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Award offer: 3.2% + 3.2% + 3.2% = too good to refuse

“In principle” agreement reached on the new Local Government (State) Award

We sent a "Special Update" to all members electronically last week after Deputy President Sams in the Industrial Relations Commission was able to secure an agreement between the Local Government Association and Shires Association and the local government unions for a new State Award to operate from the first pay period on or after 1 November. The [in-principle agreement](#) was recommended for acceptance of the parties to the Award by DP Sams.

Seven days of negotiation between the parties and our third appearance in the Commission and it was clear that if we couldn't reach agreement that day, 19 September, then we were never going to be able to.

Our message last week indicated that we would be putting a more compelling and thorough argument to members in the next Bulletin about why we thought the in principle agreement should be ratified by depa. Members have been very realistic in their response to the news. Obviously we would all like bigger increases but when the increases have been around 3% or so since the Award was made in 1992, people have developed realistic expectations.

There are half a dozen councils which have agreed to 4% payable to employees through a Council Agreement, more have agreed to 3.5% and others

are still offering 3% or, in the case of Tweed, 2.5% - a new low and something for the general manager up there to be very proud about.

Other councils were doing nothing, preferring to wait to see what happened in the State Award negotiations before they decided to make any offer or do anything else.

Some councils, Hornsby and Greater Taree for example, decided that they would implement an increase of 3% from 1 November without requiring the agreement of the unions in the form of a Council Agreement. This approach, of the Council simply deciding that they will pay an increase, is not a good development. It removes the unions from the negotiation of pay increases and creates the illusion that employees get pay increases only because the Council is really, really kind. Something we know is rarely true. This also fosters in the mind of those councils an imperviousness to the effect of the State Award - something that will prove to be a sad learning experience for them.

And there are councils where management was starting to try to negotiate some offsets (usually the handing back of historic conditions of employment) as part of a blackmailing exercise to provide a decent pay increase in an environment where questions remain unanswered about the application of the State Award, the jurisdiction of the State Commission, WorkChoices etc.

There are a number of questions members have asked, and here are some of them:

1 What if my Council has agreed already to pay an increase of less than 3.2% for the next 12 months through a Council Agreement?

The pro forma Council Agreement, agreed between the LGSA and the unions, contains a clause that the Council will pay the identified percentage figure or the Award increase, whatever is the greater. This will protect employees at those councils and ensure that they received a 3.2%.

2 What if my Council has announced that it will pay an increase of less than 3.2% by administrative action?

This is the Hornsby example mentioned above but Hornsby is not the only Council that has done this. It will fall now to the unions to pressure those councils to match the increase provided in the Award. We would expect that the LGSA will support a proposal that the 3.2% be provided here as well.

The only real problems will arise if a Council in this category wants to assert that it is a constitutional corporation and it still wants to persist with some sort of Federal fiasco under WorkChoices. See question 9 below.

3 What if my Council has agreed to pay more than 3.2%?

This is the occasion to test whether what used to be called a "gentleman's" agreement really was an agreement made between honourable people. It would be disappointing to see any Council in this category try to renege on any arrangement already agreed locally. Whether the agreement is already formalised in a Council Agreement or whether the agreement has been made but is not yet formalised in a Council Agreement, the agreed increase should remain safe.

4 What if my Council hasn't done anything?

Well, that at least means no-one wasted any time locally and they can agree to pay the 3.2% or they

can, if they want to, pay more in 2007 and then fall in line (or even continue to pay you more) in 2008 and 2009. Wow, look at that, a flying pig!

5 Doesn't a 3.2% increase keep local government employees relatively poorly paid?

Sadly, it does. The difficulty of negotiating a State Award is that the LGSA acts the councils that are not really financially viable. There are approximately 40 councils on what the Department of Local Government describes as their "Finance Watch" list. These are councils that struggle to meet their legal obligations, and in any sensible and rational world, would be amalgamated so fast that our heads would spin.

There are a number of councils which, if they were companies operating under Corporations Law, would effectively be trading insolvent and their directors could be prosecuted, barred from acting as company directors or even sent to jail.

We would prefer to see a smaller number of well-financed amalgamated councils, but that's another issue. If you would like to see our opinionated view, use [this link](#)

6 How can councils expect to keep professional employees?

We all know that there have been shortages identified in those professional areas eligible to join depa - environmental health officers, building surveyors, planners etc. We also know that there are identified national shortages of engineers.

While the NSW Government, both through the Department of Planning and the Department of Local Government keep going on about skills shortages and what councils should do about it, the New South Wales Government regularly offers comparable positions to those employed in councils at higher rates of pay. Senior building surveyors on more than \$100,000 in the BPB and rates for planners in the Department of Planning, environmental health officers in the Food Authority and the Department of Health create an attractive alternative for underpaid and underappreciated professionals in local government. And no Council politics to deal with

either.

Councils will continue to lose professionals to the NSW Public Sector unless they embrace market rates of pay. depa can help here.

