



KIMBERLEY LAND  
COUNCIL  
**ENTERPRISE  
AGREEMENT 2023**

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## 1 TITLE

This agreement will be known as the *Kimberley Land Council Enterprise Agreement 2023 (Agreement)*.

## 2 PURPOSE

This Agreement sets out the relationship between the Kimberley Land Council Aboriginal Corporation (KLC) and its employees, reflecting the vision and values of the organisation. It describes the employment conditions for employees, and the responsibilities of the KLC to employees and of employees to the KLC.

## 3 SCOPE

This Agreement covers;

- a. the Kimberley Land Council Aboriginal Corporation (ABN 96 724 252 047) (**KLC**); and
- b. employees that work for KLC up to and including Executive Level 2 (**Employee**).

## 4 TERMS OF AGREEMENT

This Agreement shall come into operation seven days after the date of approval by the Fair Work Commission.

The nominal expiry date will be three (3) years from the date of approval. However, this Agreement shall continue to operate beyond the nominal expiry date until it is replaced or terminated in accordance with the *Fair Work Act 2009* (Cth) (**FW Act**).

The parties covered by this Agreement agree to commence negotiations for the next Enterprise Agreement 6 months prior to the nominal expiry date of this Agreement.

## 5 VISION

KLC is a community organisation working for and with Traditional Owners of the Kimberley, to get back country, to look after country, and to get control of our future.

## 6 ORGANISATIONAL AND OPERATIONAL VALUES

- Respect for our law and culture;
- Respect for our Elders and stakeholders;
- Fair and transparent decision-making;
- Effective and open communication;
- Working in partnership;
- Trust and loyalty;
- Justice and equality for Indigenous peoples; and
- Cultural diversity.
- Achieve real benefits, long term outcomes and realistic aspirations through a commitment to social justice, reconciliation and equality;
- Protect country and culture (land, law, language);
- Promote sustainable connection to country;
- Act in the best interests of Traditional Owners through effective engagement and fully informed decision-making; and
- Provide a positive, consistent, clear, and supportive working environment.

## 7 RELATIONSHIP TO AWARD & NATIONAL EMPLOYMENT STANDARDS

This Agreement will be read and interpreted in conjunction with the National Employment Standards (**NES**). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

Subject to the NES, this Agreement replaces all other related awards, agreements, understandings and arrangements made by the parties prior to this Agreement being entered into.

This Agreement operates to the exclusion of any modern award or other industrial instrument. Any legislation (including the NES), policy, procedure or other document referred to in this Agreement are not incorporated into the Agreement.

On signing this Agreement, it is agreed that there shall be no claims or industrial action taken on matters within this agreement during the term of the Agreement.

## 8 JOINT CONSULTATIVE COMMITTEE

Either the KLC or employees may initiate The Joint Consultative Committee (**JCC**). The Committee will be made up of three employees (which may include the elected employee union representative) and three management representatives. Employees will be encouraged to attend meetings of the Committee during work time.

The purpose of the Committee is to achieve the following:

- a. provide a forum for discussion or consultation and negotiation between the KLC and employees; facilitate the mutual exchange of information, excluding confidential or commercially sensitive information, which affects the working environment of the KLC and its employees;
- b. promote industrial harmony by encouraging the dissemination of information about industrial matters and the resolution of such matters through discussion and negotiation.

## 9 FLEXIBILITY ARRANGEMENTS

### 9.1 Individual flexibility arrangement

Notwithstanding any other provision of this Agreement, an employee and the KLC may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:

- a. the agreement deals with 1 or more of the following matters:
  - i. arrangements about when work is performed;
  - ii. overtime rates;
  - iii. penalty rates;
  - iv. allowances;
  - v. leave loading; and
- b. the arrangement meets the genuine needs of the KLC and employee in relation to 1 or more of the matters mentioned in subclause 9.1a **Error! Reference source not found.**; and
- c. the arrangement is genuinely agreed to by the KLC and employee.

The KLC must ensure that the individual flexibility arrangement:

- a. are about permitted matters under section 172 of the FW Act; and
- b. are not unlawful terms under section 194 of the FW Act; and
- c. result in the employee being better off overall than the employee would be if no arrangement was made.

The KLC must ensure that the individual flexibility arrangement:

- a. is in writing; and
- b. includes the name of the KLC and the employee; and
- c. is signed by the KLC and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
- d. includes details of:
  - i. the terms of the enterprise agreement that will be varied by the arrangement; and
  - ii. how the arrangement will vary the effect of the terms; and
  - iii. how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- e. states the day on which the arrangement commences.

The KLC must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to by the KLC and the employee.

An agreement may be terminated:

- a. at any time, by written agreement between the KLC and the employee; or

by the KLC or employee giving not more than 28 days' written notice to the other party.

## 9.2 Flexible working arrangements

Employees are entitled to make a request for a Flexible Working Arrangement (**FWA**) in accordance with the NES, as summarised in this clause.

Eligible employees may request a FWA if any of the following circumstances apply to the employee and the employee would like to change their working arrangements because of those circumstances:

- a. the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;
- b. the employee is a carer (within the meaning of the Carer Recognition Act 2010);
- c. the employee has a disability;
- d. the employee is 55 or older;
- e. the employee is experiencing family and domestic violence;
- f. the employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing family and domestic violence.

To avoid doubt, and without limiting subclause 9.2a to 9.2f, an employee who:

- a. is a parent, or has responsibility for the care, of a child; and
- b. is returning to work after taking leave in relation to the birth or adoption of the child; may request to work part time to assist the employee to care for the child.

An eligible employee is:

- a. an employee, other than a casual employee, who has completed at least 12 months of continuous service, or less at the discretion of the DCEO, immediately before making the request; or
- b. a regular casual employee who has been employed on that basis for a sequence of periods of employment during a period of at least 12 months and has a reasonable expectation of continuing employment by the KLC on a regular and systematic basis.

Employees must request an FWA in writing detailing the change sought and of the reasons for the change. The KLC will discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances.

The KLC must give the employee a written response to the request within 21 days, which must:

- a. state that the KLC grants the request; or
- b. if following discussion between the employee and the KLC, the KLC and employee agree to change the employee's working arrangements that differs from that set out in the request – set out the agreed change; or
- c. state that the KLC refuses the request and include the matters outlined at clause 9.2.8 below.

The KLC may refuse the request only if:

- a. the KLC has discussed the request with the employee and genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the circumstances for the request (this does not require the KLC to agree to a change if the KLC would have reasonable business grounds for refusing a request for the change); and
- b. the KLC and the employee have not reached such an agreement; and
- c. the KLC has had regard to the consequences of the refusal for the employee; and
- d. the refusal is on reasonable business grounds in accordance with the NES.

