



MUNICIPAL WORKS OPERATIONS ASSOCIATION

**LOCAL GOVERNMENT SECONDMENT
PROGRAM**



The MWOA is a non for profit association and listed below are our core organisational purposes. We have elected to assist in the personal and professional development of members by designing and implementing a “Local Government Secondment Program”. We are not dictating to any person or council that this document is how the final agreement should look, but merely assisting in the process with participating councils agreeing on each other’s responsibilities and accepting any risk and liability.

**On behalf of the Board & Directors
Municipal Works Operations Association**

**CEO Stephen M Robertson
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The Purpose for the MWOA:

The MWOA provides networking through the seven branches strategically positioned throughout Victoria for members so they can be a part of a vibrant, proactive and diverse group.

Mission Statement:

The MWOA promotes industry awareness and professionalism throughout all levels of the Local Government Industry through its effective communication and networking opportunities for members working within, and suppliers delivering services to, local government and the community.

Organisational Purpose Statement:

To provide our members with professional representation and support through effective industry communication, to Local Government and all Government Public Works authorities, and other strategically important organisations. To create an environment conducive to growth and relevance, maintaining a commercial and practical approach with valued service.

Strategic Vision:

To consider the main areas of activity, for the development of a viable and sustainable Association, for the delivery of high quality and appropriate services to all Members.

PARTICIPANTS PERSONAL DETAILS (USE BLOCK LETTERS)

Title: Mr Mrs Ms Miss Other: _____

Surname: _____

Name: _____

Address: _____

Suburb: _____ State _____ Post Code: _____

Mobile: _____ Telephone: _____

Email: _____

Council: _____

Position:

Management Endorsement: Please attach an official letter from management

Host Council: _____

Host Council Contact Details:

Host council letter of agreement:

Drivers Licence:

Number: _____

Verified: Please attach a copy of current licence

Qualifications:

Current Duties:

Medical History:

Contact Details In Case of Emergency:

Name: _____ Surname: _____

Mobile: _____ Relationship: _____

Secondment Duties:

Terms & Conditions

Employment Status:

This is a secondment of the employee by the employer council to the host council. The employee remains employed by the employer council, but works from the office of the host council, at the direction of the host council, for the period of the placement.

The employee will continue to accrue leave entitlements during the secondment, and there would be no break in the employee's period of continuous service under section 22 of the *Fair Work Act 2009*.

The employee will continue to be covered by the terms of the employer council's enterprise agreement (and not the host council's enterprise agreement), and any contract of employment with the employer council. There would need to be a letter establishing the placement as a temporary arrangement, or a short term variation of the employment agreement.

The employee will continue to be covered by the employer council's employment policies. The employee will be directed to comply with the host council's policies.

Reporting Arrangements:

The employee be assigned a manager at the host council, but continues to report back to their usual manager. This allows the employer council to comply with its occupational health and safety obligations, as discussed below.

If the employee will be absent at any time during the secondment, for example to take personal leave or compassionate leave, there needs to be a process for notifying both the host council, so that it can cover the absence, and the employer council, so that it can adjust the employee's leave balance. A further issue with personal leave or compassionate leave is that it might cause the length of secondments to be imbalanced.

Behaviour & Complaints:

To help to establish a framework for management of inappropriate behaviour, the employee should be directed to comply with both the employer council's code of conduct and the host council's code of conduct during the course of the placement.

Works Compensation:

Because the employee will remain employed by the employer council during the secondment, and has been directed to work at the host council, their time at the host council should be viewed as a part of their employment with the employer council.

As a result, if the employee suffers an injury during the course of the placement, that injury will be "arising out of or in the course of" the employment with the employer council, with the result that the employee will be entitled to make a claim for workers compensation against the employer council under section 39 of the WIRC Act.

The claim should not ordinarily have an impact on the host council's insurance premium, but the employer council's insurance premium may increase. However, if the employee's

injury arises from negligence or a breach of statutory duty on the part of the host council, the host council may be liable to indemnify the employee council's workers compensation insurer under section 369 of the WIRC Act.

Duties of Employer Council:

Section 21 of the OHS Act requires that an employer provide and maintain a safe working environment for employees. This includes ensuring that there are safe systems of work in place, and that the employee has adequate training, instruction, and supervision in the performance of their tasks.

