

# CITY OF UNLEY (AWU) ENTERPRISE BARGAINING AGREEMENT 2021

This Enterprise Agreement is made pursuant to Chapter 3 Division 2 of the Fair Work Act 1994 between the Amalgamated AWU (SA) State Union and the City of Unley.

The terms and conditions agreed between the parties are set out hereunder.

## **CLAUSE 1: TITLE**

This Agreement shall be referred to as the City of Unley (AWU) Enterprise Bargaining Agreement 2021.

## **CLAUSE 2: ARRANGEMENT**

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### **CLAUSE 3: DEFINITIONS**

**‘Acting Status’** assignments will occur when an Employee assumes the full scope of responsibilities associated to a recognised vacant position for a period of greater than 9 weeks. Whilst an Employee is undertaking an acting status assignment their substantive role is to be backfilled in its entirety by another person and the Employee will be paid at the appropriate rate for the role.

**‘Agreement’** means the City of Unley (AWU) Enterprise Bargaining Agreement 2021.

**‘Award’** shall mean the Local Government Employee’s Award in force at the time of certification of this Agreement.

**‘Consultation’** is a process that considers the Employees’ and their representatives and provides them with the opportunity to have their viewpoints heard and considered before a decision is made.

**‘Council’** shall mean the City of Unley.

**‘Dispute’** means any individual or collective issue concerning the application of this Agreement.

**‘Eligible Employee’** means a person paid directly by the Council and excludes casuals.

**‘Employee’** means a person paid directly by the Council who is employed to perform work covered by this Agreement and the Award.

**‘Employer’** means the City of Unley.

**‘Family Violence’** as defined in the Domestic Violence Act 1994 (SA). Family violence includes physical, sexual, financial, verbal or emotional abuse by a family member.

**‘Forced Redundancy’** means a reduction in the overall budget allocation of full-time equivalent (FTE) positions that results in a decrease to the number of FTE required to accommodate the existing number of Employees.

**‘Grievance’** means a complaint made against a decision of the organisation. A grievance is a clear statement by an employee of a work-related problem, concern or complaint in regard to an individual issue not covered by the City of Unley’s Fair Treatment Policy.

**‘Higher Duties’** assignments will occur when an Employee undertakes a set of duties in addition to the duties of their substantive role, that when combined together are sufficient to justify payment higher than the pay level of the Employee’s substantive classification.

**‘Immediate Family’** includes partner (legally married or defacto) including same sex partners; child or adult child (including adopted child, stepchild, foster child, son or daughter-in-law or an ex-nuptial child); and parent/guardian, partner’s parents, step-parent, grandparent, grandchild, sibling, stepsibling or sibling-in-law of an Employee.

**'Immediate Leader'** includes all manager/supervisor positions within Council to which employees covered by this Agreement report, irrespective of their actual title e.g. manager, coordinator, team leader etc.

**'Multi-functional'** shall mean an individual has the competency to work across a wide range of disciplines covered under the Award.

**'Mixed Duties'** assignments will occur when an Employee undertakes a set of duties in addition to the duties of their substantive role, that when combined together are not sufficient to qualify as a Higher Duties assignment.

**'Parties'** means the Australian Workers Union (AWU) and the City of Unley.

**'Scheduled Work'** relates to that work, task, or work plan that is programmed, i.e. a task or work that has been planned as part of a working day or week's schedule. It is not related to work that is a call out or where less than one working days' notice has been given to commence a task.

**'Teams'** shall mean a grouping of Employees and may either be within or across teams. Teams may change depending on the task of the grouping.

**'Union'** means the Amalgamated AWU (SA) State Union or AWU.

**'Wages'** shall mean the Agreement wage plus any regular and permanent penalties and regular required overtime as set out in rosters and any other benefit which is recorded by contractual Agreement as forming part of the Employee's total remuneration package. Where appropriate, use of a motor vehicle may be taken into account. It excludes higher duties, reimbursement expenses, annual leave loading and allowances and penalties of a temporary or irregular nature.

**'Workplace Representative'** shall mean Employees elected by the workforce employed by the City of Unley.

## **CLAUSE 4: OBJECTIVES**

### **4.1 Developing Our Culture**

Council understands that constructive leadership, management and teamwork are significant elements necessary to maximise both community benefit and Employee satisfaction. The parties will work together towards building a constructive culture, which means showing a balanced concern for getting the job done whilst also satisfying the needs of the individual or group.

Basic characteristics of a constructive culture include:

- a) A tendency toward consensus decision-making;
- b) The ability to generate creative solutions;
- c) A high level of enjoyment and satisfaction; and



- d) A commitment to increasing organisational effectiveness.

#### **4.2 Multiskilling Our Workforce**

The parties to this Agreement understand that a viable future for in-house delivery of services is to some degree dependent upon the workforce being committed to a multi-functional approach. This means the willingness to work across the wide range of disciplines covered under the Award and not remain limited to working in specific work streams such as civil works or horticulture. It is also recognised by all parties that the ongoing improvement of existing skills is an essential component of meeting customer needs in a competitive environment.

#### **4.3 Working to Plan**

To achieve more efficient and proactive outcomes for the community and to provide for planned maintenance, the parties to this Agreement agree that work is to be planned ahead of time with sufficient lead time. This will be achieved, in part, through the implementation of teamwork plans.

#### **4.4 Maximising Time on The Job**

The parties to this Agreement agree that starting on site rather than at Council's Depot should be an option for Employees. This arrangement may be varied depending on program/project logistics but will apply by mutual consent between the relevant immediate supervisor and individual work teams. Agreement to starting on-site should not be unreasonably withheld. Where Employees start on site, the arrangements outlined in Clause 8.1 of the Local Government Employees Award do not apply.

All works teams also agree to comply with the recognised departure and return times as follows:

- a) All work teams are to have departed the Depot within 15 minutes of the planned start time and to return no earlier than 15 minutes from the planned finish time;
- b) Employees are to access toilet facilities at the nearest location to the worksite; and,
- c) All Employees working away from the Depot are to have prepared materials sufficient to complete the workday by the time of departure from the Depot.

#### **4.5 Continuous Improvement**

Continuous improvement is a key to ensuring Council provides appropriate quality cost effective services to the community. Council will continually look to improve workplace methods, practices, quality and productivity to ensure the community receives value for money with an efficient and effective workforce. To ensure the changing needs of the community are met, services will be reviewed and revised on an ongoing and as needs basis.

The parties agree that participation by Employees is essential to ensure decisions have given due consideration of Employees experience and knowledge to achieve desired outcomes. The shared aims of the parties are to co-operatively and constructively work together in achieving benefits for Council, Employees and the Community.

#### **CLAUSE 5: PERIOD OF OPERATION**

- 5.1 This Agreement shall take effect from the first pay period after 1 July 2021 (notwithstanding the actual date of approval by the South Australian Employment Tribunal SAET) and remain in force until 30 June 2023. Negotiations for the next Enterprise Agreement will occur during the final six months of this Agreement.
- 5.2 Council is committed during the life of this Agreement and its renegotiation to negotiate collectively with the Union and Employees party to this Agreement.

#### **CLAUSE 6: PARTIES BOUND**

This Agreement shall be binding on the City of Unley in respect of its Employees employed pursuant to the Award, the Australian Workers Union in respect to its members employed by the City of Unley (excluding Employees working at the Unley Swimming Centre).

#### **CLAUSE 7: RELATIONSHIP TO PARENT AWARD**

- 7.1 This Agreement shall be read and applied in conjunction with the terms contained within the Local Government Employees Award as amended from time to time, provided that where there is any inconsistency, this Agreement shall take precedence.
- 7.2 This Agreement replaces the City of Unley (AWU) Enterprise Bargaining Agreement 2018.

#### **CLAUSE 8: EMPLOYEE PROTECTION**

This Agreement shall not operate so as to cause any Employee to suffer a reduction in remuneration and benefits, provided by the Employer as a whole, applicable at the time of signing the Agreement or in National standards as provided for in State and Federal Legislation.

#### **CLAUSE 9: CONSULTATIVE MECHANISMS**

- 9.1 The parties agree that the effective operation of this Agreement is dependent upon open and honest communication and trust between the parties. The primary method of communication and the framework to facilitate management and Employees working together will be via the Workplace Consultative Committee (WCC). This committee commits to meeting at a minimum quarterly to ensure information is not only conveyed to all Employees, but that all Employees have the opportunity to have their opinions heard.

- 9.2 These meetings will provide the opportunity for Employees and management to exchange ideas, problem solve and brainstorm operational issues.

### **9.3 Workplace Consultative Committee**

#### **9.3.1 The WCC shall consist of:**

- a) Employer representatives (to be no greater in number than the number of Workplace Representatives);
- b) Workplace Representatives elected by the Employees covered by this Agreement; and
- c) The WCC will have, as a member, the State Secretary of the Australian Workers Union (or his/her nominee).

#### **9.3.2 The role of the WCC shall be to:**

- a) Reach decisions by consensus. All decisions will operate as recommendations to the General Manager;
- b) Hear and acknowledge reports and ideas presented by Employee and Employer representatives on a range of issues;
- c) Provide a forum for information flow between the Employer and Employees;
- d) Monitor and review the implementation of the Agreement;
- e) Assist to implement new policies where appropriate;
- f) Engage in consultation regarding any organisational change relevant to Depot operations;
- g) Review and report on cost saving initiatives and proposals that contribute to the efficient running of the depot operations;
- h) Where appropriate, attempt to resolve disputes as per Clause 23 b).

#### **9.3.3 Negotiation of new Agreement**

- a) A separate committee titled the Enterprise Agreement Negotiating Committee (EANC) shall be established to negotiate the next Enterprise Agreement pursuant to Clause 5.1;
- b) The EANC shall consist of up to five (5) management representatives and up to five (5) employee representatives of which one employee representative will be the AWU Workplace Representative and one will be the State Secretary of the AWU (or his/her nominee).

## **CLAUSE 10:       WORKPLACE HEALTH AND SAFETY**

- 10.1 In accordance with the South Australian Work Health and Safety Act 2012, the City of Unley is committed to ensure, as far as is reasonably practicable, that all workers and visitors are safe from injury and risk to their health whilst at work.
- 10.2 The parties recognise that safety education and safety programs shall be fundamental in achieving this objective. There shall be strict compliance with all relevant Acts and Regulations, and implementation of Industry Codes and Practice to provide protection to stakeholders.
- 10.3 All Employees shall give their full co-operation to the achievement of high standards of Work Health and Safety.
- 10.4 All Employees Personal Protective Equipment (PPE) will be supplied as a minimum as per the Workplace Health & Safety Instructions 2 & 3 2015 (as revised from time to time).