If the KLC refuses the request, the written response under clause 9.2.6 must:

- a. include details of the reasons for the refusal; and
- b. without limiting subclause 9.2.7, set out the KLC's particular business grounds for refusing the request and explain how those grounds apply to the request; and
- c. either:
  - i. set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the employee's circumstances; or
  - ii. state that there are no such changes; and
- d. from 6 June 2023, set out the effect of s65B and s65C of the FW Act.

## **10 EMPLOYMENT AT KLC**

### **10.1 Preference in Employment**

The KLC is an Equal Opportunity Employer and encourages the filling of vacancies by Kimberley Aboriginal people who meet the selection criteria or who demonstrate that with a reasonable amount of training they will be able to do so.

### **10.2 Forms of Employment**

Employees may be engaged in full-time or part-time employment, either on a fixed term or permanent basis. Employees may also be engaged casually.

**Full-time employee** means an employee who works an average of 75 hours over a fortnightly period during normal office hours.

**Part-time employee** means an employee who:

- a. works less than 75 hours over a fortnight;
- b. has mutually agreed and a guaranteed schedule of hours of work, no less than 3 hours per day worked; and



- c. receives, on a pro rata basis, any pay, entitlements and conditions to those of full-time employees.

Where a part-time employee has regularly worked more than their guaranteed hours for at least 12 months, the employee may request in writing that the KLC varies the agreement to increase their guaranteed hours.

**Fixed-term employee** means an employee on either a full time or part time schedule, who is on a contract with a specific end date. Where a fixed term appointment is made for a specific task or project, the contract may, in lieu of a finishing date, specify the circumstance(s) that results in employment ceasing.

**Trainees** are employees who are engaged in full-time, part-time or fixed term employment who are enrolled in training with a registered training organisation, such as TAFE.

**Casual employee** means an employee who is engaged on a casual basis by the KLC in accordance with the definition of casual employee under the FW Act. A casual employee is paid a 25% loading in addition to their ordinary hourly rate of pay in lieu of entitlements normally provided to permanent employees, such as paid leave. Casual employees are not entitled to subsidies, benefits, district allowances or salary sacrifice arrangements.

### **10.3 Right to request casual conversion**

Offers and requests for conversion from casual employment to full-time or part-time employment will be applied in accordance with the NES.

### **10.4 Probation period**

New employees, other than casual employees, will be subject to a three-month probationary period. During that period:

- a. either party may terminate the employment in accordance with clause 15 – TERMINATION OF EMPLOYMENT; or
- b. the probationary period may be extended, in writing, by a maximum of three months.

### **10.5 Individual Planning and Performance (IPP)**

The Individual Planning and Performance (IPP) Process is designed to enable KLC Managers and employees to regularly get together and discuss performance and progress in relation to job performance and behaviours. An individual's performance goals and expectations will align with their Organisational Unit Plan and the overarching KLC Strategic Plan. This alignment adds significant value to the KLC by driving performance towards accomplishing relevant goals.

A formal review for each employee will take place annually between 1 February and 31 March. The purpose of the review will be to:

- a. objectively assess the employee's performance over the previous 12 months;
- b. discuss and agree the employee's performance objectives for the next review period; and
- c. review development opportunities and career objectives for the employee.

The KLC will endeavor to assist employees to perform to a high standard through the setting of performance objectives against the KLC Unit Plans and the overarching KLC Strategic Plan, regular feedback and the provision of development opportunities.

If a manager forms an opinion that an employee's work performance is at risk of falling, or has fallen, below the standard expected for that particular job, the manager will discuss this concern with the

employee. The discussion will consider any issues that may be affecting performance and determine any action that needs to be taken to address the situation, including giving the employee help to improve their work performance by role clarification, training or other support or development activity.

If the employee has not achieved a satisfactory performance level within a reasonable period of time, then the manager may recommend that performance management processes commence.

## 11 WORKING HOURS

Ordinary hours of work are an average of 37.5 hours per week and will not exceed 10 hours per day. The ordinary hours will be worked between 7am and 6pm, Monday to Friday.

Normal office hours will be between 8:00am and 4:30pm. Any work conducted before 7:00am or after 6:00pm, or on weekends, must be approved by the employee’s manager in advance.

### 11.1 Flexitime

KLC employees (other than casuals) may have access to Flexitime in accordance the KLC Flexitime policy.

### 11.2 Time off in lieu of working additional hours (TOIL)

If an employee is required to work more than their contracted hours within a payroll fortnight, prior written approval must be obtained before work is performed as follows:

- Line manager in respect of any time worked in excess of ordinary hours on a weekday.
- Unit Manager in respect of any overtime worked on Saturday, Sunday or public holidays.

The employee is responsible for obtaining written approval before performing and recording additional hours as time off in lieu (TOIL).

The TOIL accrual period is from 1 February to 31 January.

TOIL accrued in the accrual period must be taken by 31 January. Managers and employees have a positive obligation to design workloads that minimise excess hours, do not result in employees exceeding maximum TOIL accrual and allow employees to take TOIL that has been accrued. Any accrued, unused TOIL balance will be paid to employees at their base rate of pay by 28 February.

Employees cannot accrue more than 20 days of TOIL annually; except in circumstances approved by the DCEO with support of the employee’s Unit Manager. An employee will not be expected to work overtime if they have reached the maximum 20-day accrual.

TOIL rates of accrual:

Day worked	Accrual Rate	
Monday – Friday (Hours in excess of 10 hours or before 7am or after 6 pm)	1:1.5	1 hour worked = 1.5 hours accrued
Saturday	1:1.5	1 hour worked = 1.5 hours accrued
Sunday	1:2	1 hour worked = 2 hours accrued
Public Holiday	1:2.5	1 hour worked = 2.5 hours accrued

TOIL is recorded in the individual's TOIL accounts at the penalty rates as outlined above, and then converted into normal hours to be used as paid time off. For example, 1 hour worked on Saturday = 1.5 normal hours added to the TOIL account.

The KLC Annual General Meeting (AGM) is an annual event where additional TOIL balance is allocated to staff and is managed separately from the 20-day maximum as outlined above.

Employees may request to cash out TOIL at any time. Written approval must be gained from the Unit Manager, HR Manager and Deputy CEO. Upon termination all accrued, unused, TOIL will be paid out.

## 12 SALARIES, SUPERANNUATION & ALLOWANCES

### 12.1 Salary and classification structure

KLC employees will be classified in one of the following classification levels and appointed to at least the minimum salary point in the relevant level. Employees will not receive increments beyond the highest increment within that level.

### 12.2 Wage Review

The KLC will review employees' base salaries against the Social Community Homecare and Disability Services (SCHADS) award and apply the percentage adjustment across all KLC pay levels effective from 1 July annually.

