

## WITHOUT PREJUDICE

### TfNSW and RMS Award Bargaining 2022

#### Combined Transport Unions Draft Job Security Clauses (Topics 4 and 9)

2 May 2022

Item Ref	TfNSW Claim Number	RMS Claim Number	Claim	Specifics	Topic	Draft Text for clause
1.	4.1	4.1	Improved job security	Requirement that TfNSW has a process to review the success of change management process and structure implemented.	Job Security	See <b>220325 Transport Awards WHS Draft Clauses</b> - TfNSW Award Unions draft clause 21.7
2.	4.1	4.1	Improved job security	Jobs must not be advertised externally whilst there are unplaced employees who could be suitable for the role	Job Security	See <b>Appendix: Job Security and Improved Consultation Clauses 28 April 2022</b> - TfNSW Award Unions draft clause 8.6(a) - RMS Award Unions draft clause 7.5(a)
3.	4.1	4.1	Improved job security	The employer must implement change in accordance with the NSW Public Service Agency Change Management Guidelines and specifically, will give priority to unplaced employees in the recruitment process. Meaning these employees do not need to undergo a competitive recruitment process with place employees. Rather they only need to undergo a suitability assessment.	Job Security	See <b>Appendix: Job Security and Improved Consultation Clauses 28 April 2022</b> - TfNSW Award Unions draft clause 8.5 and 8.6(b) - RMS Award Unions draft clause 7.4 and 7.5(b)
4.	4.1	4.1	Improved job security	Labour hire is not to be utilised for more than 3 months. Where requirement for work exists for longer than 3 months an employee is to be engaged directly by TfNSW. Where the labour hire is utilised 3 months and there is to be an extension the labour hire employee is to be offered direct employment with TfNSW.	Job Security	See <b>Appendix: Job Security and Improved Consultation Clauses 28 April 2022</b> - TfNSW Award Unions draft clause 15(d)(iv) and 15(e) - RMS Award Unions draft clause 15.6(c), 15.6(d) and 15.6(e)
5.	4.1	4.1	Improved job security	Contractors who are engaged for a period of greater than 3 months are to be offered direct employment with TfNSW.	Job Security	See <b>Appendix: Job Security and Improved Consultation Clauses 28 April 2022</b> - TfNSW Award Unions draft clause 15(d)(iv) and 15(e) - RMS Award Unions draft clause 15(d)(iv) and 15(e)

6.	4.1	4.1	Improved job security	At clause 8.3 along with Labour Hire the employer will provide information in relation to contractors	Job Security and Improved Consultation	See <b>Appendix: Job Security and Improved Consultation Clauses 28 April 2022</b> - TfNSW Award Unions draft clause 8.3(c)
7.	4.1	4.1	Improved job security	Existing redeployment procedures will be strengthened.	Job Security	TBC
8.	4.1	4.1	Improved job security	The Award will contain an obligation to provide retraining in any excess or displaced employees' field of choice within the organisation.	Job Security	TBC
9.	4.1	4.1	Improved job security	All Contractors to TfNSW will be paid the same terms, conditions, and pay rate applicable to the work they perform as prescribed in the Award.	Job Security	TBC
10.	4.1	4.1	Improved job security	Compliance with the above provisions will be audited by the Employers and the results of the audits will be made available to the relevant parties to the Award.	Job Security	TBC
11.	4.1	4.1	Improved job security	<b>Long Service Leave Portability</b> Recognition of service for the purpose of Long Service Leave in like for like industries, for example an allocator from a private transport company taking up a position in the Transport Traffic Command.	Job Security	TBC
12.	4.1	4.1	Improved job security	<b>Public Crisis Conditions</b> a) An annual bonus or additional leave will be payable/accrued to employees for work performed during a public crisis, including natural disasters and health pandemics. b) During said events, the Unions will be allowed paid time with Members to review health and safety conditions.	Job Security	TBC
13.	4.2	4.2	Protection against Future Privatisation.	<b>Future Privatisation</b> a) If the NSW Government privatises any part of any job covered by the Award, the parties agree that the base rate of the specific job will increase by 25% on the day the tender or tenders are released to compensate for uncertainty and mitigate against future potential degradation of conditions. b) If privatisation is considered, the Employers	Job Security	TBC

