

# Orders



SOUTH  
AUSTRALIAN  
EMPLOYMENT  
TRIBUNAL

## Case Details

**Case number** 02644/2019

**Applicant** Berri Barmera Council

**Other parties** James Button , Neil Drogemuller , The Australian Workers' Union South Australian Branch

## Orders - Approval of Enterprise Agreement

### The Berri Barmera Council (AWU) Enterprise Agreement No. 13, 2019

I HEREBY APPROVE this Enterprise Agreement pursuant to section 79 of the *Fair Work Act 1994*.

This Agreement shall come into force on and from 20 August 2019 and have a life extending for a period of 36 months therefrom.

Commissioner McMahon

20 Sep 2019

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**THE BERRI BARMERA COUNCIL  
(AWU) ENTERPRISE BARGAINING AGREEMENT NO. 13, 2019**

**CLAUSE 1 TITLE**

This Agreement shall be entitled The Berri Barmera Council (AWU) Enterprise Bargaining Agreement No. 13, 2019.

**CLAUSE 2 ARRANGEMENT**

- 1 Title
- 2 Arrangement
- 3 Definitions
- 4 Parties Bound
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### **CLAUSE 3 DEFINITIONS**

For the purposes of this Agreement:

**"Award"** means Local Government Employees (SA) Award 1998.

**"Child"** shall include an adopted child, stepchild, ex-nuptial child or adult child

**"Council or Employer"** means The Berri Barrera Council.

**"Union"** shall mean the Amalgamated Australian Workers Union (SA) State Union.

**"Employee"** shall mean any employee of the Council who performs work covered by the Award

**"Agreement"** means The Berri Barrera Council Enterprise Bargaining Agreement No. 12, 2016

**"Consultation"** means the process which will have regard to employees interested in the formulation of plans which have a direct impact upon them. It provides employees with the opportunity to have their view heard and taken into account prior to a decision being made.

**"De facto spouse"** shall mean a person of the opposite sex to the employee who lives with the employee as the employee's husband or wife on a genuine domestic basis, although not legally married to the employee.

**"Immediate family or household member"** shall mean the spouse, child, parent, grandparent, grandchild or sibling of the employee, or the child, parent, grandparent, grandchild or sibling of the employee's spouse.

**"Redundancy"** shall mean the loss of employment due to the Council no longer requiring the job the Employee has been doing to be performed by anyone, and 'redundant' has a corresponding meaning.

**"Spouse"** shall include the employee's former spouse, de facto spouse or former de facto spouse.

**"Workplace Representative"** shall mean an employee who is elected by their co-workers and appointed in accordance with the Union rules, to represent them in workplace matters.

### **CLAUSE 4 PARTIES BOUND**

This Agreement shall be binding on:

- The Council;
- The Union; and
- All employees who perform work covered by this Agreement

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

This Agreement shall commence operation on the 1st day of July 2019 and expires on 30<sup>th</sup> June 2022. Parties agree to enter into negotiations for a new agreement no later than 30<sup>th</sup> March 2022.

### **CLAUSE 6 RELATIONSHIP TO CURRENT AWARD**

This agreement shall be read in conjunction with the Local Government Employees (SA) Award, provided that where there is any inconsistency this agreement shall take precedence.

#### **CLAUSE 7 INTENT AND OBJECTIVES**

The economic health of the council and the well-being of all depends on the success of a shared commitment to prepare for the future and more competitive environment.

The aim of this Agreement is to develop and support a flexible workforce and management structure committed to the continued improvement and success of the Council. It is anticipated that this commitment will see the development and encouragement of an "Enterprise Culture" whereby the desire to embrace measures aimed at achieving improved productivity will ultimately lead to the success of the Council and achieve sustainable productivity.

#### **CLAUSE 8 CONSULTATIVE MECHANISM**

The parties agree that the effective operation of this Agreement is dependant on the continuation of the established Consultative Structures within the workplace. The principle Consultative Structure is the Single Bargaining Unit.