The salary table will be updated following each wage review.

KLC Salaries Effective 1 July 2023:

Level 1		Level 2		Level 3		Level 4	
1.0	\$ 48,715.32	2.0	\$ 64,058.89	3.0	\$ 72,338.11	4.0	\$ 82,585.37
1.1	\$ 50,285.06	2.1	\$ 66,067.78	3.1	\$ 73,654.24	4.1	\$ 84,740.82
1.2	\$ 52,080.39	2.2	\$ 68,076.14	3.2	\$ 75,230.26	4.2	\$ 86,917.21
		2.3	\$ 69,891.89	3.3	\$ 76,773.83	4.3	\$ 88,858.58
Level 5		Level 6		Executive Level 1		Executive Level 2	
5.0	\$ 94,476.45	6.0	\$ 103,746.69	EL1.0	\$ 114,922.56	EL2.0	\$ 127,027.98
5.1	\$ 96,505.76	6.1	\$ 105,492.37	EL1.1	\$ 116,646.39	EL2.1	\$ 129,568.54
5.2	\$ 98,756.99	6.2	\$ 107,778.68	EL1.2	\$ 118,396.09	EL2.2	\$ 134,769.21
5.3	\$ 100,238.35	6.3	\$ 109,395.36	EL1.3	\$ 120,172.03		
		6.4	\$ 111,036.29	EL1.4	\$ 122,438.48		

### 12.3 Casual Employment

A casual employee shall be paid the appropriate hourly rate for the work they are carrying out in line with the KLC Salary & Classification Structure based on the following:

Ordinary Hours	Rate	Calculation
Monday – Friday	1:1	KLC Hourly Rate plus 25% casual loading (i.e. hourly rate for classification x 1.25) = <b>Casual Hourly Rate</b>
Saturday	1:1.5	Casual Hourly Rate at time and a half (i.e. Casual Hourly Rate for classification x 1.5)
Sunday & Public Holiday	1:2	Casual Hourly Rate at double time (i.e. Casual Hourly Rate for classification x 2.0)

Casual employees are eligible for Overtime Pay if their overall hours of work performed is in excess of:

- a. 10 hours on any day; or
- b. 37.5 hours in one week or 75 hours per fortnight

Overtime	Rate	Calculation
Monday – Saturday First 2 hours	1:1.5	Casual Hourly rate at time and a half (x1.5)
Monday – Saturday After 2 hours	1:2	Casual Hourly rate at double time (x2.0)
Sunday	1:2	Casual Hourly rate at double time (x2.0)
Public Holiday	1:2.5	Casual Hourly rate at double time and half (x2.5)

On each occasion a casual employee is required to attend work, they will be entitled to a minimum payment of three hours.

#### 12.4 Payment of salaries

Employee salaries and casual hourly wages payments are made fortnightly in arrears by electronic funds transfer directly into the bank account nominated by each employee.

#### 12.5 Entitlement to increments

The KLC links employee performance and behaviour to salary progression through the IPP Process as defined in 10.5. The IPP Process aims to ensure that employees know and understand what is expected of them and recognises and rewards employees based on performance. The following will be awarded annually, based on performance, on 1 April:

**A single increment** will be awarded to employees who:

- Meet performance expectations

**A double increment** will be awarded to employees who:

- Exceed performance expectations

**No increment** will be awarded to an employee who:

- in the past 12 months has had documented discussion(s) with their manager about the employee's performance and/or behaviour not meeting the standard expected for the employee's particular position, and the employee does not meet performance expectations at the formal review; or
- commences employment after 1 January and has not completed a minimum of 3 months' probation

**An increment may not be awarded** to an employee who:

- in the past 12 months has been subject to formal disciplinary action based on misconduct.

Where an employee does not meet performance expectations, specific reasons are to be provided to the employee.

## 12.6 Salary Sacrifice

The KLC is recognised as a Public Benevolent Institution (PBI) by the Australian Taxation Office (ATO). Subject to the continuation of this recognition and any changes to the Fringe Benefits Tax (FBT) legislation, employees of the KLC can benefit from tax-free salary sacrifice.

The KLC currently outsources the management of salary sacrifice. An employee is responsible for establishing, seeking advice and managing their own salary sacrifice arrangements with the KLC's nominated salary sacrificing organisation. All costs associated with this are at the employee's expense.

Where a salary sacrifice arrangement is authorised by an employee, it will operate as a deduction from the employee's pay in accordance with the FW Act.

## 12.7 Superannuation

The KLC will make employer superannuation contributions as required by legislation. Contributions will be made into an employee nominated fund of choice, provided that the fund complies with superannuation legislation for this purpose.

In the absence of such nomination, or the fund nominated not complying with legislation, funds will be placed on behalf of employees, with a compliant superannuation fund, as notified by the KLC, provided that fund:

- a. offers a MySuper product;
- b. is an exempt public sector scheme; or
- c. is a fund of which a relevant employee is a defined benefit member.

Employees will be advised of such treatment.

An employee may authorise KLC to make voluntary contributions by sending a request in writing to Payroll.

## 12.8 District Allowance

Employees, excluding a casual employee, based in the Kimberley will be entitled to a District Allowance, paid fortnightly, at rates as listed below. The onus of proof is on the employee to establish entitlement to the higher rate of District Allowance payable to employees in regard to residential location and dependent(s). Part-time employees will be entitled on a pro-rata basis.

The annual rates applicable at the date of this Agreement are as follows:

District Allowance	
Broome - no dependents	\$ 1000.00
Broome - with dependents	\$ 4,196.00
Other Kimberley - no dependents	\$ 3110.00
Other Kimberley - with dependents	\$ 7,912.00

Should the employee be temporarily or permanently relocated to an area outside the Kimberley, which does not attract District Allowance, then the payment of District Allowance will cease upon such relocation.

An employee is not eligible to receive the dependents District Allowance if their spouse or de- facto is receiving the dependents component, either from the KLC or another employer.

The district allowance does not form part of an employee's base Salary.

This allowance may be reviewed over the period of this Agreement through consultation with the JCC.

### **12.9 Definition of Dependent**

For the purposes of determining eligibility to a "district allowance with dependents", a dependent is defined as the following:

- a. a spouse or de facto partner of the Employee who is not earning more than the tax-free threshold as determined by the Australian Taxation Office per annum; or
- b. a person under the age of 18 years of age who is a dependent child for whom you have legal responsibility, either alone or jointly with another person, for the care, welfare and development of the child; or
- c. a parent of the Employee, who ordinarily resides with the Employee and is wholly or substantially dependent on the Employee who is not earning more than the tax-free threshold as determined by the Australian Taxation Office per annum; or
- d. any other person who is, because of special circumstances and certified by a medical practitioner to be dependent on the Employee.

