

Proposed areas of inclusion:

Topic	Proposal
Annual leave	Removal of 1 month's notice provision Direction to take: <ul style="list-style-type: none"> - Retain 4 weeks; - Where possible give 8 weeks notice - Removes all other requirements
Cashing out of annual leave	Reduce restrictions on limits to cash out Possible ability to gift leave to another staff member
Community Service leave	Open to discussing this further in light of recent natural disasters
Compassionate leave	Open to further discussions about this, particularly for those in regional or remote areas
Dispute Resolution	Defines ways that disputes can be brought to FWC and how they are managed (example clause included)
Diversity and Inclusion, and Gender Identification Support	Commitment to diversity and inclusion Provision of support to staff addressing gender issues We are also open to including specific information about working with people with disabilities, older workers and other groups (example clause included)
Domestic violence leave	Extend to 10 days
Leave Loading	Remove leave loading and absorb into rate of pay where it is applicable
Meal breaks when working from home	Where a staff member is working predominately from home, it is expected that they take a meal break during this time and this may not be specifically directed or rostered. Staff are able to request that they be directed or rostered when working from home.
Mileage on way home from community visit	Staff using own vehicles finish work at their last client or hub and do not claim for mileage on their return from their last client/hub to home
New National Office definition	In line with actual definition
Overtime provisions	Clearer English
Paid parental leave	TBS is considering ways that this may be extended, however we have not made a commitment to this yet.
Pandemic leave	Formalise policy position created through COVID
Payment of wages on termination	Ability to rectify overpayments on final pay Final pay to be paid within the regular pay cycle or sooner Pay may be withheld until equipment is returned
Personal/Carers leave	Name change – Personal leave Need to adjust this for part time staff based on new case law – FTE of hours, not days
Phased Retirement	Provide staff with ability to request flexibility as they prepare for retirement (example clause included)

Progression to pay points	Primary carers to use their paid parental leave (both under the EA and the Federal Government scheme) as service for progression
Saturday and Sunday work	<p>Include provisions that employees may be regularly rostered to work on these days, particularly with 4 weeks notice. Might need some maximums on how many times this can occur where not by agreement.</p> <p>Clarity that those with regular shifts that fall on a public holiday may be directed to work to ensure clients receive services on these days (particularly for Ageing staff and clients)</p>
Stand down due to probity non-conformance	<p>Ability to stand down staff with pay, or delay employment commencement, where appropriate probity is not met</p> <p>Ability to stand down staff without pay where they are not able to meet inherent requirements of role due to probity – eg waiting outcome of court case, failing to comply with reasonable direction to renew probity, failing a probity check</p>
WFH provisions by direction or by agreement	<p>Provide opportunity for TBS to direct staff to work from home where safe and resourced to do so, particularly in situations like COVID-19</p> <p>WFH by agreement</p>

Example Clauses

Phased Retirement

X. Phased Retirement – from Local Government Award

- (i) In recognition of the ageing workforce in local government and the need to retain skills and experience within the industry, employers are encouraged to develop and promote flexible work and leave arrangements to enable their employees to better manage their transition into retirement.*
- (ii) Examples of flexible work and leave arrangements include:
 - (a) Part-time work;*
 - (b) Flexi time;*
 - (c) Leave without pay;*
 - (d) Job sharing arrangements;*
 - (e) Variations to ordinary hours and rosters;*
 - (f) Job redesign; and*
 - (g) Purchased additional annual leave arrangements.**
- (iii) The terms of a flexible work and leave arrangements shall be in writing and may be varied from time to time, by agreement, to suit the specific needs of either the employer or the employee.*