##### **Single Bargaining Unit**

• **The Single Bargaining Unit shall consist of:**

- (i) Employer representatives nominated by the Council.
- (ii) Employee representatives elected by the employees of the Council to whom this Agreement applies; and
- (iii) The State Secretary of the AWU (or their nominee), if the employees who are members of the AWU and to whom this Agreement applies so request their involvement

• **The role of the Single Bargaining Unit shall be:**

- (i) To reach decisions by consensus. All decisions will operate as recommendations.
- (ii) To hear and acknowledge reports and ideas generated by employee and employer representatives on a range of issues.
- (iii) To provide a forum for information flow between the employer and, employees.

#### **CLAUSE 9 PERSONAL LEAVE**

Employees may access a maximum of 5 days in any financial year of accrued sick leave for the purposes of caring for a sick or injured family member or member of the employees' household provided evidence to the satisfaction of the employer is produced.



#### **CLAUSE 10 FLEXIBLE HOURS - AGGREGATE HOURS APPROACH**

The standard method of aggregating 76 hours per fortnight is 8 shifts of 8.5 hours and one shift of 8 hours, thereby allowing for a 9 day fortnight. Deployment of employees on flexible hours outside the standard method will be by agreement between the employee and the employer on the basis of seasonal and/or organisational needs.

- 10.1 An employee, or group of employees may, with the agreement of the employer, commence and finish a shift within the span of 5am to 9pm Monday to Friday with such time work being considered ordinary time without additional loading.
- 10.2 Overtime will only be calculated on hours which exceed 76 in any one fortnight and paid at Time + 50% for time worked beyond 76 hours but less than 90 hours, and Time + 100% for time worked in addition to 90 hours in any one fortnight. Employees may request Time Off In Lieu (TOIL) of paid overtime but time accrued will be recorded at time for time (that is without overtime penalties). In the event that TOIL must be paid out, overtime penalties will apply.
- 10.3 A 15 minute afternoon paid break shall be given to any employee working beyond 10 hours in a day.
- 10.4 Employees who work Public Holidays and Saturday or Sunday will be remunerated at appropriate overtime rate including call outs in accordance with the applicable Clauses, 6.3 and 7.6, of the Award.
- 10.5 Any paid overtime or accrual of TOIL must be approved by the appropriate Team-leader or Manager PRIOR to the additional hours being worked.
- 10.6 An employee shall not unreasonably refuse to work additional hours in accordance with this clause.
- 10.7 Accrued TOIL shall be taken as soon as reasonably practicable by mutual agreement with the Team-Leader or Management prior to the absence and will be contingent upon operational requirements. The maximum amount of accrued TOIL shall be 38 hours and must be taken within the financial year it was accumulated and will not be carried over.
- 10.8 Each employee will record their daily working hours on an approved attendance record and submit this to their Team-Leader for endorsement at the end of each day.
- 10.9 Documentation in relation to the taking of leave shall continue as per this Agreement and Council's policies and procedures, as amended from time to time.
- 10.10 Employees are allowed a 20 minute paid morning tea break (at a time fixed by the Council), which is counted as time worked.
- 10.11 If the majority of employees agree, an afternoon tea break (at a time fixed by the Council) may be taken, which is an unpaid break.
- 10.12 Employees are required to have at least a 30minute unpaid meal break no more than 5hours after the commencement of work.

Meal and tea breaks are to be taken at the actual site of work.

The provisions of this clause also apply in respect of ordinary hours, overtime and weekend work performed.

#### **CLAUSE 11 CHRISTMAS BREAK / CHRISTMAS CLOSURE**

- 11.1 With the exception of emergencies the Christmas Closure will include:
- The week leading up to Christmas
  - The week following Christmas plus public holidays
- 11.2 With two weeks left for during the next year.