Employees will be required to provide evidence or declaration of their dependent(s) status annually. Employees must also advise the organisation immediately of any changes to circumstances affecting the allowance. Any payments made to staff as a result of incorrect information or failure to advise of changes must be repaid to the KLC.

### **12.10 Residential Housing Entitlement**

The KLC recognises the high cost and limited supply of residential accommodation in the Kimberley region. To assist staff in meeting these high costs a Housing Entitlement will be provided, subject to documentary evidence to support their application.

Where an employees' partner receives another type of housing subsidy, including through another employer (Partner's Housing Subsidy), an employee may only claim the Housing Entitlement in relation to the portion of rent or interest, if any, that is not the subject of the Partner's Housing Subsidy.

Employees, who are partners and both working for the KLC (either a spouse or de facto partner), are only eligible to claim one type of residential housing subsidy between them. They can choose to have one person claim the full amount or provide a statutory declaration outlining how they would like to divide the one subsidy type between them.

Where there is a shared housing arrangement, an employee may only claim the portion of the rent that they pay towards the total weekly rent. They are required to provide a statutory declaration that confirms the amount that they pay towards the overall rent and a copy of the rental lease agreement and/or two recent bank transfers for the rental payment or other evidence as requested by the KLC.

The Housing Entitlement will only be paid from the date the employee makes an application and will not be backdated. Employees will be required to sign a Statutory Declaration annually, or as determined by the KLC, confirming the basis of their application.

Employees must advise the organisation immediately of any changes to circumstances affecting the subsidy. Any incorrect payments made to staff as a result of incorrect information must be repaid to the KLC.

#### **12.10.1 Rental Subsidy**

If you are renting housing in the Kimberley, the KLC will pay up to 40% of your rent, with the subsidy capped at a fortnightly amount of \$700. To qualify for this subsidy, you must:

- a) prove that the property is your principal place of residence; and
- b) provide documentation confirming the rental arrangement.

Part-time employees will be entitled to the subsidy on a prorated basis.

#### **12.10.2 Mortgage Subsidy**

The KLC will pay the interest component of an employee's mortgage, capped at a fortnightly amount of \$400. To qualify for this subsidy, you must:

- a) Provide a copy of the Mortgage arrangement with a recognized financial institution for the purchase of a residential property within the Kimberley; and
- b) Provide evidence of the interest component of the loan; and
- c) Prove that the property is your principal place of residence.

Part-time employees will be entitled to the subsidy on a prorated basis.

#### **12.11 Travel and accommodation expenses**

The KLC will cover all pre-approved travel and accommodation costs associated with work carried out on behalf of the KLC paid according to KLC policy.

#### **12.12 Higher Duties Allowance**

Where an Employee performs all or over 50% of the duties/responsibilities of another employee holding a higher paid job classification for a period of at least 5 consecutive working days, they will be paid a higher duties allowance at a level commensurate with the additional responsibilities, as approved by the DCEO.

Any exceptions to the above clause would require written approval from the DCEO.

#### **12.13 On-Call Allowance**

KLC employees (other than casuals) may have access to the On-Call Allowance in accordance with the KLC On-Call Allowance Policy and Procedure.

#### **12.14 Heat Allowance**

Where work continues for more than two hours in temperatures exceeding 46 degrees Celsius employees will be entitled to 20 minutes rest after every two hours' work without deduction of pay.

It will be the responsibility of the KLC to ascertain the temperature.

## **13 LEAVE**

Employees are entitled to leave as outlined below. All forms of leave must be applied for in advance of leave being taken, with the exception of unforeseeable or exceptional circumstances. Leave may only be taken where formal authorisation and approval has been provided by the KLC.

Leave, other than personal, compassionate, family and domestic violence and parental leave, is to be taken at a time (or times) as agreed between the employee and the KLC. Operational requirements in determining whether leave applications are approved may be considered in the leave approval process.

### **13.1 Annual Leave**

An employee (other than a casual employee) is entitled to five weeks of paid annual leave for each year of service with the KLC. The entitlements will accrue in accordance with the NES.

In summary, the NES provides that:

- e. An employee's entitlement to annual leave accrues progressively during a year of service according to the employee's ordinary hours of work. A part time employee will receive the pro rata equivalent.
- f. Annual leave does not accrue during any period of unauthorised absence, unpaid leave or unpaid authorised absence (other than community service leave or period of standown).
- g. Any untaken leave in one year cumulates to the next year. Untaken annual leave is paid out on termination at the amount that the employee would have received had they taken the leave.
- h. Where an employee is entitled to a public holiday, or other period of leave under the NES (other than unpaid parental leave), which falls during a period of annual leave, that day (or part day) shall not be counted in the period of annual leave.

If an employee suffers personal illness or injury while on annual leave, they are entitled to convert part of the annual leave to personal leave upon production of a medical certificate covering the period of personal illness or injury, providing that the employee has accumulated sufficient personal leave credits.

Annual leave is taken by agreement between employees and their manager, with regard for workload and operational requirements, provided that the KLC will not unreasonably refuse a request to take accrued annual leave.

#### **13.1.1 Annual leave loading**

Annual leave is paid at the employee's ordinary rate of pay for the employee's ordinary hours in the period. In addition, a loading of 17.5% calculated on the ordinary rate of pay applicable shall be paid on annual leave entitlements with the exception of the Travel Days referred to in clause 13.1.4.

#### **13.1.2 Direction to take annual leave**

- a. The KLC may direct an employee to take annual leave if:
  - i. the employee has an excessive annual leave balance (more than 10 weeks); or
  - ii. The KLC's operations are being shut down for a period (other than Christmas shutdown).

KLC will advise employees of a direction to take leave at least one month in advance of the requirement to take leave. If an employee does not have sufficient annual leave credit to take paid



annual leave during a shutdown of KLC’s operations, the employee may be allowed the necessary annual leave to be deducted from future credits or the employee may take leave without pay.

### 13.1.3 Cashing out Annual Leave

Employees may request to cash out Annual Leave at any time. However, in all cases the following applies:

- a. the employee must retain at least four weeks annual leave;
- b. approval must be gained from the Unit Manager, HR Manager and Deputy CEO;
- c. there must be a signed, written agreement with the KLC on each occasion;
  - the amount of leave being cashed out;
  - the amount they will be paid; and
  - the date it will be paid.
- d. An annual leave entitlement cannot be cashed-out prior to the leave being accrued.
- e. The payment for the cashed-out leave has to be the same as what the employee would have been paid if they took the leave.

### 13.1.4 Travel days

Employees working in areas 2-3 are entitled to extra leave annually as listed in the table below. These days shall be referred to as Travel Days and can only be taken in conjunction with a period of leave. They will not accrue from year to year and do not attract leave loading. For the purpose of this benefit, the term annually refers to the period 1 January to 31 December.

