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NEW SOUTH WALES  
**INDUSTRIAL GAZETTE**

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# CONTENTS

Vol. 386, Part 4

6 March 2020

Pages 1040 — 1258

		Page
Awards and Determinations —		
Crown Employees Conservation Field Staff Officers, (Department of Industry, Skills, and Regional Development and NSW Office of Environment and Heritage) Reviewed Award 2019	AIRC	1040
Crown Employees (NSW Department of Justice) - Museum of Applied Arts and Sciences Electrical Preparators Award 2019	AIRC	1068
Crown Employees (Security and General Services) Award 2019	AIRC	1074
Farm Assistants (Department of Education and Communities) Wages and Conditions Award 2019	AIRC	1096
Health Employees Dental Officers (State) Award 2019	AIRC	1109
Health Industry Status of Employment (State) Award 2019	AIRC	1116
Hospital Scientists (State) Award 2019	AIRC	1121
Public Hospital Medical Officers (State) Award 2019	AIRC	1165
Public Hospitals Library Staff (State) Award 2019	AIRC	1201
Public Hospitals Medical Record Librarians (State) Award 2019	AIRC	1206
Teachers' (NSW Health Early Childhood Service Centres) Salaries and Miscellaneous Conditions Award 2019	AIRC	1210
Crown Employees (General Assistants in Schools - Department of Education) Award	RIRC	1219
Restaurants, &c., Employees (State) Award	RIRC	1227
Obsolete Awards —		
Crown Employees (School Administrative and Support Staff, General Assistants in Schools) Standdown Award	ROIRC	1255
INDEX FOR VOLUME 386		1256

END OF VOLUME 386 OF THE N.S.W. INDUSTRIAL GAZETTE

**CROWN EMPLOYEES CONSERVATION FIELD STAFF OFFICERS,  
(DEPARTMENT OF INDUSTRY, SKILLS, AND REGIONAL  
DEVELOPMENT AND NSW OFFICE OF ENVIRONMENT AND  
HERITAGE) REVIEWED AWARD 2019**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Industrial Relations Secretary.

(Case No. 204467 of 2019)

Before Chief Commissioner Kite

4 July 2019

**AWARD**

Clause No.      Subject Matter

**PART A**

- 1. Title of Award
- 2. Area, Incidence and Duration
- 3. Definitions
- 4. Parties
- 5. Supersession
- 6. Objectives of Award
- 7. No Extra Claims
- 8. Contract of Employment
- 9. Classifications and Rates of Pay
- 10. Hours of Work
- 11. Overtime
- 12. Rostered Days Off
- 13. Leave
- 14. Allowances to Reimburse Expenses
- 15. Inclement Weather
- 16. First-Aid and Health and Safety Issues
- 17. Work Apparel
- 18. Tools and Protective Clothing
- 19. Settlement of Disputes
- 20. Anti-Discrimination
- 21. Counselling and Discipline
- 22. Contractors' Protocol
- 23. Agreed Procedures for Market Testing and Contracting Out
- 24. Ongoing Award Review
- 25. Deduction of Union Membership Fees

**PART B**

**MONETARY RATES**

- Schedule 1 - Wage Rates
- Schedule 2 - Competency and Grading Alignment
- Schedule 3 - Allowances

## **PART A**

### **1. Title of Award**

This Award, made pursuant to Part 1, Division 1, clause 10 of the *Industrial Relations Act* 1996, shall be known as the Crown Employees Conservation Field Staff Officers, (Department of Industry, Skills, and Regional Development and NSW Office of Environment and Heritage) Reviewed Award 2019.

### **2. Area, Incidence and Duration**

- 2.1 The employees regulated by this Award shall be entitled to the conditions of employment as set out in this Award and, except where specifically varied by this Award, existing conditions are provided for under the *Government Sector Employment Act* 2013, Government Sector Employment Regulation 2014, the Government Sector Employment Rules 2014, Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 and the Crown Employees (Public Sector - Salaries 2019) Award; or any Awards varying or replacing these Awards.
- 2.2 This Award rescinds and replaces the Crown Employees Conservation Field Staff Officers, (Department of Industry, Skills, and Regional Development and NSW Office of Environment and Heritage) Reviewed Award 2018 made on 1 February 2019 and all variations thereof.
- 2.3 This award has a nominal term of 12 months from 1 July 2019 with any increases to pay and work related allowances effective from the first full pay period on or after 1 July 2019.

### **3. Definitions**

- (i) "Act" means the *Government Sector Employment Act* 2013.
- (ii) "Appropriate Secretary" means - the Secretary of the Department of Industry, Skills and Regional Development or the Chief Executive of the New South Wales Office of Environment and Heritage.
- (iii) "Australian Recognition Framework (ARF)" means the national recognition of vocational education and training developed by the Australian National Training Authority.
- (iv) "Australian Qualification Framework (AQF)" means the certification system established under the Australian Recognition Framework (ARF).
- (v) "Casual employee" means an employee engaged for a limited duration and paid on an hourly basis who receives a casual loading in lieu of all paid leave entitlements, including payment for public holidays.
- (vi) "Conservation Field Officer" means an employee of the Department or the Office as defined in sub-clause (iii), engaged before the making of this Award in one of the classifications of:

Mechanical Tradesperson

Fitter

Electrician

Plant Electrician

Painter

Carpenter

Plumber

Welder

Plant Operator  
Crane Operator  
Tractor Operator  
Transport Driver  
Labourer  
Machineman  
Driller  
Cableway Operator  
Dogman  
Bore Gaugers Assistant  
Construction Worker (General)  
Rigger  
Driller  
Drill Operator  
Pegman  
Ganger  
Surveyors Field Hand  
Farm Assistant  
Sand Drift Worker  
Nursery Horticulturalist  
Cleaner  
Security Officer  
General Service Officer  
Canteen Worker  
Earthmoving Operator

or who after the date of operation of this Award were assigned to a role as Conservation Field Officers but does not include any person who resigned or was terminated prior to that date.

- (vii) "Employee" means and includes all persons employed on an ongoing full time, ongoing part time, temporary or casual basis under the provisions of the *Government Sector Employment Act 2013*, the *Government Sector Employment Regulation 2014* and the *Government Sector Employment Rules 2014* who are assigned to a role classified under this Award in the Department or the Office.

- (viii) "Employer" means the Secretary of the Treasury established under the *Government Sector Employment Act 2013*.
- (ix) "Industrial Relations Secretary" means the Secretary of the Treasury, as established under the *Government Sector Employment Act 2013*.
- (x) "Ministerial Leave Conditions" means the Uniform Leave Conditions for Ministerial Employees referred to in clause 13 Leave Conditions.
- (xi) "Ongoing full-time employee" means an employee assigned to role on an ongoing full-time basis under the provisions of the *Government Sector Employment Act 2013*, the *Government Sector Employment Regulation 2014* and the *Government Sector Employment Rules 2014*.
- (xii) "Ongoing Part-time employee" means an employee, subject to the provisions of the *Government Sector Employment Act 2013*, the *Government Sector Employment Regulation 2014* and the *Government Sector Employment Rules 2014*, who is engaged for less than 38 hours per week and who receives the same range of entitlements as an ongoing full-time employee, including sick leave and annual leave, but on a pro rata basis in proportion to the hours worked. Ongoing Part-time employees do not receive a casual loading.
- (xiii) "Reasonable time limits" means sufficient time for all parties to familiarise themselves with the nature of the perceived problems taking into consideration the isolated situation in which these employees work.
- (xiv) "Regulation" means the *Government Sector Regulation 2014*.
- (xv) "Role" means a role assigned to an employee under the provisions of the *Government Sector Employment Act 2013*, *Government Sector Employment Regulation 2014* and the *Government Sector Employment Rules 2014*.
- (xv) "Rules" means the *Government Sector Employment Rules 2014*.
- (xvi) "SBU" means the Single Bargaining Unit which is comprised of the parties to this Award as agreed by those parties.
- (xvii) "Temporary employee" means an employee engaged for a specific period or for a specific project.
- (xviii) "The Department or the Office" means the Department of Industry, Skills and Regional Development or the New South Wales Office of Environment and Heritage.
- (xix) "Union" means one or all of the union parties to the Award listed in clause 4(i) to (vii) below, as appropriate.

#### **4. Parties**

The parties to this Award are:

- (i) The Australian Workers' Union, New South Wales Branch.
- (ii) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union.
- (iii) Electrical Trades Union of Australia.
- (iv) Construction, Forestry, Mining and Energy Union.
- (v) United Voice.
- (vi) The New South Wales Plumbers and Gasfitters Employees' Union.

- (vii) Transport Workers' Union, and
- (viii) The Industrial Relations Secretary.

covering all Conservation Field Officers as defined in subclause 3(i) assigned to a role in the Department or the Office.

## **5. Supersession**

The terms and conditions of this Award replace the terms and conditions of the:

Surveyors Field Hands (State) Award (now rescinded)

Gangers (State) Award (now rescinded)

General Construction and Maintenance, Civil and Mechanical, Engineering, etc. (State) Award (now rescinded), with the exception that clause 25, Compensation for Travel Patterns, etc., will continue to apply where appropriate.

Plant Operators on Construction (PWD, etc.) Award (now rescinded)

Crown Employees (Transport Drivers, etc.) Award

Crown Employees (Skilled Trades) Award

Bore Gaugers and Assistants Agreement 5317 of 1977

Farm Assistants, Soil Conservation Service Agreement 2310 of 1981

Department of Conservation and Land Management Skilled Trades, etc. (Rates of Pay) Enterprise Agreement EA 146 of 1995

and all variations thereto, in so far as they apply to employees within the Department or the Office.

## **6. Objectives of Award**

- (i) The parties acknowledge that the Award is directed towards high quality and efficient services to the community and to the Department's and the Office's customers.
- (ii) The parties acknowledge that the Award seeks to enhance the image and profile of the Department and the Office.

These objectives will be achieved through:

- (a) The review of current work practices to ensure that they are customer-focused and maximise the efficient and effective use of resources.
- (b) The acceptance of change and commitment to continuous improvement and productivity by both the management of the Department or the Office and its Conservation Field Officers.
- (c) The development of an organisation based upon teamwork, flexibility, competence and opportunities for organisational and personal development.
- (d) The review of current work patterns leading to more flexible working arrangements which better meet employee and customer needs.
- (e) Achievement of these objectives is expected to deliver savings in operating costs and genuine productivity gains and the parties agree that the savings arising out of achievement of those

objectives will be shared with employees and will be reflected in the rates of pay prescribed under clause 9.

## **7. No Extra Claims**

- 7.1 Other than as provided for in the *Industrial Relations Act 1996* and the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014*, there shall be no further claims/demands or proceedings instituted before the NSW Industrial Relations Commission for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the Employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

The terms of the preceding paragraph do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing award provisions.

## **8. Contract of Employment**

### **8.1 Weekly Employment**

- (i) Ongoing Full-time and Ongoing Part-Time employees shall be engaged by the week. An employee's engagement may be terminated by either the employee or the appropriate Secretary providing one week's notice in writing or by payment or forfeiture, as the case may be, of one week's wage in lieu of notice, provided that, in the case of misconduct, an employee's engagement may be terminated without notice.
- (ii) Casual employees are engaged by the hour and the engagement of a casual employee may be terminated without notice.

### **8.2 Pay Period**

Ordinary pay shall be paid for the current fortnight. Adjustments for overtime, penalties and allowance will be paid either currently or a fortnight in arrears.

### **8.3 Payment Method**

Wages shall be paid via Electronic Funds Transfer (EFT) into a bank or other account, except in cases where this is not possible, in which case payment will be made by cheque.

### **8.4 Pay Advice**

Before or at the time of payment of wages, each employee shall be issued with a docket showing at least the gross amount of salary and the details of any deductions made from the employee's earnings, in accordance with section 123 of the *Industrial Relations Act 1996*.

### **8.5 Payment on Termination**

When an employee is terminated by the Department or the Office, the employee shall be paid all of the wages due at the time of the employee's termination on or before the employee's next normal pay day.

## **9. Classifications and Rates of Pay**

### **9.1 Rates of Pay**

- (i) The minimum weekly rates for ongoing full-time employees covered by this Award are as provided in Schedule 1.
- (ii) Should there be a variation to the *Crown Employees Wages Staff (Rates of Pay) Award 2019*, or an Award replacing it, during the term of this Award, by way of a wage increase or some other benefit, this Award will be varied to give effect to any such wage increase, or other benefit, with effect from the operative date of the variation, or the replacement Award.



## 9.2 Rates of Pay for Casual Employees

Casual employees will be paid per hour at the rate of 1/38th of the applicable weekly rate for a full-time employee at the same classification level plus, subject to the provisions of clause 12:

- (i) for ordinary hours of work, a casual loading of 24.6%, in compensation for the disadvantages of casual work and in lieu of all paid leave entitlements, including annual leave (where 24.6% is the cumulative percentage obtained by applying a 15% casual loading and then applying a 8.33% loading in lieu of annual leave);
- (ii) for overtime hours, a casual loading of 15%, in compensation for the disadvantages of casual work, with the hourly rate so obtained then being used as the ordinary rate of pay for the calculation of overtime;

provided that casual employees will be paid for a minimum of 4 hours for each engagement.

## 9.3 Rates of Pay for Part-time Employees

Ongoing part-time employees will be paid a weekly rate determined by the following formula:

applicable rate ongoing for full-time employee at   x    $\frac{\text{(weekly hours of the ongoing part-time employee)}}{38}$

at the same classification level

## 9.4 Classification of Employees

The classification of an employee will be determined by demonstrating the ability to undertake the capabilities provided for in the Government Sector Capabilities Framework as outlined in the role description and the level of responsibility and skill that the employee is required to exercise. The responsibilities and skills required to be exercised at each level in the classification structure are defined in Schedules 1 and 2.

## 9.5 Purpose of Classification Structure

The classification structure is designed to:

- (i) recognise capabilities and competencies achieved and used;
- (ii) group all employees covered by this Award into one of several (excluding trainees/apprenticeship) levels ;
- (iii) allow for career progression based on acquisition and use of capabilities and competencies as defined in subclause 9.4.

## 9.6 Supervision

Where an employee is required to supervise the work of other employees, they shall be paid the appropriate allowance according to Schedule 3. Provided that CFO Grade 5 and above will only be paid the allowance when supervising employees at their same level.

## 9.7 Classification Review Committee

The SBU shall establish a subcommittee to review applications for re-grading, subject to the provisions of the Act, Regulation and Rules and based on capabilities and competency acquisition and use. Subject to subclause 9.8, notification of the results of the review by the subcommittee to the appropriate employee salaries section will be sufficient to regrade the role and the employee assigned to the role.

## 9.8 Disagreements about Classification Levels

Any disagreement about the classification level in which an employee is placed will be processed using the dispute procedures contained at clause 19.