#### **CLAUSE 12 EMERGENCY SERVICES MEMBERSHIP**

- 12.1 In the case of an employee of Council being a registered member of one of the following emergency services:
- Country Fire Service
  - State Emergency Service
  - SA Ambulance Services;
- if that employee is called upon to perform emergency services duties within the Riverland during working hours, Council will continue to pay and conditions of that employee at the ordinary rate of pay until the employee's normal finish time. Permission MUST be gained by the employee's manager / supervisor PRIOR to leaving council work to attend to the request of the emergency services. Permission may not be granted due to operational efficiency / circumstances (ie grave digging). Duties that require more than one day must be approved by management.
- 12.2 In the case of an employee of Council being a registered member of the Metropolitan Fire Service if that employee is called upon to perform emergency services duties within the Riverland during working hours, the employee will access TOIL that has been accumulated for such purposes or Annual Leave. Time worked to bank TOIL for use under this clause MUST be at a time agreed to be management. Permission MUST be gained by the employee's manager / supervisor PRIOR to leaving council work to attend to the request of the emergency services. Permission may not be granted due to operational efficiency / circumstances (ie grave digging). Duties that require more than one day must be approved by management.

#### **CLAUSE 13 REDUNDANCIES**

##### **General Principles**

There shall be no forced redundancies during the life of this Agreement.

The means of adjustment in those situation where organisational change result in positions being no longer required will be dealt with via natural attrition or in one of the following ways:

- Redeployment to a position of the same classification level
- Redeployment to a position of lower classification level with income maintenance
- Voluntary separation package

However, employees may seek a voluntary separation package at any stage of the process, provided that no more than three months has lapsed in the redeployment position.

### **Redeployment**

It is the preferred aim to redeploy employees into a position of equal classification and status as their pre-redeployment position. If after examining all options, it is agreed by all the parties that redeployment to such a position is not feasible, an employee may be redeployed into such a position of lower classification level. The employee pre-redeployment salary shall be frozen for a period of 12 months and then reduced on a sliding scale over the next 24 months to reduce to the salary of the new position. The employee will, as a matter of priority be provided with training to assist the redeployment into a new position. The employee has up to three months from commencement in the redeployed position to confirm acceptance of that position. Voluntary Separation Package (VSP)

Where redeployment is not reasonably practicable, the employer may discuss with the employee a proposal for a VSP. Should an employee elect to take a VSP, such package shall comprise (as a minimum):

- 6 weeks notice of termination or payment of total weekly salary in lieu thereof;
- 2 weeks of total weekly salary as severance payment for each year of service with this Council up to a maximum of 104 Weeks;
- An amount representing 10% of the total annual salary for the purpose of outplacement assistance.

### **CLAUSE 14 ABSORPTION OF SPECIAL RATES AND ALLOWANCES**

Special rates and allowances included in the Award for operating different machinery or performing certain duties shall be absorbed under this Agreement.

No additional payment shall be made for work related allowances listed in Schedule 4 of the award with the following exceptions:

- First Aid Attendant
- Toxic Substances
- Drivers Licence

Expense related allowances shall not be affected.

### **CLAUSE 15 WORK HEALTH AND SAFETY (WHS)**

The Berri Barmera Council shall as reasonably practical be a safe working environment at all times.

The employer, employee and the Union shall give full co-operation to the achievement of high standards of Work Health and Safety through the theoretical and practical application of the WHS and Injury Management Plan.

The parties recognise safety education and safety programs shall be fundamental in achieving this objective. Council projects shall comply with all relevant Acts and Regulations, industry Codes of Practice and other Work Health and Safety guidelines so as to provide and maintain a safe working environment.

Council and employees covered by this Agreement commit to maintaining a minimum Level 3 standard as established during Work Health and Safety Audit periods.

The parties recognise that WHS practices extend to the wider community by risk management and the limitation of public liability exposures. Council is dedicated to limiting this exposure with the active involvement of employees with regards to risk management principles as adopted by Council.



#### **CLAUSE 16 SALARY INCREASES**

The following wage increases are agreed for the term of this Agreement:

- (1) A wage increase of Consumer Price Index CPI for year ending March Quarter 2019 (Adelaide capital city) from the first full pay period commencing on or after the 1<sup>st</sup> July 2019
- (2) A wage increase of 2.0% from the first full pay period commencing on or after the 1<sup>st</sup> July 2020 or Consumer Price Index CPI for year ending March Quarter 2020 (Adelaide capital city) whichever is the greatest
- (3) A wage increase of 2.3% from the first full pay period commencing on or after the 1<sup>st</sup> July 2021 or Consumer Price Index CPI for year ending March Quarter 2021 (Adelaide capital city) whichever is the greatest

On the condition that this agreement is signed by both parties on or before 30<sup>th</sup> June 2019, a one – off only payment by way of a bonus of \$250 to be paid to employees from the first full pay period commencing on or after the 1<sup>st</sup> July 2019 . This payment does not form part of the employees normal wage base for the purposes of future wage adjustments including those prescribed in (1), (2) and (3) hereof"

All payments shall be based on the new Base Rate, which shall include the supplementary Payments and Service Increments.