### **10.5 Alcohol, Drug and Substance Abuse Assistance**

- 10.5.1 The use and effects of alcohol, drug and other substances in the workplace can pose serious problems for all Employees. Problems and safety issues arise not only for the person concerned, but also for friends or work colleagues working with the affected person.
- 10.5.2 Where it has been identified that an Employee is suffering from the effects of alcohol, drug or substance abuse, then this should be managed in accordance with Council's policy.
- 10.5.3 Reasonable assistance, including counselling, will be given to the Employee if requested by the Employee.

## **CLAUSE 11:       PROBATIONARY PERIOD**

- 11.1 The Council will engage any new Employee for a probationary period of six months from the Commencement Date.
- 11.2 The Council will assess the Employee's performance on a regular basis during the probationary period and discuss it with the Employee before the end of the probationary period.
- 11.3 In the event of an adverse assessment being made an employee shall be entitled reasonable counselling and training, the nature of such training is at the absolute discretion of the City of Unley.
- 11.4 At any time during the probationary period, either party may terminate the employment by giving two weeks' notice to the other party.
- 11.5 The Council may determine that the employee is not required to work during the

nominated notice period.

11.6 This clause excludes employees engaged as Casuals.

## **CLAUSE 12: MANAGING ORGANISATIONAL CHANGE**

### **12.1 Job Security**

The parties agree that changes to workplace methods, practices, quality and productivity must be consistent with the efficient operation of Council. Further, the parties acknowledge that the current workforce of Council is a critical element in the provision of quality services. Arbitrary job reductions will not be pursued to secure the ongoing improvements in productivity and efficiency sought under this Agreement.

The parties are committed to optimising the employment security of Employees by;

- a) Taking steps to ensure Council has the benefit of a stable and committed workforce and that no forced redundancies will take place during the life of this Agreement for Employees covered by this Agreement (excluding casuals and temporary Employees).
- b) Training and developing Employees to increase their level of skill and ability and providing retraining when necessary. Training needs will be identified through the performance development review (PDR) process and, where appropriate, the development of competency development plans in a timely manner. Managers should ensure necessary training, development and competency assessment is provided, consistent with the relevant policies and procedures of the Employer.
- c) Providing an environment that supports career development and equal employment opportunity.
- d) Implementing consultative mechanisms to ensure timely advice and discussion between Employees and management about any significant changes to service delivery that may impact upon Employee requirements.

### **12.2 Organisational Structure**

The parties agree that the organisational structure must support the achievement of Council's strategic plan whilst ensuring optimum productivity is achieved through the principles of continuous improvement.

Consequently, the organisation structure will from time to time be reviewed to ensure that it supports the achievement of the Council's strategic plan.



### **12.3 Shared Services**

Council will continue to explore opportunities within the Eastern Region Alliance (ERA), as well as other councils, to enter into shared service arrangements to ensure it provides appropriate quality cost effective services to the community. Where a decision is made to engage in such an arrangement the consultation process set out in this Agreement will occur following such determination and prior to any implementation of such arrangements.

In the event that an Employee's position within Council is made redundant by way of a shared services arrangement resulting in a new entity taking over responsibility of the position and the Employee is offered and chooses to transfer to the new entity such an Employee shall have all accumulated entitlements, recognized by Council, discharged at the time of the transfer. Redundancy compensation shall not be payable by Council in such a situation.

In the event that an Employee's position within Council is made redundant by way of a shared services arrangement resulting in a new entity taking over responsibility of the position and the Employee is offered but chooses not to accept transfer to that similar position, 12.5.2 will apply.

### **12.4 External Service Providers**

It is the clear position of Council to provide services to the community utilising its own Employees. During the life of this Agreement, Council will invest in appropriate skill development, systems and equipment to ensure its workforce is able to deliver quality and efficient services to the community.

Council may, however, determine from time to time to utilise external service providers where any of the following criteria is met;

- a) Specialised and/or highly technical tasks for which Council does not have the necessary equipment, resources or expertise.
- b) Short term work including emergency circumstances when employment of additional permanent Employees cannot be justified (recognising that the Award and this Agreement allow for the use of fixed term, casual and Agency Employees).
- c) Large or labour intensive works where the Council is unable to apply the required equipment or resources without adversely affecting existing services or operations.
- d) It can be clearly demonstrated that it is in the public interest to utilise external service providers.

## **12.5 Change Management**

The parties recognise that organisational change is an essential consequence of meeting the needs and expectations of the community.

The Council is committed to honest and open consultation with Employees and their representatives. Any proposed significant change(s) would be subject to consultation with directly affected Employees.

Changes should be planned and take into account all resource implications, particularly those that are related to Employees. The likely consequence of change should be considered and possible scenarios, including the financial and human costs of each, considered. Council will act fairly and objectively with the individuals affected by change and minimise disruption, distress and costs to both Employees and the organisation itself.

Employees, and/or their nominated representatives, directly affected by management's plans will be consulted regarding these plans and their implementation.

Consultation will include both verbal and written communication. The Council shall provide in writing to the Employees, the Union and their representatives on request all relevant information concerning the proposed change, including the expected effects on Employees. The input of Employees and that of their representatives through consultation will be genuinely considered before finalising plans and implementation.

In the event of redundancies occurring or positions becoming under-utilised as a result of organisational change, a re-organisation or restructure of Council operations and/or Employees functions, the contracting out of work previously performed, technological change or the reduction or abolition of functions or services carried out by the Council, the following arrangement(s) shall apply in respect to the employment security of all Council's permanent Employees:

### **12.5.1 Under-utilised Employee**

An Employee may become "under-utilised" where one or more of the following occurs:

- a) Discontinued functions, operations or activities.
- b) Amalgamation of functions, operations or activities.
- c) There are more Employees than is necessary for the efficient and economical working of the Department or Work Area.
- d) Introduction of technological change that will displace functions, operations or activities.
- e) Structural change, including but not limited to, workplace change and/or restructuring.

## **12.5.2 Redeployment**

The Council will make all reasonable efforts to redeploy Employees who have been identified as under-utilised, provided that such redeployment has been identified as available. An Employee shall be entitled to representation throughout this process.

Where Employees have been deemed to become under-utilised, the following will apply;

## **12.5.3 Redeployment Principles**

The following principles will apply to the redeployment of under-utilised Employees:

- a) Under-utilised Employees will be assisted sensitively and consistent with the requirements of merit and equity. Every effort must be made to place the Employee into a position suitable to the Employee's existing skills, experience and substantive salary level whilst also meeting the needs of Council.
- b) Under-utilised Employees who are considered for redeployment will for their part make all reasonable efforts to participate in processes such as assessment and retraining to maximise their redeployment opportunities.
- c) Concurrent with the Council's responsibility to attempt to redeploy and retrain an under-utilised Employee, the Employee has a responsibility to actively seek alternative employment within the Council and if so desired external to the Council.
- d) Having particular regard for the personal circumstances for the Employee, the redeployment is not to disadvantage the Employee unduly; however, disadvantage will also have regard to the overall employment environment before and after the redeployment.

### **12.5.3.1 Suitable Alternative Position**

12.5.3.1.1 A decision about the suitability of a position for an under-utilised Employee is to be made having regard to, and attempting to match as far as practicable, matters including, but not restricted to, hours of work, quantum of hours of work and rates of pay. The skills, knowledge and experience will also be taken into consideration, including the ability to retrain and obtain relevant skills within 12 months.

12.5.3.1.2 A suitable alternative position may include a position of a lower remuneration and/or classification level below the Employee's previously held substantive position.

- 12.5.3.1.3 Where a suitable alternative position is available the affected Employee will be offered the position in preference to other Employees.
- 12.5.3.1.4 Offers of redeployment will be in writing, quoting the classification, salary/wage, and location and attaching a copy of the position description.
- 12.5.3.1.5 All vacancies must be considered for suitability to under-utilised Employees before the vacancy is advertised internally or externally to determine whether the skills of the Employee match (including with reasonable retraining) the required skills of the vacancy.

### **12.5.3.2      Redeployment to a Lower Classification**

Where an Employee is redeployed to a position carrying a lower classification, their pre-transfer wage will be maintained for a period of two years. At the conclusion of the two-year period the Employee will be reclassified in accordance with the new position. The Chief Executive Officer may elect to negotiate a longer period to satisfy any extraordinary circumstances.

### **12.5.3.3      Training**

Where Council considers that a suitable alternative position(s) is available and it has been identified that skill or knowledge differences exist between the current job and proposed job, management will provide the under-utilised Employee with a position description, proposed training program and discuss the position with the Employee.

- 12.5.3.3.1 The training program is to be developed by the manager in consultation with the Employee. The program will then be confirmed in writing prior to appointment to the new position. The purpose of the program is to ensure that the Employee can overcome identified skill or knowledge differences.
- 12.5.3.3.2 Council undertakes to provide the necessary training for all Employees affected by workplace changes that result in under-utilisation.
- 12.5.3.3.3 All training is to be at the Council's expense and any training that may have to take place



outside normal working hours will be paid at the normal rate of pay.

- 12.5.3.3.4 Within the first six (6) months following redeployment in an alternate position, an under-utilised Employee may still apply to the Chief Executive Officer for a voluntary separation (severance) package (as prescribed within Clause 12.5.4). Any such application may or may not be approved.

#### **12.5.4 Redundancy**

- 12.5.4.1 A 'redundancy' will be identified only after all reasonable effort has been made to redeploy an under-utilised Employee utilising the Redeployment Process as defined within 12.5.2 and no suitable position is available.
- 12.5.4.2 Where a determination is made that a redundancy exists, Council may elect to offer a voluntary separation (severance) package to the affected Employee. Employees are under no obligation to accept an offer.
- 12.5.4.3 Where the affected Employee has indicated no interest in a voluntary separation (severance) package, consideration shall be given to expanding the field of Employees whom may be offered such a package.