7 What are the other things that form part of the "in principle" agreement?

- The tool allowance amended to reflect movements in the crown Employees (Skilled Trades Award);
- Once only increase of 18% to car and vehicle allowances to reflect a spike in fuel prices during the past three (3) years (where the minimum quarterly allowance remains unchanged); and
- Except where otherwise provided, allowances, including the traveling allowance will be increased consistent with wage increases during the term of the Award.
- Flexible and simplified consultative committee clause;
- Annual assessments optional for employees who have topped out in their salary range;
- No minimum payment on call employees working on a public holiday;
- Equivalent time in lieu for work on a public holiday;
- Casual loading not payable on overtime; and
- Simplification of the appointment and promotion provisions.

Most of these are minor wording changes or provisions affecting outdoor staff but there are two changes that have a relevance for depa members.

Changes to consultative committees

It is proposed that there be a new clause to allow councils to establish consultative committees more

appropriate to the number of staff they employ. Part of the claim made by the LGSA in these negotiations was the removal from the current Award of the right of local union representatives to agree to expand the composition of the Consultative Committee - and this was done, not only to accommodate small councils, but to open the door for non-union members.

depa is opposed to non-union members on consultative committees. We dealt with this issue in the [August Bulletin](#). Nevertheless, the proposed new clause does allow local agreement but requires that "agreement not be unreasonably withheld". That will become the next argument when the first Council steps up with a proposal to put freeloaders on the consultative committee.

The new clause is reproduced below:

At award Clause 27 Consultative Committees delete old clause and replace with:

- **A. AIM**

The parties to the award are committed to consultative and participative processes. **There shall be a consultative committee at each council which shall:**

- (i) provide a forum for consultation between council and its employees;
- (ii) positively co-operate in workplace reform to enhance the efficiency and productivity of the council and to provide employees with access to career opportunities and more fulfilling, varied and better paid work.

B. SIZE AND COMPOSITION

- (i)
 - (a) **The size and composition of the consultative committee shall be representative of council's workforce.**
 - (b) **Representation shall include, but not be limited to employee representatives of the USU, depa and the LGEA.**
 - (c) **The size and composition of the committee shall be agreed to between council and the unions**

and such agreement shall not be unreasonably withheld.

(d) In absence of agreement, council may introduce other consultative mechanisms, until the matter is resolved.

(ii) Officers of the union(s) or Association(s) may attend and provide input to meetings of the consultative committee, at the invitation of the committee or their respective members.

C. SCOPE OF CONSULTATIVE COMMITTEES

(i) The functions of the consultative committee shall include:

- (a) award implementation**
- (b) training**
- (c) consultation with regard to organisation restructure**
- (d) job redesign**
- (e) salary systems**
- (f) communication and education mechanisms**
- (g) performance management systems**
- (h) changes to variable working hours arrangements for new or vacant positions**
- (i) local government reform.**

(ii) The consultative committee shall not consider matters which are being or should be processed in accordance with award clause 30 Grievance and Disputes Procedures.

D. MEETINGS AND SUPPORT SERVICES

(i) The consultative committee will make recommendations based upon consensus. Where there is no consensus on a particular item, the recommendation to council should note any dissenting views.

(ii) The committee shall meet as required.

A big increase in the car allowance

We don't have many members these days receiving the allowance for providing their own car. In the olden days (before the introduction of FBT and the attraction of extending leaseback cars to staff) we had lots of members receiving this allowance.

In any event, agreement has now been reached for an 18% increase in the allowance to accommodate the spike in petrol prices in the last 12 or so months.

Historically, the car allowance is increased by the Private Motoring Component of the CPI and this practice will continue.

8 Is it good, bad or ugly that there will be a three year Award?

It's good. In fact, it's very good. It expresses the commitment of both the LGSA and the unions to retaining a vibrant and long term Award in the New South Wales industrial jurisdiction at a time when the employers' organisations, the unions and the NSW Ministers for Local Government and Industrial Relations are all encouraging councils to keep away from the Federal system.

A three year Award sends a strong signal.

9 What if councils still want to do Federal agreements?

This could be very ugly. The High Court has made no observation at all about whether individual councils in New South Wales are trading corporations or not. The New South Wales Ministers for Industrial relations and Local Government have urged councils to keep away from options under the WorkChoices legislation until such time as there is clarity about the applicability of the Federal legislation to local government. The two ministers have even threatened councils that they will take action to prevent moves in that direction.

We know that there are cases already determined about specific businesses and whether the proportion of their activities which might be regarded as constituting trading is sufficient for

them to satisfy the constitutional test of being a trading Corporation. Certain percentages of trading activities have been determined to either satisfy that test or not but no general principle can be extrapolated from the specific cases.

The current proceedings in the Federal Court in Brisbane with Etheridge Council may do nothing more than determine whether Etheridge, and Etheridge alone, is a constitutional corporation or is not. No one is setting guidelines on what constitutes sufficient trading activity, or how it should be measured, or how regularly or consistently it should occur, by which councils can test their own trading activity and make a decision. That would be very helpful but no such ready-reckoner exists.

