

# LOCAL GOVERNMENT (COVID-19) SPLINTER (INTERIM) AWARD 2021

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Local Government NSW.

(Case No. 95009 of 2021)

Before Commissioner Murphy

20 April 2021

## AWARD

### PART A

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#### Part 1 – Application and Operation

##### 1. Title

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1.1 This Award shall be known as the *Local Government (COVID-19) Splinter (Interim) Award 2021* (“**Award**”).

##### 2. Commencement and Duration

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2.1 This Award commences operation on and from 8 April 2021 and shall remain in force until 7 April 2022 (12 months).

2.2 This Award ceases to operate on 8 April 2022.

##### 3. Coverage

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- 3.1 This Award shall apply to all employers named in Schedule A and to all their employees, except for employees whose positions are identified as senior staff positions pursuant to sections 332 and 334 of the *Local Government Act 1993* (NSW).

#### 4. Industrial Parties

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4.1 The industrial parties to this Award are:

- (a) Local Government NSW (“LGNSW”);
- (b) Aged and Community Services Australia (“ACSA”);
- (c) New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (“USU”);
- (d) Local Government Engineers’ Association of New South Wales (“LGEA”);
- (e) Development and Environmental Professionals’ Association (“depa”);
- (f) Nurses and Midwives’ Association of New South Wales (“NSW Nurses”);
- (g) Electrical Trades Union of Australia, New South Wales Branch (“ETU”); and
- (h) Health Services Union (“HSU”).

#### 5. Definitions and Interpretation

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5.1 In this Award, unless the context requires otherwise:

**Award** means the *Local Government (COVID-19) Splinter (Interim) Award 2021*.

**COVID-19** means the coronavirus named “COVID-19” by the World Health Organisation (previously known as “2019 novel coronavirus”) and the disease it causes.

**Job Retention Allowance** means the Job Retention Allowance referred to in clause 13 of this Award and which is based on the Band 1 / Level 2 rate of pay under the *Local Government (State) Award 2020*. The allowance may be a weekly amount or an hourly amount depending on the context. The hourly amount is either 1/35<sup>th</sup> or 1/38<sup>th</sup> of the weekly amount depending on the ordinary hours of work for the relevant work function at clause 18A of the *Local Government (State) Award 2020* for the employee’s substantive position.

**LG (State) Award** means:

- (i) the *Broken Hill City Council Consent Award 2015* as varied from time to time, and any award that succeeds the *Broken Hill City Council Consent Award 2015*;
- (ii) the *Entertainment and Broadcasting Industry – Live Theatre and Concert (State) Award* as varied from time to time, and any award that succeeds the *Entertainment and Broadcasting Industry – Live Theatre and Concert (State) Award*;
- (iii) the *Goldenfields Water County Council Enterprise Award 2020* as varied from time to time, and any award that succeeds the *Goldenfields Water County Council Enterprise Award 2020*;
- (iv) the *Local Government (State) Award 2020*, as varied from time to time and any award that succeeds the *Local Government (State) Award 2020*;
- (v) the *Local Government (Electricians) Award*, as varied from time to time, and any award that succeeds the *Local Government (Electricians) Award*;
- (vi) the *Local Government, Aged, Disability and Home Care (State) Award*, as varied from time to time and any award that succeeds the *Local Government, Aged, Disability and Home Care (State) Award*;
- (vii) the *Nursing Home & Nurses (State) Award*, as varied from time to time and any award that succeeds the *Nursing Home & Nurses (State) Award*;

- (viii) the *Riverina Water Council Enterprise Award 2019* as varied from time to time, and any award that succeeds the *Riverina Water Council Enterprise Award 2019*;
- (ix) the *South Sydney City Council Salaried Officers Award 2017* as varied from time to time, and any award that succeeds the *South Sydney City Council Salaries Officers Award 2017*;
- (x) the *South Sydney City Council Wages Staff Award 2017* as varied from time to time, and any award that succeeds the *South Sydney City Council Wages Staff Award 2017*;
- (xi) the *City of Sydney Wages/Salary Award 2017* as varied from time to time, and any award that succeeds *The City of Sydney Wages/Salary Award 2017*;
- (xii) any enterprise agreement or council agreement made in relation to the abovementioned awards; and/or
- (xiii) the *Wollongong City Council Enterprise Agreement 2018 – 2021*, and any agreement that succeeds the *Wollongong City Council Enterprise Agreement 2018 – 2021*.

