



Local Government Reform: Employee Relations Frequently Asked Questions

BACKGROUND

A review of Local Governments in the Perth metropolitan area was concluded by the Metropolitan Local Government Review Panel in July 2011. The Final Report of the Panel (**Robson Report**) was presented to the Western Australian State Government in July 2012 and it outlined 30 recommendations to progress metropolitan Local Government reform.

The State Government reviewed the Robson Report and announced a number of changes to the arrangements of Local Government. The plan includes reducing the number of metropolitan Local Governments from 1 July 2015 by either amalgamation or boundary adjustment.

An amalgamation of two or more Local Governments means employees would be transferred from an existing Local Government to a new Local Government. A boundary adjustment means the current boundary lines of a Local Government are adjusted and employees would be transferred from an existing Local Government to an amended Local Government. A boundary adjustment may result in the existing Local Government being abolished and merged with another existing Local Government.

Proposals regarding the change have been made by the State Government, Local Governments and the public to the Local Government Advisory Board (**LGAB**). The LGAB has the role of reviewing all of the proposals received and making any recommendations for change to the Minister for Local Government. During the LGAB process, 38 proposals were put forward to the LGAB.

The LGAB has completed their report with recommendations to the Minister for Local Government. The report was submitted on Friday 19 September 2014.

The Minister for Local Government is expected to make an announcement on his decision in the 2nd week in October 2014. The Minister for Local Government may only accept or reject the recommendations of the LGAB. He cannot amend or put forward other proposals.

Governors Orders are to be issued for new Local Governments following the decision of the Minister and any community polls for amalgamations.

From 1 July 2015, Commissioners will be appointed to fill in for the role of Councils established via an amalgamation for the new Local Governments until 17 October 2015. After that date, Local Government elections will be conducted, the new Councils will commence and the Commissioners' assistance will cease.

The Western Australian Local Government Association (**WALGA**) along with the Department of Local Government and Communities (**DLGC**) and the Local Government Managers' Association (**LGMA**) have come together to create the Local Government Reform Toolkit. The Toolkit, which includes these ER frequently asked questions, is an online resource providing practical assistance for Local Governments to manage the reform process. To access the toolkit please click here: <http://www.reformtoolkit.com.au>

DISCLAIMER

The responses to these FAQ's represent the views of WALGA based on information available as at 14 October 2014. The information contained within the FAQ's is based on the understanding that all Metropolitan Local Government's operate as National System Employers under the terms of the Fair Work Act 2009.

General Reform Questions

1. What does amalgamation or boundary adjustment mean for employees?

An amalgamation of two or more Local Governments means employees would be transferred from an existing Local Government to a new Local Government.

A boundary adjustment means the current boundary lines of a Local Government are adjusted and employees would be transferred from an existing Local Government to an adjusted Local Government. A boundary adjustment may result in the existing Local Government being abolished and merged with another existing Local Government.

In the event of a boundary adjustment where a portion of a Local Government will move in to a new boundary, future service arrangements and an interim organisational structure for the adjusted Local Government will be determined. Staffing and resourcing needs will be identified accordingly. For example, where a service and associated asset is being transferred, employee arrangements may depend on the asset being transferred, the nature of the ownership of the asset and the future work to be conducted in relation to that asset.

Related Links

Local Government Reform Toolkit

<http://www.reformtoolkit.com.au/amalgamation-and-boundary-change-information.aspx>

2. Will all employees, including CEO's, maintain their employment after an amalgamation or boundary adjustment?

Yes. All current employees (including CEO's) from an affected Local Government will be entitled to maintain their employment with the new or adjusted Local Government.

In an amalgamation or a boundary adjustment that includes an entire Local Government district, a new organisational structure will need to be considered in transitioning to the new entity or expanded entity. In the new structure, if any existing positions were considered unnecessary, the employee is still entitled to have their wages and conditions continued for a minimum of two years in an employment position unless an employee agrees to acceptable compensation to end the employment relationship.