#### **12.5.5 Voluntary Separation (Severance) Package**

An Employee who agrees to take a voluntary separation package as a result of a redundancy shall be entitled to the following amount of severance pay in respect to a continuous period of service:

- a) Equivalent of twelve (12) weeks remuneration plus three (3) weeks' pay for each completed year of service to a maximum of one-hundred and four (104) weeks.
- b) \$2,000 outplacement fee (paid to the service provider).
- c) Pro-rata Long Service Leave when seven (7) years of service has been attained.

#### **12.5.6 Re-Employment**

An Employee, who has taken a voluntary separation package under the provisions of this Clause, shall not be re-hired or re-employed in any direct or indirect capacity for a period of two (2) years from the date of separation from the Council.

All Employees are to ensure that when using employment agencies to engage temp staff for any purpose, it must be specified that the requirement is for temp staff who have not accepted a voluntary separation package funded by Council in the last two (2) years.

### **12.5.7 Vacancies**

Permanent vacancies arising out of organisational change under this Clause shall be advertised internally in the first instance and may be advertised externally. All Employees including those on fixed term contracts shall be entitled to apply for such vacancies.

Agency staff working for Council may only apply for these vacancies if they are advertised externally.

## **CLAUSE 13: LEAVE**

### **13.1 Annual Leave**

Annual leave shall accrue as prescribe in Clause 7.1 of the Award.

The debiting of whole days for annual leave shall be made to reflect the total daily hours of work the Employee would normally have worked on the day the leave is taken.

### **13.2 Purchased Leave**

- 13.2.1 Employees may purchase up to four weeks additional leave per annum (pro rata for part time Employees). A request will not automatically be granted, and approval will depend upon the application of the criteria outlined in 13.2.9
- 13.2.2 In the event that the application is denied on the basis of 13.2.9 iv), an appeal may be made to the relevant General Manager. The General Manager's decision will be final and binding.
- 13.2.3 Employees may apply for one, two, three or four weeks of unpaid leave, funded by salary deductions, spread evenly over the year. This allows Employees to continue to receive pay during the period(s) of purchased leave.
- 13.2.4 Applications for Purchased Leave must be made by the first of May each year to their General Manager or nominee.
- 13.2.5 Purchased Leave can only be taken in whole week blocks.
- 13.2.6 Purchased Leave must be utilised in the financial year in which it is purchased or it will be lost.
- 13.2.7 A period of Purchased Leave will count as a period of service.

- 13.2.8 Approval of Purchased Leave will be determined by the relevant General Manager in consultation with the Business Unit Leader.
- 13.2.9 Decisions to approve an application of Purchased Leave will be based upon the following factors:
- i) Long Service Leave is not available;
  - ii) Annual Leave entitlement is not to exceed four (4) weeks upon the Employees anniversary date;
  - iii) If approved the combination of Annual Leave and Purchased Leave is not to exceed a total of eight (8) weeks at any given time; and
  - iv) Operational requirements at the time of request.
- 13.2.10 An Employee's fortnightly deductions will remain unchanged if they elect to be part of the Purchased Leave scheme.
- 13.2.11 Where an Employee/Employer requests cancellation of the Purchased Leave before the leave has been taken due to exceptional circumstances, and this is agreed, a refund of the salary will be paid as a lump sum.
- 13.2.12 Where an Employee ceases paid employment during the year in which the Purchased Leave has been approved, reconciliation will occur to ensure that all monies owing to the Employee or Council are accounted for and appropriate recovery or payment is made.

### **13.3 Personal/Family Leave**

The parties recognise that absenteeism is costly, affects efficiency and is disruptive to the whole organisation in terms of work not undertaken and loss of service. Accordingly, the following arrangement will apply to assist Employees to reconcile their family and work responsibilities.

#### **13.3.1 Personal Leave**

- 13.3.1.1 The entitlement for Sick Leave accrued under the Local Government Employees' Award can be used for:
- a) absences from work due to personal illness (excluding any workers' compensation related injury);
  - b) the care and support of an Employee's immediate family (see definitions) or household members when they are ill, providing they are responsible for the care of the person concerned – generally, an Employee should not take carers leave when another person has taken leave for the same purpose; and
  - c) to deal with emergency situations or other matters of a

pressing domestic nature that cannot be scheduled outside of normal work hours or during annual leave or rostered days off.

- 13.3.1.2 Employees must advise their direct supervisor as soon as reasonably practicable before the commencement of their shift that they cannot attend work and should advise of their return date as soon as it is known.

A medical certificate or satisfactory evidence may be required when:

- a) Personal Leave exceeds two consecutive days; or
- b) Personal Leave is taken either side of a public holiday, rostered day off or weekend; or
- c) more than five single days of Personal Leave are taken in a year; or
- d) the Council requests verification that the Employee was unable to attend duty on the day(s) for which Personal Leave has been claimed.

- 13.3.1.3 The debiting of whole days for sick leave shall be made to reflect the total daily hours of work the Employee would normally have worked on the day the leave is taken.

#### **13.4 Compassionate Leave**

Employees are entitled to three days paid compassionate leave when a member of the Employee's immediate family or household member contracts or develops a personal injury or illness that poses a serious threat to their life, or dies. This leave is in addition to Paid Personal Leave.

#### **13.5 Paid Parental / Adoption Leave**

- 13.5.1 An Employee (excluding casual Employees) shall be granted parental/adoption leave on full pay for a consecutive period of thirteen (13) weeks (494 hours) absence in the case of the primary carer, and two weeks (76 hours) absence in the case of the partner of the primary carer, provided that:

- a) the Employee has completed 12 months of continuous service with the Council immediately prior to qualifying for the paid parental/adoption leave;
- b) the Employee is only required to meet this qualifying period once;
- c) the Employee will be paid at the rate and hours effective prior to commencing parental leave i.e. a full-time employee



working temporarily reduced hours will be paid at the reduced hours rate for the period of the parental leave;

- d) the Employee applies in writing to the relevant General Manager 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);
- e) in the case of parental/adoption leave for the primary carer, the period of 13 weeks absence shall be taken in one consecutive block or in 26 weeks at half pay within the 12 month parental/adoption period to commence on any date nominated by the applicant during the period of parental/adoption leave; and
- f) 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.

13.5.2 The Paid Parental Leave Act 2010 (Cth) universally paid maternity leave scheme will have no effect on the obligation of the Employer to make payment in accordance with this Clause.

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

### **13.6 Breastfeeding**

- 13.6.1 Council is committed to supporting an appropriate work/life balance for employees and will implement flexible work arrangements to support women who wish to breastfeed at work. "Breastfeeding" includes expressing milk.
- 13.6.2 Council will provide access for up to 60 minutes paid time per working day to facilitate on or off-site breastfeeding and will make every effort to provide a comfortable and appropriately equipped private place in which to breastfeed and access to hygienic support facilities.

### **13.7 Extended Carer's Leave**

- 13.7.1 An Employee, other than a casual Employee, with two (2) years continuous service shall be entitled to apply for the following unpaid leave;
  - (a) Up to one (1) years unpaid leave to care for a member of the Employee's immediate family who is ill.
  - (b) Up to one (1) years unpaid leave to undertake the care of their grandchild.
  - (c) Granting of Extended Carer's Leave is at the discretion of the Council on a case by case basis per occasion on such terms allowed by the Council.

- (d) Absence on Extended Carer's Leave shall not break the continuity of service of an Employee and shall not be taken into account in calculating the period of service for any purpose defined in the Award, Agreement or Long Service Leave Act 1987.

- 13.7.2 Employees employed pursuant to a fixed term employment contract will not be entitled to leave under this clause beyond the expiry of their contract.

### **13.8 Long Service Leave**

- 13.8.1 Long service leave may be taken in single days with prior approval of the immediate supervisor.
- 13.8.2 The debiting of long service leave shall be made to reflect the total daily hours of work the Employee would normally have worked on the day the leave is taken.

### **13.9 Family Violence Leave**

- 13.9.1 The City of Unley recognises that Employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore the employer is committed to providing support to Employees that experience family violence.
- 13.9.2 An employee experiencing family violence may make an application for Paid leave of up to fifteen (15) days per calendar year for medical appointments, attend legal proceedings, and other activities relating to family violence. This leave is in addition to existing leave entitlements and may be taken as single or consecutive days.
- 13.9.3 Family violence leave will be provided on a pro-rata basis for part-time Employees and will be non-cumulative.
- 13.9.4 Council, at its discretion may request the Employee to provide relevant supporting evidence of the need to take leave which can be in the form of a document issued by law enforcement, court, doctor, district nurse, family violence support service or lower. A signed statutory declaration would also be acceptable evidence.
- 13.9.5 All personal information concerning family violence will be kept confidential in-line with the council's policies and procedures and applicable legislation
- 13.9.6 The employer will ensure all people leaders and contact officers are trained in family violence awareness.
- 13.9.7 An Employee experiencing family violence may raise the issue with their immediate supervisor or People and Culture (P&C) contact. The supervisor may seek advice from P&C in how best to assist the employee if the employee chooses not to see P&C.

13.9.8 Where requested by an Employee the P&C contact will assist the employee to negotiate suitable support as per sub-clause 13.9.11 and sub-clause 13.9.12.

13.9.9 The employer will ensure that payroll Employees and leaders are informed of the leave available, the process for approval and the confidentiality requirements in relation to this leave.

An Employee experiencing family violence will be referred to the Employee Assistance Program and/or other local resources.

In order to provide support to an Employee experiencing family violence and to provide a safe work environment to all Employees, the employer will consider any reasonable request from an Employee experiencing family violence for;

- a) Changes to their span of hours and or shift patterns.
- b) Job redesign or changes to duties if necessary to ensure the employees safety during the working day.
- c) Temporary relocation to an alternate work location.
- d) Change to their telephone number or email address to avoid harassing contact.

13.9.10 An Employee who supports a person experiencing family violence may take carers leave from their existing entitlements to accompany them to court or hospital or to care for dependent children if required in an emergency circumstance.

### **13.10 Cultural Leave**

13.10.1 The City of Unley recognises the importance of enabling and encouraging Aboriginal and Torres Strait Islander people to attend and participate in cultural and ceremonial activities. Such activities are essential to the continuation and promotion of Aboriginal and Torres Strait Islander cultures.

13.10.2 The employer will support Aboriginal and Torres Strait Islander Employees to meet their cultural and/or ceremonial obligations and maintain links to their family and heritage.