AREA 1	AREA 2*	AREA 3*
Broome Kununurra	Fitzroy Crossing Halls Creek Dampier Peninsula Warmun Wyndham	Balgo Mulan
<b>0 days annually</b>	<b>1 additional day annually</b>	<b>2 additional days annually</b>

*\*Should a commercial flight to Perth commence operating from any Area 2 or 3 location this clause will be reviewed to determine if any locations need to be reclassified to a new Area. Should a new Kimberley-based work location be added for KLC Staff, that location will be added to one of the areas above.*

### 13.1.5 Annual leave distance reimbursement

This reimbursement is to assist employees who are 100kms, or more, from an airport with operating commercial flights to Perth, to travel from their place of residence to the nearest regional airport with operating commercial flights to Perth e.g. Kununurra, Broome. All occasions of use must be in conjunction with a period of Annual Leave and have prior approval by the Unit Manager. This benefit will be capped annually to cover two return trips from the employee’s place of work to the nearest airport. Employees will be reimbursed for the personal cost of fuel on presentation of tax receipts. This benefit will not accrue from year to year. For the purpose of this benefit, the term annually refers to the period 1 January to 31 December.

Casual employees are not entitled to annual leave or travel days.

### **13.2 Personal/Carer's Leave**

An employee (other than a casual employee) is entitled to 15 days Personal/carers' leave per year of service and will accrue in accordance with the NES. A part-time employee will receive the pro rata equivalent.

In summary, the NES provides that:

- a. Personal/carers' leave is cumulative from year to year but is not paid out on termination of employment.
- b. Personal/carers' leave accrues progressively during a year of service according to the employee's ordinary hours of work. Personal/carers' does not accrue during a period of unauthorised absence, unpaid leave or unpaid authorised absence (other than community service leave or period of stand down).
- c. Paid personal/carers' leave is paid at the employee's ordinary rate of pay for the ordinary hours the employee would have worked during the period of leave.
- d. Where a public holiday falls during a period of paid personal/carers' leave, the employee is not taken to be on personal/carers' leave that day.

#### **13.2.1 When can personal/carers' leave be taken?**

An employee may take paid personal/carers' leave:

- a. if they are unfit for work because of their own personal (mental or physical) illness or injury (including pregnancy-related illness); or
- b. to provide care or support to a member of their immediate family or household, because of a personal (mental or physical) illness, injury or unexpected emergency affecting the member. For the purpose of this Agreement and the NES, a member of the employee's immediate family means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of an employee; or a child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner; or
- c. at the discretion of the DCEO, for the purposes of bereavement.

#### **13.2.2 Unpaid personal/carers' leave**

- d. An employee (including a casual employee) is entitled to two days of unpaid personal/carers' leave for each occasion when a member of the employee's immediate family or household requires care or support because of a personal illness (mental or physical), injury, or an unexpected emergency.
- e. An employee may take unpaid personal/carers' leave for each occasion as a single continuous period of up to two days, or any separate periods to which the employee and their manager agree. An employee cannot take unpaid personal/carers' leave during a particular period if the employee could instead take paid personal/carers' leave.

#### **13.2.3 Notice and Evidence**

- a. To be entitled to personal/carers' leave, an employee must comply with the notice and evidence requirements set out in this clause.
- b. An employee must notify the KLC of an inability to attend work due to personal/carers' leave as soon as reasonably practicable (which may be a time after the leave has started) and must advise of the period, or expected period, of the leave. Where possible, this should be within one hour of normal commencement time.

- c. An employee will provide a medical certificate or, where it is not practical to provide a medical certificate, a statutory declaration or other supporting evidence acceptable to the employee's manager in the following circumstances:
  - i. where the employee is or will be absent on personal/carer's leave for three (3) or more consecutive working days, unless the employee's manager informs the employee that such evidence will not be required; or
  - ii. where the employee has been absent on paid or unpaid personal/carer's leave for a total of 7 non-consecutive days in a 12-month period, and the employee's manager informs the employee that such evidence will be required; or
  - iii. if the employee has been advised by the employee's manager that they are required to provide evidence for any future personal leave absences due to the employee's pattern of leave.

#### **13.2.4 Casual Exclusion**

Except for unpaid carer's leave, this clause does not apply to casual employees. When taking unpaid carer's leave, casual employees must comply with the notice and evidence requirements.

#### **13.3 Compassionate leave**

An employee is entitled to up to two days of paid compassionate leave, on each occasion (in accordance with the NES, as outlined in this clause). This means one block of two consecutive days or two separate days. Compassionate leave can be used where:

- a. a member of the employee's family or household, or a person with whom the employee has a close personal relationship:
  - i. contracts or develops an illness or injury that poses a serious threat to his or her life; or
  - ii. dies; or
- b. a child is stillborn, where the child would have been a member of the employee's immediate family or household, if the child had been born alive; or
- c. the employee or the employee's spouse or de facto partner has a miscarriage.

Except in the case of casual employees, compassionate leave is payable at the employee's ordinary rate of pay for the ordinary hours the employee would have worked had they not proceeded on the leave.

To be entitled to compassionate leave, the employee must provide notice to the KLC as soon as practicable (which may be a time after the leave has started), and must advise the period, or expected period, of the leave. The KLC may request evidence that would substantiate the reason for the leave.

#### **13.4 Family and Domestic Violence Leave**

All employees, including casuals, are entitled to 10 days' paid leave per 12-month period to deal with family and domestic violence, in accordance with the NES (as outlined in this clause). An employee may take leave to deal with family and domestic violence if the employee:

- a. is experiencing family and domestic violence; and
- b. needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside the employee's hours of work.

An employee must give notice of the taking of leave as soon as practicable (which may be a time after the leave has started) and must advise of the period, or expected period, of the leave.

In addition to FDV Leave, an employee is able to use accrued leave entitlements, such as annual leave or TOIL, if it is available to them.

Family and domestic violence leave is paid at the employee's full rate of pay, worked out as if the employee had not taken the period of leave. In the case of a casual employee, payment is worked out as if the employee had worked the hours in the period for which the employee was rostered.

The KLC may request evidence to satisfy a reasonable person, to confirm the legitimacy of the leave. Depending on the circumstances, such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

The KLC will take steps to ensure confidentiality is maintained, unless disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

### **13.5 Parental Leave**

Parental Leave covers the following elements:

- a. paid parental and adoption leave provided by the KLC at eight weeks per instance;
- b. paid supporting partner leave provided by the KLC at two weeks per instance;
- c. unpaid parental leave.