## 9.9 Above Level Assignments

When Conservation Field Officers are required to perform above level assignments, they shall be paid the appropriate above level assignment allowance in accordance with the provisions of clause 20 of the Government Sector Employment Regulation 2014 with the additional provision that it be paid after one day.

# 10. Hours of Work

## 10.1 Ordinary Hours of Work

Subject to subclauses 10.2 and 10.3:

- (i) The ordinary hours of work for all employees, other than casual employees, covered by this Award, shall be 8 hours per day worked over 57 days of each 12-week cycle.
- (ii) The standard span of hours will be between 6.00 a.m. and 6.00 p.m. on each working day Monday to Friday.

## 10.2 Variation of Ordinary Hours of Work

- (i) The standard span of hours may be varied by mutual agreement between the Department or the Office and the majority of affected employees in a particular group, region, district or section to suit operational needs.
- (ii) Ordinary hours of work may extend up to 10 hours on any one day.

## 10.3 Part-time Hours

Employees may work on a part-time basis, subject to the provisions of Part 5 of the *Industrial Relations Act 1996*, provided that:

- (i) the ordinary hours of duty are agreed between the employee concerned and the Department or the Office and fall within the same span of hours as applies or would apply to a full-time employee undertaking the duties concerned ;
- (ii) the ordinary working hours are fixed at not less than 4 hours per day worked; and
- (iii) the Department or the Office will inform the relevant Union of the hours fixed for part time employees. The Union shall have 7 working days from the date of being advised to object to the agreement through the dispute procedures prescribed by clause 19. The Union will not unreasonably object to an agreement under this subclause.

# 11. Overtime

## 11.1 Overtime Definition

Overtime is that time an employee is directed and authorised to work which is either:

- (a) in excess of 501 hours per settlement period ; and/or
- (b) outside the span of hours, as established for each employee under clause 11.

Overtime will only be payable for time on duty at the worksite (notwithstanding the provisions of subclause 14.3).

#### 11.2 Employees to Work Reasonable Overtime

- (i) Subject to paragraph 11.2(ii), the appropriate Secretary may require an employee to work reasonable overtime at overtime rates.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.

For the purposes of this subclause, what is unreasonable or otherwise will be determined having regard to:

- (a) any risk to employee health and safety;
- (b) the employee's prior commitments outside the workplace, particularly the employee's family and carer responsibilities, community obligations or study commitments;
- (c) the urgency of the work to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
- (d) the notice (if any) given by the appropriate Secretary of the overtime and by the employee of his or her intention to refuse it; and
- (e) any other relevant matter.

#### 11.3 Overtime Rates

Overtime will be paid for at the rate of time and a half for the first 2 hours and thereafter at double time, to be calculated on the basis of each completed unbroken period of overtime; provided that double time will be paid for all work performed on Sundays and double time and a half shall be paid for all work performed on public holidays.

#### 11.4 Minimum Periods

An employee who works overtime:

- (i) on a Saturday, Sunday or public holiday; or
  - (ii) by being recalled after leaving work, prior to their next scheduled period of ordinary time duty,
- shall be paid for no less than 4 hours' work, at the appropriate rate.

#### 11.5 Break from Duty

Following completion of overtime, an employee shall either:

- (i) be released from resuming ordinary duty for an unpaid period of 10 consecutive hours, excluding travel; or
- (ii) if required to resume or continue working without having had an unpaid break of 10 consecutive hours, excluding travel, be paid at the rate of double time until such a break is given.

Provided that, if the provision of an unpaid break under this subclause results in an employee performing less than 38 ordinary hours of duty in a week (paid at either ordinary or any other loaded rate), then any shortfall shall be paid at ordinary rates.

## 11.6 Meal Breaks

- (i) Employees who have not been afforded a meal break of at least 30 minutes in duration, commencing by 1.00 p.m., shall be paid overtime rates for all time worked between 1.00 p.m. and the time when they do receive a meal break of no less than 30 minutes.
- (ii) Employees working overtime will be entitled to a paid meal break of 30 minutes:
  - (a) after working 2 hours' overtime following the completion of a full period of ordinary time, where more than 2 hours' overtime is required ;
  - (b) after working every 4 hours' overtime without a meal break; and
  - (c) where overtime on a Saturday, Sunday or public holiday continues after 12.00 noon, the break will occur between 12 noon and 1.00 p.m.

## 11.7 Meal Allowance

Employees who are directed to work overtime and who, through insufficient notice, need to buy meals shall be paid a meal allowance for any meal break for which they are entitled under paragraph 11.6(ii) at the rates specified in Schedule 3.

For the purposes of this subclause, sufficient notice will be 12 hours prior to commencement of overtime or such lesser period as is reasonable in the circumstances.

## **12. Rostered Days Off**

### 12.1 Entitlement

- (i) An employee's ordinary hours will be worked on no more than 57 days in each 84-day cycle, Monday to Friday, with 3 days in each period being regarded as a rostered day off (RDO). Each day of paid leave taken and any public holidays occurring during any cycle of 4 weeks shall, for the purposes of this paragraph, be regarded as a day worked.
- (ii) An employee who has not worked 57 days in a complete 84-day cycle shall receive pro rata accrued entitlements for each day worked (or for each fraction of a day worked), payable for the rostered day off or, in the case of termination of employment, on termination.

### 12.2 Scheduling RDOs

- (i) An employee's RDO will be scheduled in advance of each cycle in which it occurs, taking into account the interests of employees and ensuring that the Department' or the Office's operational needs are met having regard to seasonal, climatic and workload factors.
- (ii) With a minimum of 12 hours' notice to affected employees and without penalty to the Department or the Office, RDOs may be rescheduled to satisfy operational needs. Agreed substitute RDOs are to be provided by mutual agreement and may only be deferred under circumstances of emergency.

### 12.3 Accumulating RDOs

- (i) Employees may accumulate (bank) up to 10 RDOs. Employees will be given an opportunity to take their accumulated RDOs at a time convenient to both the employee and the Department or the Office prior to the end of February in each calendar year.
- (ii) Employees may take their accumulated RDOs by agreement with the appropriate manager:
  - (a) consecutively to a maximum of 10 days; or

- (b) by working 9-day fortnights; or
- (c) by a combination of these 2 methods.

Employees may agree with their manager to defer taking some of their accumulated RDOs, provided that RDOs are not forfeited and provided that no more than 10 RDOs are accumulated at any one time.

- (iii) Once scheduled, the only circumstances in which a "banked" RDO will be required to be worked is fire or similar state of emergency.

### **13. Leave**

#### 13.1 General Provisions

The Department and the Office shall be bound by the provision of the Uniform Leave Conditions for Ministerial Employees, subject to the amendments and additions specified in this clause.

#### 13.2 Sick Leave

- (i) Sick leave will accrue on a calendar year basis, with the full annual entitlement being available from 1 January each year for employees employed as of that date.
- (ii) New employees who commence after 1 January will receive a pro rata credit for that proportion of the calendar year remaining. Sick leave taken during the first 3 months of employment will only be paid upon the completion of 3 months' service and following one month's continuous service without the taking of any sick leave, up to a maximum entitlement of 15 days' paid sick leave per annum.
- (iii) Unused sick leave entitlements will accrue, in accordance with Ministerial Leave Conditions.

#### 13.3 Parental leave

##### 13.3.A Parental leave for casual employees

- (i) Refer to the *Industrial Relations Act 1996 (NSW)*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996 (NSW)*.
- (ii) An appropriate Secretary must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of the appropriate Secretary in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

##### 13.3.B Communication during Parental Leave

- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the appropriate Secretary shall take reasonable steps to:
  - (a) make information available in relation to any significant effect the change would have on the status or responsibility level of the role the employee was assigned to before commencing parental leave; and

- (b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the role the employee was assigned to before commencing parental leave.
- (ii) The employee shall take reasonable steps to inform the appropriate Secretary about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee shall also notify the appropriate Secretary of changes of address or other contact details which might affect the appropriate Secretary's capacity to comply with paragraph 13.3.4.1 above.

#### 13.3.C Right to request

- (i) An employee entitled to parental leave may request the appropriate Secretary to allow the employee:
  - (a) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks
  - (b) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months
  - (c) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.
- (ii) The appropriate Secretary shall consider the request having regard to the Department's or the Office's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the organisation's business. Such grounds might include cost, lack of adequate replacement employee, loss of efficiency and the impact on customer service.
- (iii) The employee's request and the appropriate Secretary's decision made under 13.3C(i)(b) and 13.3C (i)(c) must be recorded in writing.
- (iv) Where an employee wishes to make a request under 13.3C(i)(a), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

### 13.4 Personal/Carer's Leave

#### 13.4A. Use of Sick Leave

- (i) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in section 13.4A(iii)(b), shall be entitled to use, in accordance with this subclause, any sick leave accruing from 1 January 1998 in terms of subclause 13.2 for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.
- (ii) The employee shall, if required, establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to:
  - (a) the employee being responsible for the care of the person concerned; and

- (b) the person concerned being:
  - (1) a spouse of the employee; or
  - (2) a de facto spouse who, in relation to the employee, is a person of the opposite sex to the employee who lives with the employee as the husband or wife of the employee on a bona fide domestic basis although not legally married to that person; or
  - (3) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
  - (4) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
  - (5) a relative of the employee who is a member of the same household where, for the purposes of this subparagraph:
    - I. "relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;
    - II. "affinity" means a relationship that one spouse because of marriage has to the relatives of the other; and
    - III. "household" means a family group living in the same domestic dwelling.
- (iv) An employee shall, wherever practicable, give the appropriate Secretary notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the appropriate Secretary by telephone of such absence at the first opportunity on the day of the absence.

#### 13.4.B Use of Annual Leave

An employee may elect with the appropriate Secretary's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

#### 13.4.C Unpaid Leave for Family Purpose

An employee may elect, with the consent of the appropriate Secretary, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in section 13.4A(iii)(b) who is ill.

#### 13.4.D Personal Carers entitlement for casual employees

- (i) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in clause 13.4A(iii)(b) of the Award who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.

This entitlement is subject to the evidentiary requirements set out below in (iv), and the notice requirements set out in (v).

- (ii) The appropriate Secretary and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement,

the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (iii) The appropriate Secretary must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of the appropriate Secretary to engage or not to engage a casual employee are otherwise not affected.
- (iv) The casual employee shall, if required,
  - (a) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
  - (b) establish by production of documentation acceptable to the appropriate Secretary or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (v) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the appropriate Secretary of their inability to attend for duty. If it is not reasonably practicable to inform the appropriate Secretary during the ordinary hours of the first day or shift of such absence, the employee will inform the appropriate Secretary within 24 hours of the absence.

#### 13.4.E Bereavement entitlements for casual employees

- (i) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause (iii)(b) of Clause 13.4C Personal/Carers Leave.
- (ii) The appropriate Secretary and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. 2 days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (iii) The appropriate Secretary must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an appropriate Secretary to engage or not engage a casual employee are otherwise not affected.

#### 13.5 Annual Leave

- (i) An employee may elect, with the consent of the appropriate Secretary, to take annual leave not exceeding 10 days in single-day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- (ii) Access to annual leave, as prescribed in subparagraph 13.5(i), shall be exclusive of any shutdown period provided for elsewhere under this Award.
- (iii) Where applicable, an employee and the appropriate Secretary may agree to defer payment of annual leave loading in respect of single-day absences until at least 5 consecutive annual leave days are taken.



### 13.6 Time Off in Lieu of Payment for Overtime

- (i) An employee may elect, with the consent of the appropriate Secretary, to take time off in lieu of payment for overtime at a time or times agreed with the appropriate Secretary within 12 months of the said election.
- (ii) Overtime taken as time off during ordinary time hours shall be taken at the ordinary-time rate, that is, an hour for each hour worked.
- (iii) If, having elected to take time as leave in accordance with subparagraph 13.6(i), the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
- (iv) Where no election is made in accordance with subparagraph 13.6(i), the employee shall be paid overtime rates in accordance with the Award.

### 13.7 Make-up Time

An employee may elect, with the consent of the appropriate Secretary, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Award, at the ordinary rate of pay.

### 13.8 Public Holidays

Payment (to the extent which would ordinarily have been paid had the day been a working day) shall be made for the following days:

New Year's Day, Australia Day, Anzac Day, Good Friday, Easter Monday, Queen's Birthday, Labour Day, Christmas Day, Boxing Day,

whenever celebrated, and all other gazetted holidays proclaimed to operate throughout the State of NSW.

### 13.9 Union Picnic Day

- (i) The picnic day will be held during the Christmas - New Year period.
- (ii) All employees will, as far as practicable, be given and will take this day as picnic day and shall be paid therefore as for 8 hours' work at the rates of pay prescribed in this Agreement.

### 13.10 Recreation Leave Management

- (i) At least 2 consecutive weeks of recreation leave shall be taken by an employee every 12 months, except by agreement in special circumstances.
- (ii) When an employee has achieved an accrual of 30 days' recreation leave (maximum accrual without review is 40 days), their manager or supervisor will discuss the management of that accrued recreation leave with the employee, so that it may be taken at a time which suits the operational needs of the Department or the Office and the needs of the individual.

## **14. Allowances to Reimburse Expenses**

### 14.1 Reimbursement of Meal Allowances - No Overnight Stay

Expenses incurred by employees when they are directed to travel on official business, including outside their normal working hours, without having to remain away from home base overnight and where meals are not provided by the Department or the Office, will be reimbursed to the level specified under this subclause. This entitlement to reimbursement is in lieu of any allowances which may otherwise apply

under subclause 11.7. Receipts will not be required to substantiate meal expenditures claimed up to the levels set out in Schedule 3.

#### 14.2 Reimbursement for Accommodation and Meals - Overnight Stay

- (i) Where the employee is required to stay overnight and accommodation is not provided by the Department or the Office, the employee will be paid the actual cost of living expenses upon production of receipts plus the incidental expenses allowance as per Schedule 3.
- (ii) Where the employee is required to stay overnight and accommodation is provided by the Department or the Office, the employee will be paid the appropriate daily meal allowance plus the incidental expenses allowance as per Schedule 3.

#### 14.3 Travelling Time

- (i) Time spent travelling on official business during ordinary hours of work is regarded as on duty and is comprehended within an employee's minimum rate of pay as prescribed by clause 10. Time spent travelling on official business outside ordinary hours will attract additional payment or compensation, at the employee's ordinary rate of pay, i.e. single time.
- (ii) Where an employee is required to commence and/or finish work at a temporary work location, that is, not at their normal depot or workshop, they may be required to travel up to 20 minutes each way in their own time. Any time spent travelling beyond 20 minutes will be compensated at the employee's ordinary rate of pay, i.e. single time.