13.10.3 Where absence from the workplace is required to fulfil cultural and/or ceremonial obligation, Aboriginal and Torres Strait Islander Employees will be entitled to Paid Cultural and Ceremonial Leave up to a maximum of three (3) days per calendar year.

13.10.4 Additional unpaid leave for Cultural purposes can be accessed in line with current unpaid leave provisions. This leave will not be unreasonably withheld by the employer. In deciding whether or not to grant further unpaid leave the employer will take into account fairness, the Employees years of service, the operational requirements of the

organisation and the nature of the cultural and/or ceremonial obligations.

13.10.5 Cultural and/or ceremonial obligations may include attendance at NAIDOC week events.

13.10.6 Paid Cultural Leave is non-cumulative.

13.10.7 Paid Cultural Leave will not be provided if the Employee is receiving a fee for performance or attendance at a ceremonial event.

13.10.8 Where the Employee has other paid leave available they may choose to use that leave in preference for the unpaid leave entitlements referred to above.

### **13.11 Professional Development Leave**

13.11.1 Employees may apply for up to one (1) years leave without pay to undertake a course of study or to take up a vocational or professional development placement, subject to the Employee having two (2) years continuous service with Council at the time of commencing the leave.

13.11.2 Employees employed pursuant to a fixed term employment contract will not be entitled to leave under this clause beyond the expiry of their contract.

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

13.11.4 Absence on professional development leave shall not break the continuity of service of an Employee and will be taken in accordance with the current Leave Policy.

13.11.5 An Employee on professional development leave for up to 12 months is entitled to the position that they held immediately before proceeding on leave except where otherwise agreed in the terms and conditions of the leave.

13.11.6 The terms and conditions of the leave and return to work shall be agreed and documented by the parties prior to commencement of the leave. An application for an Employee's early return from leave prior to the date agreed at the time of commencement of such leave shall be subject to further terms and conditions agreed and documented between the parties.



## **CLAUSE 14: FLEXIBILITY IN WORKING HOURS**

This section of the Agreement is aimed at supporting a flexible workforce, which is customer responsive whilst maintaining a competitive cost structure.

### **14.1 Ordinary Hours of Work**

- 14.1.1 The ordinary fortnightly hours of work of a full time Employee shall be 76 hours to be worked Monday to Friday over a 9-day fortnight with a Rostered Day Off (RDO) accruing each fortnight.
- 14.1.2 The fortnightly ordinary daily hours of work Monday to Friday shall be 8.5 hours per day for 8 days and the 9<sup>th</sup> day to be 8 hours inclusive of a morning paid break of twenty (20) minutes and a lunch break of forty (40) minutes; comprised of thirty (30) minutes unpaid plus ten (10) minutes paid to cover travel time off the work site, if required.
- 14.1.3 The ordinary daily hours of work excluding public holidays, are not to exceed 10 hours in any one day and are to be worked between the span of 6.00 am to 7.00 pm Monday to Friday.
- 14.1.4 The debiting of whole days for annual leave, sick leave and long service leave shall be made to reflect the total daily hours of work the Employee would normally have worked on the day the leave is taken.
- 14.1.5 With the Agreement of both parties, up to 5 additional hours per fortnight can be worked Monday to Friday between 6.00am and 7.00pm without attracting penalty payments. The purpose of this Clause is to enable the completion of programmed, scheduled or urgent work which would create an unreasonable additional cost or restrict the public's use of infrastructure if the work was held over until another day/time. The first 30 minutes of any additional unscheduled time will be paid at normal rates, with any additional time being paid at overtime rates.
- 14.1.6 Start and finish times and the programing of RDO's are as mutually agreed between the Employee and their immediate supervisor.
- 14.1.7 When the RDO cannot be taken as it would fall on a public holiday the RDO will be taken on the next work day or another day by mutual agreement.
- 14.1.8 By mutual Agreement, RDOs may be rescheduled by either Employee or immediate supervisor upon request and preferably will be taken within the same fortnight. Where the RDOs cannot be taken within the same fortnight, all hours worked will be time banked on the following basis:
  - a) Where the Employee requests the change – hour for hour irrespective of how many hours are worked within the fortnight.
  - b) Where the immediate supervisor requests the change, time will

accrue at one and a half times for every hour worked over 76 in the fortnight. This excludes Clause 14.8: Adverse Weather.

## **14.2 Work, Life Balance**

Teams are committed to ensuring work practices continue to be customer focused to maximise both community benefit and Employee satisfaction, whilst, Council will support teams by;

- 14.2.1 Council will be supportive of balancing personal and family life including parental leave with work demands by implementing flexible systems which minimise potential conflict between the two
- 14.2.2 Council will recognise the needs of Employees with personal or family responsibilities, including parental leave, and their right to address those needs without conflict between their employment and their needs. The Council, Employee and a representative if required, can enter into negotiations to determine and implement any measures which, when mutually agreed, will assist Employees with balancing their personal/family or parental needs with their work life. These may include, but not be limited to: maternity leave, parental leave, job sharing, flexible working hours, personal and carers leave, purchased leave and voluntary reduction of full-time employment to part time employment.
- 14.2.3 Where an Employee's ordinary time hours cannot be worked in accordance with sub-clause 14.1.1, 14.1.2 and 14.1.3 above, a written hours Agreement, as mutually agreed, between the Employee and the Employer setting out the details of the work arrangement shall be signed and held by the Employer and Employee.
- 14.2.4 In the hours Agreements the overtime/penalty time as contained in sub-clause 14.3 and 14.4 shall apply, unless some other compensating benefit is otherwise agreed between the Employer and the Employee.

## **14.3 Penalties**

- 14.3.1 Penalty payments shall not apply to Employees who perform work outside of their ordinary daily hours.
- 14.3.2 Penalty payments shall apply to Employees whose ordinary (normal) daily hours are worked outside of the ordinary daily span of hours ie before 6am and after 7pm. Penalty payments shall be in accordance with Clause 6.1.3 of the Award (Early Starts/Late Finishes).

## **14.4 Overtime**

- 14.4.1 All overtime worked Monday to Saturday inclusive will be paid at one and a half times the current base rate. This remains constant no matter how many hours are worked. All other overtime will be paid as per Clause 6.3 of the Award.

14.4.2 Any hours worked as overtime can be accrued and taken as time off in lieu, added to the Time Bank Hours or paid at the overtime rate. Where overtime is banked it is accrued at the appropriate rate.

14.4.3 The working of additional hours must be with prior authorisation.

#### **14.5 Rest Period after Performing Overtime**

14.5.1 These arrangements will apply both to the working of scheduled overtime and overtime worked when an employee is participating in the Call-Out Roster (refer Clause 14.6).

14.5.2 When overtime work is necessary, it will, wherever reasonably practicable, be arranged to ensure that Employees have at least ten (10) consecutive hours off duty between the work of successive days.

14.5.3 In considering the task(s) undertaken during the scheduled overtime, employee wellbeing and WHS implications, the following will apply:

- a) If overtime ends after 12 midnight, the 10 hour break shall apply.
- b) If overtime ends before 12 midnight, the 10 hour break may not apply.
- c) For overtime on Friday, Saturday or Sunday nights (not preceding a work day), the 10 hour break may not apply.
- d) If overtime worked on a Sunday night preceding a work day, then the 10 hour break will apply.

Any variation to the above will be by mutual agreement.

14.5.4 If, on the instructions of the Employer, the Employee resumes or continues work without having had ten (10) consecutive hours off duty, he/she will be paid at double rates until released from duty for such period. The Employee is then 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.

14.5.5 When an employee is absent from work taking the 10 hour break, it will be without loss of pay for ordinary daily hours during such absence.

#### **14.6 Callout**

A seven-day roster system for callouts will be maintained. The nominated on-call Employee for the seven-day period will be equipped with a phone and fully equipped vehicle. The vehicle is for commuter use only, to and from the place of work.

### **Initial Call.**

Where an on-call Employee is called out, payment will be at double time for a minimum of three hours at the minimum of the Team Member (LGTM) rate.

### **Further calls**

Any additional calls received within the initial 3 hour call out period, which requires additional work to be undertaken beyond the initial 3 hour period, will be paid 'hour for hour' in minimum 30 minute blocks, regardless of whether the Employee has returned home or not.

Any additional calls received after the initial 3 hour period has expired **and** the Employee has returned home, the call-out will start another 3 hour period.

Any additional Employees called out will be paid in accordance with the Award.

**'On call Employees' shall be paid an allowance of:**

<b>Year of Agreement</b>	<b>Amount per week</b>
Year 1 21/22	\$194.13
Year 2 22/23	\$197.43

## **14.7 Time Bank Hours**

- 14.7.1 Approved hours worked outside of ordinary hours of work as specified in sub-clause 14.1 may be placed in the Time Bank Hours.
- 14.7.2 Time Bank Hours can only be taken with the approval of the immediate supervisor
- 14.7.3 The Time Bank Hours balance must not exceed 42.5 hours and banked time may be taken in single days, parts thereof or groups of days up to five. Any banked time paid out will be at ordinary pay rates.
- 14.7.4 An Employee's Time Bank Hours balance may enter a deficit of up to a maximum of 8.5 hours. However, all deficits must be cleared by 30 June of that financial year.
- 14.7.5 An Employee will be able to work RDO's or work additional hours to enable them to have accrued time in the time bank hours, subject to approval by their immediate leader.
- 14.7.6 This sub-clause excludes casual Employees.



## **14.8 Adverse Weather**

The arrangements in this Clause are to be considered in conjunction with Council's relevant policies and procedures.

When actual temperature reaches or exceeds 37 degrees (or 36.5 degrees on the day following a 37 degree day at work) as reported by the Kent Town BOM weather observation station (and upon closure of Kent Town the West Terrace 'Ngayirdapira' BOM weather observation station), the following conditions will apply:

- 14.8.1 With the exception of Team Leaders, normal work will cease and all employees who are covered by this Agreement will cease work. Team Leaders may cease work only where there are consecutive days of adverse weather and their immediate supervisor agrees to the cessation of work;
- 14.8.2 Time lost by Employees ceasing work due to adverse weather conditions shall be adjusted hour for hour whereby 50% of the time shall be taken from the individual Employees time bank hours and 50% of the time is paid by Council;
- 14.8.3 A roster of a minimum of four (4) employees with required skills (sourced from volunteers and in the absence of volunteers as identified by management) will be developed, to respond to emergencies. Employees on the roster are required to respond to any task during times of adverse weather in a safe manner;
- 14.8.4 In addition to the rostering of employees to respond to emergencies, those employees required to maintain essential work such as wicket preparation and work associated with the management of community events, will remain on duty until this work is completed in a safe manner;
- 14.8.5 These arrangements do not apply to casual Employees and Employees who are engaged through an employment agency. Such Employees may be asked to cease work at any time in accordance with clause 14.8.1.
- 14.8.6 Parties agree to allow for consideration in the future of technology and environmental factors as a mechanism for stoppage of work alongside forecasted temperature.