#### **13.5.1 Paid Parental Leave**

The KLC will provide eight weeks paid parental leave at the employee's regular rate of pay, subject to the employee being eligible under the following conditions:

- a. the employee must be the primary caregiver of the child, including a newly adopted child under school age;
- b. the employee has completed at least 12 months continuous service with the KLC;
- c. the employee has worked a minimum of 10 months, inclusive of paid leave, over the immediately preceding 13 months.

Paid Parental leave is available to employees, with the exception of casual employees. A part-time employee will receive the pro rata equivalent.

An employee may apply to their manager to take paid parental leave at half their regular rate of pay for a period of 16 weeks.

A pregnant employee who is entitled to parental leave may start their leave up to six weeks prior to the expected date of birth of their child. If a pregnant employee who is entitled to parental leave continues to work during the six-week period before the expected date of birth of the child, the KLC may ask the employee to provide a medical certificate stating that they are fit to work on their normal duties.

#### **13.5.2 Adoption**

An employee adopting a child is entitled to parental related leave where the child:

- a. is, or will be, under 16 years of age as at the day of placement, or the expected day of placement, of the child; and
- b. has not, or will not have, lived continuously with the employee for a period of six months or more as at the day of placement, or the expected day of placement, of the child; and
- c. is not a child of the employee or the employee's spouse or de facto partner.

Employees are entitled to two days unpaid leave to support the integration of an adopted child into the family.

### **13.5.3 Supporting partner leave**

An employee will be entitled to 10 days paid supporting partner leave in the event of that employee's partner giving birth to a child. To be eligible for paid supporting partner leave an employee must have:

- a. completed at least 12 months continuous service with the KLC; and
- b. have worked a minimum of 10 months, inclusive of paid leave, over the immediately preceding 13 months; and,
- c. have requested and taken this leave within eight weeks of the birth of the child.

A part-time employee will receive the pro rata equivalent.

### **13.5.4 Unpaid parental leave**

Full-time, part-time and regular casual employees are entitled to, after 12 months' continuous service with the KLC, unpaid parental leave following the birth or adoption of a child in accordance with the NES.

In summary, the entitlement to parental leave is up to 12 months unpaid parental leave (extendable in certain circumstances) which can be taken as maternity leave and/or parental leave, or adoption leave.

A regular casual employee is a casual employee who has been employed by the KLC on a regular and systematic basis and who, but for the expected birth or placement of a child, would have a reasonable expectation of continuing employment with the KLC on a regular and systematic basis.

An employee may apply to the DCEO for a further period of up to twelve months. Such a request must be in writing and given to the employee's manager at least four weeks before the end of the available parental leave period.

The DCEO must give the employee a written response to the request stating whether the KLC grants or refuses the request. The response must be given as soon as practicable, and not later than 21 days, after the request is made. The KLC may refuse the request only on reasonable business grounds and must provide written details of the reasons for the refusal.

On ending parental leave, an employee is entitled to return to:

- a. the employee's pre-parental leave position; or
- b. if that position no longer exists, an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position.

### **13.5.5 Unpaid special maternity leave**

A pregnant employee is entitled to a period of Unpaid Special Maternity leave, in accordance with the NES, if they are not fit for work during that period because:

- a. They have a pregnancy related illness; or
- b. They have been pregnant, and the pregnancy ends after a period of gestation of at least 12 weeks otherwise than by the birth of a living child and the child is not stillborn.

### **13.6 Long Service Leave**

An employee, other than a casual employee, will be entitled to be paid long service leave of 13 weeks after seven years of continuous service. Long Service Leave will be calculated at all times exclusive of

any periods of leave without pay. An employee may take accrued Long Service Leave after five years' continuous service pro rata, based on a seven-year increment. After the initial seven-year period, the long service leave cycle will begin again and staff will be entitled to pro rata long service leave after a further five years of service.

Upon resignation or termination (other than for serious misconduct) an employee is entitled to be paid any eligible accrued pro rata Long Service Leave entitlements as per above criteria.

### **13.7 Aboriginal Cultural leave**

An employee, other than a casual employee, who is adherent to Aboriginal culture shall be afforded reasonable opportunity to follow and practice the requirements of that culture, including the attendance of PBC meetings that the Employee is a member of.

This leave type is offered by the KLC in the form of up to five days of paid leave, and five days' unpaid leave per year. In order to use this leave, written approval must be received in advance from the DCEO. Cultural leave is afforded in addition to other types of leave defined in this Agreement. Part-time employees are entitled to Cultural leave on a pro-rata basis.

### **13.8 Community service leave**

Employees (including casual employees) are entitled to community service leave, in accordance with the NES and relevant state legislation, as outlined in this clause, to attend:

- a. jury service; or
- b. a voluntary emergency management activity with a recognised body to deal with an emergency or natural disaster.

Employees are required to notify the KLC as soon as reasonably practicable of their intention to take community service leave and advise the period (or expected period) of the absence.

Where an employee:

- a. is required to attend jury service, they will be paid in accordance with the NES and *Juries Act 1957 (WA)*; or
- b. attends a voluntary emergency management activity, they will be paid at their ordinary rate of pay for the ordinary hours the employee would have ordinarily worked, in accordance with the NES and *Emergency Management Act 2005 (WA)*.

To be entitled to community service leave, employees must provide proof to satisfy a reasonable person that they have been / will be engaged in an eligible community service activity. Employees on jury service are required to provide an attendance certificate.

### **13.9 Study leave**

At the DCEO's discretion through approval by Line and Unit Manager, study leave may be granted to an employee undertaking a course of study. This approval must be sought for support of this leave in advance of any leave being taken. Study approved must be relevant to the work of the KLC. The period of paid leave will be limited to the following where applicable:

- a. time required to attend lectures and practical work, together with travel each way, up to a maximum of eight hours per week;
- b. time required for attendance at compulsory residential schools to a maximum of two weeks per semester; and/or,
- c. time required to attend examination, to a maximum of five days in any period of 12 months.

The above is based on a full-time employee; part-time employees will be considered for Study leave on a pro-rata basis only. This clause does not apply to casual employees.

### **13.10 Unpaid Leave**

An employee may apply for unpaid leave in extraordinary circumstances. An employee must use all accrued annual leave and other relevant leave entitlements including TOIL, before an application for leave without pay will be considered. Approval of unpaid leave will be at the discretion of the employees' unit manager if the period is under two weeks. For periods over two weeks the employee must gain approval by applying in writing to the DCEO.

### **13.11 Employee purchased leave**

An employee, other than a casual employee, can apply to reduce their working year for personal or family responsibility reasons. This form of leave involves the employee working for less than 52 weeks per year, whilst having their salary averaged over 52 weeks per year.

Employees must apply for Employee Purchased leave in advance. Each application will apply for a period of 12 months. An employee is entitled to make further applications in subsequent years. Granting of Employee-Purchased leave is subject to approval by the Unit Manager and DCEO. Operational requirements will be taken into consideration in deciding whether to approve an application.