In the event of a boundary adjustment where a portion of a Local Government will move in to a new boundary, whether or not employees will transfer to the adjusted

Local Government will depend upon the asset being transferred, the nature of the ownership of the asset and the work being conducted in relation to the asset.

In the event of a boundary adjustment where a portion of a Local Government will move in to a new boundary, future service arrangements and an interim organisational structure for the adjusted Local Government will be determined. Staffing and resourcing needs will be identified accordingly. For example, where a service and associated asset is being transferred, employee arrangements may depend on the asset being transferred, the nature of the ownership of the asset and the future work to be conducted in relation to that asset.

Related Links

Transfer of assets and liabilities

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Information Sheet on CEO Employment Arrangements

http://www.reformtoolkit.com.au/Assets/Toolkit/Function-Id_17/Category-Id_191/Documents/MetRIC_CEO_Employment_Arrangements_676.pdf

CEO Employment Arrangements Flowchart

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Operation of the Two Year Guarantee located in the Reform Toolkit

http://www.reformtoolkit.com.au/Assets/Toolkit/Function-Id_15/Category-Id_126/Documents/MetRIC_Operation_Two_Year_Guarantee_806.pdf

3. Are employment matters considered in Governor's orders?

We cannot comment on what may or may not go in the Governors Orders. However, it is unusual for the Governors Orders to consider specific employment issues.

A copy of an example Governors Orders can be found on the toolkit.

Related Links

Governors Orders

http://www.reformtoolkit.com.au/Assets/Toolkit/Function-Id_4/Category-Id_13/Documents/example-of-governors-orders_814.pdf

Transfer of Business – Enterprise Agreements and Policies

4. Does the Transfer of Business under the Fair Work Act 2009 apply in the event of an amalgamation or boundary adjustment?

Yes. In both an amalgamation and boundary adjustment a Transfer of Business (**TOB**) would occur, as the relevant legislative requirements of the Fair Work Act 2009 would be satisfied.

5. Under the boundary change arrangement, will the enterprise agreement of an abolished Local Government keep going if one of the parties to the enterprise agreement no longer exists?

Yes. Under the transfer of business provisions, employees will carry over employment wages and conditions deriving from certain industrial instruments, notably enterprise agreements.

That will mean that the enterprise agreement of a Local Government that is abolished by a boundary adjustment will remain in operation until it is terminated, varied or replaced by the adjusted Local Government that has expanded to incorporate the abolished Local Government.

6. Does an enterprise agreement have to cover the two year period after 1 July 2015 to guarantee employment for two years under the relevant schedule of the Local Government Act 1995 (WA)? What happens if the enterprise agreement runs out on 30 June 2016?

No. If the enterprise agreement runs out on 30 June 2016, an enterprise agreement of an abolished Local Government will still remain in operation until it is terminated, varied or replaced.

7. What workplace policies and procedures will apply in a new or amended Local Government? What code of conduct will apply in a new or amended Local Government?

Amalgamation

In the event of an amalgamation, the new Local Government would be required to create new policies and procedures. However, existing policies and procedures that contain an entitlement protected by the operation of Schedule 2.1 of the Local Government Act 1995 (**LG Act**) will transfer to the new Local Government and continue to apply for a two year period, but only to the transferring employees.

Boundary Adjustment

In the event of a boundary adjustment, the policies and procedures of the adjusted Local Government that has expanded to incorporate part or all of another Local Government will continue to operate.

The abolished Local Government's existing policies and procedures that contain an entitlement protected by the operation of Schedule 2.1 of the LG Act will transfer to the adjusted Local Government and would apply only to the transferring employees for a two year period.

Local Governments can prepare by reviewing all policies and procedures and identifying any entitlements which are protected by the operation of Schedule 2.1 of the LG Act.

8. **If employees maintain existing terms and conditions of employment will this create a disparity of terms and conditions between employees undertaking the same or substantially similar work in a new or expanded Local Government entity?**

Yes.

Employees will carry over employment wages and conditions deriving from certain industrial instruments and some policies and procedures.

Therefore, there may be a situation in a new or adjusted Local Government where certain employees are carrying out the same roles but are enjoying different wages and employment conditions by virtue of being covered by different employment terms and conditions.