#### 14.4 Camping Expenses

- (i) The Department or the Office may elect to provide camping facilities for which a camping allowance is paid. The camping allowance is as prescribed in Schedule 3.
- (ii) Where the employee is required to camp and camping facilities are not provided by the Department or the Office in accordance with paragraph 14.4(i), the camping equipment allowance prescribed in Schedule 3 shall be paid.

### **15. Inclement Weather**

#### Definition

For the purposes of this clause, "inclement weather" means wet weather or abnormal climatic conditions such as hail, cold, high winds, severe dust storms, extreme high temperature or any combination thereof.

#### 15.1 Continuation of Work

Appropriate functions can be carried out in inclement weather conditions, provided protective clothing of an agreed standard is issued. Decisions on working in inclement weather will rest with the supervisor after consultation with the employees affected and consistent with sound occupational health and safety principles:

### **16. First-Aid and Health and Safety Issues**

- (i) Where Practicable, No Less Than One of the Employees in Each Work Group Shall Have a Recognised Qualification in First-Aid.
- (ii) A standard first-aid kit shall be provided and maintained by the Department or the Office on all worksites to which this Agreement applies.
- (iii) In the event of any serious accident, happening or serious sickness occurring to any employee whilst at work, in the camp or going to or from the camp, the Department or the Office shall provide transport facilities to the nearest hospital or doctor at its expense.

- (iv) Any employee who is appropriately qualified and is approved by the appropriate Secretary to perform first-aid duty to any work group shall be paid a first-aid allowance in accordance with Schedule 3.

**17. Work Apparel**

The Department or the Office will issue, free of cost to employees, the following work apparel:

Item	Number
Trousers	4
Shirt (long/short sleeves)	4 (any combination)
Wool jumper	1
Jacket	1

One pair of overalls may be substituted for any pants/shirt combination.

2 sweat shirts may be substituted for the woollen jumper.

When requested by Workshop employees, up to 2 pairs of shorts may be substituted for up to 2 pairs of (long) trousers (to be worn under overalls)

Work apparel will be replaced on a fair-wear-and-tear, new-for-old-exchange basis.

It is a condition of employment that employees must wear the work apparel that is issued to them by the Department or the Office whilst on duty.

Employees will be responsible for the cost of laundering and maintenance of work apparel issue to them.

**18. Tools and Protective Clothing**

- (i) All tools required by employees shall be provided free of charge by the Department or the Office.
- (ii) The Department or the Office shall supply and the employee will wear, where appropriate, protective equipment and clothing as required by the *Work Health and Safety Act 2011* and Regulations as amended, e.g. hats, eye protection, overalls, etc.
- (iii) Protective equipment and clothing remains the property of the Department or the Office and, on resignation, retirement or dismissal, will be returned to the Department or the Office, if requested.
- (iv) An employee whose protective equipment and clothing is worn, spoiled or damaged due to the circumstances of their employment shall have the clothing replaced at no cost to the employee.

**19. Settlement of Disputes**

In accordance with the provisions of section 14 of the *Industrial Relations Act 1996*, the undermentioned procedures shall be applied in the settlement of disputes:

- (i) Reasonable time limits as defined in clause 3.vi must be allowed for discussion at each level of authority.
- (ii) The employee, employees or their representatives are required to notify the Department or the Office (the supervisor in the first instance) (in writing or otherwise) as to the substance of the grievance/dispute, requesting a meeting with the Department or the Office (Supervisor) for initial discussions and stating the remedy sought.
- (iii) Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and supervising staff, it shall be referred to the Department's, the Office or the employee's Director, Industrial Relations or other nominated employee who may arrange for the matter to be discussed with the Union or Unions concerned.

- (iv) Failing settlement of the issue at this level, the matter should be referred to senior management. If the matter remains unresolved and if appropriate, the assistance of the appropriate Secretary may be requested.
- (v) If the matter remains unsolved, it should be referred to the Industrial Relations Commission of NSW under section 130 of the *Industrial Relations Act 1996*.
- (vi) Whilst these procedures are continuing, no stoppage of work or any form of limitation of work (excepting safety-related issues) shall be applied.

## **20. Anti-Discrimination**

- 20.1 It is the intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 20.2 It follows that, in fulfilling their obligations under the dispute resolution procedure prescribed by this Award, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 20.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 20.4 Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- 20.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.
- (a) The Department or the Office and employees may also be subject to Commonwealth anti-discrimination legislation.
  - (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:  
  
"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

## **21. Counselling and Discipline**

This clause shall not apply where the actions and/or behaviour of an employee are such as to constitute grounds for dismissal in accordance with subclause 81.

### 21.1 Early Intervention and Informal Counselling

- (i) Poor performance should be dealt with as performance difficulties are identified. For example:

- (a) agreed goals and targets are not achieved within a reasonable or agreed time;
  - (b) agreed tasks are not performed; or
  - (c) identified skills required are not demonstrated.
- (ii) Informal counselling by the manager/supervisor of the employee should only occur under the following conditions:
- (a) The employee is given reasonable notice of the proposed informal counselling session and the purpose of the session.
  - (b) The manager/supervisor should confine the counselling session to work performance, informing the employee of identified deficiencies in their performance by reference to the employee's work plan. The employee should be given the opportunity to respond to this information, which may or may not resolve the problem. If unresolved, the manager/supervisor will verbally, and in writing, confirm the work performance issues requiring improvement, the targets to be achieved, and the timeframe. The employee will also be informed of the next steps to be followed if improvements to work performance are not achieved within the required timeframe.
  - (c) If possible, the outcome of informal counselling should be agreed by the employee and their manager/supervisor. If the employee disagrees with the manager/supervisor's views on their work performance and/or proposals to improve work performance, they are to be informed of their right to use the agency's grievance and dispute resolution procedures.
  - (d) Resolution of the employee's grievance or dispute may result in the following:
    - no further action in regard to the employee's work performance; or
    - implementation of informal counselling outcomes; or
    - formal counselling if the level of poor work performance cannot be effectively managed by informal counselling or the employee refuses to accept informal counselling outcomes; or
    - administrative action if the work performance has been caused by organisational, personal or external factors.

Early and effective information counselling in most areas will address work performance problem and inform the employee that poor work performance is unacceptable.

## 21.2 Formal Counselling and Development of a Performance Improvement Plan

- (i) Formal counselling would normally be required in situations where:
  - (a) performance is still poor after informal supervisory counselling;
  - (b) the poor performance is beyond the scope of informal supervisory counselling;
  - (c) the poor performance exists at a formal feedback point in the annual cycle of performance assessments; or
  - (d) poor performance exists at the end of a probationary period.
- (ii) A formal counselling session would normally be the responsibility of the employee's line manager and conducted:
  - (a) at a predetermined time and location;

- (b) with the employee having received adequate written notice of the purpose of the session, who will be in attendance, the poor work performance issues to be canvassed, proposed strategies to address poor work performance, consequences of continued poor performance and the purpose of a performance improvement plan;
- (c) in accordance with the agenda. If there is no identified organisational, personal or external factors or deficiencies that can be attributed to the poor work performance, an agreed documented performance improvement plan should be developed by the manager/supervisor and employee;
- (d) with a support person in attendance (such a Union delegate or colleague) if desired by the employee.

The performance improvement plan should include agreed dates for progress reviews and be signed by the manager/supervisor and employee.

The employee's rights in relation to formal grievance and dispute resolution procedures should be maintained which, depending on the outcome, may result in:

- (a) no further action in regard to the employee's work performance; or
  - (b) implementation of formal disciplinary action if the employee has not good cause or reason to accept formal counselling; or
  - (c) alternative administrative action if the poor work performance is the result of organisational, personal or external problems.
- (iii) At the end of a formal counselling session, the employee and their manager/supervisor should be fully aware of the future management of the employee's work performance.
  - (iv) This information should be summarised in the formulation of a performance improvement plan. The performance improvement plan should be signed and a time agreed for the follow-up meeting. A copy should be given to the employee.

### 21.3 Follow-up Review of the Performance Improvement Plan

- (i) At the agreed date, the supervisor and employee should review the employee's performance and the remedial action taken as a result of the performance improvement plan.
- (ii) Where it is agreed that the performance is satisfactory, this should be documented and future performance should continue to be assessed through the normal feedback cycle of the performance management system. However, consideration should be given to setting an interim date for further counselling to assist the employee if required.
- (iii) If the employee has failed to improve performance at the agreed date, the supervisor should consider further action including:
  - (a) extension of the review period;
  - (b) transfer to another location at an equivalent grade;
  - (c) use of sanctions; and
  - (d) disciplinary action.
- (i) As in the previous counselling session, the principles of maintaining accurate records, informing those involved and allowing adequate preparation time should be followed.

- (ii) Any decision or recommendation made should be conveyed to the employee in writing and include:
  - (a) the decision or recommendation;
  - (b) a summary of the procedure to date and the basis for the decision;
  - (c) the consequence of the decision and, if applicable, the legislative basis under which any further action is being taken; and
  - (d) advice on how to access further information and assistance if required.
    - (i) Where consideration is being given to either extension of the review period, or transfer, the matter should be discussed with the employee and agreement to proceed sought. Otherwise, the agency's grievance and dispute resolution mechanism could be utilised. Failure to agree does not in itself preclude the proposed course of action but should raise serious doubts about the potential for success.

#### 21.4 Use of Sanctions

- (i) If performance remains unsatisfactory after the formulation and review of the performance improvement plan, it may be appropriate to consider the use of sanctions. The use of sanctions is intended to bring about an improvement in the performance of an individual. Sanctions must be related to work performance only. They may include the following:
  - (a) extension of probation period;
  - (b) cancellation of increment;
  - (c) cancellation of flex time; and/or
  - (d) cancellation of access to study leave provisions.
- (ii) Intended or actual use of any sanction must be approved at the appropriate managerial level and documented both in a written statement to the employee and in the revised performance improvement plan.

#### 21.5 Misconduct Action

- (i) Where consideration is being given to disciplinary action, the procedures contained within the *Government Sector Employment Act 2013*, the *Government Sector Employment Regulation 2014* and the *Government Sector Employment Rules 2014* shall be followed.

### **22. Contractors' Protocol**

Where work is to be carried out by contract, including subcontract, the Department or the Office will:

- (i) ensure that all tenders are properly scrutinised to ensure that prospective tenderers would, if successful, be paying Award rates, providing Award conditions and complying with other statutory provisions and the Department's or the Office's specified standards, including but not limited to safe working procedures.
- (ii) on being advised or otherwise becoming aware that a contractor or subcontractor is not paying Award rates, providing Award conditions or complying with any other statutory provisions, the Department or the Office will take necessary action to ensure that the situation is rectified. Should the contractor or subcontractor continue to breach the provision, then appropriate action, including termination of contract, will, if appropriate, be implemented.

### **23. Agreed Procedures for Market Testing and Contracting Out**

Where work is presently carried out by the Department's or the Office's wages employees, the parties agree that the Government's policy on Service Competition will be observed.

### **24. Ongoing Award Review**

- (i) A Single Bargaining Unit (SBU) will be established to monitor the viability of this Award and ensure adherence to the terms contained herein.
- (ii) The appropriateness of this Award and the clauses contained within to the Department or the Office and the Unions will be reviewed by the SBU continually while this Award is operating.
- (iii) This Award will continue to operate after its nominal expiry date unless the Department or the Office or the Union provide one month's notice that it is to expire.
- (iv) The SBU will be responsible for initiating and formulating any amendments to be developed and approved to this Award or replacement Award.
- (v) An Award developed by the SBU under subclause 24(iv) will replace this Award on:
  - (a) the date of commencement of such Award; or
  - (b) another date,as agreed between the Department or the Office and Unions.

### **25. Deduction of Union Membership Fees**

- (i) The Union shall provide the appropriate Secretary with a schedule setting out Union fortnightly membership fees payable by members of the Union in accordance with the Union's rules.
- (ii) The Union shall advise the appropriate Secretary of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of Union fortnightly membership fees payable shall be provided to the Department or the Office at least one month in advance of the variation taking effect.
- (iii) Subject to subclauses 25(i) and 25(ii), the Department or the Office shall deduct Union fortnightly membership fees from the pay of any employee who is a member of the Union in accordance with the Union's rules, provided that the employee has authorised the Department or the Office to make such deductions.
- (iv) Monies so deducted from employee's pay shall be forwarded regularly to the Union together with the necessary information to enable the Union to reconcile and credit subscriptions to employees' Union membership accounts.
- (v) Unless other arrangements are agreed to by the appropriate Secretary and the Union, all Union membership fees shall be deducted on a fortnightly basis.
- (vi) Where an employee has already authorised the deduction of Union membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.



## PART B

### MONETARY RATES

#### Schedule 1 - Wage Rates

	From 1 July 2019	Effective from the first full pay period on or after 01 July 2019 (2.5%) Per Week
	Per week \$	Per Week \$
Trainee	910.30	933.10
Grade I	948.80	972.50
Grade II	1000.20	1025.20
Grade III	1053.60	1079.90
Grade IV	1082.80	1109.90
Grade V	1143.90	1172.50
Grade VI	1219.30	1249.80
Grade VII	1280.10	1312.10

#### Schedule 2 - Conservation Field Officers Proposed Tasks/Competency and Grading Alignment

This document outlines the work undertaken by Conservation Field Officers and the appropriate units of competence (competency) that aligns with the roles. The relevant tasks and competencies have been matched to the proposed grading structure.

Work groups have been established to assist all stakeholders to validate the proposed structure. The workgroups are:

Group 1	Farm Operations
Group 2	Water Operations
Group 3	Lands/Park Operations
Group 4	Dam Operations
Group 5	River Operations
Group 6	Fitters Operations
Group 7	Survey Field Operations
Group 8	Building Maintenance Operations
Group 9	Earthmoving Operations

The purpose of this document and format is to establish an understanding of the relationship between the roles undertaken and the competency achieved and the level or grade at which that role will be recognised.

The competencies identified for each work group and grade are nationally endorsed units of competence. The units have been selected from various industry packages as examples of units of competence which reflect the roles undertaken by employees covered by the new consent Award. The selection of the competencies for each grade will be subject to ongoing review and replacement as the nature of roles and technology changes. The identifying codes for each competency indicate the current source industry package. Example competencies have been accessed from packages which include:

Rural Production, RTE03

Amenity Horticulture, RTF03

Conservation and Land Management, RTD02

Water Industry, NWP01

Asset Maintenance, PRM04

Asset Security, PRS03

Civil Construction, BCC03

General Construction, BCG03

Metal and Engineering Industry, MEM98

Public Safety, PUA00

Forest and Forest Products Industry, FPI99

Extractive Industry, MNQ03

Laboratory Operations, PML99

Automotive Industry Retail, Service and Repair

Business Services, BSB01

Transport and Distribution, TDT02

Sea Food Industry, SFI04

Electrotechnology, UTE99

Property Development and Management, PRD01

National Public Services, PSP99

When reviewing the relevant section/s of this document, stakeholders need to confirm that the competencies are representative of the type of roles carried out in their respective workgroups. The refinement of identifying the specific competencies to roles will be addressed in the transitional arrangements which will proceed outside the formal Award.