An employee may apply to reduce their working year by a minimum of two weeks and a maximum of six weeks. The salary of employees working a reduced year, will be proportionately reduced, averaged, and paid over a 52-week period.

Employees will not be eligible for Purchased leave unless their annual leave balance is less than 10 days.

Any agreement between an employee and the KLC to enter an Employee Purchased leave arrangement will be recorded in writing.

Purchased Leave cannot be taken until it has been paid for and has accrued.

Any entitlements, related to salary rates will be applied on a pro-rata basis for the weeks worked, and averaged and paid across a 52-week period. Benefits, subsidies, loadings, or entitlements unrelated to salary rates will remain as applicable to the position. Leave loading is not applied to this form of leave.

### **13.12 Christmas/New Year shutdown Leave**

The Kimberley Land Council shuts down for no more than a two-week period over the Christmas holidays, including the week of Christmas Day, Boxing Day and the week inclusive of the New Year's Day Public Holiday.

In addition to the Public Holidays, all staff, other than casual employees, are provided three days paid 'KLC Shutdown Leave', provided by KLC at the employee's full rate of pay during this period. Part-time employees are only entitled to those days of paid leave that fall on the days of the week that they usually work.

Christmas/New Year Shutdown leave does not accrue, does not include leave loading and cannot be taken at any other time of the year.

Employees agree to use 4 days of accrued leave, including TOIL, Annual Leave or Long Service Leave (where eligible) for the days in the week of the New Year's Day Public Holiday.

If an employee does not have sufficient annual leave credit to take paid annual leave during a shutdown of KLC's operations, the employee may be allowed the necessary annual leave to be deducted from future credits or the employee may choose to take leave without pay.

Where an employee is required to be on-call during the Christmas Shutdown Period, and has been required to work during that period, the employee will be entitled to time off in lieu.

### **13.13 Public Holidays**

Public Holidays shall be in accordance with the NES with relevant days and part-days to be observed as gazetted for the work location.

Where employees are not required to work on a day which they are normally required to work because it is a public holiday, they will be paid for the ordinary hours of work on that day, in accordance with the NES.

Employees, other than casuals, can apply to their manager to work on Australia Day and take an alternative holiday without loss of pay on Mabo Day or another nominated day of significance to Australian Indigenous people.

### **13.14 Gender Affirmation Leave**

An employee who has completed a minimum of 12 months' continuous service with the KLC, may apply for up to twelve months' Gender Affirmation Leave. In order to qualify for the leave, the employee must:

- a. notify their Unit Manager at least 10 weeks prior to the commencement of the leave;
- b. provide supporting documentation from medical professionals; and
- c. receive written approval from their Unit Manager and the DCEO.

At the beginning of the 12 months' leave, the employee must first use all accrued TOIL. They can choose to use other accrued paid leave entitlements such as Personal, Annual, or Long Service Leave (where eligible). They would then go onto unpaid Gender Affirmation Leave.

At the end of the Gender Affirmation Leave, the employee would be entitled to return to their same role or a suitable role at the same level of pay and responsibility.

## **14 CONSULTATION ABOUT CHANGE**

In line with the FW Act, the KLC supports consultation about major workplace changes.

14.1 This term applies if the KLC:

- a. has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
- b. proposes to introduce a change to the regular roster or ordinary hours of work of employees.

### **14.2 Major change**

14.2.1 For a major change referred to in subclause 14.1a:

- a. the KLC must notify the relevant employees of the decision to introduce the major change; and



- b. Subclauses 14.2.2 to 14.2.8 apply.

14.2.2 The relevant employees may appoint a representative for the purposes of the procedures in this term.

14.2.3 If:

- a. relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- b. the employee or employees advise the KLC of the identity of the representative; the KLC must recognise the representative.

14.2.4 As soon as practicable after making its decision, the KLC must:

- a. discuss with the relevant employees:
  - i. the introduction of the change, and
  - ii. the effect the change is likely to have on the employees; and
  - iii. measures the KLC is taking to avert or mitigate the adverse effect of the change on the employees; and

14.2.5 For the purposes of the discussion - provide in writing, to the relevant employees:

- a. all relevant information about the change including the nature of the change proposed; and
- b. information about the expected effects of the change on the employees; and
- c. any other matters likely to affect the employees.

14.2.6 However, the KLC is not required to disclose confidential or commercially sensitive information to the relevant employees.

14.2.7 The KLC must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

14.2.8 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the KLC, the requirements set out in subclauses 14.2a, 14.2.2, 14.2.4 and 14.2.5 are taken not to apply.

In this term, a major change is likely to have a significant effect on employees if it results in:

- a. the termination of the employment of employees; or
- b. major change to the composition, operation or the size of the KLC's workforce or to the skills required of employees; or
- c. the elimination or dilution of job opportunities (including opportunities for promotion or tenure); or
- d. the alteration of hours of work; or
- e. the need to retrain employees; or
- f. the need to relocate employees to another workplace; or
- g. the restructuring of jobs.

### **14.3 Change to regular roster or ordinary hours of work**

14.3.1 For a major change referred to in subclause 14.1.1b:

- a. the KLC must notify the relevant employees of the proposed change; and
- b. Subclauses 14.3.2 to 14.3.7 apply.

14.3.2 The relevant employees may appoint a representative for the purposes of the procedures in this term.

14.3.3 If:

- a. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- b. the employee or employees advise the KLC of the identity of the representative;
- c. the KLC must recognise the representative.

14.3.4 As soon as practicable after proposing to introduce the change, the KLC must:

- a. discuss with the relevant employees the introduction of the change; and
- b. for the purposes of the discussion—provide to the relevant employees:
  - i. all relevant information about the change, including the nature of the change; and
  - ii. information about what the KLC reasonably believes will be the effects of the change on the employees; and
  - iii. information about any other matters that the KLC reasonably believes are likely to affect the employees; and
- c. invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

14.3.5 However, the KLC is not required to disclose confidential or commercially sensitive information to the relevant employees.

14.3.6 The KLC must give prompt and genuine consideration to matters raised about the change by the relevant employees.

14.3.7 In this term: relevant employees means the employees who may be affected by a change referred to in subclause 14.2.1.

#### **14.4 Consultation with employees on leave**

If the KLC makes a decision that will have a significant effect on the status, pay or location of an employee's parental leave position, all reasonable steps will be taken to give the employee information about, and an opportunity to discuss, the effect of the decision on that position.

### **15 TERMINATION OF EMPLOYMENT**

#### **15.1 Period of notice**

During the probationary period, an employee or the KLC is required to give one week's notice of resignation or termination of employment (as applicable). At all other times an employee and the KLC are required to give the following periods of notice:

- a. Level 5 and below positions: 4 weeks; and
- b. Level 6 and above positions: 6 weeks.

In addition to this notice, where the KLC is terminating an employee's employment, employees over 45 years of age, at the time of the giving of the notice, with not less than two years of continuous service, shall be entitled to an additional week of notice. An employee is not required to give this additional weeks' notice when resigning if over 45 years of age.

For casual employees, employment may be terminated by either party giving one hours' notice.

The KLC and an employee may agree that the employee is required to give a lesser period of notice than prescribed above.

In the case of the KLC terminating the contract of employment, notice of the effective day of termination must be provided in writing to the employee.

The KLC may require the employee to work out the notice period or may provide payment in lieu of notice not provided.

Where a notice of termination is provided by the KLC to an employee, the employee will be provided with up to one paid day within their notice period for the purpose of seeking other employment.

If applicable, the KLC may deduct any monies owing from the employee's final pay. The KLC will not make the deduction where the deduction is unreasonable in the circumstances. The employee will forfeit payments for the period not worked.

Notwithstanding the above, an employee may be dismissed without notice for serious misconduct, in accordance with the NES. In this case, the employee is only entitled to be paid for the time worked up to the time of dismissal.

### **15.2 Payment on termination of employment**

The KLC will pay an employee no later than 7 days after the day on which the employee's employment terminates:

- a. the employee's wages under this agreement for any complete or incomplete pay period up to the end of the day of termination; and

all other amounts that are due to the employee under this agreement and the NES.

### **15.3 Redundancy and Redeployment**

Redundancy and redeployment provisions offered by the KLC do not apply to the following employment types:

- a. employees whose period of continuous service with the employer is less than 12 months;
- b. employees employed for:
  - i. a specified period of time;
  - ii. a specified task; or
  - iii. a specified season;
- c. employees terminated because of serious misconduct;
- d. casual employees;
- e. there is a transfer of employment where an employee accepts employment with the new employer who agrees to recognise the employee's service with the KLC;
- f. there is a transfer of employment and an employee rejects an offer of employment with the new employer which recognises the employee's service with the KLC and the terms and conditions of employment offered are on an overall basis no less favourable than those provided by the KLC;

#### **15.3.1 Redundancy**

- a. For the purposes of this Agreement, the CEO may declare a position excess for reasons including, but not limited to:
  - i. there being excess positions at that position level than is necessary for the efficient and economical working of the KLC;

- ii. that the position is no longer required due to technological or other changes in the work methods and structure of the KLC;
  - iii. changes in the nature, extent or organisation of the functions of the KLC;
  - iv. changes in priorities and/or in servicing different regions;
  - v. position funding allocation is reduced in real terms;
  - vi. where the duties of the position are to be performed at a different locality due to the above points, and the occupant of the position is unwilling to transfer to the different locality
- b. Where a final decision has been made to make a position redundant, the employee will be provided with written advice of the amount of termination pay, pay in lieu of notice and all other entitlements.
- c. An employee is made redundant where their employment is terminated:
- d. at the KLC's initiative because it no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary or customary turnover of labour; or
- e. because of the insolvency or bankruptcy of the KLC.
- f. Where eligible, any employees to receive redundancy payments calculated at their base rate of pay and regular hours in accordance with the following table:

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and over	16 weeks' pay

- g. In addition to redundancy pay an employee will receive the appropriate period of notice or payment in lieu of notice or as identified in the employment contract.
- h. Where a notice of redundancy has been issued to an employee, the employee will be provided with up to one paid day within the notice period for the purpose of seeking other employment.
- i. The KLC retains the discretion to offer voluntary redundancy where appropriate.

### 15.3.2 Redeployment

An employee whose position has been declared redundant will be considered for redeployment to a similar or lower level role within the KLC where skills fit and it is practicable.

## 16 DISCIPLINARY PROCESS

Where ongoing under performance or misconduct has been identified, the KLC will seek to support and enable staff to perform at their best, in order to continue to contribute to the ongoing success of the KLC.

In the event of misconduct or ongoing under performance by employees of the KLC disciplinary matters will be handled fairly, consistently and in compliance with legal obligations with the following overriding principles:

- a. informal action should be considered in the first instance, unless in the case of serious misconduct;
- b. where underperformance has been identified performance management processes will take place before disciplinary process is applied;
- c. natural justice and procedural fairness will ensue, allowing for a fair and consistent process;
- d. employees will be supported by KLC during and after the process;
- e. the process will be evidence based;
- f. employees will be provided with an opportunity to correct unacceptable conduct other than in situations where summary dismissal is appropriate;
- g. each situation is reviewed on a case-by-case basis in relation to the particular circumstances;
- h. all information relating to the disciplinary issue will be kept confidential, where possible.

The KLC Disciplinary Policy sets out standards applied in the event of ongoing underperformance or misconduct by employees of the KLC. It ensures that disciplinary matters are handled fairly, consistently and in compliance with legal obligations. The purpose of the KLC Disciplinary Policy is to:

- a. outline informal and formal processes;
- b. outline the potential disciplinary outcomes arising from the above processes, and;
- c. inform employees of their rights, roles and responsibilities.

Changes will not be made to the KLC Disciplinary Policy without consultation with the JCC, except to the extent required to comply with any applicable law.

## **17 DISPUTE RESOLUTION PROCEDURE (EMPLOYMENT STANDARD)**

If a dispute relates to:

- a. a matter arising under the Agreement; or
  - b. the NES;
- this clause sets out procedures to settle the dispute.

Any party to the dispute may appoint a representative for the purposes of the procedures in this term.

In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, through discussions with the concerned parties, including but not limited to:

- a. Between the employee(s); or
- b. Between employees and relevant line manager(s); or
- c. Between employees and/or Unit Manager; or
- d. Between employees and Human Resources; or
- e. Between employees and DCEO/CEO.

If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.

Provided the Fair Work Commission is satisfied the above clauses have been complied with and that genuine attempts have been made to resolve the dispute at the workplace level, the Fair Work Commission may deal with the dispute in 2 stages:

- a. 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
- b. if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
  - i. arbitrate the dispute; and
  - ii. make a determination that is binding on the parties.

Note: If Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

While the parties are trying to resolve the dispute using the procedures in this term:

- a. an employee must continue to perform their work as they would normally unless they have a reasonable concern about an imminent risk to their health or safety; and
- b. an employee must comply with a direction given by the KLC to perform other available work at the same workplace, or at another workplace, unless:
  - i. the work is not safe; or
  - ii. applicable occupational health and safety legislation would not permit the work to be performed; or
  - iii. the work is not appropriate for the employee to perform; or
  - iv. there are other reasonable grounds for the employee to refuse to comply with the direction.

The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.



**TYRONNE GARSTONE**

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