Commonsense dictates that in these circumstances councils should simply get on with it and pay the Award increase or some other similar amount and keep their industrial relations operating happily under the New South Wales jurisdiction. They should sign referral agreements and be done with it.

But we know it's not all about commonsense. There will be ideological zealots and muscle-flexers amongst councillors, general managers and HR managers who all want to press ahead with a Federal agenda regardless. For these councils, the price can be high.

The AFPC provided an increase of around \$23 for employees on the sort of rates that our members are paid from 1 December 2006 and a further increase from 1 October 2007 of \$5 or so. The LGSA claims that it has advice that the December 2006 enquiries can be absorbed into the November 2006 Award increase. The unions have alternative advice. The LGSA also claims to have advice that councils don't need to provide the increase to salary system rates of pay but, again, the unions have differing advice.

What all this means, is that if a Council wants to play in the Federal jurisdiction, then they need to do a number of things. They will need to convince everyone that they are, in fact, a trading Corporation and that is a difficult task. Off to the Federal Court, perhaps? And even if they were

able to convince people that they were a trading Corporation, then the unions very quickly would be insisting that the AFPC increases in December 06 and October 07 also be paid to all rates of pay in the salary system and on top of the 2006 award increases.

This will be a high price to pay for an ideological commitment. The LGSA calculated that if councils were required to pay the December 2006 AFPC increase on top of the November 2006 Award increase, then the number of councils at risk financially, the so-called "Finance Watch" councils, would increase from the existing 40 to more than 80 of the State's 153 councils. If the financial viability of councils is that precarious, then there can only be 60 or 70 councils who could even contemplate affording this move.

And for what? We already know from the failure of the industry to embrace the flexibility available in a State Award since 1992, that management simply lacks the imagination and the expertise to do anything interesting at all in the workplace. Embracing WorkChoices as a system that boasts flexibility, in a climate of this chronic lack of imagination about flexible work practices, would reveal that lack of imagination very quickly.

10 How will depa consider accepting the offer?

The USU Annual Conference has already accepted the offer on behalf on the USU. Executive meetings of the Local Government Association Executive and the Shires Executives next week will also consider strong recommendations from the staff (and the Recommendation of DP Sams) to accept the in-principle agreement.

The LGEA Executive will consider this issue tomorrow.

The overwhelming positive response already received to the message to all members last week makes it clear that it is on offer to difficult to refuse and, as we did in 2004, our Committee of Management will vote to accept or reject the offer next week. Already, members of the Committee have indicated their support for the offer.

Not a cardigan to be seen

When "old building surveyor", depa member and currently General Manager of Canada Bay Council Gary Sawyer announced that he wanted to organise a reunion of old building surveyors, the cruel and the cynical went to work constructing nightmare fantasies about the event involving cardigans, safari suits and shirt pockets with neatly lined up pens of different colours.

How wrong they were. Almost 200 environmental health and building surveyors packed a pub in Pyrmont on 31 August to prove that the stereotypes were wrong. Not a cardigan nor a safari suit to be seen. And some relatively young people too.

depa was happy to insert something in a Bulletin to members to let them know that it was happening and away it went from there. We were even happier to put some money on the bar. A great afternoon and for many, an even better night ensured that this will become a regular event.

We record our thanks to Gary on behalf of all of those old (predominantly) blokes who we haven't seen for a long time and who we enjoyed catching up with an enormously. Well done, Gary.

WorkChoices just keeps looking worse

It's hard to pick up a newspaper or listen to current affairs radio or television without hearing horror stories of employees missing out on entitlements as they move across to Australian Workplace Agreements.

So pervasive is the acceptance of this reality in the community that in the June Bulletin we inserted a link to an extract from an episode of *McLeod's Daughters* where the issue of AWA's was presented in a form extremely antagonistic to the Federal Government.

Now we find that AWA is also received hostile treatment in a recent episode of *Kath and Kim*. [See for yourself.](#)

Random drug and alcohol testing at work

A couple of years ago Kempsey Council surprised everyone by announcing random drug and alcohol testing of staff. Ostensibly done as some sort of acknowledgement of occupational health and safety responsibilities, the system nevertheless invades the privacy of council employees who are really entitled to do whatever they like on weekends, nights or generally when not at work.

The LGSA and unions were really caught on the hop, as opposed to the hops, of course but the Shires Association announced that it supported the concept but the three unions opposed it.

It's important to be clear about this issue. No one has a problem about councils managing the performance of staff when it is evident in the way they work that there is a problem - whether that be drug-related (legal or illegal), or whether it is something as innocuous as people watching cricket all night or the sleep-deprivation of a new baby.

If an employee is off the pace, then the employer has an obligation to deal with it.

But it is a long blow to suggest that councils are entitled to randomly test employees for drugs of any sort. Often it is some anti-drug zealotry masquerading under the guise of concern for the welfare of staff.

depa has filed a dispute with Hornsby Council over the Council's intention to introduce random drug and alcohol testing after a six-month this "warning" period.

We know that Kempsey has done this but we are unsure whether anyone else has. If your Council has drug and alcohol policy that involves random testing, please contact the office.



Ian Robertson
Secretary

