

EBA UPDATE:

4 SEPTEMBER MEETING



Dear members,

Talks continued with the Unions' Single Bargaining Unit (SBU) and Telstra meeting this week to continue negotiations for a new agreement.

Clause 45

Interplay between moving to a Subsidiary and being redeployed under Clause 49

Currently the Telstra EA provides that if your position is made redundant, you enter the 'placement period' and it is during this time that redeployment opportunities are explored with the affected employee.

In considering how this would work in practice, with the introduction of the proposed Clause 45, we have sought for any offer to transfer to a Subsidiary to occur after the employee has the opportunity to fully consider internal redeployment options. This would ensure that the employee will still be able to seek redeployment within Telstra without foregoing the opportunity to take up the offer to transfer to a Subsidiary, should their redeployment attempts be unsuccessful.

Telstra have agreed to this proposal, and drafting is underway to reflect this.

Viability of the Subsidiary

Concerns around the viability of proposed subsidiaries has been reflected in some of the feedback received from members.

One simple example of these concerns is; *What if the subsidiary is just a 'shell' or goes bust? Who will pay outstanding entitlements of employees?*

Generally, a 'parent company' does not have a legal obligation to pay its subsidiaries debts if it became insolvent unless there were clear indications of unscrupulous business activity, such as trading while insolvent.

The SBU is pushing for Telstra to contractually guarantee an employee's entitlements to alleviate these concerns. Telstra is considering this and will respond in coming discussions.

On-selling of the Subsidiary?

Another concern raised by members and represented in this week's meeting was in regards to the potential on-selling of the Subsidiary to a third party.

If this was to occur, while employees in the Subsidiary still had the Telstra EA applying to them, then any on-selling would result in a redundancy as Clause 45 only applies to transferring out of Telstra. If this were to occur, where a new EBA was in place, then it would depend on the terms of the new EBA. Remember, however, the entitlement to the Telstra scale of redundancy will still apply regardless of the EBA.

Just to recap on Clause 45 - in order to displace the requirement to pay retrenchment benefits under Clause 45, the offer to move to a Subsidiary must:

1. Be to perform the same or substantially the same work;
2. On terms and conditions substantially similar to, and considered on an overall basis, no less favourable
3. Recognise service with *Telstra*;
4. Provide 15 days paid personal leave each year (pro-rata for part time employees);
5. Provide your ordinary hours of work will be no more than an average of 36% hours each week; and
6. Provide that your retrenchment benefits will be calculated:
 - i. In accordance with the scale in section 10 if your job with the *Subsidiary* is made redundant and you are retrenched; and
 - ii. By reference to your *Fixed Remuneration at Telstra* at the time the offer is made, or the fixed remuneration at the time you are retrenched by the *Subsidiary*, whichever is higher.

Defined Benefit Superannuation

The SBU represented matters raised by various members including the options for employees who are in a defined benefits super funds if they chose to go to a Subsidiary.

Remember, if the option for Defined benefits membership is not provided in the new job offer, then the offer will not be deemed suitable – meaning those employees will still receive redundancy payments, regardless of if they accept, or reject, the transfer of employment offer.

However, the question around what actually happens to the employee's defined benefit fund, still exists.

We understand that the answer to that question will be a critical factor to any decision of an affected employee, and therefore it is definitely worth investigating as it is not itself subject to negotiation,

but a matter for TelstraSuper. We will report on the findings of this in due course.

Long Service Leave

The policy

As report last week, the LSL policy Telstra intends to implement from 1 January 2020 will allow Telstra to direct employees, with a leave balance in excess of 90 days, to take a period/s of LSL up to 24 days.

The SBU does not believe that employees should be directed in this way, particularly given the difficulty employees face in accessing the leave they want, at the time they want to avail of it, in the first place.

The Unions pushed back on this policy when it was proposed by Telstra in the middle of last year, leading to Telstra taking a step back from implementation for the 2019 calendar year. Instead Telstra agreed that for the duration of 2019, they would seek to encourage staff – but not direct them.

The parties discussed different parameters that could be put in place to encourage employees to avail of LSL, including an expectation that employees take their 9 days of LSL each year if they have accrued 90 days, and in the event that their application is rejected, then Telstra and the employee will discuss and try and reach agreement on a time to take the leave.

This would cap the expectation to take leave at 9 days per year and not 24 days, as currently proposed in Telstra policy. It would only be where an employee does not apply to take their 9 days that Telstra would then have the ability to direct the employee to do so.

This would still be subject to certain parameters of providing extensive notice and taking into account personal circumstances.

Telstra is considering this proposal and will respond during coming meetings.

Pay

Telstra has indicated they are not in a position to put a final pay offer on the table until the other matters have been substantially finalised.

However, the SBU has made it clear that the entire agreement is a package deal. And while we may reach a point at which some clauses currently causing contention may result as being acceptable, agreement is ultimately dependant on the entire offer.

We will continue to keep members updated as talks progress with the next meeting to occur next week. In the meantime, should you require any further information or have feedback to share, please contact me on 08 8443 7389 or 0419 807 285.

Yours faithfully,

Graham Lorrain
BRANCH PRESIDENT

6 September 2019