***Local Government (State) Award 2020*** means the *Local Government (State) Award 2020*, as varied from time to time, and any award that succeeds the *Local Government (State) Award 2020*.

***Ordinary pay*** has the same meaning as under the *LG (State) Award*.

***Salary system rate of pay*** means the rate of pay an employee is entitled to receive under their employer's salary system in recognition of the skills the employee is required to apply on the job.

***Senior staff*** has the same meaning as under the *Local Government Act 1993* (NSW) and includes the general manager of the Council and the holder of all other positions identified in the employer's organisation structure as senior staff positions.

***Suitable alternative duties*** include:

- duties that are within the limits of an employee's skill, competence and training; and/or
- duties, whether the same or different, that have a different span of ordinary hours, different spread of ordinary hours, or different commencement and/or finishing times that are reasonable and which take into consideration carers or family responsibilities, provided that employees make genuine efforts to make themselves available; and/or
- duties that involve working a different number of hours per day or week; and/or
- training, including training in areas unrelated to an employee's substantive role.

***Union*** means any one or more of the following organisations:

- New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union ("USU");
- Local Government Engineers' Association of New South Wales ("LGEA");
- Development and Environmental Professionals' Association ("depa");
- Nurses and Midwives' Association of New South Wales ("NSW Nurses");
- Electrical Trades Union of Australia, New South Wales Branch ("ETU"); and
- Health Services Union ("HSU").

## **6. Relationship with the *Local Government (State) Award***

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6.1 This Award is to be read and interpreted in conjunction with the *LG (State) Award*.

6.2 Where there is any inconsistency between this Award and the *LG (State) Award*, this Award shall prevail to the extent of the inconsistency.

6.3 Where this Award is silent, the *LG (State) Award* shall apply (where applicable).

## **Part 2 – Statement of Intent**

### **7. Intention**

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7.1 This Award puts in place special interim arrangements in response to the COVID-19 pandemic.

7.2 Where this Award provides an employer with additional rights which, if exercised by the employer, would result in employees being worse off under this Award than they would be under the *LG (State) Award* or another applicable industrial instrument(s), those rights may only be exercised as a result of an Order from the State or Commonwealth Government related to COVID-19 responses and for no other reason.

7.3 Nothing in this Award prevents changes to working arrangements provided elsewhere under the *LG (State) Award* (in accordance with the relevant award provisions), including but not limited to the following clauses which are currently identified in the *Local Government (State) Award 2020* at subclause 16(x) [Travelling Allowance]; clause 19D [Facilitative Provisions]; clause 23 [Flexibility for Work and Family Responsibilities]; clause 24 [Phased Retirement]; and clause 28 [Job Share Employment].

7.4 This Award shall not set any precedent in relation to award entitlements after its expiry.

## **Part 3 – Dispute Resolution Procedure**

### **8. Grievance and Dispute Procedure**

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8.1 Clause 36 [Grievance and Dispute Procedures] of the *Local Government (State) Award 2020* shall apply.

## **Part 4 – Anti-Discrimination**

### **9. Anti-Discrimination**

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9.1 Clause 3 [Anti-Discrimination] of the *Local Government (State) Award 2020* shall apply.

## **Part 5 – Conditions of Employment (General)**

### **10. Operational Flexibility**

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10.1 The employer may, due to COVID-19, direct an employee to carry out suitable alternative duties, provided that such a direction shall not be unreasonable having regard to the employee's personal circumstances including any family and carer responsibilities.

10.2 Where, due to COVID-19, an employee is directed to perform suitable alternative duties, the employee, when performing the suitable alternative duties:

(a) shall be paid the salary system rate of pay that recognises the skills the employee is required to apply to those duties, provided that the employee shall not suffer a reduction in the salary system rate of pay for their substantive position;

(b) shall be entitled to allowances, weekend penalties and shift penalties under the *LG (State) Award* which are applicable to the suitable alternative duties; and

(c) is not entitled to allowances, weekend penalties and shift penalties under the *LG (State) Award* which are not applicable to the suitable alternative duties.

10.3 An employer and an employee may agree to the employee taking their accrued annual leave at half pay through a combination of paid annual leave and leave without pay. Agreement to a combination of paid annual leave and leave without pay shall not be unreasonably refused.

10.4 An employee (other than a casual) with less than five (5) years' service may, with the consent of the employer, take long service leave in advance.