9. **If an enterprise agreement is terminated during the two year transitional period what industrial instrument would then apply?**

Amalgamation

In the event of an amalgamation, if an enterprise agreement was terminated, the Local Government Industry Award 2010 (**LGIA**) would apply to employees. This is unless a new enterprise agreement has been negotiated with the employees of the new Local Government.

Boundary Adjustment

In the event of a boundary adjustment, if an enterprise agreement was terminated the relevant industrial instruments (either an enterprise agreement(s), the LGIA or both) from the continuing Local Government would apply to the transferring employees. This is unless a new enterprise agreement has been negotiated with the employees of the adjusted Local Government.

10. **Can a continuing Local Government terminate the enterprise agreement of the abolished Local Government before the 2 year guarantee expiration has concluded?**

Yes. However, an enterprise agreement can only be terminated by the Fair Work Commission if the requirements of the Fair Work Act 2009 are met.

Two Year Guarantee Questions

11. **What does amalgamation or boundary adjustment mean for employee salaries/wages and employment conditions?**

Section 11(4) of Schedule 2.1 of the LG Act provides that employees affected by structural reform (including amalgamation and boundary adjustments) are entitled to have their salary/wages and conditions provided by an employment contract continued for a minimum of two years unless:

- a) that employee agrees to acceptable compensation to vary the salary/wages and conditions provided by that employment contract; or

- b) that employee agrees to acceptable compensation to terminate or vary that employment contract.

12. Who does Schedule 2.1 section 11(4) of the LG Act apply to:

Schedule 2.1 would apply to all employees engaged by a Local Government at the time that structural reform takes effect. This would mean that the contract of employment carries through to a new or amended Local Government.

a) Chief Executive Officers

Yes, but only for the duration of their employment contract

b) Employee's employed on maximum term contracts?

Yes, but only for the duration of their employment contract.

c) Casual employees?

Yes. As with any casual employment relationship, ongoing employment is subject to both parties agreeing to maintain the relationship.

d) Continuing seasonal employees?

Yes, but only but only for the duration of their employment contract or season. The employment of a seasonal employee terminates at the end of every season. If the seasonal employee is employed the following season, it is generally viewed as new employment relationship.

13. Is regular overtime protected in schedule 2.1?

No. Generally regular overtime would be at the discretion of the Local Government and based on operational needs. Therefore, it is not considered a right or entitlement that is protected by the operation of Schedule 2.1 of the LG Act.

14. What happens to temporary 457 Visa holders in the case of amalgamation or boundary adjustment? Would their employment automatically transfer to the new Local Government entity?

WALGA and the DLGC is working closely with the Department of Immigration and Border Protection to make sure those employees on 457 visas are afforded the same employment protection as other employees through the operation of schedule 2.1 of the LG Act.

15. Does reform affect the usual transfer of long service leave entitlement?

No. The transfer between Local Governments will not affect the continuity of service, for the purposes of the *Local Government (Long Service Leave) Regulations (WA)*.

16. For employees who transfer to a new or amended Local Government, can previously accrued leave entitlements be recognised?

Yes. Under the transfer of business provisions of the Fair Work Act 2009, leave can be transferred. It is the intention of the LG Act that all employees will maintain rights and entitlements that arise under the contract of employment, or by reason of it, for a period of two years.

Schedule 2.1 section 11 (5) of the LG Act provides that:

“The rights and entitlements of a person whose contract of employment is transferred from one Local Government to another, whether arising under the contract or by reason of it, are to be no less favourable to that person after the transfer than they would have been had the person’s employment been continuous with the first Local Government.”

Redundancy Questions

17. **Should criteria be applied to determine who will be offered a voluntary redundancy?**

Yes. A Local Government should ideally have criteria to determine which employees may be offered a voluntary redundancy. It is up to each individual Local Government to determine appropriate criteria based on operational needs. .

18. **When should Local Government’s look at offering voluntary redundancies?**

A Local Government can offer voluntary redundancies at any time, though it would be prudent to only do so once the new organisational structure has been confirmed.

