuneration or conditions of employment (considered as a whole) prescribed by an award under this Act that applies to the employees at the time of the application for approval; and
- (j) the agreement is consistent with the objects of this Part; and
- (k) the agreement complies with the other requirements of this Act.
- (1a) The agreement of employees to be bound by a proposed enterprise agreement may be indicated by ballot or in some other way.
- (1b) If a ballot of employees is taken—
  - (a) SAET must be satisfied that—

- (i) all employees were given a reasonable opportunity to participate in the ballot; and
    - (ii) the ballot was conducted in accordance with the rules for the conduct of ballots (if any) laid down by regulation; and
    - (iii) a majority of the employees casting valid votes at the ballot voted in favour of the proposal; and
  - (b) if SAET is so satisfied, it will be presumed that a majority of the total number of the employees (including those who did not vote at the ballot) is in favour of the proposal.
- (1c) In deciding whether an agreement is in the best interests of an employee with a disability, SAET must have regard to the *Supported Wage System* of the Commonwealth (or any system that replaces it), and any other relevant national disability standard identified by or under the regulations.
- (2) SAET must refuse to approve an enterprise agreement if a provision of the agreement discriminates against an employee because of, or for reasons including, race, colour, sex, sexual preference, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (3) SAET must not approve an enterprise agreement if the agreement applies to part of a single business or a distinct operational or organisational part of a business and SAET considers that—
- (a) the agreement does not cover employees who should be covered having regard to—
    - (i) the nature of the work performed by the employees whom the agreement does cover; and
    - (ii) the relationship between that part of the business and the rest of the business; and
  - (b) it is unfair that the agreement does not cover those employees.
- (4) In deciding whether to approve an enterprise agreement, SAET must identify the employees (if any) who are covered by the agreement but whose interests may not have been sufficiently taken into account in the course of negotiations and must do whatever is necessary to ensure that those employees understand the effect of the agreement and their interests are properly taken into account.
- (5) Despite subsection (1)(e)(ii) and (iii), SAET may, on referral of an enterprise agreement by a member of SAET who considered the agreement in the first instance, approve the agreement if SAET is satisfied that—
- (a) a majority of at least two-thirds of the total number of employees to be covered by the agreement is in favour of making the agreement; and
  - (b) the enterprise is suffering significant economic difficulties; and

- (c) the agreement would make a material contribution to the alleviation of those difficulties; and
  - (d) there are reasonable prospects of the economic circumstances of the enterprise improving within the term of the agreement; and
  - (e) having regard to any relevant award under this Act (which should be considered as a whole) the agreement does not substantially disadvantage the employees covered by the agreement.
- (6) An enterprise agreement must also be referred to SAET for approval if the member of SAET before whom the question of approval comes in the first instance is in serious doubt about whether the agreement should be approved.
- (7) If an enterprise agreement is to be entered into on a provisional basis—
- (a) the prescribed provisions do not apply to its approval under this section; but
  - (b) the agreement may only be approved on condition that—
    - (i) the agreement is to be renegotiated between the employer and the group of employees within a period (not exceeding 6 months) SAET considers appropriate in the circumstances and fixes on approving it; and
    - (ii) if, in the course of the renegotiation, the employer and the group<sup>1</sup> reach agreement (either in the same or on different terms), the agreement is, on its approval under this Part, to take the place of the provisional agreement and, if agreement is not reached, the provisional agreement lapses at the end of the period fixed for its renegotiation.

**Explanatory note—**

The ***prescribed provisions*** are subsection (1)(a), (b), (c) and subsections (4) and (5).

- (9) If SAET is of the opinion that grounds may exist for withholding approval of an enterprise agreement but—
- (a) an undertaking is given to SAET by one or more of the persons who are to be bound by the agreement (or by a duly authorised representative on their behalf) about how the agreement is to be interpreted or applied; and
  - (b) SAET is satisfied that the undertaking adequately deals with the aspects of the agreement that might otherwise lead SAET to withhold its approval,

SAET may incorporate the undertaking as part of the agreement, or amend the agreement to conform with the undertaking, and approve the agreement in its modified form.

- (10) Before SAET rejects an application for approval for an enterprise agreement on the ground that its provisions do not meet the criteria for approval, it should identify the aspects of the agreement that are of concern to SAET and allow a reasonable opportunity for the renegotiation of those aspects of the agreement.
- (11) SAET may approve an enterprise agreement without proceeding to a formal hearing if SAET—
  - (a) is satisfied on the basis of documentary material submitted in support of the application that the agreement should be approved; and
  - (b) has given public notice of its intention to approve the agreement in accordance with the rules.

**Note—**

- 1 The group may, if the appropriate authorisation exists, be represented in the negotiations by an association or associations of employees—See section 75.