				<p>will:</p> <ul style="list-style-type: none"> <li>i. Provide the Unions with a social impact statement demonstrating the public benefit of the sale.</li> <li>ii. Ensure that disadvantaged groups are not negatively impacted by the proposed privatisation.</li> <li>iii. Allow Employees to develop an “in-house bid” for the proposed privatised work.</li> </ul>		
14.	4.2/4.3 (RMS log)	4.2/4.3 (RMS log)	Protection against Future Privatisation/ Ensuring the protection contained in the <i>Transport Administration Amendment (RMS Dissolution) Act 2019</i> (NSW) remains in effect.	Variation to the RMS Award to ensure the protections.	Job Security	RMS Award: Vary clause 3.3 of the Award in terms of the date it remains in force.
15.	4.2/4.3 (RMS log)	4.2/4.3 (RMS log)	Protection against Future Privatisation/ Ensuring the protection contained in the <i>Transport Administration Amendment (RMS Dissolution) Act 2019</i> (NSW) remains in effect	Where provisions from RMS Award are brought into the TfNSW, TfNSW will in accordance with the MOU continue to utilise RMS Award for both new and existing roles which the majority are an RMS function. "	Job Security	TBC
<b>Award Modernisation Claims Relating to Job Security</b>						
16.	9.1(c)	9.1(c)	<p>Modernise and update provisions whilst ensuring existing conditions are maintained, except where conditions are enhanced. A focus on but not limited to: ...</p> <p>9.1(c) Changes that have occurred with ET and CFR...</p>	Aligning the RMS and TfNSW Awards	Job Security/Award Modernisation	<p>See <b>Appendix: Job Security and Improved Consultation Clauses 28 April 2022</b></p> <p>- TfNSW Award Unions draft clause 8.3(c)</p>
17.	9.1(c)	9.1(c)	<p>Modernise and update provisions whilst ensuring existing conditions are maintained, except where conditions are enhanced. A focus on but not limited to: ...</p> <p>9.1(c) Changes that have</p>	Aligning the RMS and TfNSW Awards	Job Security/Award Modernisation	<p>See <b>Appendix: Job Security and Improved Consultation Clauses 28 April 2022</b></p> <p>- TfNSW Award Unions draft clause 8.4</p> <p>- RMS Award Unions draft clause 7.6 (a) and (b)</p>

			occurred with ET and CFR...			
18.	9.1(c)	9.1(c)	<p>Modernise and update provisions whilst ensuring existing conditions are maintained, except where conditions are enhanced. A focus on but not limited to: ...</p> <p>9.1(c) Changes that have occurred with ET and CFR...</p>	Aligning the RMS and TfNSW Award	Job Security/Award Modernisation	<p>See <b>Appendix: Job Security and Improved Consultation Clauses 28 April 2022</b></p> <p>-RMS Award Unions draft clause 7.7 (b)</p>

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TfNSW	RMS
<p>8.1 There shall be effective means of consultation on matters of interest and concern, both formal and informal, at all levels of the organisation, between the parties to this award and Employees.</p> <p>8.2 Senior management representatives of the Employer and nominees of each of the Union parties will meet quarterly as a consultative committee - and at other times as agreed - to consult on matters which have organisational wide impact or implications.</p>	<p>7.1 There shall be effective means of consultation on matters of interest and concern, both formal and informal, at all levels of the organisation, between the parties to this Award and Employees. This includes but is not limited to, monthly Peak Consultative Committee meetings unless varied by agreement.</p>
<p><u>8. XX The Employer is committed to consultation on workplace policies and such policies will continue to have effect until such time as the Employer amends, replaces or rescinds policy.</u></p>	<p>7.2 The Employer is committed to consultation on workplace policies and such policies will continue to have effect until such time as the Employer amends, replaces or rescinds policy.</p>
<p>8.3 The Consultative Committee will also consider strategic workforce planning issues and implementation, including securing a workforce for the future, the role of labour hire in delivering that workforce (subject to subclause 14.2) and the capability requirements for that workforce. Relevant information will be provided to the Unions to facilitate such discussions, such as:</p> <p>(a) Divisional organisation structures;</p> <p>(b) Active and budgeted positions by classification by Division, grade and location;</p> <p>(c) Available breakdown figures for full-time, part time, casual and temporary employees, as well as numbers, usage and length of hire of labour hire, <u>contractors and project work.</u></p>	<p>7.3 The Consultative Committee will also consider strategic workforce planning and implementation issues. Relevant information will be provided to the Unions to facilitate these discussions such as:</p> <p>(i) Divisional organisation structures;</p> <p>(ii) Establishment details showing position by classification by Division, grade and location;</p> <p>(iii) Available breakdown figures for full time, part time, casual and temporary employees, as well as numbers, usage and length of hire of contractors and labour hire.</p> <p>(iv) Other relevant information concerning the Employer's use of contractors, supplementary labour, and project work.</p>
<p>8.4 When a change is proposed that will have an impact upon the working arrangements of Employees, the Employer will <u>notify and</u> consult with Employees and their employee representatives.</p> <p><u>(a) the employer will notify the employee representatives of the change with enough notice, that will be greater than one business day, to allow the employee representatives to attend meetings where the impact on working arrangements is being communicated to employees.</u></p> <p>(ba) <u>To enable genuine consultation</u> The Employer will provide relevant information, including but not limited to, that referred to in clause 8.3, about:</p>	<p><del>7.65-</del> Employer to Notify</p> <p>(a) <del>Where the Employer intends to introduce changes in production, program, organisation, structure or technology that are likely to have significant effects on Employees, the Employer undertakes to notify the employees who may be affected by the proposed changes and the relevant Branch or State Secretary of the Union(s).</del></p> <p><u>When a change is proposed that will have an impact upon the working arrangements of Employees, the Employer will notify and consult with Employees and their employee representatives</u></p>

