

# AUSTRALIAN SERVICES UNION

## LOCAL GOVERNMENT & ENERGY DELEGATES CONFERENCE 2020

### EBA MODEL CLAUSE - GENDER AFFIRMATION LEAVE

In the event of an employee who intends to or is transitioning gender, Council and relevant parties including the ASU will make every effort to protect the privacy and safety of transitioning workers during and post transition.

Upon request by an employee, the Council will update employee records and directories to reflect the employee's name and gender change. The Employer will ensure that all workplace-related documents, inclusive of titles, are also amended to reflect the change. This may include but not be limited to name tags, employee ID's, email addresses, organizational charts, and rosters. No records of the employee's previous name, sex or transition will be maintained post-transition, unless required by law or requested by the employee.

Council will provide safe bathroom and change room facilities to a worker during and after transition. Council recognizes that a transitioning worker has the right to use the washroom of their lived gender, regardless of whether or not they have sought or undertaken surgeries.

Council agrees to adopt the VEOHRC transition plan template as part of their policies and procedures. Council will offer to undertake a transition plan with the Employee, upon an employee informing Council they intend to transition. The transition plan will be undertaken within a reasonable time upon request of an employee and reviewed quarterly to address any future amendments the employee wishes to make. A copy of the transition plan will be made available to the employee and Council (maintained on the employee's file and restricted to access by human resources unless otherwise agreed by the employee).

#### **Definitions**

'Transition' means

'Transition' means: Transitioning refers to the process where a transgender employee commences living as a member of another gender. This is sometimes referred to as the person 'affirming' their gender. This may occur through medical, social or legal changes. Employees may transition in different ways. For example, not all will choose to undergo surgery for a range of reasons including the availability, cost or desire.

It is the Employer's responsibility to ensure that transgender and/or transitioning employees are protected from harassment and bullying.

#### **Affirmation Leave Entitlements**

The Employer will provide employees a total 20 days paid Affirmation leave per annum for essential and necessary gender affirmation procedures, inclusive of but not limited to; medical, psychological, union consultation, hormonal, surgical, legal status and documentation amendment appointments.

Leave agreement or transition plan will include a statement from the Employer that related time off from work will not be used for absence management, discipline or monitoring purposes. That time off from work will not lead to a break in continuity of service or loss of seniority.

The leave may be taken in block or in singular days. This entitlement is in addition to all other types of leave available to employees.

## **Supporting someone accessing Affirmation leave**

A person who is supporting someone accessing affirmation leave will be entitled to 5 paid days per year to do so. This may include attending appointments with them, caring for them if they have undergone surgery and so on.

## **Training**

Training should be provided by the Employer for staff around working with people who may choose to transition. The training should be organised by the Employer and offered during the hours of work. The Council will consult with the union and employee about the preferred training provider.

## **Employer Obligations**

24 hour notice must be provided in writing to the employee should the Employer want to discuss the employee's transition plan. The Employer must uphold their commitment to the transition plan.

The Employer must provide flexibility and support to the employee who is transitioning, for instance providing for the capacity to work at home/access to flexible work arrangements in the instance that affirmation leave entitlements have been exhausted.

At a minimum the transition plan should be reviewed annually, with the worker able to request a review at any time. Where necessary the employee can access light duties or transfer to safe work under OHS obligations.

## **Dispute Resolution and Equal Opportunity Measures Available**

Council has a zero-tolerance approach to discrimination and harassment.

In the event that disputes arise about this clause, or experiences in the workplaces that constitute discrimination or harassment employees may access the dispute resolution clause in this agreement. Alternatively, employees may access the VEOHRC and related jurisdictions for advice and issue resolution.



**By your side**