Acceptable compensation outlined in schedule 2.1 of the LG Act will apply to any redundancies that arise out of structural reform.

19. **Can a Local Government employee who is made redundant be employed by another Local Government?**

Yes. There is no reason why an employee could not accept a redundancy payment and then be employed directly by another Local Government. However, an employee could not accept a redundancy payment and then be re-employed at the same adjusted or continuing Local Government from which they received the payment.

20. **Does a redundancy package include superannuation entitlements?**

Please Note: *The following information has been provided by the WALGA Tax Service.*

No.

Under taxation law, superannuation guarantee payments are calculating using ‘ordinary time earnings’ (OTE). Superannuation Guarantee Ruling (SGR) 2009/2 explains the meaning of OTE.

As per SGR 2009/2,

74. Redundancy payments made on termination of employment are not a reward for services rendered by an employee, even if part of the payment is calculated by reference to the employee's period of service with the employer. They are payments to compensate the employee for the loss of their job; not a reward for their services.

Therefore, a redundancy payment is not subject to superannuation guarantee based on SGR 2009/2.

No obligation to pay superannuation on a redundancy payment derives from the provisions of the Local Government Industry Award 2010. However, a Local Government should review their enterprise agreements or policies to ascertain if contractually it has an obligation to pay superannuation on a termination or redundancy or if matching superannuation contributions are required.

21. If an employee rejects an offer of employment for a different position with a new or adjusted Local Government, what happens to their employment?

Schedule 2.1 provides for employees to maintain their employment or to agree to acceptable compensation to end their employment. If no reasonable alternative duties can be found for an employee in a new organisational structure the Local Government may deem it reasonable to offer redundancy.

22. Will there be forced redundancies?

No. The LG Act provides a guarantee that employees affected by structural reform will have their employment conditions continued for at least two years, unless they agree to acceptable compensation to end the employment relationship.

With the first changes planned to take effect in July 2015, this means the two year guarantee is currently set to end on 30 June 2017.

23. What would happen if an employee was made redundant after the 2 year guarantee from the LG Act has elapsed?

If a Local Government made an employee redundant after the two year employment guarantee has elapsed, the redundancy provisions in the relevant industrial instrument, employment contract, organisational policy or the safety net provisions of the Fair Work Act 2009 would be applicable.

Recruitment & Selection

24. What is the process for filling available positions, other than CEO's or Senior Officers?

In the event of a boundary adjustment, the continuing Local Governments recruitment and selection processes would continue to apply.

For amalgamated Local Governments, the recruitment and selection methods employed will be determined by the new Local Government, in line with the principles affecting employment under the LG Act, section 5.40.

Related Links

Employment of the CEO

<http://www.reformtoolkit.com.au/ReformToolkit/sub-function-detail.aspx?subFunctionId=191&functionId=17&action=SupportingMaterial#SupportingMaterial>

- 25. Should Local Governments include wording in letters of offer or contracts of employment to new employees that flag potential change due to structural reform?**

Yes. During the entire recruitment process it would be prudent for Local Governments to be transparent with potential employees about the prospect that structural reform could have an effect on their ongoing employment.

It may also be prudent to insert wording into letters of offer or contracts of employment to reduce the discussion to writing.

- 26. Is a continuing Local Government obliged to take on employees where a boundary adjustment encompasses their previous place of work (e.g. a library or depot).**

In the event of a boundary adjustment where a portion of a Local Government will move in to a new boundary, future service arrangements and an interim organisational structure for the adjusted Local Government will be determined. Staffing and resourcing needs will be identified accordingly. For example, where a service and associated asset is being transferred, employee arrangements may depend on the asset being transferred, the nature of the ownership of the asset and the future work to be conducted in relation to that asset.

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- 27. How will position descriptions be created as part of the structural reform process?**

Position descriptions may be reviewed when determining the new organisational structure of the adjusted or new Local Governments. This may involve the creation of new positions or amendments to existing positions.

- 28. What is the process for recruiting a new CEO in an amended Local Government?**

This process can be found on the reform toolkit.

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