**Submissions**

- 11 At the hearing, the CFMMEUSA submitted that the City of Mitcham had not provided enough evidence for SAET to be satisfied that the requirements of the FW Act had been met and that the enterprise agreement should not be approved. It contended that the information contained within the Initiating Application (Form A32) was inadequate for SAET to approve the enterprise agreement.
- 12 Further, the CFMMEUSA submitted that in accordance with subs-s 79(6) of the FW Act, the Commissioner hearing the application at first instance should refer the matter to the Full Bench of SAET if that member has serious doubt about whether the agreement should be approved.
- 13 As a consequence of the ‘serious doubt’ issue being raised, the parties were given the opportunity to provide further written submissions in order to consider whether the agreement should be approved or referred to the Full Bench of SAET.
- 14 Written submissions were received from the City of Mitcham on 31 May 2022 and 28 June 2022. The CFMMEUSA provided written submissions on 14 June 2022. The submissions of both parties have been taken into account when considering whether the enterprise agreement should be approved.
- 15 Procedurally, the City of Mitcham submitted that it had met the requirements for the approval of the enterprise agreement and had provided all necessary documentation to satisfy SAET that it should approve the enterprise agreement. The City of Mitcham further submitted

that it could provide additional documentary evidence to SAET if necessary.

- 16 The CFMMEUSA have submitted that the City of Mitcham did not meet the statutory requirements procedurally in conducting the ballot at the time the enterprise agreement was voted on.
- 17 In reply on the issue of the ballot, the City of Mitcham submitted that the information contained within section 6 of Form 32 demonstrated how the enterprise agreement was formally entered into by the employees of the organisation – i.e., in accordance with s 75(2)(b) of the FW Act, with employees being represented by the Amalgamated Australian Workers (SA) Union (AWU), and that authority was conferred by membership.
- 18 By affidavit of Mr Gregory Stevens, sworn on 25 June 2022 and lodged in SAET on 29 June 2022, the circumstances of how the enterprise agreement was formally entered into were explained. Mr Stevens deposed that he was previously a Commissioner and Deputy President of the South Australian Industrial Relations Commission from 1976 to 2000. He further deposed that clause 10 of the current agreement contains details regarding the Single Bargaining Unit (SBU). Mr Stevens provided information about the role of the SBU. His affidavit further indicated that -
  - Mr Stevens is the independent Chair of the SBU.
  - Mr Stevens has extensive experience in negotiating enterprise agreements within local government.
  - The SBU was established to negotiate the enterprise agreement.
  - The SBU is made up of employer and employee representatives.
  - Employee representatives from each of the 4 workgroups were included.
  - The SBU met on no less than 16 occasions.
  - The difference between the current and proposed agreement were identified for employees.

- Mr Stevens was aware that a copy of the proposed agreement, a one-page summary, a frequently asked questions document, a final offer document and a tracked change of the current and proposed agreement with comparisons was provided to all the affected employees.
  - Mr Stevens is of the view that the agreement was properly explained to all employees in accordance with s 79(a)(ii) of the FW Act.
- 19 The CFMMEUSA contended that for the AWU to represent all employees, as it proposes in the Enterprise Agreement, it has to meet the requirements of s 77(1)(d) of the FW Act.
- 20 In reply, the City of Mitcham submitted that there is no exclusivity with the AWU in negotiating the enterprise agreement and, therefore, the two-thirds majority is not required. They submitted that there was ample evidence that during the enterprise agreement bargaining period there were genuine negotiations held with the CFMMEUSA and consequently, there cannot be any exclusivity conferred on the AWU to the exclusion of another association of employees.
- 21 However, the CFMMEUSA submitted that the following clauses within the proposed enterprise agreement that identify the union (as defined in clause 3 of the enterprise agreement) as the AWU, in effect excludes other unions including the CFMMEUSA:
- Cl. 11 Union workplace representatives.
  - Cl. 12 Right of entry.
  - Cl. 13 Employee/union attendance
  - Cl. 14 Trade union leave.
- 22 As such, it would require SAET to oppose the approval of the enterprise agreement.
- 23 The position of the City of Mitcham is that the CFMMEUSA submissions should be rejected on the basis that these clauses have been included in previous enterprise agreements, including the existing agreement, and do not purport to be at the exclusion of other unions including the CFMMEUSA. There is no provision that states only the AWU can represent the industrial interests of the employees.
- 24 The City of Mitcham assert that while the provisions name the AWU as a party to the enterprise agreement (given that the AWU is a party to the Local Government Employees Award), and gives benefits to AWU members, it does not have the effect that only the AWU can represent the industrial interests of those employees. The example of this is that the

CFMMEUSA were involved during the negotiating process of this enterprise agreement.

