

EBA UPDATE:

17 SEPTEMBER MEETING



Dear member,

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

LONG SERVICE LEAVE

As members would now be well-aware, Telstra's Long Service Leave (LSL) policy which takes effect from 1 January next year allows the company to direct employees whom have accumulated more than 90 days of long service leave to take up to 24 days per year and to direct the reduction of long service balances to 90 days.

As this is policy that Telstra can unilaterally change, the SBU has sought to bring the issue into bargaining and resolve it as part of this agreement.

The current proposal for a LSL policy would operate in the following way:

- Employees who have accrued 90 days LSL will be **expected** to avail of at least 9 days per year – the same amount of LSL accrued per year by a full-time employee;
- The employee would need to apply for the leave prior to 30 June each year;
- If the application for LSL is rejected by their manager, the employee is expected to make a further application to take the 9 days;
- In the event that the employee has made two applications for LSL and both have been rejected, the employee cannot be directed and there is no expectation that further LSL would be taken in that calendar year;
- Telstra would only be able to direct an employee to avail of LSL where the employee refuses to make application to take the 9 days LSL by 30 June in any calendar year **and** the employee and manager cannot reach mutual agreement on when the 9 days should be taken.

Further parameters around such direction include three months' notice for any direction and a requirement that consideration be given to personal circumstances and preferences.

In our view, our proposal provides the employee with greater control and flexibility than Telstra's incoming policy. It also limits the expectation and the scope for direction to 9 days, as opposed to 24. While it still allows Telstra to direct employees, it has quarantined that ability within narrow and reasonable parameters.

Further tweaking of the policy was discussed, including a provision that managers respond to applications for leave in a timely manner. The SBU is seeking to have this proposed policy fixed for the life of the agreement to avoid unilateral changes being made by Telstra to broaden their powers.

CLAUSE 45

The parties continued discussion around the interaction of Clause 45 with Clause 49, which deals with the Placement Period employee's enter upon notification of redundancy.

The SBU held concerns that if Clause 45 is triggered before an employee enters the Placement Period, they are then disadvantaged in time to seek redeployment within Telstra before making their choice with regard an offer of employment with a Subsidiary. Changes have now been made to bring the operation of Clause 45 within the Placement Period and to extend the period for response – ensuring any offers made under Clause 45 remain open until the Placement Period expires.

Clause 45 and Defined Benefit superannuation (DB)

It has been agreed that if an offer to transfer employment to a Subsidiary does not include eligibility in a Defined Benefit scheme, then the offer would not be deemed 'suitable' and therefore, the employee would receive retrenchment benefits, irrespective of whether or not they accepted an offer to move to a Subsidiary.

It is now apparent from our enquiries of Telstra Super that eligibility to continue in membership of a Defined Benefit fund would be possible if certain actions are taken by Telstra and by Telstra Super, after the Subsidiary is created.

The SBU does not believe this gives affected employees any further clarity about the operation of Clause 45 in their particular circumstances because although it is now known that continued DB scheme membership is possible, it is not known whether Telstra Super and Telstra will choose to give effect to that option until the Subsidiary is actually created. On this basis, the SBU has sought to exclude Defined Benefit scheme members from the operation of Clause 45. Telstra is considering this proposal.

Ongoing viability of a Subsidiary

The SBU seeks to ensure that Telstra remains responsible for the entitlements of employees it transfers to a Subsidiary, in the event the Subsidiary becomes insolvent or for any reason can't pay entitlements.

Telstra's position at this meeting was that, as a matter of reputation and branding, Telstra would not allow one of its Subsidiaries to fail in this way. Telstra also referred to the Government's Fair Entitlements Guarantee as a safeguard for employees. The scheme provides certain protections for unpaid entitlements in instances of bankruptcy or liquidation.

The SBU's position is that Telstra should provide a guarantee that they will meet any shortfall or pay any entitlements that are not met by the Subsidiary. It is not good enough to 'pass the buck' to the taxpayer or rely on the fact that this occurrence would be extremely unlikely. We agree that the likelihood of this occurring is extremely slim, therefore, in our view there is little risk for Telstra to provide the guarantees we are seeking.

Indirect support roles and Clause 45

Clause 45 has come a long way from where it started and is almost at a stage where agreement may be possible, however there is one last hurdle around defining the scope of operation that is causing some difficulty.

In its simplest form, Clause 45 can operate where a whole business unit, such as InfraCo, becomes a separate Subsidiary entity. All employees within the business unit would necessarily become redundant at Telstra but could be offered employment at InfraCo under Clause 45 and would transfer over with their EBA and the protections in contract that we have reported on in earlier bulletins

The difficulty, however, is considering the operation with regard to employees in 'support' roles.

For example, InfraCo as a separate entity would require a range of support staff such as finance, HR, legal, communications etc. The question is, can an employee in one of these support roles who was providing support to InfraCo and other business units, also be transferred under Clause 45 and can a support staff member, for example a pay roll officer that had no interaction with Infra Co before the split, but finds their role redundant at Telstra, be offered a payroll position at Infra Co under Clause 45?

Further discussions will continue on this issue, but the SBU does not support a Clause 45 where individuals who are not directly affected by a transfer of business, but are affected by redundancy for some other reason are transferred under Clause 45 to fill vacancies that present in the Subsidiary. Our position is that there should be a direct link between the redundancy in Telstra and the job offer in the Subsidiary.

Further discussions are needed to clarify these ongoing concerns which will form part of the agenda for our next meeting in two weeks' time.

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

19 September 2019