Diversity and Inclusion, and Gender Identification Support

- 1.1. TBS is committed to promoting and supporting diversity in the workplace and recognises that TBS's work depends upon our people, with their diverse views, abilities, skills, languages, cultures and background.*
- 1.2. TBS is committed to promoting and supporting diversity in the workplace and recognises that in order to achieve TBS's purpose, much depends upon our people, with their diverse views, abilities, skills, languages, cultures and background.*
- 1.3. TBS respects, values and encourages diversity in the workplace. TBS is an inclusive organisation that values fairness, equity and diversity consistent with the TBS Way.*
- 1.4. TBS is committed to:
 - a) Ensuring employees work within and apply workplace diversity principles, especially in leadership and management practices and behaviours in TBS;*
 - b) Fostering a culture that acknowledges and promotes diversity and includes the prevention and elimination of discrimination;*
 - c) Continued development and implementation of strategies to reduce barriers to employment; and*
 - d) Fostering a work environment free of harassment.**
- 1.5. In addition to TBS's position on general diversity issues, TBS supports all sex and gender diverse employees and will treat employees consistent with their identified gender.*
- 1.6. TBS will work with any employee in addressing issues relating to gender identification, including but not limited to transitioning of gender at work, and non-binary gender identification. Depending on the situation, the needs and wants of the employee and operational requirements, the employer will endeavour to assist employees in addressing gender identification issues at work. This may include:*

- a) *Providing ongoing support including education provided by The Gender Centre or other suitable provider, to team members relating to gender identification and changing gender;*
- b) *Providing access to gender neutral or gender identified uniforms, including replacing uniforms from one gender for that of another, and that doing so is without cost to the employee;*
- c) *Approved access to accrued paid leave and approved unpaid leave for the purposes of assisting with gender identification change/s, where approval will not be unreasonably withheld;*
- d) *Assisting the employee with any employment-related checks required by TBS, which will be paid for by TBS (for example where the employee has changed their name or is known as an alias); and*
- e) *Other provisions agreed by TBS and the employee.*

Dispute Resolution

1.7. What is this clause about?

This clause sets out the steps that TBS, Employees and the unions covered by this Agreement need to follow when a dispute arises between one or more of them which they wish to resolve. The objectives of this clause are to:

- a) set out a workable process for resolving workplace disputes effectively and, so far as is possible, amicably; and
- b) encourage the parties to try genuinely to reach mutually acceptable resolutions for their disagreements in the first instance, before considering, and if thought necessary, pursuing legal action.

1.8. Background to this clause

- a) Disputes are inevitable in any workplace and TBS recognises that working through them respectfully can be a healthy way to generate new ideas, find improved ways of working and/or strengthen relationships.
- b) TBS believes that:
 - i. parties should not be prevented from exercising or enforcing their legal rights to resolve the dispute, and if one party isn't complying with the law, it may be appropriate to take legal action to resolve the issue; however
 - ii. wherever practicable, taking legal action to resolve a dispute should be a last resort and it is preferable for disputes to be resolved at the workplace level, by the disputing parties finding a mutually acceptable resolution (which may involve reaching a compromise); and
 - iii. if the parties are struggling to find a solution themselves, then mediation and/or conciliation by a third party (eg, by the Fair Work Commission) can be very helpful to assist the parties reach a mutually acceptable resolution without having to resort to legal action.

1.9. What type of disputes does this clause apply to?

This clause covers disputes relating to:

- a) any matter arising from this Agreement; and/or
- b) the National Employment Standards; and/or
- c) the employment relationship between one or more Employees covered by this Agreement and TBS.

1.10. Relationship with Employee Grievance Handling Policy

- a) Following approval of this Agreement, TBS will update its Employee Grievance Handling Policy to incorporate and align with the provisions in this clause.