### **Consideration**

- 25 The Form A32 indicated at section 6 that the AWU represented employees and that authority was conferred on it as the registered association by membership. This was not refuted.
- 25 In relation to the relevant procedural requirements, I am satisfied that the evidence before me establishes that the AWU have met s 75(2)(b) of the FW Act and are not representing employees to the exclusion of all other employees, making the requirement to meet s 77(1)(d) redundant.
- 26 I prefer the documentation and submissions provided by the City of Mitcham and, in particular, the affidavit evidence of Mr Stevens as to how the ballot process was conducted.
- 27 The proposed enterprise agreement was voted on by the employees, and at the final vote 35 employees voted for the enterprise agreement, and 30 employees voted against the enterprise agreement with 2 abstaining. The number of employees who voted on the approval of the enterprise agreement was not contested by the CFMMEUSA.
- 28 I am satisfied that all employees were given a reasonable opportunity to participate in the ballot pursuant to s 79(1b)(a) of the FW Act and that the majority of employees who voted on the approval of the enterprise agreement were for the approval of the enterprise agreement.
- 29 When determining the outcome of a vote for the approval of an enterprise agreement, SAET must consider the requirements of s 79(1b)(b) of the FW Act. Given that there were 35 for and 30 against, with 2 abstaining, pursuant to s 79(1b)(b) of the FW Act (SAET having been so satisfied of the process being conducted appropriately), it is presumed that a majority of the total number of employees are in favour of the enterprise agreement.
- 30 With regard to other relevant procedural requirements, while the City of Mitcham may not have included any of the claims in the proposed enterprise agreement submitted by the CFMMEUSA, it is evident from the correspondence between the City of Mitcham and the CFMMEUSA, and the written submissions of 31 May 2022, that the CFMMEUSA were provided an opportunity to put forward their proposed enterprise agreement items for consideration. The CFMMEUSA's submissions to the contrary are therefore unfounded.

- 31 Having considered the log of claims of the CFMMEUSA, the City of Mitcham cannot be found to have negotiated with the AWU to the exclusion of another association (the CFMMEUSA) and is not in breach of s 77(1)(d) of the FW Act.
- 32 In relation to the clauses opposed by the CFMMEUSA, I note the submissions of the City of Mitcham. If an employee sought representation from the CFMMEUSA and were denied by the City of Mitcham, then the CFMMEUSA would be entitled to bring that matter before SAET at that time for consideration. Proposing the AWU as the union does not in itself exclude an employee from seeking the assistance of another association such as the CFMMEUSA.
- 33 In terms of the CFMMEUSA not having representative rights when negotiating enterprise agreements, s 76A(3) of the FW Act provides the following:

76A - Best Endeavours Bargaining

...

- (3) SAET may, on the application of a party to any negotiations, give directions to resolve any dispute as to the composition of the group of employees for negotiating purposes.

...

- 34 Best Endeavours Bargaining was available to the CFMMEUSA during the period of negotiations, but for whatever reason the CFMMEUSA did not seek to intervene under this statutory provision. This was a deliberate decision made by them. However, it is available to the CFMMEUSA in any future negotiations if it should choose to do so.
- 35 The rest of the clauses to which the CFMMEUSA object are not matters that would preclude SAET from approving an enterprise agreement, as identified in ss 77 (Form and Content) and 79 (Approval) of the FW Act. Accordingly, the submissions of the CFMMEUSA are without substance.
- 36 Section 77 of the FW Act identifies matters such as: specifying the employer and employees bound by the agreement, makes provision for sick leave, makes provisions for renegotiations, and provides a timeframe of 21 days to submit the application to SAET after the agreement is signed.
- 37 Section 79 of the FW Act identifies matters such as: whether the new agreement supersedes another; explaining the procedures for preventing and settling an industrial dispute; informing the employees of their rights to representation; that the agreement must be negotiated without coercion;

whether SAET is satisfied if an agreement is entered into by a registered association; whether the agreement provides for consultation; whether the agreement is in the best interests of the employees covered by the agreement; and that it does not provide for inferior wages and conditions provided in the standards or the relevant award. Finally, whether the enterprise agreement is consistent with the objects of the FW Act and complies with other requirements of the FW Act.

- 38 In the circumstances of this matter, the requirements of both s77 and s79 have been met.
- 39 Therefore, I am satisfied that the process for the approval of the enterprise agreement have been established and I have no serious doubt about the approval of the enterprise agreement. Accordingly, the approval of the enterprise agreement is not required to be referred to the Full Bench of SAET pursuant to s 79(6) of the FW Act.
- 40 Having established that the enterprise agreement has met all the requirements of the FW Act, and in accordance with s 79, I hereby approve this enterprise agreement.
- 41 In terms of the operative date, an enterprise agreement that is not challenged is generally approved 14 days after it has been received by SAET, after its intentions are provided to the parties. So as not to prejudice the employees to any great degree, I find that the operative date for the enterprise agreement is 14 July 2022. This is 14 days after the date that the City of Mitcham filed its last written submissions, which provided the details required to approve the enterprise agreement.