### **11. Employees Working from Home**

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#### **Spread of Ordinary Hours**

11.1 Where working from home under this Award, an employee shall not be entitled to shift or weekend penalties, unless directed to work outside their ordinary spread or span of hours.

11.2 Ordinary hours of work shall not exceed twelve (12) hours in any one day exclusive of unpaid meal breaks.

### **Home Internet and Home Computer Related Expenses**

11.3 Employees working from home (due to COVID-19) shall not be entitled to a reimbursement of home internet and/or home computer related expenses, provided that an employer shall not unreasonably refuse to reimburse an employee for such expenses where exceptional circumstances exist and the employee obtains the employer's prior approval before incurring the expense.

11.4 Claims for other out-of-pocket expenses (e.g. stationary) shall be processed in accordance with subclause 15(viii) [Expenses] of the *LG (State) Award* and applicable policies of the employer.

11.5 The employer may require proof to justify payments under this clause.

### **12. Leave for COVID-19 Vaccinations**

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12.1 Employees shall be entitled to leave, without loss of pay, for the time reasonably required to receive a Therapeutic Goods Administration approved vaccination for COVID-19.

12.2 The employer may require proof to justify payments under this clause.

### **Part 6 – Close Down**

### **13. Duty to Explore Suitable Alternative Duties**

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13.1 Where, due to COVID-19, employees are unable to perform their normal duties at their normal place of work, the employer shall:

(a) explore opportunities for the affected employees to work from home or from another location; and/or

(b) provide the employees with suitable alternative duties where available; and

(c) regularly review these arrangements.

13.2 Where an employee can perform their work duties from home or from another location and/or suitable alternative duties are available, and the employee unreasonably refuses to perform such duties, the employee shall not be entitled to the paid COVID-19 special leave and Job Retention Allowance provided at clause 14 of this Award. For this subclause to apply, the employee must have received prior written notice of the consequences of unreasonably refusing to perform their work duties from home or from another location and/or from performing suitable alternative duties.

### **14. No Useful Work**

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14.1 This clause applies to permanent full-time employees and permanent part-time employees only.

14.2 Where, due to COVID-19, the employer has no useful work for employees, the employer may temporarily stand down (or partially stand down) the employees, subject to the following:

#### **Stage 1 – Paid COVID-19 Special Leave, up to four (4) weeks**

14.3 Subject to subclause 14.4, an employee who is stood down (or partially stood down) under subclause 14.2 shall be entitled to paid COVID-19 special leave at their salary system rate of pay for four (4) weeks or until the employer is able to provide the employee with useful work, whichever occurs first.

14.4 Effective from the operative date applying to the employer as indicated in Schedule A of the Award, the amount of paid COVID-19 special leave that an employee is entitled to receive under subclause 14.3 may be absorbed by up to two (2) weeks of paid special leave already received by the employee from the employer in relation to COVID-19 since 8 April 2021.

**Example:**

Susan is a swimming school instructor.

Arising from *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020*, the pool where Susan works was required to close. As a result, Susan's employer was unable to provide her with useful work and provided her with two (2) weeks paid special leave in May 2021 (after 8 April 2021).

No suitable alternative duties are available, and the employer has now decided to temporarily stand Susan down.

As Susan has already received two (2) weeks paid special leave in relation to COVID-19 since 8 April 2021, she is entitled to two (2) weeks paid COVID-19 special leave (instead of four (4) weeks paid COVID-19 special leave).

- 14.5 Paid COVID-19 special leave under subclauses 14.3 and 14.4 may be taken:
- (a) in one continuous period; or
  - (b) two or more separate periods.
- 14.6 Where an employee is only partially stood down (i.e. working reduced hours or reduced days) paid COVID-19 special leave shall be calculated on a pro-rata basis and is only payable on the hours that the employee is stood down from work.
- 14.7 Employees may be recalled back to work by the employer during paid COVID-19 special leave by the giving 24 hours' notice or such shorter period of notice as may be agreed.
- 14.8 Part-time employees shall be entitled to paid COVID-19 special leave on a pro-rata basis according to the regular number of hours worked.
- 14.9 Paid COVID-19 special leave shall be regarded as service for the purposes of computing entitlements under the *LG (State) Award*. Paid COVID-19 special leave shall also be regarded as ordinary time earnings (OTE) for the purposes of superannuation guarantee contributions.

**Stage 2 – Job Retention Allowance, up to 13 weeks (3 months)**

- 14.10 An employee who remains stood down (or partially stood down) under subclause 14.2 and who has exhausted their entitlement to paid COVID-19 special leave under subclauses 14.3 or 14.4 and who has accrued annual leave balance not exceeding four (4) weeks, shall be paid a Job Retention Allowance at the Band 1 / Level 2 rate of pay under the *Local Government (State) Award 2020* for thirteen (13) weeks or until the employer is able to provide the employee with useful work, whichever occurs first. Provided that where a Junior, Trainee or Apprentice employee's regular ordinary rate of pay is less than the Band 1 / Level 2 rate of pay under the *Local Government (State) Award 2020*, the amount to be paid as the Job Retention Allowance shall be the employee's ordinary rate of pay instead of the Band 1 / Level 2 rate of pay under the *Local Government (State) Award 2020*.
- 14.11 The Job Retention Allowance under subclause 14.10 may be taken:
- (a) in one continuous period; or
  - (b) two or more periods that together are not more than thirteen (13) weeks in the aggregate.
- 14.12 Employees may supplement payment of the Job Retention Allowance under this Award by applying to take accrued annual leave or long service leave (including long service leave under 10.4 with the consent of the employer) at the same time.

**Example:**

Anthony earns approximately \$2,000/week (\$400/day).

Anthony is entitled to the Job Retention Allowance (\$871.10/week as at 8 April 2021) and has accrued annual and long service leave available for use.

In addition to receiving the Job Retention Allowance (\$871.10/week as at 8 April 2021), Anthony can apply to take 3 days accrued leave per week, which would bring his weekly earnings to approximately \$2,071.10/week.

- 14.13 Where an employee is only partially stood down (i.e. working reduced hours or reduced days) the Job Retention Allowance shall be calculated on a pro-rata basis and is only payable on the hours that the employee is stood down from work.
- 14.14 (a) Employees may be recalled back to work by the employer during the period that they are receiving the Job Retention Allowance by the giving of 24 hours' notice or such shorter period of notice as may be agreed.
- (b) An employee that is temporarily recalled back to work under this subclause to perform their *normal duties* shall be paid in accordance with the *LG (State) Award* for the time so recalled.
- (c) An employee that is temporarily recalled back to work under this subclause to perform *suitable alternative duties* shall be paid in accordance with subclause 10.2 of this Award for the time so recalled.
- 14.15 Part-time employees shall receive the Job Retention Allowance on a pro-rata basis according to the regular number of hours worked.
- 14.16 An employee who is directed to take excess accrued annual leave and/or long service leave pursuant to the *LG (State) Award* shall not be entitled to the Job Retention Allowance whilst on such directed leave.
- 14.17 Subject to subclause 14.18, where an employee is receiving the Job Retention Allowance and is not working, such period shall not be regarded as service for the purposes of computing entitlements under the *LG (State) Award*.
- 14.18 Periods of paid annual leave and long service leave count as service for the purposes of computing leave entitlements under the *LG (State) Award* and as ordinary time earnings (OTE) for the purposes of superannuation guarantee contributions.
- 14.19 The Job Retention Allowance is not ordinary time earnings (OTE) for the purposes of superannuation guarantee contributions.

### **Stage 3 – Leave without pay**

- 14.20 An employee who remains stood down under subclause 14.2 and who has exhausted their entitlements to paid COVID-19 special leave under subclauses 14.3 or 14.4 and the Job Retention Allowance under subclause 14.10 shall be placed on leave without pay until the employer is able to provide the employee with useful work, provided that if the employee has accrued annual leave or long service leave available they may take that leave (including long service leave under subclause 10.4, with the consent of the employer).
- 14.21 If an employee is stood down and placed on leave without pay by an employer as a direct or indirect result of the COVID-19 pandemic:
- (a) the service of the employee with the employer is, despite that break, taken to be continuous service, and
  - (b) the employee continues to accrue annual leave and long service leave while stood down without pay.

## **15. Savings and Transitional**

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- 15.1 Nothing in this Award limits the employer's right to direct employees to take accrued annual leave and/or long service leave in accordance with the provisions of the *LG (State) Award*.
- 15.2 Nothing in this Award prevents the employer from providing additional benefits to employees to help mitigate the adverse effects of COVID-19 on employees.
- 15.3 If, after the commencement of this Award, an employer receives new or additional State and/or Commonwealth Government funding in relation to COVID-19, the employer shall take such funding into consideration when deciding whether to extend the benefits provided by this Award or to provide additional benefits to mitigate the adverse effects of COVID-19 on employees.

## **16. Leave Reserved**

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- 16.1 Nothing in this Award limits the employer's right to direct employees to take accrued annual leave and/or long service leave in accordance with the provisions of the *LG (State) Award*.

16.2 Leave is reserved for the Parties to the Award to apply to vary this Award and/or access the Industrial Relations Commission of New South Wales should a State or Commonwealth Government assistance/funding package related to COVID 19 be provided to Employers and/or Employees.

**Schedule A—Employers covered by this Award**

**A.1** The employers listed in Table 1 below are the employers covered by this Award, as provided by clause 3.

**A.2** For employers listed in Column A of Table 1, subclause 14.4 of the Award operates on and from 8 April 2021.

**A.3** For employers listed in Column B of Table 1, subclause 14.4 of the Award operates on and from [DATE TO BE DETERMINED BY THE COMMISSION, IF REQUIRED].

**A.4** For employers listed in Column C of Table 1, subclause 14.4 of the Award operates on and from [DATE TO BE DETERMINED BY THE COMMISSION, IF REQUIRED].

**A.5** For employers listed in Column D of Table 1, subclause 14.4 of the Award operates on and from [DATE TO BE DETERMINED BY THE COMMISSION, IF REQUIRED].

**Table 1 – Employers covered by the Award, and operative date of subclause 13.4**

<b>Column A (Subclause 14.4 operates on and from 8 April 2021)</b>	<b>Column B (Subclause 14.4 operates on and from ...)</b>	<b>Column C (Subclause 14.4 operates on and from ...)</b>	<b>Column D (Subclause 14.4 operates on and from ...)</b>
Armidale Regional Council			
Ballina Shire Council			
Bathurst Regional Council			
Bega Valley Shire Council			
Berrigan Shire Council			
Blacktown City Council			
Blue Mountains City Council			
Bogan Shire Council			
Bourke Shire Council			
Brewarrina Shire Council			
Byron Shire Council			
Cabonne Council			
Camden Council			
Campbelltown City Council			
Canterbury Bankstown Council			
Central Coast Council			
Cessnock City Council			
City of Lithgow Council			
Clarence Valley Council			
Cobar Shire Council			
Coffs Harbour City Council			
Coonamble Shire Council			
Cowra Shire Council			
Dubbo Regional Council			
Dungog Shire Council			
Edward River Council			
Federation Council			

<b>Column A (Subclause 14.4 operates on and from 8 April 2021)</b>	<b>Column B (Subclause 14.4 operates on and from ...)</b>	<b>Column C (Subclause 14.4 operates on and from ...)</b>	<b>Column D (Subclause 14.4 operates on and from ...)</b>
Greater Hume Shire Council			
Griffith City Council			
Gunnedah Shire Council			
Hawkesbury City Council			
Hay Shire Council			
Hilltops Council			
Hornsby Shire Council			
Kempsey Shire Council			
Ku-ring-gai Council			
Lane Cove Municipal Council			
Liverpool City Council			
Lockhart Shire Council			
Mid-Coast Council Cumberland Council			
Mid-Western Regional Council			
Moree Plains Shire Council			
Muswellbrook Shire Council			
Narrabri Shire Council			
Narrandera Shire Council			
Narromine Shire Council			
Newcastle City Council			
North Sydney Council			
Oberon Council			
Port Stephens Council			
Queanbeyan-Palerang Regional Council			
Randwick City Council			
Riverina Water County Council			
Rous County Council			
Shellharbour City Council			
Shoalhaven City Council			
Singleton Council			
Snowy Valleys Council			
Tamworth Regional Council			
Temora Shire Council			
The Council of the Municipality of Hunters Hill			
The Council of the Municipality of Kiama			
The Hills Shire Council			
Tweed Shire Council			
Uralla Shire Council			

Column A (Subclause 14.4 operates on and from 8 April 2021)	Column B (Subclause 14.4 operates on and from ...)	Column C (Subclause 14.4 operates on and from ...)	Column D (Subclause 14.4 operates on and from ...)
Wagga Wagga City Council			
Walcha Council			
Walgett Shire Council			
Warren Shire Council			
Warrumbungle Shire Council			
Wentworth Shire Council			
Willoughby City Council			
Wollondilly Shire Council			
Woollahra Municipal Council			
Yass Valley Council			