- b) For clarity, the Employee Grievance Handling Policy may also set out other matters (eg, information, reasonable directions or guidance about other types of disputes, like interpersonal grievances between colleagues) but the provisions of this clause take precedence to the extent of any inconsistency.
- 1.11. Representation
- a) In accordance with clause 1.12 below an Employee who is a party to the dispute may appoint a representative for the purposes of this procedure.
 - b) If a union that is covered by this Agreement raises a dispute with TBS, the union is to confirm whether the dispute is brought in its capacity as a representative for one or more particular Employees, or whether it is a dispute relating to a matter of general concern to the union but which is not raised on behalf of any specific Employee/s.
- 1.12. What happens when a dispute arises?
- a) If the dispute is being raised by or on behalf of a particular Employee or Employee/s, those individual/s (and/or their representative/s) are to provide relevant details and discuss the matter with the relevant Employee manager (eg, the Employee/s' supervisor or, if the matter relates to a whole site/service, the manager of that site or service). If these discussions fail to resolve the dispute within a reasonable time, the matter may be referred to TBS's executive management team for further consideration.
 - b) If the dispute is being raised by a union relating to a general matter of concern, in the first instance the union is to seek to resolve the dispute by providing relevant details and discussing the matter with TBS's executive management. This would usually involve contacting the Executive General Manager People & Culture as the first step.
 - c) If the dispute is being raised by TBS, TBS will provide relevant details and discuss the matter with the other party or parties (including any Employee representatives).
 - d) Nothing in this clause prevents discussions occurring via email or another form of written communication. However, face to face, oral discussions are often beneficial for effective dispute resolution and, in some cases, they may be the most appropriate and/or necessary method.
 - e) Unless otherwise agreed by the parties, discussions relating to disputes under this clause are without prejudice to each party's legal rights.
 - f) If parties reach a mutually acceptable outcome and want that outcome to be legally binding, they may enter into a written agreement setting out the agreed terms, in accordance with general contract law.
- 1.13. What if discussions don't resolve the dispute?
- a) If the discussions in clause 1.12 above do not resolve the dispute within a reasonable time, and a party wishes to pursue the dispute further, that party may refer the matter to the Fair Work Commission. However, a dispute must not be referred to the Fair Work Commission unless, and until a reasonable time after, the matter has been referred to TBS's executive management team for consideration.
 - b) If a dispute is not referred to the Fair Work Commission within a reasonable time after discussions end, the other parties are entitled to treat the dispute as having been withdrawn.
 - c) The Fair Work Commission may deal with the dispute in 2 stages:
 - i. the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - ii. in regards to matters in 1.12 above (matters arising under this Agreement) and/or the National Employment Standards, if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may arbitrate the dispute and make a determination that is binding on the parties; or in regards to matters under 1.12 above above (the employment relationship

between one or more Employees covered by this Agreement and TBS), the Fair Work Commission may arbitrate the dispute if both parties agree.

- d) If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act but, consistent with the Act, it may not determine a dispute about the existence of reasonable business grounds for the purposes of clause 1.12 above (reasonable business grounds to refuse flexible working arrangements).
- e) A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Divisions 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision, with permission from the Fair Work Commission.

1.14. Maintaining the status quo

- a) If this dispute resolution procedure has been invoked, then until a resolution has been reached, or the steps in this procedure have otherwise been exhausted:
 - i. the parties are to maintain the status quo, subject to this clause; and
 - ii. a party is not to commence legal proceedings in any Court or Tribunal in relation to the disputed issue/s, but may seek urgent interlocutory relief from a competent Court or Tribunal if doing so is reasonably required to enforce this status quo provision, or this dispute resolution process generally.
- b) For the purposes of this clause, the status quo means the circumstances that were prevailing immediately before this procedure was invoked.
- c) Where a party holds a reasonable concern that maintaining the status quo would:
 - i. be unsafe; or
 - ii. cause a party to breach an immediate compliance obligation,then, without prejudice to any party's legal rights or entitlements, TBS is to implement – and the parties are to comply with – alternative interim arrangements provided they are safe and reasonable (eg, temporary transfer to safe duties).
- d) This status quo provision does not prevent the parties from agreeing (or TBS from reasonably requiring Employees) to trial a proposed new arrangement while a dispute resolution process is underway, without prejudice to any party's legal rights or entitlements.
- e) This status quo provision does not prevent TBS from undertaking reasonable disciplinary or performance management processes. However, if the dispute is about a specific disciplinary or performance management process, TBS will not make any final decision to dismiss, demote or issue a formal warning to the affected employee until the dispute resolution process has been completed.

1.15. Recurrence of a dispute

If a dispute has been withdrawn, arbitrated, or the parties otherwise agree that the dispute has been resolved (whether or not they make a binding agreement about the terms of the resolution), then if another dispute arises about the same (or substantially the same) subject matter it is to be treated as a new dispute and the parties are to recommence discussions under clause 1.12 above before taking any further steps.