## **14.9 Night Works**

To meet the specific needs of the Employer, Employees covered by this Agreement may be asked to undertake duties at night (Night Works) starting at or after 7pm Monday to Friday and at or after 6pm Saturday, Sunday and Public Holidays for a defined period

- 14.9.1 Night works means any scheduled work starting at or after 7:00pm Monday to Friday and at or after 6:00pm Saturday, Sunday and Public Holidays and this will be regarded as ordinary hours (refer Clause 13.1).
- 14.9.2 The Employer must give an Employee forty-eight (48) hours' notice of its intention to commence Night Works. The notice will include the intended start and finish times and the duration of the Night Works. Agreeing to undertake Night Works is not compulsory.
- 14.9.3 The Employer may vary rostered start times to meet scheduled work requirements. Subject to providing Employees with forty-eight (48) hours' notice of its intention, the Employer may transfer work requirements from day to night.
- 14.9.4 Night Works will be paid as per the table below:

Days of the week	Start times	Rates
Monday - Friday	7pm	Time and a half for the first 2hrs then double time thereafter
Friday	7pm start – midnight	Time and a half for the first 2hrs then double time thereafter
	After midnight	Double time all hours
Saturday	6pm start	Double time all hours
Sunday	6pm start to midnight	Double time all hours
	After midnight	Same as Mon - Friday
Public Holidays	6pm start to midnight	Double time and a half
	After midnight	Same as Mon - Friday

#### 14.10 Christmas Eve/New Year Closure

- 14.10.1 The Chief Executive Officer will announce to all Employees in writing by 1 October annually, the expected closures, operating hours and minimum Employee requirements to maintain the Council's operations for the period 25 December to 1 January. Every effort shall be made to ensure consistency of operating hours across all business units and remote locations.
- 14.10.2 The above decision will be made after:

- a) Consultation with all affected Employees and their managers; and

- b) The Council's minimum operating requirements have been assessed.

14.10.3 Any Employees not required to work during the Christmas to New Year period will be encouraged to take at least 2 weeks leave to allow for planning and to minimise disruption during the year.

#### **CLAUSE 15: ABSORPTION OF ALLOWANCES**

The parties agree that the past increases granted pursuant to all Enterprise Agreements, include the absorption of all work and expense related allowances in Schedule 2, 4 and 5 of the Award, with the exception of the Meal Allowance and the Motor Vehicle Allowance .

#### **CLAUSE 16: FIXED TERM CONTRACTS**

- 16.1 In keeping with Council's position on contestability, it is recognised that the organisation's workforce will need to comprise a mixture of full time, part time and casual employees, employees on fixed term contracts and agency personnel. Council is committed to maintaining permanent full time Employees however this mix will provide the flexibility necessary to enable the organisation to provide security of tenure to employees.
- 16.2 Mindful of the objective of maintaining the size of the permanent workforce, the Council will use such positions for specific purposes to cover the following situations:
  - a) Replace employees on leave or extended absence from duty; or
  - b) Undertake seasonal or other short term project work; or
  - c) Undertake project work where Council is unable to resource its work from within existing Employee resources; or
  - d) Replace existing Employees temporarily assigned to undertake project work; or
  - e) Short-term placements to cover peaks in workload or until the recruitment and selection process is completed for a vacant position.
- 16.3 Employees employed directly by Council on a casual basis and Employees engaged indirectly through labour hire arrangements shall be employed for an aggregate period of no longer than 26 weeks in any 12-month period. This may be extended following a review by management in consultation with the WCC.
- 16.4 Fixed term contracts of employment can be used for periods for up to two years for temporary or new contracts.

## **CLAUSE 17: PERMANENT PART TIME EMPLOYMENT**

Council and Employees recognise that there are advantages provided through part time employment and job-sharing arrangements.

- 17.1 All Employees are entitled to apply to work on a part time or job share basis. Council will consider applications on their merit, taking into account operational requirements and individual needs. Agreement to work part time or job share shall not be unreasonably withheld.
- 17.2 No current permanent full time Employee will be forced to work on a part time or job share basis.
- 17.3 The normal working hours of a part-time Employee may be changed by mutual agreement to meet the short-term requirements of either party or in respect of an increase or decrease in normal hours of duty.
- 17.4 Where a part time Employee agrees, he/she may work up to 38 hours per week, to be paid at the ordinary rate of pay. Additional hours worked above 38 hours per week or outside the ordinary span of hours shall be paid in accordance with Clause 14.4, herein.
- 17.5 Every endeavour shall be made to provide the Employee with reasonable notice of a requirement to work additional hours.
- 17.6 Leave entitlements shall be calculated on a pro-rata basis for all hours worked and paid at the ordinary rate of pay.

## **CLAUSE 18: HIGHER DUTIES**

- 18.1 An Employee engaged in higher duties for greater than two consecutive days (each occurrence) will be paid at the higher rate.
- 18.2 Where the actual performance of higher duties 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.
- 18.3 The above provision shall not apply to one-off situations whereby an Employee performs duties to cover the absence of another Employee on long service leave, maternity leave, workers compensation or extended annual or sick leave.
- 18.4 Where an Employee is predominantly engaged in the relief of regular short term absences such as sick leave, rostered days off and annual leave and such relief is a regular and constant feature of the Employee's position (for an accumulated period of 1500 hours in a 12 month period), then the Employee will be reclassified to that level.
- 18.5 An Employee may be offered an extended period of higher duties to provide coverage for other Employees taking extended periods of leave or for special project work/supervision. This will occur through mutual consent and will be recorded in writing between the parties acknowledging that following the period

of “acting up” the Employee performing higher duties will revert to their substantive pay and position.

- 18.6 Where Clause 18.5 has been used and an Employee has performed higher duties for a continuous period of six months, Council agrees to review the status of the higher duties to determine whether the duties should continue on a temporary basis or are of a permanent nature. Where it is found that the duties are of a permanent nature, the Employee shall be reclassified to the higher classification.
- 18.7 Where an Employee has undertaken higher duties for a continuous period of six months or more, any annual leave, sick leave or long service leave that accrued during this period and is taken during or immediately following this period, will be paid at the higher classification rate.

#### **CLAUSE 19: TRAINING AND STUDY**

- 19.1 The parties are committed to ensuring the development of a learning environment with the aim of enhancing productivity, effectiveness of operations and providing realistic career choices and multi-skilling.
- 19.2 The parties agree that training will be Employee specific and will be developed through the Employee's development and review mechanism. During the life of this Agreement, individual training plans will be developed and revised for each Employee in consultation with Employees. Training time and course fees will be at Council's expense in line with the current Training and Development Policy and Procedure.
- 19.3 Business Units, through their meeting and planning processes, will also give consideration to their training needs.
- 19.4 Further, as a means of providing greater flexibility in the provision of training and subject to agreement by individual Employees, time spent at structured training programs approved by management on a Saturday or other agreed times outside of ordinary hours will be taken as TOIL at ordinary rates.
- 19.5 Skill development will not be limited to formal training programs and study programs. The parties recognise the benefits of Employee exchanges between Councils and like businesses and will help facilitate this for Employees who wish to participate in such schemes, where practicable.

#### **19.6 Study Criteria for Study Assistance**

- (a) The course of study has a direct relationship to the Employee's current duties or is within the scope of the duties that may be taken as a consequence of promotion, redeployment or multi-skilling.
- (b) An essential component of the proposed course of study has been identified in the current career development plan of an Employee, either within their current career direction or a direction that has been identified and agreed, through the development and review system.



- (c) The proposed course of study must be consistent with the role and function of the Local Government industry.
- (d) Both the needs of the Employee and the organisation must be met through the approval of study assistance. Thus, absences on study leave will not have an adverse effect upon the Council's ability to deliver services.
- (e) Where study assistance has been granted the following conditions apply:

At the beginning of each semester an Employee may choose either:

- i. up to three hours paid time off per week inclusive of travel time for attendance at course lectures, tutorials and exams. Paid time off can only be taken during study semesters (or terms) and not during semester breaks; or
  - ii. reimbursement of the prescribed course fees up to a maximum of \$1,200 per calendar year for a certificate level program or to a maximum of \$2,500 per calendar year for an undergraduate or postgraduate program, on production of evidence of successfully completing the components of the course for which reimbursement of fees is sought and submission of documentary evidence of expenditure.
- (f) By mutual agreement between the Manager and Employee arrangements can be made for additional study time to be granted provided the time is made up (e.g. RDO bank). These provisions apply to both contact and correspondence courses.

#### **CLAUSE 20: POSITION CLASSIFICATION**

An Employee may have their classification reviewed by adhering to the current Reclassification Policy and Procedure.

#### **CLAUSE 21: LOSS/SUSPENSION OF DRIVERS' LICENCES**

- 21.1 An Employee who requires a licence to perform their normal duties must advise their supervisor if they lose their licence.
- 21.2 All reasonable steps will be taken so that the Employee can pursue normal duties within the scope of the restrictions. Where this is not possible, the Employee may be required to access any accrued annual or long service leave entitlements, and then leave without pay up to a maximum period of twelve months.
- 21.3 In the event of an Employee losing his/her license for a period greater than twelve months, their employment with Council may be terminated.

## **CLAUSE 22: EMPLOYEE SUPPORT PROGRAM**

### **22.1 Corporate Health and Fitness**

Council is committed to the development of a healthier workforce. A number of programs will be available aimed at increasing Employees' awareness on issues which have an impact on their general well-being.

### **22.2 Employee Assistance Program**

- 22.2.1 The Employee assistance program focuses on the psychological and the emotional support of Employees, in so far as to minimise psychological hazards.
- 22.2.2 For Employees suffering the effects of stress, no matter what the cause, appropriate support will be offered.
- 22.2.3 A seven-day week, twenty-four hour a day counselling service will be made available to all Employees covered by this Agreement. Should the need arise for longer term counselling, this will be provided after negotiation with the Employee.