Refer to Schedule 1 – Wage Schedule for commencement pay rate as at 1<sup>st</sup> July 2019.

#### **ii) Salary Sacrificing to Superannuation**

Employees may salary sacrifice part of wages into the Local Government Scheme provided that such amount does not exceed the over award increases afforded through enterprise bargaining. Employees will be responsible for taxation requirements arising out of any such salary sacrificing arrangements. The employees' substantive gross salary (for all purposes) shall be the pre sacrificing salary. The application to commence Salary Sacrificing to Superannuation is to be in writing on the relevant form provided by Payroll and shall detail the percentage of salary sacrificed. The arrangements made may only apply to future salary arrangements and cannot be retrospective. The employee may cease Salary Sacrificing to Superannuation by the employee providing written notification with prior notice being at least one full pay period.

#### **CLAUSE 17 NO FURTHER CLAIMS**

The Parties Bound (clause 4) undertake that during the period of operation of this Agreement there shall be no further wage increases sought, or granted, except for those provided under the terms of this Agreement.

This Enterprise Agreement shall not preclude increases granted by a State Wage Case 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 18 DISPUTE SETTLEMENT PROCEDURE**

### **1) Procedure in relation to disputes arising from the operation of this Agreement**

In the event of any problems arising from the implementation of matters contained in this Agreement, the Enterprise Bargaining Consultative Committee shall discuss the matter with the view to adopting an appropriate course of action to resolve the matter.

Should such discussions fail to reach a satisfactory resolution, the matter shall be the subject of negotiation between the Management of The Berri Barmera Council and the SA Branch of the Union on behalf of the members employed by the Berri Council.

In the absence of a satisfactory resolution to the matters in dispute, either party may seek assistance from the South Australian Employment Tribunal in a conciliation role and, if necessary, to arbitrate the dispute.

### **2) Procedure in Relation to Disputes Arising out of Employment**

The purpose of this Dispute Settling Procedure is to provide all parties to the Agreement with access to a system to enable discussion and resolution of all matters of grievance and dispute. Parties agree to use all stages in the Dispute Settling Procedure to ensure that all issues receive prompt attention to encourage their resolution of the Enterprise level.

Parties also agree that during implementation of the Dispute Settling Procedure, work within the Council will proceed without stoppages or the imposition of any bans, work limitations or restrictions except in the case of genuine occupational health and safety issues.

It has also been accepted by the parties that at each stage of this procedure a record will be made of the time and date of discussions and relevant outcomes. Such record will be signed off as accurate by the employee/s and management. It is the responsibility of the most senior officer involved at each stage of this process to prepare or have prepared, the record.

### **3) Stage One**

The employee and/or Representative of the employees choice will contact the relevant supervisor/manager to attempt to settle the issue at that level.

### **4) Stage Two**

If the issue is not settled at Stage One, the employee and the Representative of the employees choice will meet with the next manager or supervisor in the line of authority. This process will continue until the Departmental Manager becomes involved.

### **5) Stage Three**

If the matter is not settled at Stage Two the Representative of the employees choice and the employee will meet with the Department Manager.

### **6) Stage Four**

If the matter is not settled at Stage Three the Chief Executive Officer will meet with the Representative of the employees choice, the union organiser, the employee and the Departmental Manager.

## **7) Stage Five**

If the matter is not resolved at stage Four the Chief Executive Officer with the assistance of the Industrial Officer from the Local Government Association of South Australia Inc and the relevant Union Industrial Officer shall seek resolution through the South Australian Employment Tribunal.