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<p>(i) The proposed change;</p> <p>(ii) Effects on the Employees; and</p> <p>(iii) The rationale for the proposed changes based on business needs. <u>Including consultant reports utilised to inform or instigate the proposed workplace change.</u></p> <p>(iv) How the changes comply with 14.2 (Preference for Direct Permanent Employment) and 15 (Contractors and Labour Hire) of the Award.</p> <p><u>(v). how the number of positions in the structure ensure the Employer is resourcing the business needs and objectives</u></p> <p>(cb) The Employer will meet with the affected Employees and their Employee Representative and discuss <u>in good faith</u> the effects of the changes on the Employee(s) concerned and measures proposed to avoid or otherwise minimise any possible adverse impact on affected Employees <u>and to give prompt consideration to matters raised by the Employees and/or the Employee Representative in relation to the changes.-</u></p> <p><u>(d) discussions shall commence as early as practicable and before the employer has made a final decision to adopt and implement any changes referred to in subclause 8.4.</u></p> <p>(ee) The Employees(s) will be given an opportunity and reasonable time to provide input and discuss the proposed change with their Employee Representatives, to consider the change and respond to any proposed changes.</p> <p>(fd) The Employer will <u>genuinely consider and</u> respond <u>in writing</u> to any feedback provided by Employees and their Employee Representatives.</p>	<p>(b) Without limiting the generality thereof, <del>significant effects</del><u>impacts upon working arrangements</u> includes termination of employment, changes in the composition, operation or size of the workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or relocation or transfer of employees to other work or locations, the restructuring of jobs, changes to the working arrangements of Employees, changes to employment conditions (for example, due to legislative or regulatory change), the use of contractors to perform work normally performed by employees covered by this Award and the legal or operational structure of the business</p> <p><u>(c) the employer will notify the employee representatives of the change with enough notice, that will be greater than one business day, to allow the employee representatives to attend meetings where the impact on working arrangements is being communicated to employees.</u></p> <p>7.76- Employer to Consult</p> <p>(a) The Employer undertakes to discuss with the Employees affected and the Union(s) in good faith the introduction of any change referred to in subclause 7.5, the effects the changes are likely to have on Employees, measures to avert or mitigate any adverse effects of such changes on Employees and to give prompt consideration to matters raised by the Employees and/or the Union in relation to the changes.</p> <p>(b) The discussion shall commence as early as practicable and before the Employer has made a final decision to adopt and implement any changes referred to in subclause 7.5. For the purposes of such discussion, the Employer undertakes to provide in writing to the Employees concerned and the Union, appropriate relevant information about such changes including the nature of the proposed changes, what they are intended to achieve <del>and</del> the expected effects of the changes on Employees, <u>consultant reports utilised to inform or instigate the proposed workplace change, how the changes comply with XX (Preference for Direct Permanent Employment) and XX (Contractors and Labour Hire) of the Award, and how the number of positions in the structure ensures the Employer is resourcing the business needs and objectives-</u></p>
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	<p>(c) The Employees will be given an opportunity and sufficient time in which to provide input to the Employer and discuss the proposed change and any measures proposed to avoid or otherwise minimise any possible adverse impact on affected Employees.</p> <p>(d) The Employer will genuinely consider and respond in writing to any feedback provided by Employees and the Employer Representatives.</p> <p>(e) Where, subject to the provisions of this Clause, the Employer makes a final decision to implement change in the workplace and the Union disagrees with that decision, subject to there being no stoppage of work as a result of the decision of the Employer, the Union may refer the matter in dispute to the NSW Industrial Relations Commission for conciliation and/or arbitration in accordance with the Dispute Resolution Procedure in clause 5 of this Award.</p>
<p>8.5 The Employer <del>must be committed to</del> implement <del>ing</del> change in accordance with the NSW Public Service Agency Change Management Guidelines to improve the process of assisting employees when impacted by reform. When developing a plan for change, the Employer will address the impact on affected employees in accordance with the above Guidelines and subclause 14.1.</p> <p><del>8.6 To ensure compliance with clause 8.5 the employer commits to the following:</del>  <del>(a) not advertising roles externally whilst there are affected employees, and existing excess employees who are suitable for the role.</del>  <del>(b) affected employees and existing excess employees must be provided with priority assessment in accordance with the NSW Case Management and Redeployment Guidelines. Therefore, they are not be required to undergo a competitive recruitment process. Rather, they will be suitably assessed prior to any other applicants.</del></p>	<p>7.4 the Employer <del>must be committed to</del> implement <del>ing</del> change in accordance with the NSW Public Service Agency Change Management Guidelines to improve the process of assisting employees when impacted by reform. When developing a plan for change, the Employer will address the impact on affected employees in accordance with the above Guidelines and clause 7.3.</p> <p><del>7.5 To ensure compliance with clause 7.4 the employer commits to the following:</del>  <del>(a) not advertising roles externally whilst there are affected employees, and existing excess employees who are suitable for the role.</del>  <del>(b) affected employees and existing excess employees must be provided with priority assessment in accordance with the NSW Case Management and Redeployment Guidelines. Therefore, they are not be required to undergo a competitive recruitment process. Rather, they will be suitably assessed prior to any other applicants.</del></p>
<p><del>8.7-6</del> The Employer shall consult with Employees, Employee Representatives and other parties to this award prior to the introduction of any technological change that impacts on the working arrangements of Employees.</p>	<p><del>7.8</del> The Employer shall consult with Employees, Employee Representatives and other parties to this award prior to the introduction of any technological change that impacts on the working arrangements of Employees.</p>
<p><del>8.87</del> Where matters cannot be resolved through the consultative process, <del>including where the employer makes a decision to implement change in the workplace</del></p>	<p><del>7.76</del> (e) Where, subject to the provisions of this Clause, the Employer makes a final decision to implement change in the workplace and the Union disagrees</p>