### **22.3 Phased Retirement**

- 22.3.1 Phased retirement will enable Employees who are approaching retirement (within 5 years) but are unable to continue to work full-time or do not wish to continue to work full-time, to combine aspects of their careers and income with family involvement, other responsibilities and interests.
- 22.3.2 By written agreement between an eligible full-time or part-time Employee and the relevant General Manager, an Employee may participate in a phased retirement program that is offered by Council. Phased retirement will be at the discretion of the relevant General Manager.
- 22.3.3 The terms of a phased retirement agreement must be specified in a written agreement signed by the Employee and the Employee's General Manager. The purpose of a phased retirement plan is to allow an Employee to enter into agreement with Council to progressively access his/her accrued leave entitlements over final years of employment and thereby reduce his/her work hours each week.
- 22.3.4 The agreement shall incorporate an agreed date of retirement which may be varied by mutual agreement.
- 22.3.5 An Employee will be eligible to participate in a phased retirement program on the following conditions:
  - (a) The Employee must be a full-time or part-time Employee;

- (b) The Employee must have worked for at least five continuous years with Council;
- (c) The Employee must be fit to perform the inherent requirements of his/her substantive position;
- (d) The Employee must not be in receipt of workers compensation payments, temporary or permanent disability payments or income protection payments;
- (e) The Employee attends work under the program for a minimum of three days in each 10-day fortnight;
- (f) The Employee attends work under the program for a maximum of eight days in each 10-day fortnight; and
- (g) The Employee not undertaking paid employment that in the opinion of the Council imposes an unreasonable risk to their Occupational Health, Safety and Welfare.

Contract and casual Employees are excluded from this Clause.

#### **CLAUSE 23: GRIEVANCE SETTLEMENT PROCEDURE**

- 23.1 The formal grievance process is available to all Employees to ensure they are treated fairly and equitably.
- 23.2 It is the aim of both parties to ensure natural justice for all employees and that grievances are resolved as quickly as possible in order to preserve positive working relationships.
- 23.3 People and Culture team member may be requested to provide advice and assistance at any stage of the process by the impacted employee or Management.
- 23.4 The following grievance settlement procedures should be followed (excluding grievances related to Fair Treatment – the Council has a policy and procedures related to these grievances).

##### **Stage 1**

Employees should, in the first instance, seek to resolve any disputes with the relevant supervisor, as should supervisors be proactive in seeking to resolve any dispute with the Employees concerned. Should it be inappropriate for any Employee to speak to a supervisor, they can move to Stage 2 of the process.

##### **Stage 2**

If the matter is not resolved at Stage 1, an aggrieved Employee may report the issue to a Workplace Representative. The Representative and the aggrieved Employee will discuss the issue with the Employee's Manager in order to seek a resolution.

### **Stage 3**

If not resolved at Stages 1 and 2, the issue is to be referred to the Chief Executive Officer or relevant General Manager who will liaise with the Union Industrial Officer/Organiser where requested by the Employee to do so.

### **Stage 4**

If not resolved at Stage 3, the grievance will have escalated to dispute status and referred to the South Australian Employment Tribunal for conciliation and if necessary, arbitration. The process contained in Stages 1 to 3 should be completed within seven days of the issue being raised at Stage 1.

23.5 At any stage of the above process, the parties agree to maintain the status quo and the Employee shall continue working until the matter is resolved.

23.6 Nothing in this process prevents the Employee from involving the Union Industrial Officer/Organiser at any stage.

## **CLAUSE 24: DISPUTE RESOLUTION**

Any disputes arising under this Agreement shall be dealt with through the following steps:

- a) either party shall raise the matter with the other through formal written communication and attempt to resolve the issue by negotiation;
- b) should this step not reach a satisfactory conclusion the matter can then be referred to the WCC;
- c) if this does not succeed then the matter may be referred to the South Australian Employment Tribunal for it to exercise its conciliation powers; and
- d) if the conciliation does not resolve the matter then the parties will place it before the South Australian Employment Tribunal for arbitration.

## **CLAUSE 25: INCOME PROTECTION**

The Employer will maintain a Personal Accident and Illness Insurance Plan for Employees covered by this Agreement. Coverage is subject to the terms and conditions of the Insurance Policy and currently provides 24-hour sickness and accident cover for loss of income for a maximum 104 weeks.

This Clause shall not apply to Employees employed on a casual basis.

## **CLAUSE 26: TRAVEL JOURNEY INSURANCE**

The Council will provide Journey Insurance for all Employees covered in this agreement, against bodily injury whilst engaged in a journey to and from their residence and place of work; between a place of training for work and including all private journeys.

## **CLAUSE 27: WAGE INCREASE – QUANTUM AND TIMING**

- 27.1 Employees covered by this Agreement shall be entitled to the following wage adjustments:
- 27.1.1 A 1.5% wage increase effective from the first full pay period occurring on or after 1 July 2021
  - 27.1.2 A further 1.7% or CPI (Adelaide CPI annualised as at March Quarter) whichever is greater effective from the first full pay period occurring on or after 1 July 2022.
- 27.2 Wage rates and increases that shall apply under this Agreement are attached at Appendix A.

## **CLAUSE 28: SUPERANNUATION**

The Council must pay superannuation contributions in respect of each Employee into the Employee nominated superannuation fund.

- 28.1 For the purpose of this Clause:

“Statewide Super” means the superannuation scheme established on 1 July 2012, when Statewide merged with the South Australian super fund, Local Super.

“Superannuation contributions” means:

- a) contribution which the Employer is required to pay under the terms of the rules governing the Statewide Super Scheme;
- b) contributions which the Employer must pay to a superannuation fund in respect of the Employee in order to avoid the imposition of a superannuation guarantee charge under the Superannuation Guarantee (Administration) Act 1992 (Cth);
- c) percentage contribution as per the Award on Employee’s ordinary time earnings; and
- d) any additional contributions which the Employer agrees to pay in respect of an Employee.

- 28.2 Employees will be entitled to choose the fund into which their Employer superannuation contributions will be made. If an Employee does not nominate an alternative fund, the Employer superannuation contributions will be made to Statewide Super as the default fund.



The amount of the Employer contribution will be:

- a) For each Employee who is making "Salary Link" contributions to Statewide Super:
  - I. 3% of the Employee's salary, 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 Salary Link benefit for the Employee, and
  - III. Any additional superannuation contributions which the Employer agrees to pay in respect of the Employee.
- b) "Salary Link" contributions have the meaning given to that term under the Trust Deed.
- c) For each other Employee:
  - I. Contributions which the Employer must pay to a superannuation fund in order to avoid from 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.

**CLAUSE 29: SALARY SACRIFICE**

- 29.1 An Employee may elect to sacrifice any amount from their fortnightly pre-tax salary to make additional superannuation contributions to the superannuation scheme of their choice.
- 29.2 Salary sacrifice contributions made by the Employee will be treated as Employer contributions and may be subject to superannuation surcharge and are likely to be preserved.
- 29.3 The Employee's gross salary for all purposes shall be the pre-sacrifice salary.
- 29.4 The parties agree that salary sacrificing will not result in additional cost to the Council, including Fringe Benefits and Employer Contribution taxes. Any such costs incurred through a salary sacrifice arrangement shall be met by the Employee. This means that contributions made to the superannuation scheme will be adjusted to take account of taxation payable in relation to those contributions.
- 29.5 The Employee may elect to withdraw from the salary sacrifice scheme at any time.
- 29.6 Salary sacrifice is provided in accordance with the Council's Salary Sacrificing Policy, as amended from time to time.

**CLAUSE 30: CITY OF UNLEY VALUES**

All Employees covered by this Agreement shall demonstrate a commitment to the City of Unley Values.

**CLAUSE 31: NO FURTHER CLAIMS**

- 31.1 The Union undertake that during the period of operation of this Agreement there shall be no further wage increase sought, or granted, except for those provided under the terms of this Agreement.
- 31.2 This Enterprise Agreement shall not preclude increases granted by State Wage Case Decisions for economic adjustment purposes from being accessed by those covered by this Agreement. Such State Wage case decisions must clearly determine that any such increases are in addition to Enterprise Bargaining increases.

**CLAUSE 32: SIGNATORIES**

Signed for and on behalf of

***The Corporation of the City of Unley***

.....  
Peter Tsokas  
Chief Executive Officer

.....  
Witness

on this 8<sup>th</sup> day of MARCH 2022

***The Amalgamated AWU (SA) State Union***

.....  
Secretary

.....  
Witness

on this 8<sup>th</sup> day of MARCH 2022

## **APPENDIX A**

### **SCHEDULE OF WAGE RATES**

<b>New Class and EB Rates for LG Group 2021-2023</b>				
<b>LG EBA Rates Starting on the 12th July 2021 - 1.5%</b>				
		<b>1.5% as at 12/07/2021</b>		<b>as at 12/07/21 (25%)</b>
<b>Old Class</b>	<b>New Class</b>	<b>Pay Rate</b>	<b>Annual Salary</b>	<b>Casual Pay Rate</b>
IE3	LGELTM	\$34.1764	\$67,532.60	\$42.7205
IE5	LGTM	\$35.7559	\$70,653.75	\$44.6949
IE6	LGSTM	\$36.7009	\$72,520.93	\$45.8761
IE9	LGTL	\$41.2711	\$81,551.76	\$51.5889

<b>LG EBA Rates Starting on the 4th July 2022 - 1.7% or CPI whichever is greater</b>				
		<b>1.7% as at 04/07/2022</b>		<b>as at 04/07/22 (25%)</b>
<b>Old Class</b>	<b>New Class</b>	<b>Pay Rate</b>	<b>Annual Salary</b>	<b>Casual Pay Rate</b>
IE3	LGELTM	\$34.7574	\$68,680.65	\$43.4468
IE5	LGTM	\$36.3638	\$71,854.87	\$45.4547
IE6	LGSTM	\$37.3248	\$73,753.78	\$46.6560
IE9	LGTL	\$41.9727	\$82,938.14	\$52.4659