This procedure is not intended to preclude ultimate access by either party to the South Australian Employment Tribunal for conciliation or arbitration purposes.

The process contained in Stage One, Two, Three and Four shall be completed within 14 working days of the issue of being raised at Stage One to ensure its expedient resolution.

## **CLAUSE 19 WORKFORCE DEVELOPMENT**

### **19.1 Training and Development**

It is recognised that active participation in Training and Development programmes by employees has the potential to lead to a multi-skilled workforce which will give benefits to Council in improved productivity as well as providing improved career prospects for employees. As such, Council has a commitment to the ongoing training of its employees.

It is acknowledged that change is a part of the ongoing development of the organisation and that training will continue on change management programmes. Training in a team environment is an important component of Council's training programme to achieve this without disruption to effective operation of Council, some training outside standard working hours is necessary.

Council will ensure that all employees have a fair and equitable chance to attend training programmes relevant to their work. Council has a commitment in the budget to ongoing training of employees with the allocation of training funds equitably distributed between all employees. To this end training and development plans will be based on their annual development and performance appraisal balanced against the overall organisational training needs.

Notwithstanding the above, Council may offer training opportunities for personal development outside of normal working hours in the employees own time on a voluntary basis.

### **19.2 Study Leave**

It is agreed that Council has a role in encouraging and supporting employees to undertake study programmes in accordance with current procedures and relevant to their current and/or likely future career responsibilities. Council will consider all applications of Study Leave on their merit taking into account operational arrangements and practicalities, and the demonstrated benefits to Council.

## **CLAUSE 20 VARIATION**

This Agreement may be varied by mutual consent of both parties during the life of this Agreement subject to the approval of the South Australian Employment Tribunal.

**CLAUSE 21 SIGNATORIES**

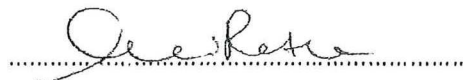
SIGNED FOR AND ON BEHALF OF THE BERRI BARMERA COUNCIL



KARYN BURTON CHIEF EXECUTIVE OFFICER

Date. 5 / 7 / 2019

In the presence of:



WITNESS

Date. 5 / 7 / 2019

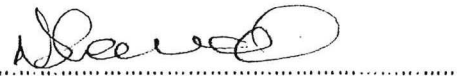
SIGNED FOR AND ON BEHALF OF THE AMALGAMATED AUSTRALIAN WORKERS UNION (SA) STATE UNION



PETER LAMPS, STATE UNION SECRETARY

Date: 5 / 7 / 2019

In the presence of:



WITNESS

Date. 5 / 7 / 2019



### Schedule 1: Wage Schedule

MUNICIPAL EMPLOYEE	Commencement Pay Rate as at 1/7/2019 CPI*
Grade 1 Year 1	\$ 47,167.45
Grade 1 Year 2	\$ 47,940.71
Grade 1 Year 3	\$ 48,702.13
Grade 2 Year 1	\$ 49,177.78
Grade 2 Year 2	\$ 49,951.03
Grade 2 Year 3	\$ 50,712.46
Grade 3 Year 1	\$ 51,235.40
Grade 3 Year 2	\$ 52,008.65
Grade 3 Year 3	\$ 52,770.09
Grade 4 Year 1	\$ 53,718.74
Grade 4 Year 2	\$ 54,491.99
Grade 4 Year 3	\$ 55,253.42
Grade 5 Year 1	\$ 55,421.60
Grade 5 Year 2	\$ 56,194.85
Grade 5 Year 3	\$ 56,956.28
Grade 6 Year 1	\$ 56,876.13
Grade 6 Year 2	\$ 57,649.38
Grade 6 Year 3	\$ 58,410.81
Grade 7 Year 1	\$ 58,330.64
Grade 7 Year 2	\$ 59,103.91
Grade 7 Year 3	\$ 59,865.33
Grade 8 Year 1	\$ 59,666.92
Grade 8 Year 2	\$ 60,440.18
Grade 8 Year 3	\$ 61,201.60

\*CPI: Consumer Price Index, as declared for the year ending March Quarter 2019 (Adelaide capital city)