Following is the grading structure and the proposed task/competency alignments for each work group:

**COMPETENCY/GRADING ALIGNMENT CONSERVATION FIELD OFFICERS**

Trainee

Entry/induction training to align with achieving Grade 2 competencies.

Grade 1

Achievement of a selected number of Entry Level competencies required.

Competencies selected are a mix of generic and operational competencies applied in a narrow range of areas.

This grade equates to about half of Grade 2 requirements.

Grade 2

Working at this level defines a competent Conservation Field Officer undertaking a moderate range of operational tasks.

Completion of competencies at this level predominantly fit with to national certificate AQF Level.

Grade 3

Achievement of limited number of operational competencies selected from a higher level.

Enables an employee to be recognised for specialisation which may not be required full-time.

Reflects work undertaken mainly at Level 2 with some additional competencies from Level Grade 3.

Grade 4

Achievement of additional competencies required.

Roles undertaken at this level relates to the application of relevant theoretical knowledge and a range of well-developed skills.

Predominantly equates with national certificate AQF Level 3.

Grade 5

Achievement of additional competencies required.

Roles undertaken at this level relates to the application of relevant theoretical knowledge and a range of well-developed skills. Some work is from a higher level.

Predominantly equates to a higher national certificate AQF Level 3.

Grade 6

Specialised competencies required to progress to this grade.

Roles undertaken at this level reflects a broad knowledge base, application of solutions to a defined range of broad unpredictable problems and skill in a range of areas with depth in some.

Roles undertaken at this level equates to AQF Level 4 and reflects the application of technical skills to a range of situations.

Grade 7

Specialised competencies required to progress to this grade.

Provides recognition of advanced technical trade skills and or qualifications beyond those of Grade 6.

Predominantly equates with to a higher national certificate AQF Level 4.

Trainee:

Entry/induction training to align with achieving Grade 2 competencies.

Completion of relevant induction training program to be confirmed in transitional arrangements.

Grade 1 Progression Criteria:

Achievement of a selected number of entry level competencies required.

Competencies selected are a mix of generic and operational competencies applied in a narrow range of areas.

This grade equates to about half of Grade 2 requirements.

The requirements for progression from Trainee to Grade 1 is the completion of the appropriate units (detailed in the relevant grading handbook) that reflect work recognised at this grade.

Grade 2 Progression Criteria:

Achievement of additional competencies required.

Working at this level defines a competent Conservation Field Officer undertaking a moderate range of operation tasks.

Completion of competencies at this level align to national certificate AQF Level 2.

The requirements for progression from Grade 1 to Grade 2 is the completion of the appropriate units (detailed in the relevant grading handbook) that reflect work recognised at this grade and the availability of work at the higher grading.

Grade 3:

Achievement of limited number of operational competencies selected from a higher level.

Enables an employee to be recognised for specialisation which may not be required on an ongoing basis.

Reflects roles undertaken between Grade 2 and Grade 4.

The requirements for progression from Grade 2 to Grade 3 is the completion of the appropriate units (detailed in the relevant grading handbook) that reflect work recognised at this grade.

Grade 4:

Achievement of additional competencies required.

Roles undertaken at this level relates to the application of relevant theoretical knowledge and a range of well-developed skills.

Aligns to national certificate AQF Level 3.

The requirements for assignment to a role at Grade 4 are the completion of the appropriate units (detailed in the relevant grading handbook) that reflect work recognised at this grade and the availability of work at the higher grading.

Grade 5:

Achievement of additional competencies required.

Roles undertaken at this level relates to the application of relevant theoretical knowledge and a range of well-developed skills. Some work is from a higher level

Aligns to higher national certificate AQF Level 3.

The requirements for assignment to a role at Grade 5 are the completion of the appropriate units (detailed in the relevant grading handbook) that reflect work recognised at this grade and the availability of work at the higher grading.

Grade 6:

Achievement of additional competencies required.

Roles undertaken at this level reflects a broad knowledge base, application of solutions to a defined range of unpredictable problems and skill in a broad range of areas with depth in some.

Aligns to national certificate AQF Level 4.

The requirements for assignment to a role at Grade 6 are the completion of the appropriate units which reflect work recognised at this grade and the availability of work at the higher grading.

Grade 7:

Achievement of additional competencies required.

Provides recognition of advanced technical trade skills and or qualifications beyond those of Grade 6.

Aligns to higher level national certificate AQF Level 4.

The requirements for assignment to a role at Grade 7 are the completion of the appropriate units which reflect work recognised at this grade and the availability of work at the higher grading

### Schedule 3 - Allowances

**Table A - Work Related Allowances**

(Subject to variations to Schedule C of the Crown Employees Wages Staff (Rates of Pay) Award 2019)

Clause No.	Description and Authority	Amount as at 1 July 2019	Effective from the first full pay period on or after 01 July 2019 (2.5%)
		\$	\$
9.6	Supervision Allowance	47.20 Per Week	48.40 Per Week
16	First Aid Allowance	3.45 per day	3.54 per day

**Table B - Expenses Related Allowances**

(Subject to variations to Table 1 - Allowances of Part B Monetary Rates of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009)

Clause No.	Description and Authority	Amount as at 1.7.19 \$	Amount from first full pay period on or after 1.7.19 \$
11.7	Meal Allowance (Overtime) Breakfast: where required to start work before 6.00 am Lunch: for overtime required to be worked after 1.30pm on Saturdays, Sundays and public holidays Dinner: when required to work after 6.00 pm	Per ATO Determination	Per ATO Determination
14.1	Reimbursement of meal allowances - no overnight stay (Part day travel) Breakfast: when travel starts before 6.00 am Lunch: when employee unable to have lunch at normal workplace Dinner: when employee works and travels after 6.30 pm	Per ATO Determination	Per ATO Determination
14.2	Incidental Expenses Allowance when claiming actual expenses for overnight accommodation and meals or where accommodations provided by Department or the Office.	Per ATO Determination	Per ATO Determination  per day
14.4(i)	Camping Allowance  Established Camp Non established Camp Additional allowance in excess of 40 nights per annum	Amount as at 1.7.2019 (i.e.2.1% March 2018 Sydney CPI)  33.00 per night 43.60 per night  10.40 per night	Amount from first pay period on or after 1.7.2019 (i.e. 1.8% March2019 Sydney CPI)  33.60 per night 44.40 per night  10.60 per night
14.4(ii)	Camping equipment allowance Bedding and/or sleeping bag allowance	32.70 per night  5.50 per night	33.30 per night  5.60 per night

P. M. KITE, *Chief Commissioner*

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**CROWN EMPLOYEES (NSW DEPARTMENT OF JUSTICE) -  
MUSEUM OF APPLIED ARTS AND SCIENCES ELECTRICAL  
PREPARATORS AWARD 2019**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Industrial Relations Secretary.

(Case No. 203406 of 2019)

Before Chief Commissioner Kite

4 July 2019

**AWARD**

**Index**

**PART A**

Clause No.	Subject Matter
1.	Title
2.	Parties
3.	Definitions
4.	Intention
5.	Wage Rates
6.	General Conditions of Employment
7.	Consultative Committee
8.	Grievance and Dispute Handling Procedures
9.	Classification Standards
10.	Anti-Discrimination
11.	Area Incidence and Duration
12.	Savings and Rights
13.	No Extra Claims

**PART B**

**MONETARY RATES**

Table 1 - Rates of Pay

**PART A**

**1. Title**

1.1 This Award shall be known as the "Crown Employees (NSW Department of Justice) - Museum of Applied Arts and Sciences Electrical Preparators Award 2019.

**2. Parties**

2.1 This Award has been made between the following parties:

The Industrial Relations Secretary

Electrical Trades Union of Australia, NSW Branch

### **3. Definitions**

"Act" means the *Government Sector Employment Act 2013*.

"Conditions Award" means the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009.

"Department" means the NSW Department of Justice.

"Department Head" means the Secretary of the NSW Department of Justice.

"-Industrial Relations Secretary" means the Secretary of Department of Premier and Cabinet as defined in s49 of the Act.

"Operative Date" means the date on which this Award is made by the Industrial Relations Commission of New South Wales and becomes legally binding on the parties.

"Staff" means and includes all persons in ongoing employment or temporarily employed under the provisions of the *Government Sector Employment Act 2013*, and who, as at the operative date of this Award were occupying one of the roles covered by this Award, or who, after that date, are appointed to or employed in one of such roles.

"Supervision" means, in addition to normal supervisory responsibilities, the assessment, evaluation and training of staff.

"Union" means the Electrical Trades Union of Australia, NSW Branch.

### **4. Intention**

- 4.1 It is intended that the Award will provide a suitable basis for the parties to implement appropriate arrangements to ensure that corporate objectives are met.
- 4.2 The Award will help facilitate the processes necessary to enhance the productivity of the organisation and provide a better return to the organisation, the staff, and the community.

### **5. Wage Rates**

- 5.1 The wage rates paid to staff covered by this Award are specified in Part B Table 1 - Rates of Pay, of Part B, Monetary Rates.
- 5.2 These rates will move in accordance with the Crown Employees Wages Staff (Rates of Pay) Award 2019 as varied or any replacement award.

### **6. General Conditions of Employment**

- 6.1 Conditions of employment are regulated by the *Government Sector Employment Act 2013* and its Regulations and Rules.
- 6.2 Conditions provided by this Award are:
  - 6.2.1 The ordinary working hours shall be an average of thirty-five per week.
  - 6.2.2 All allowances previously paid to staff covered by this Award, including the Licence Allowance, Tool Allowance and Leading Hand Allowance, are to be rolled into salary.
  - 6.2.3 As from the date of effect of this Award, staff covered by this Award shall not be required to provide their own tools.



6.2.4 Employees will be entitled to an additional holiday on a working day nominated by the Department Head within the period between Boxing Day and New Year's Day. This holiday applies in lieu of the Union Picnic Day entitlement provided by the Crown Employees (Skilled Trades) Award 2019.

6.3 Conditions provided by other Awards

6.3.1 Conditions of employment not regulated by this clause shall be covered by the Crown Employees (Skilled Trades) Award 2019 except for Overtime, Travelling Compensation and Excess Travelling Time for which provisions of the Conditions Award shall apply and;

6.3.2 Any other conditions not regulated by this Award or the Crown Employees (Skilled Trades) Award 2018 shall be provided by the Conditions Award as varied.

6.4 Where there is any inconsistency between this Award, the Crown Employees (Skilled Trades) Award 2018 and the Conditions Award this Award shall prevail to the extent of the inconsistency.

6.5 Flexible Working Hours

Flexible Working Hours: The Museum of Applied Arts and Sciences Flexible Working Hours Agreement of 1999 shall govern the employees covered under this award in terms of the hours of duty and flexible working hours.

6.6 Union Deduction

Subject to a staff member making written authorisation, the Department shall deduct from the staff member's pay, subscriptions payable to a nominated industrial organisation of employees (Union) and shall pay the deducted subscriptions to such an organisation.

**7. Consultative Committee**

7.1 The Museum of Applied Arts and Sciences ETU/Management Consultative Committee shall monitor the implementation of this Award and make, during its period of operation, recommendations to the Secretary of the Museum of Applied Arts and Sciences with regard to any matters regarding the implementation of this Award.

7.2 The ETU/Management Consultative Committee shall consist of representatives of management and representatives of the unions which are party to this Award, the latter chosen at the discretion of the union members covered by this Award.

7.3 Should the parties to the ETU/Management Consultative Committee fail to reach agreement on any matter the Dispute Resolution Procedures outlined in Clause 8 will be followed.

**8. Grievance and Disputes Settling Procedures**

8.1 All grievances and disputes relating to the provisions of this award shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within the appropriate Department, if required.

8.2 A staff member is required to notify in writing their immediate manager, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.

8.3 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti Discrimination Act 1977*) that makes it impractical for the staff member to advise their immediate manager the notification may occur to the next appropriate level of management, including where required, to the Department Head or delegate.

- 8.4 The immediate manager, or other appropriate officer, shall convene a meeting in order to resolve the grievance, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to attention.
- 8.5 If the matter remains unresolved with the immediate manager, the staff member may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two (2) working days, or as soon as practicable. The staff member may pursue the sequence of reference to successive levels of management until the matter is referred to the Department Head.
- 8.6 The Department Head may refer the matter to the Industrial Relations Secretary for consideration.
- 8.7 If the matter remains unresolved, the Department Head shall provide a written response to the staff member and any other party involved in the grievance, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- 8.8 A staff member, at any stage, may request to be represented by the Association.
- 8.9 The staff member or the Association on their behalf or the Department Head may refer the matter to the Industrial Relations Commission of NSW if the matter is unresolved following the use of these procedures.
- 8.10 The staff member, Association, Department and Industrial Relations Secretary shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- 8.11 Whilst the procedures outlined in subclauses 8.1 to 8.10 of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties, or, in the case involving work health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any staff member or member of the public.

## **9. Classification Standards**

- 9.1 A role falling within the scope of this Award shall have assigned to it a classification level determined in accordance with the classification standards detailed below. Progression in each level is detailed below.
  - 9.1.1 Electrical Preparator Grade 1: There are three salary levels for incremental progression. Progression will be determined by satisfactory performance and satisfactory attendance after 12 months at each level.
  - 9.1.2 Electrical Preparator Grade 2: There is a soft barrier from Grade 1. Progression will be determined by satisfactory attendance after 12 months at the Year 3 level of Grade 1, availability of work at the higher level of duties as specified in the role description and satisfactory performance of the higher level of duties. Approval for progression will be in accordance with the Museum of Applied Arts and Sciences' Delegation Manual. There are 2 salary levels in Grade 2. Progression will be determined by satisfactory performance and satisfactory attendance after 12 months at each level.
  - 9.1.3 Senior Electrical Preparator: This is a promotional role and there are two levels in this classification. Progression will be determined by satisfactory performance and satisfactory attendance after 12 months at each level.