## **APPENDIX B**

### **DEPOT/INFRASTRUCTURE CLASSIFICATION LEVELS**

<b>Entry Level Team Member (LGELTM)</b>	<p><b>General Description:</b> This is an entry level position for workers with Cert I or Cert II qualifications and with little relevant experience.</p> <p><b>Qualifications:</b> Cert I or Cert II or equivalent experience in arboriculture, cleaning, construction, horticulture, maintenance, or mechanics.</p> <p><b>Licences:</b> Car</p> <p><b>Criteria for advancement:</b> Entry level</p> <p><b>Authority and accountability:</b> Completes specified tasks involving the utilisation of skills and hand/power tools or machinery under established practices and procedures with supervision.</p> <p>Work is monitored under supervision either individually or in a team environment.</p> <p><b>Judgement and problem solving:</b> Judgment is limited to the tasks to be performed and may involve the use of a limited range of tools, techniques and methods within a specified range of work. The employee may resolve minor problems that relate to immediate work tasks.</p> <p><b>Specialist knowledge and skills:</b> Job specific knowledge and skill are obtained through on-the-job training and completion of a trade qualification.</p> <p><b>Management skills:</b> Not required at this level.</p> <p><b>Interpersonal skills:</b> Employees at this level require basic communication skills to enable them to communicate with customers, other employees and members of the public and in the resolution of minor matters.</p>
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<p><b>Team Member (TM)</b></p>	<p><b>General Description:</b> This is a position for workers holding a relevant Cert III qualification or with equivalent experience in construction, maintenance, cleaning or horticulture.</p> <p>The following positions are also classified at this level:</p> <ul style="list-style-type: none"> <li>- Pest Control Officer (qualified)</li> <li>- Heavy Plant Operator (Loader, Skidsteer, Roller)</li> <li>- Back Hoe Operator</li> <li>- Sweeper Operator</li> </ul> <p><b>Qualifications:</b> Cert III or equivalent experience in arboriculture, cleaning, construction, horticulture, maintenance, or mechanics.</p> <p><b>Licences:</b>  Car  Truck (LR, MR or HR)  Work Zone Traffic Management</p> <p><b>Criteria for advancement:</b> Appointment on completion of and attaining a relevant Cert III qualification and competency assessment to confirm that their expertise is equivalent to that required in this role.</p> <p><b>Authority and accountability:</b> Completes specified tasks involving the utilisation of skills and hand/power tools or machinery under established practices and procedures.</p> <p>Accountable for the quality, effectiveness, cost and timeliness of the work they undertake, for the safety and security of the assets being managed, and for appropriate record keeping</p> <p><b>Judgement and problem solving:</b> Judgment and problem-solving skills are required where there is a lack of definition requiring analysis of a number of options. Typical judgments may require variation of work priorities and approaches; some creativity and originality may be required</p> <p><b>Specialist knowledge and skills:</b></p> <p>Sound knowledge and skills in a number of areas where analysis of complex options is involved.</p> <p>Proficiency in the application of standardised procedures and practices including the operation of tools, plant, machinery and/or equipment, in accordance with the requirements of the position</p> <p>Performance of trades and non-trade tasks incidental to the work</p> <p><b>Management skills:</b> Not required at this level</p> <p><b>Interpersonal skills:</b> Employees at this level require communication skills to enable them to effectively communicate with customers, other employees and members of the public and in the resolution of minor matters</p>
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<p><b>Senior Team Member (STM)</b></p>	<p><b>General Description:</b> This is a position for workers holding a relevant Cert III qualification AND significant experience relevant to Depot operations.</p> <p>Senior Team Members take responsibility for completing assigned work, act as Team Leader if required and work in other teams when necessary.</p> <p>Senior Team Members will either:</p> <ul style="list-style-type: none"> <li>- Provide supervision to teams of trades or technical employees; or</li> <li>- Undertake work that requires a High Risk Work licence (excluding forklift operation); or</li> <li>- Undertake work that requires dual trade qualifications; or</li> <li>- Operate in a specialised role such as arboriculture worker, electrician, mechanic, plumber, irrigation technician, specialised sports field preparation &amp; maintenance (including curation of turf cricket wickets); or</li> <li>- Work in a self-managed team.</li> </ul> <p><b>Qualifications:</b> Cert III and significant experience in arboriculture, cleaning, construction, horticulture, maintenance, or mechanics.</p> <p><b>Licences:</b> Car, Truck (LR, MR or HR) Work Zone Traffic Management</p> <p><b>Criteria for advancement:</b> Appointment by competency assessment to confirm that their expertise is equivalent to that required in this role.</p> <p><b>Authority and accountability:</b> Provides specialised/technical services and advice, and completes complex tasks utilising skills and hand/power tools.</p> <p>May assign work tasks to others and allocate resources so that the required work is completed in a safe and timely manner.</p> <p>May supervise work or provide on-the-job training, based on their skills and/or experience, to employees of the same or lower levels.</p> <p>Provides specialised/technical advice to others.</p> <p><b>Judgement and problem solving:</b> Problems require assessment of a range of options having elements of complexity in reaching decisions and making recommendations.</p> <p><b>Specialist knowledge and skills:</b> Requires significant knowledge and a level of skill in a specific area to resolve issues having elements of complexity which may not be clearly defined.</p> <p>Proficiency in the application of standardised procedures and practices including the operation of tools, plant, machinery and/or equipment, in accordance with the requirements of the position.</p> <p>The vast majority of the work performed requires a High Risk Work licence and is performed in accordance with a Hazardous Work Procedure.</p> <p>Performance of trades and non-trade tasks incidental to the work.</p> <p><b>Management skills:</b> Senior Team Members may provide supervision to teams of trades or technical employees.</p> <p><b>Interpersonal skills:</b> Employees at this level are expected to have strong persuasive skills to enable them to participate in technical discussions to resolve problems, explain policy and reconcile viewpoints. Employees in this level are expected to contribute and assist the Team Leader in continuous improvement activities.</p>
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<p><b>Team Leader (TL)</b></p>	<p><b>General Description:</b> This is a position for a Team Member or Senior Team Member that also leads and manages more than one team of workers. They are typically responsible for supervising the work of others, including several Senior Workers.</p> <p>Team Leaders must have significant relevant technical experience; significant experience in leading and managing teams; and a tertiary qualification in leadership or management.</p> <p><b>Qualifications:</b> Cert III and significant experience in arboriculture, cleaning, construction, horticulture, maintenance, or mechanics; and</p> <p>Cert IV in Leadership or Management; and significant experience relevant to Depot operation.</p> <p><b>Licences:</b>  Car  Truck (LR, MR or HR)  Work Zone Traffic Management</p> <p><b>Criteria for advancement:</b> Team Members, or Senior Team Members may apply for a Team Leader Position when a vacancy arises.</p> <p><b>Authority and accountability:</b> Liaises with Senior Team Members to ensure that all required work is completed in a safe and timely manner to the required standard.</p> <p>Provides specialised/technical advice to others.</p> <p><b>Judgement and problem solving:</b> The nature of the work is usually specialised with methods, procedures and processes developed from theory or precedent.</p> <p>Decision making requires analysis of data to reach decisions and/or determine progress.</p> <p><b>Specialist knowledge and skills:</b> Requires the application of extensive knowledge and a high level of skill in a specific area to resolve issues having elements of complexity.</p> <p>Proficiency in the application of standardised procedures and practices including the operation of tools, plant, machinery and/or equipment, in accordance with the requirements of the position.</p> <p>Able to undertake work that requires a High Risk Work licence that is performed in accordance with a Hazardous Work Procedure.</p> <p><b>Management skills:</b> Team Leaders are expected to manage more than one team of workers in their functional area.</p> <p><b>Interpersonal skills:</b> Employees at this level require advanced interpersonal skills in leading and motivating Employees.</p> <p>Employees in this level are expected to write detailed and non-standard reports and other correspondence in their field of expertise.</p>
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## Transition Principles

The following principles have been developed to support the implementation of the classification structure and aim to provide consistency and transparency in the approach to decision making.

- The IE classifications no longer exist, so therefore there is no claim to retain these classifications.
- Following transition into the new structure, if an employee is currently receiving a higher base salary than the rate for the new structure, the employee's base salary will be maintained with annual wage increases within the enterprise agreement applying.
- No employee will be disadvantaged through loss of income as a result of the transition.
- All current Leading workers will be transitioned to a senior team member.
- Clear expectation that Employees automatically transitioned to the senior team member classification will demonstrate the competencies required for this position.
- Senior team members are encouraged to be members of committees to contribute to the ongoing improvement of Health & safety, employee conditions, process efficiencies & workplace culture.
- Employees that hold positions that have been identified to transition to a higher base salary (team member or senior team member) will be back paid from first full pay period of July 2019.
- Employees will be able to apply for Senior Team member classification from the date of approval of the variation by SAET.
- Implementation will be in line with the objectives of the enterprise agreement.
- Employees will be provided support and assistance through the implementation process from People and Culture and the AWU.
- If an employee is aggrieved by a decision or the process arising out of the transition they can access the grievance or dispute settlement procure of the enterprise agreement.
- **Self managed Teams** are defined as:
  - An autonomous team where there is shared responsibility for planning and managing day to day activities, workload and resources.
  - Decision making is collaborative and efficient.
  - Team members hold each other accountable for performance and behavioural standards
- Organisation support will be provided to self managed teams including workshops in relationship skills, conflict resolution and goal setting for teams interesting in pursuing this. The organisation will also work with the team to identify any internal processes or systems that may need to be modified to support the autonomous work group.
- To meet the criteria for **Specialised sports field preparation** the employee is taking responsibility for :
  - Turf wicket renovations and preparation
  - Irrigation installation, operation and maintenance
  - Turf equipment operation and maintenance (including wicket roller, wicket mower, line marker, oval cylinder mower etc)
  - Line marking
  - Contractor management
- Essential knowledge includes:
  - Cert 3 in Turf Management or relevant experience
  - Pest/disease/weed identification and treatment
  - Knowledge of turf renovation practices including aeration, turf replacement and seeding
  - Fertiliser knowledge and application
  - Chemical knowledge and application