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<p><u>and the Employee Representatives disagrees with that decision.</u> any party may utilise the Dispute Settlement Procedure at clause 5.</p>	<p>with that decision, subject to there being no stoppage of work as a result of the decision of the Employer, the Union may refer the matter in dispute to the NSW Industrial Relations Commission for conciliation and/or arbitration in accordance with the Dispute Resolution Procedure in clause 5 of this Award.</p>
<p>14.8 Temporary Employment</p> <ul style="list-style-type: none"><li>(a) A Temporary Employee shall be entitled to the same salary and conditions as permanent employees in the same classification.</li><li>(b) Temporary Employees are not entitled to redundancy payments.</li><li>(c) Subject to subclause 14.2, an engagement of a Temporary Employee may be on either a full-time or part-time basis and in the following circumstances:<ul style="list-style-type: none"><li>i. a fixed period of not more than 24 months in the one role (subject to ii to iv following); or</li><li>ii. for a specified project; or</li><li>iii. for an entry level program, including for trainees, graduates, scholars, cadets or VET cadets; or</li><li>iv. to backfill a role temporarily vacated by a Permanent Employee, including for maternity relief, secondments or career breaks.</li></ul></li><li>(d) A Temporary Employee engaged under subparagraph 14.8(c)(i) will be made permanent after 24 continuous months in the one role. This provision came into effect on 24 July 2019\.</li><li>(e) Where a Temporary Employee has been engaged under subparagraph 14.8 (c)(iv) and the role is subsequently permanently vacated, 14.8(d) shall apply.</li><li>(f) The employer will not seek to terminate a temporary engagement to avoid the provisions of paragraph 14.8(d).</li></ul>	<p>13.6 Temporary Employment</p> <ul style="list-style-type: none"><li>(a) A Temporary Employee shall be entitled to the same salary and conditions as permanent Employees in the same classification.</li><li>(b) Temporary Employees are not entitled to redundancy payments.</li><li>(c) Subject to subclause 13.6(d), an engagement of a Temporary Employee may be for a fixed period of not more than 24 months, for a specific project, or for maternity relief of not more than 24 months, on either a full-time or part-time basis.</li><li>(d) Where a Temporary Employee is engaged for a fixed period of more than 24 months the Employee will be made permanent.</li></ul>