## **10. Anti-Discrimination**

- 10.1 It is the intention of the parties bound by this Award to seek to achieve the object in Section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

- 10.2 It follows that in fulfilling their obligations under the dispute resolution procedures prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award that, by its terms or operation, has a direct discriminatory effect.
- 10.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 10.4 Nothing in this Clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*.
  - (d) A party to this Award from pursuing or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.
- 10.5 This Clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.
- (a) Employers and staff members may also be subject to Commonwealth anti-discrimination legislation.
  - (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:  
  
"Nothing in this Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

### **11. Area Incidence and Duration**

- 11.1 This Award applies to all staff of the Museum of Applied Arts and Sciences who are currently employed in the classifications defined in Part B, Table 1 of the Crown Employees (Skilled Trades) Award 2019.
- 11.2 This Award rescinds and replaces the Crown Employees (NSW Department of Planning and Environment) - Museum of Applied Arts and Sciences Electrical Preparators Award 2018 published 29 March 2019 (384 I.G. 1) and all variations thereof.
- 11.3 This award has a nominal term of 12 months from 1 July 2019 with any increases to pay and work related allowances effective from the first full pay period on or after 1 July 2019.

### **12. Savings and Rights**

- 12.1 At the time of making this Award, no person covered by this Award will suffer a reduction in his or her rate of pay or any loss of or diminution in his or her conditions of employment as a consequence of the making of this Award.

### **13. No Extra Claims**

- 13.1 Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the NSW Industrial Relations Commission for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

The terms of the preceding paragraph do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing award provisions.

**PART B**

**MONETARY RATES**

**Table 1 - Rates of Pay**

	Pay Rates as at 1/7/2019 \$	Pay Rates from first full pay period on or after 1/7/2019 \$
Grade 1		
1st Year	62,670.00	64,237.00
2nd Year	64,393.00	66,003.00
3rd Year	66,197.00	67,852.00
Grade 2		
1st Year	68,706.00	70,424.00
2nd Year	71,391.00	73,176.00
Senior Electrical Preparator - Grade 1		
1st Year	74,333.00	76,191.00
2nd Year	75,686.00	77,578.00

P. M. KITE, *Chief Commissioner*

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Printed by the authority of the Industrial Registrar.

# **CROWN EMPLOYEES (SECURITY AND GENERAL SERVICES) AWARD 2019**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Industrial Relations Secretary.

(Case No. 203852 of 2019)

Before Chief Commissioner Kite

4 July 2019

## **AWARD**

### **PART A**

#### **1. Arrangement**

##### **PART A**

<b>Clause No.</b>	<b>Subject Matter</b>
1.	Arrangement
2.	Monetary Rates
3.	Definitions
4.	Contract of Employment
5.	Hours
6.	Rostered Days Off Duty
7.	Rates of Pay
8.	Enterprise Consultation
9.	Additional Rates
10.	Shift Allowances
11.	Saturday and Sunday Work During Ordinary Hours
12.	Payment of Wages
13.	General Conditions
14.	Travelling Time and Expenses
15.	Outside Duties
16.	Lifting of Weights
17.	Sunday Work
18.	Overtime
19.	Call Back
20.	Mixed Functions
21.	Sick Leave/Personal Carer's Leave
22.	Public Holidays
23.	Recreation Leave
24.	Family and Community Services/Personal Carer's Leave
25.	Parental Leave
26.	Extended Leave/Long Service Leave
27.	Other Forms of Leave
28.	Anti-Discrimination
29.	Dispute Resolution
30.	Non-Reduction of Existing Wages
31.	Exemptions
32.	Deduction of Union Membership Fees
33.	Area, Incidence and Duration
34.	No Extra Claims

## PART B

### MONETARY RATES

Table 1 - Rates of Pay

Table 2 - Allowances

### 3. Definitions

Act means the *Government Sector Employment Act 2013*.

Afternoon Shift means any shift finishing after 6.00 p.m. and at or before midnight.

Broken Shifts means the working of two or more shifts per day by an employee within the ordinary hours as specified in subclause (iii) of clause (5), Hours.

Casual Employee means an employee engaged and paid as such and who may be employed for a period of not more than ten (10) consecutive working days for each engagement but shall not include an employee required to work a constant number of ordinary hours each week.

Conditions Award means the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009

Day means the period from midnight to midnight.

Head means as defined in the Act in respect of a Public Service agency.

Early Morning Shift means any shift commencing at or after 5.00 a.m. and before 6.30 a.m.

General Services Officer Grade 1 - An employee engaged as a General Service Officer Grade 1 may be required to carry out a range of duties, which may include:

Making and/or serving morning or afternoon teas or lunches or other meals including washing up and other duties in connection with such work. In addition they may undertake a range of routine tasks under close supervision with set instructions, including basic clerical functions.

General Services Officer Grade 2 - An employee engaged as a General Service Officer Grade 2 may be required to carry out a range of duties, which may include:

Cleaning work of any description or the bringing into or maintaining of premises in a clean condition in Government offices, courthouses, police stations, technical colleges and other Government establishments.

General Services Officer Grade 3 - An employee engaged as a General Service Officer Grade 3 may be required to carry out a range of duties which may include but not be limited to any of the following:

- (a) Pick up and delivery of parcels, goods and furniture
- (b) General maintenance of departmental cars and parking areas
- (c) Furniture removal and storage
- (d) Driving of departmental motor vehicles as required including loading and unloading
- (e) Relief security duties
- (f) or clerical functions as required
- (g) or cleaning and gardening as required

- (h) Other duties as required
- (i) Routine or minor maintenance of such a nature so as not to require a qualified tradesperson

Part-Time Employee means an employee engaged by the week but who is required to work a constant number of ordinary hours each week less than the ordinary number of hours prescribed for weekly employees.

Night Shift means any shift finishing subsequent to midnight and at or before 8.00 a.m. or any shift commencing at or after midnight and before 5.00 a.m.

#### Security Officer - Grade 1

Means a person employed in one or more of the following capacities:

- (a) to watch, guard or protect persons and/or premises and/or property,
- (b) to respond to basic fire/security alarms at their designated site,
- (c) to monitor a single closed circuit television unit recording from a stationary camera,
- (d) as an employee stationed at an entrance and/or exit whose principal duties shall include the control of movement of persons, vehicles, goods and/or property coming out of or going into premises or property and including vehicles carrying loads of any description. This is to ensure that the quantity and description of such goods accords with the requirements of the relevant document and/or gate pass. The employee may also have other duties to perform, including as an area or door attendant or commissionaire in a commercial building;

A security officer Grade 1 may perform incidental duties that need not be of a security nature.

#### Security Officer - Grade 2

Means a person who is employed as one of the following:

- (a) A mobile patrol officer. This means an employee who is required to patrol two or more premises in a vehicle. It also includes a security officer who, in order to perform his/her designated duties is required, as an integral part of those duties, to use a motor vehicle, or
- (b) A security officer who, as part of the shift or duty is required to monitor and act upon intrusion, detection equipment or access control equipment terminating in a televised display or computerised print-out;

A security officer Grade 2 may perform incidental duties which need not be of a security nature.

- (c) A caretaker whose presence is required for the protection, good order or convenient use of premises, and/or the cleanliness or upkeep of such, including routine or minor maintenance, but the work is not of a nature that requires a qualified tradesperson. A caretaker may also be required to receive and distribute stores.

#### Security Officer - Grade 3

Means a person employed substantially in a security and/or data input and/or a monitoring function within a central station and principally occupied in one or more of the following duties -

Monitoring, recording, inputting information or reacting to signals and instruments related to electronic surveillance of any kind; co-ordinating, checking or recording the activities

of mobile patrol officers and static security officers; operating or monitoring any medium of verbal communication; or

A person, who in addition to performing the duties defined in Grade 2(b), monitors or acts upon integrated intelligent building management systems terminating at a visual display unit or computerised print-out that has the capacity for and requires data input from the security officer.

Seven Day Shift Worker: for purposes of this award, a seven day shift worker means an employee whose ordinary working period includes Saturdays, Sundays and/or Public Holidays on which the employee may be regularly rostered for work.

Union means the United Voice - New South Wales Branch.

Weekly Employee means an employee engaged and paid by the week or fortnight, as the case may be.

#### **4. Contract of Employment**

- (i) Employees under this award shall be engaged either as weekly employees, part-time employees, or casual employees.
- (ii) An employer may direct an employee covered by this award to carry out such duties as are within the limits of the employee's skill, competence and training.
- (iii) The employer shall clearly display at some place accessible to the employees, the commencing and ceasing time of ordinary hours of work. One week's notice must be given for any change to such hours, otherwise payment of overtime is incurred. Less than one week's notice may be given by mutual agreement between the employer and the employee.
- (iv) The employment of any employee other than a casual employee shall be terminated only by one week's notice or by the payment or forfeiture, as the case may be, of one week's wages in lieu thereof.
- (v) The employment of a resident Security Officer Grade 2b or 2c (as defined) engaged by the week shall only be terminated by three weeks' notice or by the payment or forfeiture, as the case may be, of three week's wages in lieu thereof.
- (vi) The employment of a casual employee may be terminated by one hour's notice.
- (vii) Notwithstanding the foregoing provisions, the employer may dismiss an employee at any time for misconduct or serious misconduct and then shall be liable for payment only up to the time of dismissal.
- (viii) Termination of employment by an employer shall not be harsh, unjust, or unreasonable.

For the purposes of this clause termination of employment shall include terminations with or without notice.

Termination on the ground of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin shall constitute harsh, unjust, or unreasonable termination of employment. This definition, without limiting the above, applies except where a distinction, exclusion, or preference is based on the inherent requirements of a particular position.

- (ix) On the termination of employment the employer shall, at the request of the employee, give such employee a statement signed by the employer, stating the period of employment and when the employment terminated.
- (x) On the termination of employment an employee shall return to the employer all uniforms, identity cards, vehicles, keys and all other items issued to employees.



- (xi) Mechanisation and Technological Changes - Three months notice of termination of employment must be given to an employee who has been employed for at least twelve months and has had their services terminated on account of the introduction, or proposed introduction, by an employer of mechanisation or technological changes in the industry in which the employer is engaged. This applies notwithstanding the provisions of subclauses (iii) and (iv).
- (xii) If there is a failure to give such notice in full:
  - (a) the employee shall be paid at the rate specified for the employee's ordinary classification set out in Part B, Table 1 of this award, for a period equal to the difference between three months and the period of the notice given; and
  - (b) the period of notice required by this subclause to be given shall be deemed to be service with the employer for the purpose of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, *Government Sector Employment Act 2013* or any Act, amending or replacing any of those Acts. The right of the employer summarily to dismiss an employee for the reasons specified in subclause (vi), of this clause, shall not be prejudiced by the fact that the employee has been given notice pursuant to this subclause of the termination of the employment.

An employer who gives an employee notice of the termination of employment on grounds as set out in subclause (xi), must within fourteen days thereafter, give notification of the fact in writing to the Industrial Registrar, and the Secretary of United Voice - New South Wales Branch. The employer must state the employee's name, address and usual occupation and the date when the employment terminated in accordance with the notice given.

## **5. Hours**

- (i) Security Officers: (Other than Caretakers)
  - (a) Subject to the provisions of clause 6, Rostered Days Off Duty, ordinary hours of Security Officers shall not exceed one hundred and fifty-two in each roster period of twenty consecutive days. Such hours shall be worked in not more than twenty shifts in each roster period. The shifts shall not be more than eight consecutive hours in duration and only one shift shall be worked in any period of twenty-four hours.
  - (b) Except in the case of change of shifts, notice of which has been given in accordance with subclause (iii), of clause 4, Contract of Employment, of this award, not more than six consecutive shifts in any period of seven consecutive days shall be worked without the payment of overtime.
  - (c) The arrangement of working hours, as set out herein may be altered by agreement between the employer and the union.
  - (d) In all cases shifts shall be continuous and time shall start from the commencement of the shift.
  - (e) After four hours and no later than five hours from the commencement of each shift, a crib time of not less than thirty minutes shall be allowed, where it is reasonably practicable to do so. Time allowed as crib time will be regarded as time worked and shall be paid for as such.
- (ii) Caretakers:
  - (a) The ordinary working hours, exclusive of meal breaks, shall be an average of 38 per week. The hours shall be worked in shifts of no more than 8 hours duration from Monday to Friday inclusive.

In establishments operating Monday to Sunday the ordinary working hours shall be an average of 38 per week. The hours shall be worked in 5 shifts of no more than 8 hours duration from Monday to Sunday inclusive.
  - (b) The employer shall fix the time for working such hours on such days in one, two or three shifts.

(iii) General Service Officers Grade 2 & 3, (Cleaners and Basement Attendants)

The ordinary working hours, exclusive of meal breaks, shall not exceed an average of thirty-eight per week. Such hours shall be worked as follows -

- (a) Day Workers: Between 6.30 a.m. and 6.00 p.m. Monday to Friday, inclusive. These hours shall be worked on each day in one or two shifts of not more than eight hours total duration. An employee may commence thirty minutes earlier than the normal starting time or the ceasing time may be extended by thirty minutes. This thirty minutes may be divided between the starting and ceasing time if mutually agreed to by the employer and the employee.
- (b) Afternoon Shift Workers: Between 4.00 p.m. and 12 midnight, Monday to Friday, inclusive, to be worked in one shift of no more than eight hours daily.
- (c) Early Morning Shift Workers: Between 5.00 a.m. and 2.00 p.m., Monday to Friday, inclusive, to be worked in one shift daily of no more than eight hours' duration.
- (d) Broken Shift Workers: Between 6.30 a.m. and 6.00 p.m. Monday to Friday inclusive, to be worked in two shifts daily, subject to the provisions of subclause (a) with respect to alterations in starting and ceasing times.
- (e) Night Shift Workers: Five shifts of not more than eight hours each, between 10.00 p.m. on Sundays and 6.30 a.m. on the succeeding day (Sunday to Friday) or five shifts of not more than eight hours between 6.00 p.m. and 6.30 a.m. on each day, Monday to Saturday, inclusive.
- (f) In establishments operating from Monday to Sunday the ordinary working hours shall be an average of 38 per week which shall be worked in 5 shifts of no more than 8 hours duration from Monday to Sunday inclusive. This is subject to the provisions of paragraphs (a), (b), (c),(d) and (e) of this subclause.

(iv) General Services Officer Grade 1

The ordinary working hours, exclusive of meal times, shall not exceed an average of thirty-eight per week or eight per day. Such hours shall be worked in one or two shifts per day between 7.00 a.m. and 6.00 p.m. Monday to Friday inclusive.

In establishments operating from Monday to Sunday the ordinary working hours shall be an average of 38 per week, which shall be worked in one or two shifts per day between 7 a.m. and 6 p.m. from Monday to Sunday inclusive.

(v) Casual Employees

For casual employees the ordinary working hours shall not exceed eight hours on any day or night or shift without the payment of overtime.

(vi) Meal Breaks: (Other than Security Officers)

A meal break of not less than thirty minutes and not more than one hour shall be allowed for a meal. An employee shall not be required to work for more than five hours without a meal break. The provisions of this subclause shall also apply to Caretakers (Security Officer Grade 2).

## **6. Rostered Days Off Duty**

(i) Four-Week Work Cycle - Accrual Provisions:

- (a) Shiftworkers - Weekly Employees

Employees on shift work shall accrue 0.4 of an hour for each eight-hour shift worked to allow one complete shift to be taken off as a paid shift during every shift cycle. This shift shall be paid for at the appropriate shift rate as prescribed by clause 10, Shift Allowances, of this award.

(b) Dayworkers - Weekly Employees

The ordinary working hours shall be worked as a twenty-day four-week cycle, Monday to Friday inclusive. The cycle consists of nineteen working days of eight hours each, with 0.4 of one hour on each day worked accruing as an entitlement to take the twentieth day in each cycle as a day off paid for as though worked.

(c) Part-Time Employees

Accrual of rostered day off credits for part-time employees may be accounted for in the calculation of the part-time rates. The rate includes provision for automatic crediting of one twentieth of all time worked towards rostered days actually taken as provided in subclause (iii) of this clause.

(ii) Accrual and Paid Leave:

Each day of paid leave taken (excluding long service/extended leave and workers' compensation/accident leave) and leave without pay during periods of closedowns occurring during any cycle of four weeks, shall be regarded as a day worked for accrual provisions.

(iii) Rostering - Four Week Cycle:

- (a) Rostered days off shall be scheduled by mutual agreement between employees and the employer. This does not preclude an individual employee with the employer's agreement, substituting another day for their rostered day off.
- (b) Except as provided by paragraph (c) of this subclause, at least four weeks notice shall be given to an employee of the weekday he/she is to be rostered off duty.
- (c) In the case of a breakdown of machinery or to meet the requirements of the establishment, the employer may, with the agreement of the majority of employees concerned, substitute another day for the employee's rostered day off.
- (d) Under normal conditions, employees on a rostered day off that coincides with a pay day will be paid no later than the working day immediately following pay day.
- (e) Rostered days off may accumulate and in the case of school/college locations may be scheduled during vacation periods to suit the needs of the employer. Dates for the taking of such accumulated leave shall be agreed between the employer and the employee.

(iv) Rostered Day Off Falling on a Public Holiday:

In the event of an employee's rostered day off falling on a public holiday, the employee and the employer shall agree to an alternative day off duty as a substitute. In the absence of agreement the substituted day shall be determined by the employer.

(v) Work on Rostered Day Off Duty:

Subject to subclause (iii), Rostering - Four Week Cycle, of this clause, any employee required to work on their rostered day off shall only be paid in accordance with the provisions of clause 18, Overtime, of this Award.

(vi) Sick Leave and Rostered Days Off:

Employees are not eligible for sick leave in respect of absences on rostered days off as such absences are outside their ordinary hours of duty.

## 7. Rates of Pay

Rates of pay and allowances for classifications covered by this Award are provided for by the Crown Employees Wages Staff (Rates of Pay) Award 2019 or any instrument replacing such.

(i) Weekly Employees - A weekly employee shall be paid according to the rate for the classification as set out in Table 1 of Part B of the Award.

(ii) Part-Time Employees -

General Services Officer Grade 2 (Cleaners)

(a) Part-time employees shall be paid at an hourly rate as set out in Table 1 of Part B for all ordinary time worked and for all paid leave.

(b) The part-time rate includes provision for automatic crediting of one twentieth of all time worked towards rostered days as provided for in paragraph (c) of subclause (i) of clause 6, Rostered Days Off Duty.

(c) The hourly rate prescribed by paragraph (a) of this subclause will be adjusted by the percentage movements in the weekly rate for a General Services Officer Grade 2 in subclause (i).

All Other Part time Employees:

(a) For each hour worked during ordinary time, part time employees shall be paid the hourly equivalent of the appropriate weekly rate of pay prescribed by subclause (i) of this clause plus an additional amount of ten per cent.

(b) The hourly equivalent for the purposes of this subclause shall be based on 38 hours where a part-time employee is not accruing credits towards rostered days off but is paid only for hours worked.

(c) The hourly equivalent for the purposes of this subclause shall be based on 40 hours where a part-time employee is accruing credit for time worked towards rostered days off as provided for in paragraph (c) of subclause (i) of clause 6 Rostered Days Off Duty.

A minimum payment of three hours shall be made for each start. Part-time cleaners in small locations may be engaged on two hours per start where the total assessed cleaning area is 500 square metres or more, and no less than one hour per shift where the total assessed cleaning area is less than 500 square metres.

(iii) Casual Employees:

(a) A casual employee for working ordinary time shall be paid per hour one thirty-eighth of the weekly wage prescribed by this award for the class of work performed, plus 15 per cent.

(b) A minimum payment of four hours shall be made for each start in the case of security officers and three hours for each start in the case of all other employees.

(iv) The hourly rates of pay prescribed in subclause (ii) and (iii) of this clause, shall be calculated to the nearest whole cent.

## **8. Enterprise Consultation**

Enterprises covered by this award shall establish a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity.

## **9. Additional Rates**

(i) **Leading Hands Allowance:**

Employees placed in charge of other employees shall be paid a weekly amount as set out in Item 1 of Table 2 in addition to their ordinary wages.

(ii) **Qualification Allowance:**

An employee acting as a leading hand or a caretaker who has successfully completed a Cleaning Supervisors' Course or a course deemed by the employer to be of equivalent qualification, shall be paid an additional weekly amount as set out in Item 2 of Table 2. This amount shall be part of the ordinary rate of pay for all award purposes.

(iii) **First Aid Allowance:**

An employee who is a qualified first-aid attendant and is employed to carry out the duties of a qualified first-aid attendant shall be paid an additional weekly amount as set out in Item 3 of Table 2.

(iv) **Boiler Attendant's Certificate**

An employee required to hold a Boiler Attendant's Certificate shall be paid a weekly allowance as set out in Item 4 of Table 2 in addition to the ordinary rate of pay.

(v) **Refrigeration Driver's Certificate**

An employee required to hold a Refrigeration Driver's Certificate of competency, 1st or 2nd Class (Air Conditioning) shall be paid a weekly allowance as set out in Item 5 of Table 2 in addition to the ordinary rate of pay.

(vi) **Contingency Allowance:**

Employees engaged on any or all of the following duties

- (a) refuse disposal and/or sorting for incinerators and furnaces,
- (b) cleaning of ablution facilities,
- (c) clearing of minor plumbing blockages,
- (d) receiving appropriate stores or minor repair of non-electrical equipment,

shall be paid a weekly allowance as set out in Item 6 of Table 2.

(vii) **Toilet Allowance:**

An employee required to work in toilets, on outside steps, outside marble or outside brass or required to scrub marble, terrazzo, rubber floor corridors or stairs which necessitate the employee kneeling shall be paid an additional weekly amount as set out in Item 7 of Table 2.

The cleaning of single sex toilets may be undertaken by both male and female cleaners as long as appropriate steps are taken to ensure that the toilets are not in use at the time of cleaning. Appropriate warning signs are to be supplied by the employer.

The toilet allowance is not applicable for an employee receiving the contingency allowance set out in Item 6 of Table 2.

(viii) Multi-Purpose Machines Allowance:

Employees required to use multi-purpose machines, mobile sweeping machine and other similar mechanical equipment or operate fork lifts shall whilst so employed be paid an additional amount per shift or part thereof as set out in Item 8 of Table 2.

NOTE: A multi-purpose machine is one that performs three or more functions.

(ix) Furniture Removal Allowance:

Cleaners required to be engaged in furniture removal for more than three hours on any day or shift shall be paid an additional allowance per shift as set out in Item 9 of Table 2.

(x) Torches:

Where an employee is required to carry a torch it shall be provided and maintained in full working order by the employer. Employees providing their own torches shall be paid an allowance per shift as set out in Item 10 of Table 2 to cover the replacement of torch globes and batteries.

(xi) Laundry Allowance:

Overalls and coveralls and any uniform where supplied or required to be worn by the employee shall be laundered or dry-cleaned at the employer's expense. In lieu of this, a laundry allowance as set out in Item 11 of Table 2 may be paid for each ordinary shift worked. In the case of security officers this subclause shall apply to shifts worked in accordance with the provisions of clause 5 (i)(b), Hours of this Award.

(xii) Locomotion Allowance:

An employee required by the employer to use a motor cycle or other motor vehicle shall have such vehicle supplied and maintained by the employer. If the employee uses his/her own vehicle they shall be reimbursed each week for each shift worked at the rate set out in Item 12 of Table 2. The employer shall reimburse the employee for the cost of fuel used on the employer's business. In the case of an employee providing a bicycle for use in the employer's business the payment shall be as set out in Item 14 of Table 2 for each shift worked.

The locomotion allowance shall only be paid where the use of a motor vehicle etc. is essential to the performance of an employee's main function.

The locomotion allowance does not apply to caretakers, who are eligible to receive allowances in accordance with Item 13 of Table 2. An employee receiving the locomotion allowance is not eligible to also receive a motor vehicle allowance as set out in Item 13.

(xiii) Motor Vehicle Allowances:

(a) Employees authorised to use a private motor vehicle in the performance of their duties where no public transport is available, or where the use of public transport is not appropriate for the particular duty concerned, shall be paid additional rates as set out in Item 13 of Table 2.

(b) The rates contained in paragraph (a) are based on and shall move in accordance with the "Official Business Rate" payable under the provisions of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 as varied, or any variation or replacement award.

(c) Where public transport is available employees may use such transport for approved travel and be reimbursed with the costs incurred.

- (d) Employees may elect to use a private motor vehicle (where the use of such is so authorised) and be paid additional rates as set out in Item 13 of Table 2 up to the cost of the available public transport.
- (e) An employee receiving a motor vehicle allowance pursuant to this subclause shall not also receive a locomotion allowance under Item 12 of Table 2.

**10. Shift Allowances**

- (i) The following additional allowances for shift work shall be paid to employees other than Caretakers in respect of work performed during ordinary hours of shift as defined in clause 3, Definitions, of this award:

	Percentage
Early Morning Shift	10%
Afternoon Shift	15%
Night Shift, rotating with day or afternoon shift	17.5%
Night Shift, non-rotating	30%

- (ii) Caretakers:

The following additional allowances shall be paid per hour:

Between the hours of 9.00 p.m. and midnight -	15%
Between the hours of midnight and 6.00 a.m. -	30%

- (iii) Broken Shifts

- (a) Employees working broken shifts shall be paid an additional daily amount as set out in Item 15 of Table 2 of Part B of the Award for each day so worked.
- (b) Employees working broken shifts shall also be paid a weekly excess fares allowance as set out in Item 15 of Table 2 of Part B of the Award.

NOTE: An employee receiving broken shift allowance under the provisions of this subclause shall not receive the allowances provided for under subclause (i) and (ii) of this clause.

**11. Saturday and Sunday Work During Ordinary Hours**

- (i) Employees required to work their ordinary hours on a Saturday or Sunday shall be paid for all time so worked at the following rates:

Saturday Work	time and one-half
Sunday Work	double time

- (ii) The allowances prescribed in this clause shall be in substitution for and not cumulative upon, the shift work allowances prescribed in clause 10, Shift Allowances, of this award.
- (iii) For the purpose of this clause, the rates prescribed shall apply in respect of ordinary hours of work only and shall apply to all employees including casual employees.

**12. Payment of Wages**

- (i) All wages shall be paid fortnightly by electronic funds transfer on a Thursday as determined by the employer, and not more than forty-eight hours from the time when such wages become due.
- (ii) Wages may be paid into an employee's bank or other account as specified by the employee. The employer shall specify the day upon which wages shall be paid into such account.

- (iii) An employee kept waiting for wages on a payday shall be deemed to be working during the time kept waiting. When wages are not paid into the employee's bank or other account on the due date, the employee must notify the employer of such. The employer must make every endeavour within two full working days to ensure the appropriate credit is paid into the nominated account, or that the issuing of a cheque for the appropriate amount is undertaken. This provision will not apply where circumstances preventing payment of wages in such a manner is beyond the employer's control.
- (iv) If payment is not made by the end of the two-day period, the employee is entitled to payment at overtime rates for performance of the next full day's work. The provisions set out in subclauses (i) to (iv) do not apply to periods of employment that are less than one full pay period.
- (v) Casual employees shall be paid within one hour of termination of employment. Wages may in some circumstances be paid by cheque.

### **13. General Conditions**

#### (i) Security Officers - All Grades

- (a) Security Licence: A Security Officer required to hold a Class 1 or Class 2 Security Licence pursuant to the provisions of the *Security Industry Act 1997* shall have the cost of such licence reimbursed by the employer. Reimbursement will be made on completion of each twelve months or five years' service, whichever applies to the term of the licence held.

- (b) Training:

All full-time Security Officers who during their current employment are required to undertake an approved training course nominated by the employer and as required by the provisions of the *Security Industry Act 1997* (and Regulations), shall have the costs of such training courses reimbursed by the employer. This is provided that the undertaking of the said training course is a requirement of the employee's current position.

Reimbursable costs as referred to in paragraph 1(a) of this subclause shall include excess travelling expenses relating to the attendance at the said courses.

Employees shall be granted time off without loss of pay during ordinary hours to attend training courses as referred to in this subclause.

In cases where the courses are to be held outside the rostered shift of the employee required to attend the course, then:

The rostered shift should be altered so that the employee can attend during ordinary working hours; or

For the time spent attending the course, the employee can be granted time off in lieu on an hour for hour basis at a time convenient to the employer; or

The employee shall be paid for attending the course at ordinary time rates without the addition of penalties. Such attendance shall not form part of the employee's ordinary roster for the purpose of clause 5, Hours, of this Award.

- (c) The employee may elect which is the preferred option from the above. The final determination regarding the option to be applied lies with the employer, having regard to the needs of the establishment.

#### (ii) Security Officer Grade 2(b) and 2(c)

- (a) Where a Security Officer Grade 2b or 2c (as defined) is provided with accommodation, a deduction may be made from the wages for rent, fuel and lighting. The deduction shall not be more than the amount set out in Item 16 of Table 2.



- (b) An employer shall not require a resident Security Officer Grade 2b or 2c to vacate living quarters during annual leave period for use by a relieving caretaker, unless such arrangements are mutually agreed to between the said employee and the relieving employee.

(iii) General

- (a) Accommodation for Meals: Employers shall allow employees to take their meals, crib breaks or tea breaks in a suitable place protected from the weather. Every such employee shall be provided by the employer with adequate facilities for tea making and for heating food.

This provision shall not apply to mobile security officers.

- (b) Dressing Accommodation: Where it is necessary or customary for employees to change their dress or uniform, suitable dressing rooms or dressing accommodation and individual lockable lockers shall be provided.

- (c) Means of Exit: Provision shall be made for an exit for night employees in case of necessity.

- (d) Protective Clothing: In complying with the *Work Health and Safety Act 2011* the following clothing and equipment will be issued. The clothing shall remain the property of the employer:

Wet weather coat with hood and trousers for employees who are required to work out of doors.

Rubber boots for employees who are required to work in "wet areas", i.e. toilets, ablution blocks and external areas where water is used as part of the cleaning process.

Protective eye wear for employees who are required to empty rubbish tins and tend incinerators, or work in areas where airborne particles are a hazard.

Long rubber gloves when using detergents or similar cleaning chemicals.

Leather gloves for employees who are required to collect rubbish bins, carry refuse and sweep outside areas.

Washable broad brim hats for employees who are required to work out of doors.

- (e) Work Clothing : Clean overalls or wrap-ons, gloves and safety footwear shall be supplied by the employer where they are required in undertaking duties.

#### **14. Travelling Time and Expenses**

Where an employee is sent to work at a place other than their employer's recognised place of business, the employer shall pay all travelling time from the place of business to the job. If the employee is required to return the same day to the employer's place of business, the employer shall pay travelling time back to the place of business. An employee sent for duty to a place other than the employee's regular place of duty or required by the employer to attend a court or inquiry in connection with the employee's employment shall be paid reasonable authorised expenses.

#### **15. Outside Duties**

All employees covered by this award shall clean outside as required and shall clean above floor or ground level as is safely accessible. Where ladders are used the safety requirements of the *Work Health and Safety Act 2011* must be complied with.

#### **16. Lifting of Weights**

An employee shall not be required to lift by hand or carry weights in a manner that does not accord with the provisions of Chapter 4, Part 4.2, Hazardous Manual Tasks of the *Work Health and Safety Regulation 2011*.

## **17. Sunday Work**

An employee required to perform work on a Sunday shall be paid at the rate of double time, with a minimum payment of not less than four hours at such rate for each start.

## **18. Overtime**

- (i) For all work done outside ordinary hours the rates of pay shall be time and a half for the first two hours and double time thereafter. In computing overtime each day's work stands alone. All work performed after 12 noon on Saturday shall be paid for at the rate of double time.
- (ii) Meal Allowance - An employee who works overtime for one or more hours on any day or shift after the fixed ceasing time shall be paid for such day a meal allowance as set out Item 17 of Table 2 - Allowances, of Part B Monetary Rates. This applies unless notice to work has been given to such employee on or before the termination of the previous shift or day, as the case may be.
- (iii) Where overtime or extra shifts are required to be worked, preference shall be given to employees as classified and covered by the terms of this award where it is reasonably practicable to do so.
- (iv) Where an employee is required to work overtime, the minimum break between the finishing of one period of work or shift and the commencement of another, shall be as set out below:
  - (a) for shift workers, eight hours, including the normal changeover time if any;
  - (b) for day workers, ten hours.

If on the instructions of the employer such an employee resumes or continues work without having the required period off duty, the employee shall be paid at double ordinary time until released from duty. The employee shall be entitled to be absent without loss of pay for ordinary working time occurring during such absence until they have had the required period off duty.

- (v) For the purposes of this clause ordinary hours shall be inclusive of time worked for accrual purposes as provided for by clause 5, Hours.

## **19. Call Back**

An employee who after leaving their place of employment, is required to return to the employer's premises for any reason other than carrying out rostered duties, shall be paid a minimum of four hours' pay at the appropriate rate for each such attendance. This payment shall apply whether the employee was notified before or after leaving the place of employment.

This clause shall not apply where a period of duty is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time. The employee shall be given at least eight hours off duty, excluding travelling time in excess of thirty minutes and a meal break of thirty minutes, before there is a requirement to resume ordinary hours. An employee requested to resume duty before eight hours' rest is given shall be paid at double ordinary rates until such employee has been relieved from duty for a period of eight hours.

## **20. Mixed Functions**

An employee engaged for at least two hours on any day or shift on duties carrying a higher rate than the employee's ordinary classification shall be paid the higher rate for such a day or shift. Where an employee is engaged for less than two hours on any one day or shift, payment shall be at the higher rate for the time so worked.

An employee who is required to perform work temporarily for which a lower rate is paid, shall not suffer any reduction in wages whilst so employed. Any work of less than one week's duration shall be deemed temporary.

This clause shall not apply in situations where the higher duties result from the absence of an employee on a rostered day off.

## 21. Sick Leave/Personal Carer's Leave

- (i) The entitlement to sick leave shall be as follows:
  - (a) Employees:
    - (1) Shall be entitled to 15 days sick leave per year. Any untaken leave is cumulative. Sick leave on full pay accrues at the beginning of the calendar year. If an employee commences after 1 January, sick leave on full pay accrues on a proportionate basis for the year in which employment commences.
    - (2) An employee absent from duty for more than 3 consecutive working days because of illness must furnish a medical certificate to the Head in respect of the absence.
    - (3) An employee shall be put on notice in advance if required by the Head to furnish a medical certificate in respect of an absence from duty for 3 consecutive working days or less because of illness.
  - (b) Ministerial Employees, engaged under Ministerial Authority: in accordance with the Uniform Leave Conditions

- (ii) Use of sick leave to care for a sick dependant - general

When family and community service leave, as outlined in clause 24 is exhausted, the sick leave provisions under clause (i) may be used by an employee to care for a sick dependant.

- (iii) Use of sick leave to care for a sick dependant - entitlement

- (a) The entitlement to use sick leave in accordance with this clause is subject to:
  - (1) the employee being responsible for the care and support of the person concerned, and
  - (2) the person concerned being:
    - (1) a spouse of the employee; or
    - (2) a de facto spouse, who in relation to a person, is a person of the opposite sex to the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (3) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial) parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (4) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (5) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
      - (i) 'relative' means a person related by blood, marriage or affinity;
      - (ii) 'affinity' means a relationship that one spouse because of marriage has to blood relatives of the other; and
      - (iii) 'household' means a family group living in the same domestic dwelling

- (b) An employee with responsibilities in relation to a person who needs their care and support shall be entitled to use sick leave available from that year's annual sick leave entitlement minus any sick leave taken from that year's entitlement to provide care and support for such persons when they are ill.
- (c) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave, sick leave accrued from the previous 3 years may also be accessed by an employee with responsibilities in relation to a person who needs their care and support.
- (d) In special circumstances, the Chief Executive Officer or Managing Director may make a grant of additional sick leave. This grant can only be taken from sick leave accrued prior to the period referred to in paragraph (c).
- (e) If required, a medical certificate or statutory declaration must be made by the employee to establish the illness of the person concerned and that the illness is such to require care by another person.
- (f) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration and has the right to choose which of the two methods to use in the establishment of grounds for leave.
- (g) Wherever practicable, the employee shall give the Chief Executive Officer or Managing Director prior notice of the intention to take leave, the name of the person requiring care and that person's relationship to the employee. They must also give reasons for taking such leave and the estimated length of absence. If the employee is unable to notify the Chief Executive Officer or Managing Director beforehand, notification should be given by telephone at the first opportunity on the day of absence.
- (h) In normal circumstances, the employee must not take leave under this subclause where another person has taken leave to care for the same person.

## **22. Public Holidays**

- (i) The days on which the following holidays are observed shall be holidays under this Award, namely New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day and Boxing Day and any day which may hereafter be proclaimed a public holiday throughout the State. The Picnic Day of the Union shall also be observed as an additional holiday under this Award, to be granted on one of the three working days between Christmas and New Year's Day. The specific date is to be advised to employees prior to December each year.
- (ii) Except as hereinafter provided -
  - (a) Employees on weekly hiring shall be entitled to the above holidays without loss of pay;
  - (b) Employees shall be paid at the rate of double time and one-half with a minimum payment of four hours at such rate for all time worked on the above holidays.
- (iii) For the purpose of this clause any employee whose ordinary hours of work commence before and continue past midnight shall be regarded as working on a holiday only if the greater number of working hours fall on the holiday, in which case all the time worked shall be regarded as holiday work. If the number of ordinary hours worked before and past midnight is equal, all ordinary time worked shall be regarded as time worked on the day on which the shift commenced.
- (iv)
  - (a) Where a holiday occurs on the rostered day off of a seven day shift worker who is not required to work on the day, the employee is entitled to a day's ordinary pay in respect of such day. The employer may, in lieu of the payment of a day's ordinary pay, add a day to the recreation leave credit.

- (b) Where the worker is required to work on that day, the employer shall pay the employee a day's ordinary pay in respect of such time, plus time and one-half for the first eight hours (with a minimum payment of four hours) and double time and one-half thereafter.
- (c) Where the employment of a seven-day shift worker has been terminated and there is an entitlement to payment in lieu of recreation leave with respect to a period of employment, the employee shall also be entitled to an additional payment for each day accrued under this clause at the appropriate ordinary rate of pay. This is provided that payment has not already been made in accordance with paragraph (a), of this subclause.

### **23. Recreation Leave**

- (i) The entitlement to recreation leave shall be as follows:
  - (a) Employees: in accordance with the Conditions Award.
  - (b) Ministerial employees, engaged under Ministerial authority: in accordance with the Uniform Leave Conditions.
- (ii) Caretakers and Seven-Day Shift Workers -
  - (a) In addition to the normal recreation leave provisions, a caretaker or seven-day shift worker, at the end of each year of continuous employment shall be entitled to an additional one week's leave:
 

If during the year of employment only a portion of it has been served as a caretaker or a seven-day shift worker, the additional leave shall be 3.25 hours for each completed month of employment in those classifications. Where the additional leave is or comprises a fraction of a day, such fraction shall not form part of the leave period and shall be discharged by payment only.
  - (b) Where the employment of a caretaker or seven-day shift worker is terminated and the person thereby becomes entitled to payment in lieu of recreation leave for a period of employment, such person also shall be entitled to an additional payment of 3.25 hours at their ordinary rate of pay for each completed month of service.
- (iii) For the purposes of this clause, a seven-day shift worker means an employee whose ordinary working period includes Sunday and /or holidays on which the employee may be regularly rostered for work.

Redundant as leave is provided in (i)

### **24. Family & Community Services Leave**

- (i) The Chief Executive Officer or Managing Director may grant family and community service leave to an employee:
  - (a) for reasons related to the family responsibilities of the employee, or
  - (b) for reasons related to the performance of community service by the employee, or
  - (c) in a case of pressing necessity
- (ii) Family and Community Services Leave replaces Short leave.
- (iii) The maximum amount of family and community services leave on full pay that may be granted to an employee is:
  - (a) 2.5 working days during the first year of service and 5 working days in any period of 2 years after the first year of service, or

- (b) 1 working day for each year of service after 2 years continuous service, minus any period of family and community service leave already taken by the employee, whichever is the greater period
- (iv) Family and community service leave is available to part-time employees on a pro rata basis, based on the number of hours worked.
- (v) Where family and community service leave has been exhausted, additional paid family and community service leave of up to 2 days may be granted on a discrete 'per occasion' basis on the death of a person defined in Clause 21(iii)a)(2).

## **25. Parental Leave**

The entitlement to parental leave shall be as follows:

- (a) Employees: in accordance with the Conditions Award
- (b) Ministerial employees, engaged under Ministerial Authority, in accordance with the Uniform Leave Conditions.

## **26. Extended Leave/Long Service Leave**

- (i) The entitlement to extended leave/long service leave shall be as follows:
  - (a) Employees: in accordance with the Act and the Government Sector Employment Regulation 2014.
  - (b) Ministerial employees, engaged under Ministerial authority in accordance with the Uniform Leave Conditions.

## **27. Other Forms of Leave**

- (i) Employees: in accordance with the Public Sector Employment and Management (General) Regulation 1996 and the conditions award, or any replacement award,
- (ii) Ministerial employees, engaged under Ministerial Authority: see Uniform Leave Conditions.

## **28. Anti-Discrimination**

- (i) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act* 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award, which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act* 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;

- (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.
- (i) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
  - (ii) Section 56(d) of the *Anti-Discrimination Act 1977* provides:
 

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

### **29. Dispute Resolution**

Any dispute shall be dealt with in the following manner:

- (i) in the event of a claim, issue or dispute, the employee(s) and/or delegate(s) of the union will place the claim, issue or dispute before the immediate supervisor. The immediate supervisor will take all reasonable steps to reply to the employee(s) and/or delegate(s) as soon as possible.
- (ii) Failing agreement, employee(s) and/or delegate(s) of the union will place the claim, issue or dispute before the Manager or his/her deputy. The Manager or his/her deputy will take all reasonable steps to reply to the employee(s) and/or delegate(s) as soon as possible.
- (iii) If no agreement is reached at this stage on the claim, issue or dispute, the matter will be fully reviewed by the Secretary of the union or its representative and senior management. All reasonable steps will be taken to resolve the matter.
- (iv) Failing agreement, the claim, issue or dispute shall be referred to the Industrial Relations Commission of New South Wales for resolution.
- (v) All work shall continue normally while the above procedures are taking place.

### **30. Non-Reduction of Existing Wages and Conditions**

Wages And Conditions

- (i) Employees still in receipt of a 20% part-time loading shall continue to receive such loading under the protection of the *Public Sector Employment and Management Act 2002*.
- (ii) Existing employees as at 31 January 1992 shall not be compelled to work broken shifts or become seven-day shift workers in accordance with the provisions of this award. However, employees engaged after 31 January 1992 may be required to work broken shifts or work ordinary hours over seven days of the week.

### **31. Exemptions**

- (i) This award shall not apply to persons currently employed in terms of Determination No. 768 of 1982 - Security Officers and Senior Security Officers, Various Departments, made pursuant to Section 130 of the *Public Sector Employment and Management Act 2002* or any variation or replacement thereof.

### **32. Deduction of Union Membership Fees**

- (i) The Union shall provide the employer with a schedule setting out the Union's fortnightly membership fees payable by members of the Union in accordance with the Union's rules.
- (ii) The Union shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of Union fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.
- (iii) Subject to (i) and (ii) above, the employer shall deduct Union fortnightly membership fees from the pay of any employee who is a member of the Union in accordance with the Union's rules, provided that the employee has authorised the employer to make such deductions.
- (iv) Monies so deducted from employees' pay will be forwarded regularly to the Union together with all necessary information to enable the Union to reconcile and credit subscriptions to employees' Union membership accounts.
- (v) Unless other arrangements are agreed to by the Department of Education and the Union, all Union membership fees shall be deducted on a fortnightly basis.
- (vi) Where an employee has already authorised the deduction of Union membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

### **33. Area, Incidence and Duration**

This award shall apply to:

- (i)
  - a. all non-executive public service employees as defined in the *Government Sector Employment Act 2013* employed in Departments, Public Service executive agencies related to Departments, and separate Public Service agencies, listed in Schedule 1 to the *Government Sector Employment Act 2013*, except where another industrial instrument or arrangement applies to the employees; and
  - b. any officer, Departmental temporary employee and casual employee who, as at 23 February 2014, was employed in a Department listed in Schedule 1, Part 1, of the *Public Sector Employment and Management Act 2002* and who was covered by this award on that date will continue to be covered by this award,

who are employed in the classifications contained in this Award or under Ministerial Authority.
- (ii) This award rescinds and replaces the Crown Employees (Security and General Services) Award 2018 published 29 March 2019 (384 I.G. 18).
- (iii) This award has a nominal term of 12 months from 1 July 2019 with any increases to pay and work related allowances effective from the first full pay period on or after 1 July 2019.

### **34. No Extra Claims**

- (i) Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the NSW Industrial Relations Commission for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the Employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

The terms of the preceding paragraph do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing award provisions.



## PART B

### MONETARY RATES

**Table 1 - Rates of Pay**

Rates of pay for this award are now contained in the Crown Employees Wages Staff (Rates of Pay) Award 2019.

Rates of Pay	Per week as at 1.7.19	Per week from the first full pay period on or after 1.7.19
Classification	\$	\$
Security Officer		
Grade 1	912.10	934.90
Grade 2	944.10	967.70
Grade 3	987.30	1012.00
General Services Officer		
Grade 1	814.00	834.30
Grade 2	884.10	906.20
Grade 3	912.10	934.90
Part-time Employees (Per hour)- General Services Officer Grade 2 (Cleaners)	25.15	25.80

Application to school based employees of the Department of Education

Clause 7 Rates of Pay	Per week as at 1.7.19	Per week from the first full pay period on or after 1.7.19
Classification	\$	\$
Security Officer		
Grade 1	983.20	1007.80
Grade 2	1017.40	1042.80

**Table 2 - Work Related Allowances**

Item No.	Clause 9 - Additional Rates	As at 1.7.19	From the first full pay period on or after 1.7.19
		\$	\$
1.	Leading Hands Allowance: (per week)		
	1 - 5 employees	39.10	40.10
	6 - 10 employees	44.50	45.60
	11-15 employees	58.00	59.40
	16-20 employees	66.90	68.60
	Over 20 employees - for each employee over 20 an additional 50 cents is paid	66.90	68.60
2.	Qualification allowance (per week)	26.20	26.90
3.	First Aid Allowance (per week)	20.20	20.70
4.	Boiler Attendants Certificate (per week)	17.10	17.50
5.	Refrigeration Drivers Certificate (per week)	17.10	17.50
6.	Contingency Allowance (per week)		
	1-10 Hours per week	10.80	11.10
	11 to 25 hours per week	16.70	17.10
	26 to 38 hours per week	22.40	23.00

7.	Toilet allowance (per week)	13.40	13.70
8.	Multi-Purpose Machines Allowance - per shift	3.30	3.80
9.	Furniture removal allowance - per shift	3.30	3.38
10.	Torches - per shift	1.05	1.08
11.	Laundry allowance - per shift	2.25	2.30
12.	Locomotion allowance - per shift	35.80	36.70
13.	Motor Vehicle Allowances - Official Business Rate	0.66	0.68
14.	Bicycle allowance - per shift	2.85	2.92
15.	Broken Shifts allowance (per day)	16.40	16.80
	Excess Fares allowance (per week)	10.40	10.70
16.	Accommodation deduction (per week)	20.50	21.00
18.	Overtime meal allowance	Per ATO	Per ATO

Application to school based employees of the Department of Education

Clause 9 - Additional Rates	As at 1.7.19	From the first full pay period on or after 1.7.19
	\$	\$
(i) Leading Hands Allowance (per week)		
1 - 5 employees	42.20	43.30
6 - 10 employees	47.70	48.90
11-15 employees	62.50	64.10
16-20 employees	72.30	74.10
Over 20 employees - for each employee over 20 an additional 53 cents is paid	72.30	74.10
(v) Contingency Allowance (per week)		
1-10 Hours per week	11.60	11.90
11 to 25 Hours per week	17.90	18.30
26 to 38 Hours per week	24.20	24.80

P. M. KITE, *Chief Commissioner*

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# FARM ASSISTANTS (DEPARTMENT OF EDUCATION AND COMMUNITIES) WAGES AND CONDITIONS AWARD 2019

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Industrial Relations Secretary.

(Case No. 204348 of 2019)

Before Chief Commissioner Kite

4 July 2019

## AWARD

### PART A

#### 1. Arrangement

##### PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Hours of Work
4.	Overtime
5.	Wage Sacrifice for Superannuation and Wage/Salary Packaging Arrangements
6.	Wages and Allowances
7.	Payment of Wages
8.	Deduction of Union Membership Fees
9.	Public Holidays and Picnic Day
10.	Leave
11.	Tea Breaks
12.	Accommodation
13.	Settlement of Disputes
14.	Terms of engagement
15.	Fares
16.	Anti-Discrimination
17.	Area, Incidence and Duration
18.	No Extra Claims

##### PART B

##### MONETARY RATES

Table 1 - Wages

Table 2 - Allowances

#### 2. Definitions

2.1 "Act" means the *Government Sector Employment Act 2013*.

2.2 "Casual Employee" means a person engaged on an hourly basis to carry out:

- (i) work that is irregular or intermittent, or

- (ii) work on a short term basis in an area of the Department with a flexible workload, or
- (iii) the work of a position for a short period pending completion of the selection process for the position, or
- (iv) urgent work to deal with an emergency.

Consistent with the casual employment provisions of the *Government Sector Employment Act 2013* and any rules or guidelines issued pursuant to that Act, no single period of casual employment is to exceed three months, and the parties further agree that ideally no single period of engagement as a casual employee should exceed one month and in most instances any period of casual engagement should be less than two weeks in duration.

- 2.3 "Department" means the NSW Department of Education.
- 2.4 "Employee" means and includes all persons employed on an ongoing, temporary or casual basis under the provisions of the *Government Sector Employment Act 2013*, who, on 20 October 1982 were occupying a position covered by this award and included in the schedule attached hereto, or who after that date, are employed under the terms of this award but does not include any person who resigned or whose services were terminated (not including retirement) prior to the making of this award.
- 2.5 "Farm Assistant" means any employee, including a casual, engaged as a Farm Assistant Class I or Farm Assistant Class II.
- 2.6 "Flower Gardener" means any employee engaged as such.
- 2.7 "Horsepower" means the brake horsepower as stated by the manufacturer.
- 2.8 "Part Time Employee" means a person engaged on an ongoing basis for part hours or part years where the employee's contract hours are less than full time hours.
- 2.9 "Regulation" means the Government Sector Employment Regulation 2014.
- 2.10 "Temporary Employee" means a person engaged on a temporary basis, either full time or part time, for a fixed period greater than one month, consistent with the temporary employment provisions of the *Government Sector Employment Act 2013* and any guidelines issued pursuant to that Act.

### **3. Hours of Work**

- 3.1 Day Work - The ordinary working hours for a full time employee shall be thirty-eight per week and shall be worked in accord with the following provisions for a four-week work cycle:
  - 3.1.1 Except in the case of employees engaged in attending livestock, the ordinary working hours shall be worked as a twenty day four-week cycle Monday to Friday, inclusive, with nineteen working days of eight hours each between the hours of 7.00 a.m. and 5.30 p.m., with 0.4 of one hour on each day worked accruing as an entitlement to take one rostered day off in each work cycle as a day off paid for as though worked.
  - 3.1.2 The ordinary working hours of employees engaged in attending livestock shall be worked as a twenty day, four-week cycle of five days per week during the period Monday to Saturday, inclusive, within nineteen working days of eight hours each between the hours of 6.00 a.m. and 5.30 p.m., with 0.4 of one hour on each day worked accruing as an entitlement to take one rostered day off in each work cycle as a day off paid for as though worked.
  - 3.1.3 The rostered day off shall be a Monday or Friday within the working cycle provided that by agreement of the employer and the employee, the rostered day off may be accrued as an entitlement for a day off to be taken in a subsequent work cycle. Provided further that no employee shall be entitled to accrue more than six rostered days off under the terms of this subsection. All rostered days off shall be taken by the employee as leisure days off, and except

as provided for in this subsection, no work shall be performed by an employee on her/his rostered day off; or rostered days off.

- 3.1.4 A roster of days off (provided for under this subsection) for each employee shall be notified to employees prior to the commencement of each working cycle. Employees shall be provided with seven (7) working days' notice of a change in roster, provided that, in the case of an emergency situation, forty-eight (48) hours notice of a change in roster may be given by the employer.
  - 3.1.5 Where such rostered day off prescribed by this subclause falls on a public holiday as prescribed in clause 9, Public Holidays, the next working day shall be taken in lieu of the rostered day off unless an alternative day in that four-week cycle (or the next four-week cycle) is agreed in writing between the employer and the employee.
  - 3.1.6 Each day of paid leave taken on any public holidays occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes.
  - 3.1.7 An employee who has not worked, or is not regarded by reason of subclause (3.1.6) as having worked a complete four-week cycle, shall receive pro rata accrued entitlements for each day worked (or each fraction of a day worked) or regarded as having been worked in such cycle, payable for the rostered day off or, in the case of termination of employment, on termination.
  - 3.1.8 A majority of the employees concerned and their employers may mutually agree upon a change in starting and ceasing times so that the spread of hours in the award may be between 6.00 a.m. and 6.00 p.m.
  - 3.1.9 Employees shall commence and cease work at the headquarters or the barn.
  - 3.1.10 Employees shall be entitled to an unpaid meal break each day of not less than thirty minutes duration and not more than one hour in duration provided that the said meal break shall be taken between 11.30 a.m. and 1.30 p.m.
- 3.2 Subject to subclause 3.3 the school principal or their delegate may require an employee to work reasonable overtime at overtime rates.
  - 3.3 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
  - 3.4 For the purposes of subclause 3.3 what is unreasonable or otherwise will be determined having regard to:
    - 3.4.1 any risk to employee health and safety;
    - 3.4.2 the employee's personal circumstances including any family and carer responsibilities;
    - 3.4.3 the needs of the workplace or enterprise;
    - 3.4.4 the notice (if any) given by the school principal or their delegate of the overtime and by the employee of his or her intention to refuse it; and
    - 3.4.5 any other relevant matter.

#### **4. Overtime**

- 4.1 Except as hereinafter provided overtime at the rate of time and a half for the first two (2) hours and double time thereafter shall be paid for all time worked:-
  - 4.1.1 in excess of the daily number of rostered hours on any one day; or

- 4.1.2 outside the limits of subclause 3.1.1 in the case of employees other than those engaged on nursery work during the months of October to March inclusive; or
- 4.1.3 outside the limits of subclause 3.1.2 in the case of employees other than those engaged on nursery work during the months of October to March inclusive.
- 4.2 All work performed on Sundays and Public Holidays shall be paid for at the rate of double time and double time and a half respectively. An employee required to work on a Sunday or Public Holiday shall receive a minimum payment of 4 hours pay at the rate of double time or double time and a half respectively.
- 4.3 All ordinary time worked on Saturdays shall be paid for at the rate of time and a half.
- 4.4 An employee recalled to work overtime after 5.30 p.m. on any day other than a Sunday or Public Holiday shall receive a minimum payment of four hours pay at the appropriate overtime rate. On each recall the employee may be required to work 4 hours.
- 4.5 An employee who works so much overtime-
- 4.5.1 between the termination of his/her ordinary work day and the commencement of his/her ordinary work in the next day that he/she has not had at least ten consecutive hours off duty between these times;
- 4.5.2 or on Saturdays, Sundays and Holidays, not being ordinary working days without having had ten consecutive hours off duty in the twenty-four hours preceding his/her ordinary commencing time on his/her next ordinary day shall, subject to this sub-clause be released after completion of such overtime until he/she has had ten hours off duty without loss of pay for ordinary working time occurring during such absences.
- Provided that, if on the instructions of his/her employer, such an employee resumes or continues, to work without having had such ten consecutive hours off duty he/she shall be paid at double rates until he/she is released from duty for such period and he/she shall then be entitled to be absent until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- 4.6 An employee who is required to work overtime for two hours or more after the normal ceasing time shall be allowed, at the expiration of the said two hours, 30 minutes for a meal or crib and thereafter a similar time allowance after every four hours of overtime worked. Time for meals or crib through overtime periods shall be allowed without loss of pay, provided that overtime work continues after such break.
- 4.7 Where overtime is worked on a Saturday, if work continues after 12 noon, a break for a meal of 30 minutes shall be allowed between 12 noon and 1 p.m. which meal break shall be taken without loss of pay.

## **5. Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation**

An employee may elect, subject to the agreement of the Department to enter into a Salary Packaging Arrangement in accordance with the provisions of Clause 7 - Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation of the Crown Employees Wages Staff (Rates of Pay) Award 2019 or any variation to or successor instruments to the said award shall apply

## **6. Wages and Allowances**

- 6.1 The rates of wages and allowances to be paid to employees appointed to the positions specified are set out in Table 1 Wages and Table 2 Allowances of Part B, Monetary Rates.

- 6.2 The wage rates as set out in Table 1 - Wages, and Table 2 Allowances of Part B, Monetary Rates, shall be adjusted in line with the Crown Employees Wages Staff (Rates of Pay) Award 2019 or any variations to or successor instruments to the said award.
- 6.3 Promotion from Farm Assistant, Class I to Farm Assistant Class II shall be subject to completion of 12 month's satisfactory service and the recommendation of the Department Head, that the skill and versatility of the employee in all respects of the work of a Farm Assistant, including proficiency in the operation of farm equipment and vehicles warrants such promotion. For the purposes of this sub-clause, service shall mean service in an established position and shall include prior service as a junior.
- 6.4 Casual employees shall be paid at the rate of one thirty eighth of the weekly rates prescribed in respect of the classification for which the employee is casually employed.
- 6.5 Casual employees shall be paid in addition to the prescribed rate for the classification concerned 15 per centum thereof.
- 6.6 Special rates
- A Farm Assistant, Class I or II, employed on any of the following operations, viz.
- 6.6.1 operating and servicing a tractor provided that for the purpose of this provision a tractor shall be deemed to include a wheel tractor and a crawler tractor and provided that such tractors shall be not less than 10 horsepower;
- 6.6.2 driving on farm or college property a truck which, if driven on the highway, would require possession of at least a Class 3 driver's licence:
- 6.6.3 operating headers, harvesters, including maize harvesters, and mechanical pick-up hay balers;
- shall be paid an additional allowance as prescribed in Table 2 Allowances of Part B, Monetary Rates per day while actually so employed, provided that no allowance shall be paid for periods of such employment of less than one hour per day nor shall an employee receive more than one such allowance in respect of any one day.
- 6.6.4 an employee required to drive a truck on the highway shall be paid the rates prescribed by the Crown Employees (Transport Drivers, etc.) