

**REGISTER OF  
ENTERPRISE AGREEMENTS**

**ENTERPRISE AGREEMENT NO:** EA13/1

**TITLE:** **Fairfield City Council Attendance Productivity Payment Enterprise Agreement 2013**

**I.R.C. NO:** IRC13/101

**DATE APPROVED/COMMENCEMENT:** 15 February 2013 / 15 February 2013

**TERM:** 36

**NEW AGREEMENT OR VARIATION:** Replaces EA00/239.

**GAZETTAL REFERENCE:** Published 5 April 2013

**DATE TERMINATED:**

**NUMBER OF PAGES:** 9

**COVERAGE/DESCRIPTION OF**

**EMPLOYEES:** The agreement covers all employees employed by Fairfield City Council located at 86, Avoca Road, Wakeley NSW 2176, at 15 February 1993 and who were entitled to payment of accumulated sick leave on termination of employment under Council Enterprise Agreements operating prior to commencement of this agreement and have had continuous service of employment since that date, excludes senior staff, who fall within coverage of the Local Government (State) Award 2010.

**PARTIES:** Fairfield City Council -&- the Electrical Trades Union of Australia, New South Wales Branch, New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union, The Development and Environmental Professionals' Association, The Local Government Engineers' Association of New South Wales



**FILED**  
22 FEB 2013  
OFFICE OF THE INDUSTRIAL  
REGISTRAR

IRC 13/101

# Attendance Productivity Payment

## Enterprise Agreement 2013

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*Staff, S.*

## **FAIRFIELD CITY COUNCIL**

### **ATTENDANCE PRODUCTIVITY PAYMENT ENTERPRISE AGREEMENT 2013**

#### **1. TITLE OF AGREEMENT**

- i. This Agreement shall be known as the **Fairfield City Council Attendance Productivity Payment Enterprise Agreement 2013** (the 'Agreement').

#### **2. PARTIES BOUND BY AGREEMENT**

- i. The parties to this Agreement are:
  - a. Fairfield City Council ('the Council'),
  - b. New South Wales Government, Clerical, Administration, Energy, Airlines & Utilities Union,
  - c. Development and Environmental Professionals' Association,
  - d. Local Government Engineers Association of NSW, and
  - e. Electrical Trades Union of Australia, NSW Branch.

#### **3. RELATIONSHIP TO AWARDS AND OTHER AGREEMENTS**

- i. This Agreement will be read and interpreted in conjunction with the Local Government (State) Award 2010 (the 'Award') or any successor award.
- ii. Where there is an inconsistency between this Agreement and the Award or any other Council Agreement or Enterprise Agreement then the provisions of this Agreement will prevail to the extent of the inconsistency.

#### **4. AREA, INCIDENCE AND DURATION**

- i. The Agreement shall cover all employees who were in Council's employ at 15 February 1993 and who were entitled to payment of accumulated sick leave on termination of employment under Council Enterprise Agreements operating prior to the commencement of this Agreement and have had continuous service of employment since that date but excludes senior staff designated in accordance with the provisions of the *Local Government Act 1993* (NSW).
- ii. The Agreement shall come into operation from the first full pay period to commence on or after the date of approval by the NSW Industrial Relations Commission, and shall remain in force for a period of three (3) years until 14 February 2016.
- iii. The Agreement replaces all existing Agreements with binding application on the parties in relation to employees with an entitlement to payment of accumulated sick leave on termination and as such the terms and conditions of any such Agreements will become inoperable following the ratification of this Agreement.
- iv. The Agreement has no affiliation to any other Council Enterprise Agreements and will remain in place until replaced or terminated.

## **5. ANTI DISCRIMINATION**

- i. The parties agree to be bound by the obligations outlined in Clause 3 of the Award.

## **6. AGREEMENT NOT ENTERED INTO UNDER DURESS**

- i. This Agreement was not entered into under duress or coercion by the parties to this Agreement.

## **7. CASHING OUT AND/OR PRESERVATION OF ACCRUED SICK LEAVE**

- i. All previous arrangements for cashing out of sick leave under an Award, Agreement or contract of employment are rescinded and replaced by the following terms:

### **7.1 Preserved Paid Out Sick Leave (PPOSL)**

- i. The preservation date of Paid Out Sick Leave will be 1 March 2013.
- ii. All sick leave balances of employees covered by this Agreement will be pro-rated for each individual employee up to 1 March 2013.
- iii. The employee's accrued sick leave hours will be converted to a dollar (\$) amount by multiplying the employee's accrued sick leave hours by the employee's hourly rate as at 1 March 2013. This dollar balance will be known as the Preserved Paid Out Sick Leave ('PPOSL').

### **7.2 Safety Net**

- i. A one-off 'safety net' of 30 days sick leave will be credited by the Council to ensure employees have sufficient leave and will not be paid on resignation, retirement or termination.
- ii. Newly accrued sick leave from 1 March 2014 will continue to accrue at the employee's eligible entitlement and will not be paid on resignation, retirement or termination.
- iii. The total of sick leave accrued from 1 March 2014 and the safety net will be known as the Accrued Sick Leave ('ASL') entitlement and will not be paid on resignation, retirement or termination.
- iv. Any remaining PPOSL may be accessed by an employee as sick leave once ASL is exhausted.
- v. Any remaining PPOSL balance is to be accessed prior to taking unpaid leave.

### **7.3 Nomination Process of PPOSL Option**

- i. Employees shall elect one option set out in accordance with subclause 7.4, PPOSL Options in writing to the Council in accordance with this clause and must do so on or before 15 March 2013.
- ii. An employee may only make an election under this clause once during the life of the Agreement.
- iii. If the employee does not make an election within the time provided the Council may nominate a PPOSL option on behalf of the employee.

- iv. In the event that Council is unable to approve an employee's nominated option the employee will be notified by Council and will be required to nominate a different PPOSL Option.
- v. A letter will be provided to each eligible employee detailing their individual PPOSL entitlement in dollars as at the preservation date. The letter will also record Council's ongoing commitment to this agreement and confirm the employee's nominated PPOSL option.
- vi. In the event that an employee has nominated a PPOSL option and due to financial hardship or other meritorious circumstance the employee requests a different PPOSL option, the employee may make a written application to the City Manager.

#### **7.4 PPOSL Options**

Employees may only select **one** of the following options in accordance with subclause 7.3, Nomination Process of PPOSL Option. The PPOSL options include:

##### **i. Option 1 – 100% Payment of PPOSL**

- a) The employee may nominate to be paid the total (100%) PPOSL entitlement after the commencement of the Agreement.
- b) Council will endeavour to accommodate as many eligible employees as possible subject to total employee nomination numbers and costs.
- c) Payment will be made by the Council to the employee within one month of Option 1 being selected, subject to management approval.

##### **ii. Option 2 – PPOSL taken as Leave at Double or Triple Time**

- a) The employee may nominate to take the PPOSL entitlement as leave at double time or triple time.
- b) Upon election of this option the PPOSL will be transferred to a new category of leave - PPOSL leave.
- c) The period of PPOSL leave taken by the employee will be deducted from the employee's PPOSL (\$) dollar balance at the employee's current hourly rate at the time it is taken.
- d) The remaining PPOSL leave balance will be reconciled to the employee's wage at the time it is taken.
- e) When an employee applies for PPOSL leave, the employee can elect how PPOSL leave will be deducted on the following basis:
  - i. a period of leave on double pay – twice the number of days so taken; or
  - ii. a period of leave on triple pay – triple the number of days so taken.
- f) This option may be exercised for up to 5 years, in accordance with the Council's leave policy.
- g) The annual adjustment, being the percentage (%) annual increase set out in the Award (or its future replacements); will be applied on the remaining preserved entitlement until it is exhausted.

- h) This annual adjustment will not include any performance based progression payments.
- i) Council will endeavour to accommodate as many eligible employees as possible subject to nomination numbers and costs.
- j) PPOSL leave balances must be used within five (5) years of the Agreement's commencement. In the event that PPOSL leave is not taken within this period any remaining PPOSL leave balance will be paid to the employee in one payment.

**iii. Option 3 – Payment of PPOSL on Resignation, Retirement or Termination**

- a) The employee may nominate to take the PPOSL entitlement as a final payment on resignation, retirement or termination.
- b) The PPOSL balance will be adjusted each year by the percentage (%) annual increase set out in the Award or its successor.
- c) This annual adjustment will not include any performance based progression payments.

**iv. Option 4 – Partial Payment of PPOSL**

- a) The employee may nominate to have the PPOSL entitlement paid out over a period of 1-5 years.
- b) These payment(s) will be paid as a single equal yearly instalment nominated by the employee within one month of the commencement of the Agreement.
- c) At the time of nomination the employee is required to indicate the length of the period for how the PPOSL will be paid for example 1-5 years.
- d) The residual PPOSL balance will attract an annual adjustment being the percentage (%) annual increase set out in the Award or its successor.
- e) This annual adjustment will not include any performance based progression payments.

**7.5 Other conditions**

- i. Subject to clause 8, in the event that an employee resigns, retires or is terminated from their employment and has nominated Option 2 or 4 the Council will pay the employee the residual PPOSL balance.
- ii. For the purposes of future sick leave accrual all employees covered by this Agreement will have their annual sick leave anniversary date adjusted to 1 March.
- iii. Existing anniversary dates for all other forms of leave will continue to apply.

**8. SERIOUS MISCONDUCT THAT WOULD WARRANT SUMMARY DISMISSAL**

- i. In circumstances where an employee has been terminated, resigns or retires from their employment, the preserved PPOSL entitlement may be withheld and/or voided on the following basis:

- a. where the employee's employment is terminated by the Council due to serious misconduct warranting summary dismissal, or
  - b. where an employee resigns or retires from their employment in circumstances where they are being investigated for serious misconduct and the investigation has not been concluded and/or where the Council believes on reasonable grounds that the resignation/retirement has been submitted to avoid an adverse investigation finding of serious misconduct warranting summary dismissal.
- ii. Council will not withhold and/or void payment–
- a. before considering any representations that the employee concerned or his/her union representative may wish to make on the matter, or
  - b. if the resignation is made with the prior support and approval of the Council, or
  - c. without having clearly outlined the allegations to be investigated to the employee concerned.
- iii. During any investigation relating to serious misconduct of employees with the PPOSL entitlement, Council will only have regard for the initial allegations unless during the course of the normal investigation process, evidence or further material comes to light which forms the basis of additional allegations that are as significant or more significant than the initial allegations to justify Council's decision to withhold and/or void preserved PPOSL entitlements.
- iv. Clause 8 will only apply to those employees who at the time of being notified of an allegation(s) of serious misconduct have a preserved PPOSL entitlement.
- v. Investigations into allegations of serious misconduct will be conducted in a timely manner.
- vi. Where an employee or former employee has been terminated, resigns or retires in accordance with Clause 8, and the PPOSL entitlement is withheld, the employee may apply to the Industrial Relations Commission of NSW (or its successor), and the Industrial Relations Commission of NSW (or its successor) may determine that the employee did not engage in serious misconduct that would warrant summary dismissal and order that the PPOSL entitlement be paid to the employee.

## **9. GRIEVANCE/DISPUTE PROCEDURE**

- i. The parties agree to be bound by the obligations outlined in Clause 31 of the Award or as amended or superceded.

## **10. NOT TO BE USED AS PRECEDENT**

- i. This Agreement shall not be used in any manner whatsoever to obtain similar arrangements.

11. SIGNATURES

SIGNED on behalf of

FAIRFIELD CITY COUNCIL

)  
)  
)  
)  
)  
\_\_\_\_\_  
City Manager

In the presence of:

\_\_\_\_\_  
Signature of Witness

Daniella Zocchetto (IP132769)  
Name of Witness

7.2.13  
Date

SIGNED on behalf of

NEW SOUTH WALES GOVERNMENT  
CLERICAL ADMINISTRATION, ENERGY,  
AIRLINES & UTILITIES UNION

)  
)  
)  
)  
)  
\_\_\_\_\_  
General Secretary

In the presence of:

\_\_\_\_\_  
Signature of Witness

NATALIE DABARERA  
Name of Witness

06/02/13  
Date



SIGNED on behalf of

**DEVELOPMENT & ENVIRONMENT  
PROFESSIONALS' ASSOCIATION )**

)  
)  
)  
)  


Secretary

In the presence of:



Signature of Witness

Peter Lambert

Name of Witness

5 February 2013

Date

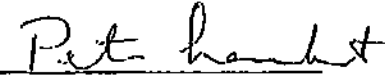
SIGNED on behalf of

**LOCAL GOVERNMENT  
ENGINEERS ASSOCIATION OF NSW )**

)  
)  
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)  


← Secretary → DIRCCOOR

In the presence of:



Signature of Witness

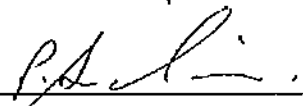
Peter Lambert

Name of Witness

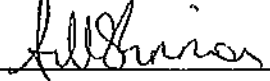
5 February 2013

Date

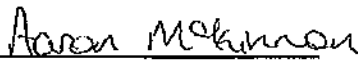
SIGNED on behalf of )  
)  
ELECTRICAL TRADES UNION OF AUSTRALIA, )  
NEW SOUTH WALES BRANCH )

  
\_\_\_\_\_  
DEPUTY Secretary

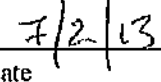
In the presence of:

  
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Signature of Witness

  
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Name of Witness

  
\_\_\_\_\_

Date