- To meet the criteria for the specialised role of **Mechanic** the employee shall:
  - Apply the full range of mechanical trade skills and responsibilities
  - Have the ability to competently perform repairs and maintenance on the full range of councils plant and equipment
  - Have the ability to perform other work beyond normal mechanical trade skills
  - Have the ability to work alone without the need for direct supervision.
  - Have the ability to supervise the work or training of apprentices
  - As per Schedule 7 of the Local Government Employees Award
- To meet the criteria for the specialised role of **Plumber** the employee shall:
  - Have completed a 4 year apprenticeship and obtained a Certificate III in Plumbing
  - Obtained a Plumber's Licence
- To meet the criteria for the specialised role of **Electrician** the employee shall:
  - Have completed a 4 year apprenticeship and obtained a Certificate III in Electrotechnology Electrician or equivalent
  - Obtained an Electrician's Licence



*In the application for approval of an enterprise agreement by the Corporation of the City of Unley (Amalgamated AWU (SA) State Union, CFMMEU SA Branch) [2022] SAET 170*

## **SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL**

In the application for approval of an Enterprise Agreement by the Corporation of the City of Unley 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:** ET-22-01137

**HEARING DATE:** 4 May 2022 and  
Written Submissions up to 16 June 2022.

**JUDGMENT OF:** Commissioner McMahon

**DELIVERED ON:** 22 December 2022

### **CATCHWORDS:**

*Application for approval of Enterprise Agreement pursuant to s 79 of the Fair Work Act 1994 (SA) – 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 Unley:

Counsel: Mr A Lazarevich

Solicitor: Mr D Sathish

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 Unley (City of Unley) seeking approval of the City of Unley (AWU) Enterprise Bargaining Agreement 2021 (the enterprise agreement) for employees covered under the Local Government Employees Award. The application was received by SAET on 11 March 2022.
- 2 On 21 March 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.
- 3 In its correspondence, the CFMMEUSA indicated they sought to be heard on the matter before SAET approved the enterprise agreement.
- 4 By further correspondence dated 24 March 2022, the CFMMEUSA indicated that it opposed the approval of the enterprise agreement for various reasons. Accordingly, SAET determined to list the matter for hearing and after multiple attempts to find a suitable date, the hearing was scheduled for 4 May 2022.
- 5 Following the hearing on 4 May 2022, the parties were given an opportunity to file further submissions in writing.
- 6 The issue here is whether the criteria under s 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 requisite proportion of employees to be covered by the enterprise agreement agree, 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)**

- 7 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.
- 8 The form and content of an enterprise agreement is provided for in s 77 of the FW Act. The requirements include that: 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.
- 9 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.
- 10 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.
- 11 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
  - (f) the agreement is consistent with the objects of this Part; and
  - (g) 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**

- 12 At the hearing, the CFMMEUSA submitted that the City of Unley 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.
- 13 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.
- 14 Given the issue of ‘serious doubt’ was raised at the hearing, 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.
- 15 Written submissions were received from the City of Unley and the CFMMEUSA up to 16 June 2022. Those submissions have been taken into account when considering whether the enterprise agreement should be approved.
- 16 In relation to the procedural requirements, the City of Unley 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 Unley further submitted that it could provide additional documentary evidence to SAET if necessary.

- 17 In writing, the CFMMEUSA submitted that the City of Unley did not meet the statutory requirements procedurally in conducting the ballot at the time the enterprise agreement was voted on.
- 18 In reply on the issue of the ballot, the City of Unley 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 FWA, with employees being represented by the Amalgamated Australian Workers (SA) Union (AWU), but it did not indicate how that authority was conferred.
- 19 The CFMMEUSA contended that for the AWU to represent all employees, as it proposes in the enterprise agreement (in clause 6), it has to meet the requirements of s 77(d) of the FW Act.
- 20 By affidavit of Peter Lamps, sworn on 24 May 2022 and lodged in SAET on the same date, the circumstances of the authority were explained. Mr Lamp deposed that he is the Branch Secretary of the AWU and that as at the date of his affidavit, there were 28 active members employed by the City of Unley who were eligible members within the AWU rules.
- 21 Mr Lamps further deposed that at the close of the employee vote on the City of Unley's enterprise agreement on 2 March 2022, the AWU had 23 members out of the group of 36 employees eligible to vote and that none of those members had withdrawn their authority for the AWU to negotiate and enter into the enterprise agreement on their behalf.
- 22 The City of Unley submitted that there were 39 employees who were eligible to vote for the agreement.
- 23 With respect to clauses within the proposed enterprise agreement that required SAET to oppose the approval of the enterprise agreement, the CFMMEUSA contended that proposed cl 9.3.3 was objectionable. That clause identifies that an Enterprise Agreement Negotiating Committee (EANC) shall be established to negotiate the next agreement. Specifically, it states that:

#### 9.3.3 Negotiation of new Agreement

- a) A separate committee titled the Enterprise Negotiating Committee (EANC) shall be established to negotiate the next enterprise agreement pursuant to 5.1
- b) The EANC shall consist of up to five (5) management representatives and up to five (5) employee representatives of

which one employee representatives will be the AWU Workplace Representative and one will be the State Secretary of the AWU (or his/her nominee).

- 24 The City of Unley's position is that the CFMMEUSA argument should be rejected on the basis that this clause has been included in previous enterprise agreements, including the existing agreement, and does not purport to be at the exclusion of other unions including the CFMMEUSA.
- 25 Additionally, the clause positively identifies that of the five employee positions on the committee, one will be the AWU workplace representative, and one will be the AWU State Secretary. It does not propose that the AWU will be the only union at the exclusion of all other unions, as it submits that there are 3 additional employee positions to be filled with candidates chosen by the employees, whether they are from the AWU or any other union.
- 26 The City of Unley further submits the current agreement includes the same clause which was approved and while the applicant did not include the CFMMEUSA in the EANC, the CFMMEUSA did put forward its log of claims which the City of Unley genuinely considered. That being the case, it says that the CFMMEUSA cannot argue that the AWU acted exclusively and that the CFMMEUSA's items for negotiation were not considered.
- 27 On this matter, it is noted that there is documentary evidence provided by the City of Unley including emails and correspondence between it and the CFMMEUSA that indicate the City of Unley did receive and consider the CFMMEUSA's log of claims.
- 28 In addition to its concern regarding cl 9.3.3, the CFMMEUSA opposes the approval of the enterprise agreement on the basis that: the proposed agreement at cl 5.2 renegotiates the proposed enterprise agreement with the AWU only, cl 9.3.1 provides the AWU status on the Workplace Consultative Committee only, and cl 12.5 includes the AWU in consultation only.
- 29 The proposed enterprise agreement defines the union as the AWU. The City of Unley submits that this is consistent with the Local Government Award, which recognises the AWU as the union.

## **Consideration**

- 30 In relation to the 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.

- 31 The matters included within the proposed enterprise agreement were voted on by the employees, with the final vote being 23 for the agreement, and 10 against.
- 32 When determining the outcome of a vote for the approval of an enterprise agreement, SAET must consider the requirements of subs 79(1b) of the FW Act as set out above.
- 33 I accept the documentation and submissions provided by the City of Unley as to the elections conducted. This demonstrates that the first vote on the enterprise agreement occurred in September 2021 and was rejected by the employees. For the purpose of a second vote conducted in February/March 2022, the City of Unley included the proposed enterprise agreement to the affected employees as well as information regarding how the voting would be conducted.<sup>1</sup> The ballot was conducted confidentially and was open for a period of two weeks. Absent employees were emailed a ballot and were provided an opportunity to vote. All other employees were provided a ballot, which they placed in a locked ballot box during the voting period.<sup>2</sup> When the ballot was counted, the vote for the enterprise agreement was 23 votes for, and 10 votes against.
- 34 I am satisfied that all employees were given a reasonable opportunity to participate in the ballot. Additionally, I am satisfied that the ballot was conducted appropriately and a majority of employees who voted were for the approval of the agreement. Whether there were 36 or 39 employees eligible to vote at the relevant time, the 23 employees who voted in favour of the enterprise agreement clearly represents a majority of the total number of eligible employees.
- 35 Pursuant to s 79(1b)(b) of the FW Act, having been so satisfied, it is presumed that a majority of the total number of employees is in favour of the agreement.
- 36 With regard to other relevant procedural requirements, while the City of Unley did not include any of the claims in the proposed enterprise agreement submitted by the CFMMEUSA, it is evident from the correspondence between the City of Unley and the CFMMEUSA submitted, that the CFMMEUSA were provided an opportunity to put forward their proposed enterprise agreement items for consideration. The CFMMEUSA's submissions to the opposite therefore are

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<sup>1</sup> Attachment 29 of the applicant's submissions.

<sup>2</sup> Attachment 30 of the applicant's submissions.

specious.

- 37 Having considered the log of claims of the CFMMEUSA, the City of Unley cannot be found to have negotiated with the AWU to the exclusion of another association (the CFMMEUSA) and it is therefore not in breach of s 77(1)(d) of the FW Act.
- 38 In relation to the clauses opposed by the CFMMEUSA, I note the submissions of the City of Unley. If an employee sought representation from the CFMMEUSA and were denied by the City of Unley, 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 union such as the CFMMEU.
- 39 In terms of the AWU 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.
- ...
- 40 Best Endeavours Bargaining was available to the CFMMEUSA during this period of negotiations, but for whatever reason the CFMMEUSA did not seek to intervene under this statutory provision. This was a forensic decision made by them. However, it is available to the CFMMEUSA in any future negotiations, if it should choose to do so.
- 41 The rest of the clauses that are offensive to the CFMMEU are not matters that would preclude SAET from approving an enterprise agreement, as identified in s 77 of the FW Act (Form and Content) and s 79 of the FW Act (Approval). Accordingly, the submissions of the CFMMEUSA are without substance.
- 42 Section 77 of the FW Act identifies matter such as specifying the employer and employees bound by the agreement makes provision for sick leave make provisions for renegotiations and provides a timeframe of 21 days to submit the application to SAET, after the agreement is signed.
- 43 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 interest 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. On the facts of this application, I am satisfied that all of those requirements have been met.

- 44 Therefore, I am satisfied that the process for the approval of the enterprise agreement have been met 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.
- 45 Having established that the enterprise agreement has met the requirements of the FW Act, and in accordance with s 79(1), I hereby approve this enterprise agreement.
- 46 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 16 June 2022. This is the date that the City of Unley filed its last written submissions, which provided the details required to approve the enterprise agreement. I note the parties have agreed to administrative arrangements from 1 July 2021 the agreement has a nominal expiry date of 30 June 2023.