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<p>14.9 The Employer may offer permanent employment to a Temporary Employee after 12 continuous months' employment in a role (the Original Role), subject to the following criteria:</p> <ul style="list-style-type: none"><li>(a) the Employee was initially employed in the Original Role following an advertised merit process;</li><li>(b) the permanent appointment is to be to a role that is of equivalent grade (unless the Employee agrees to a lower grade) and equivalent capabilities to the Original Role;</li><li>(c) the Employee has demonstrated satisfactory performance in the Original Role under the Employer's performance management system and has demonstrated satisfactory conduct.</li><li>(d) the Employee has the relevant capabilities, skills, qualifications and experience to enable the Employee to perform the duties of the role.</li></ul>	
<p>Clause 15 Contractors and Labour Hire</p> <p>(a) Consistent with subclause 14.2 the Employer acknowledges the importance of security of employment and will use direct permanent employment as the preferred and predominant staffing option for the Employer.</p> <p>(b) <u>The Employer recognises that the use of contractors and labour hire may affect the job security and capability development opportunities of Employees covered by this Award.</u></p> <p>(c) Whilst the Employer may be required to utilise contractors or labour hire for a variety of reasons, the Employer will not use such labour to undermine the terms and conditions of employees under this Award.</p> <p>(de) In considering whether to engage contingent labour <u>(contractors or labour hire)</u>, the Employer will consider whether:</p> <ul style="list-style-type: none"><li>i. there are any existing Employees who are suitable and available to carry out the work;</li><li>ii. there is an urgent or pressing need to meet business requirements; or</li></ul>	<p>15.6 Contractors and Labour Hire</p> <ul style="list-style-type: none"><li>(a) Consistent with subclauses 15.1 and 13.1 of this Award, the Employer acknowledges the importance of security of employment and will use direct permanent employment as the preferred and predominant staffing option for the Employer.</li><li>(b) The Employer recognises that the use of contractors and labour hire may affect the job security and capability development opportunities of Employees covered by this Award.</li><li>(c) In considering whether to engage contractors or labour hire employees, the Employer will consider and seek to utilise any existing Employees within the organisation who are suitable and/or available to carry out the work and/or there is a pressing need to meet business requirements, <u>and consider the length of engagement required.</u></li><li>(d) <u>Labour hire and contractors will not be utilised for work which will be available for greater than three months. Where the requirement for work exists for longer than three months the employer will engage an</u></li></ul>

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<p>iii. there are specialist skill and/or capability requirements cannot be met from within the agency.</p> <p>iv. <u>the length of engagement. Contingent labour will not be utilised for work which will be available for greater than three months. Where the requirement for work exists for longer than three months the employer will engage an individual in a form of direct employment in accordance with clause 14 of the Award..</u></p> <p><u>(e) Where contingent labour is utilised for greater than three months the individual undertaking the work is to- be offered direct employment with the employer.</u></p> <p>(f) On being advised or otherwise becoming aware that a contractor, sub-contractor or labour hire company is not applying the relevant industrial instrument rates of pay or other relevant industrial instrument conditions or complying with any other statutory provisions, the Employer will immediately engage with the contractor, sub-contractor or labour hire company to take the necessary action to address the situation. Should the contractor, sub-contractor or labour hire company continue to breach the provision then the Employer will take appropriate action which may include termination of the contract</p>	<p><u>individual in a form of direct employment in accordance with clause 13 of the Award..</u></p> <p><u>(e) Where labour hire and contractors are utilised for greater than three months the individual undertaking the work is to be offered direct employment with the employer.</u></p> <p>(f) On being advised or otherwise becoming aware that a contractor, sub-contractor or labour hire company is not paying modern award or other relevant industrial instrument rates, providing modern award or other relevant industrial instrument conditions or complying with any other statutory provisions, the Employer will take the necessary action to ensure that the situation is immediately rectified. Should the contractor, sub-contractor or labour hire company continue to breach the provision then the Employer will ensure that appropriate action including termination of contract is implemented, if appropriate.</p>
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