The fact that the employee is away from the employer council's workplace, performing duties in a workplace controlled by the host council, makes this duty harder to satisfy, but does not absolve the employer council.

To discharge this duty, before the secondment the employer council will need to satisfy itself that the host council has safe systems of work, and appropriate procedures, in relation to the work which the employee will be performing while on secondment. It will also need to be satisfied that the host council will provide the employee with a proper induction into its relevant safety systems, and provide the necessary level of supervision and training.

In addition, the employer council will need to maintain at least some level of supervision over the employee. That may be through maintaining contact with the employee, and ensuring that they can discuss any concerns that they might have regarding their working arrangements.

Duties of host Council:

The host council would owe duties under sections 23 and 26 of the OHS Act. It may also owe duties under section 21.

OH&S Act:

Section 22 of the OHS Act relevantly requires an employer to monitor the health of employees, and ensure that employees have access to complaints processes.

To a large extent, this duty can be discharged by the employer council though complying with its supervision obligations under clause 21 of the OHS Act.

Section 23 of the OHS Act requires an employer to ensure that persons other than their employees are not exposed to risks to health and safety arising from the conduct of the employer's undertaking.

The employee on secondment would be a person who is not an employee of the host council, but can be affected by its undertaking.

To discharge this duty, the host council would need to take the same sorts of measures that it would take to ensure the safety of its employees, such as ensuring that there are safe systems of work in place, and ensuring that the employee on secondment receives suitable training, information and supervision to ensure that they are not exposed to risks while they are performing their duties.

To facilitate this, the employer council would need to direct the employee to comply with all safety instructions and procedures from the host council.

Section 26 of the OHS Act requires a person who has management or control of a workplace to ensure that the workplace itself is safe. The host council would be the person in management or control of the workplace where the employee on secondment is working.

To discharge this duty, the host council would not need to take any additional measures to those it would ordinarily take to ensure the safety of its workplace.

Vicarious liability:

The employer council will remain vicariously liable for the actions of the employee as long as those actions occur in the course of the performance of the employee's duties.

Participating councils should raise the proposed secondment with their insurance brokers to ascertain:

- The impact, if any, of the employee's absence from the workplace on the employer's cover for the employee's actions; and
- Whether there are any steps which the insurer needs the employer to take to minimise its potential exposure

Intellectual property:

Intellectual property produced by an employee will usually belong to the employer.

Privacy:

The secondment, the host council may disclose personal information in the host council's possession to the employer council's employee. This constitutes the use and disclosure of personal information to a third party which is regulated by the *Privacy and Data Protection Act 2014* (Vic).

The terms and conditions of secondment which each council must accept should contain a provision requiring each council to use the personal information held by the host council strictly in accordance with the *Privacy and Data Protection Act 2014* (Vic).

Confidentiality

The terms and conditions of secondment which each council must accept could contain a provision requiring each council to keep confidential the host council's confidential information.

Instrument of Delegations:

Care must be taken to ensure that the authorised person signs off on any work performed during the secondment

Registrations etc:

Care will need to be taken to ensure that the employee has all necessary registrations, accreditations, licences and approvals to work for the host council. For example, there are be circumstances in which an employee may need a working with children check when working with the host council, even though the role at the employer council may not have required it.

Conflicts of interest

The employee will need to take additional care not to work on matters on which he or she has a conflict of interest.

Travel allowances, expense, and higher duties:

It will be council’s responsibility to consider any of the above arrangements and allowances as per their Enterprise Agreements

Performance and Goals:

The secondment and council are to determine if any performance or goals are to be pre determined

Termination:

There would need to be some process in place for the councils to terminate the placement early, whether because of concerns about an employee’s behaviour, or because of unforeseen circumstances at either council.

I acknowledge that the above terms and conditions of secondment, are the responsibility of the participating councils, and participate at their own risk. The said councils may consider seeking independent advice regarding the arrangements.

The MWOA’s involvement is with designing and implementing the secondment and accepts no risk, and the MWOA will not accept and liabilities or legal liabilities in these arrangements.

Host Council Manager:

Name/Title

Signed

Date

Host council Secondment:

Name/Title

Signed

Date

Participating Council:

Name/Title

Signed

Date

SECONDMENT PERIOD

Commencement Date: ___ / ___ / ___

Completion Date: ___ / ___ / ___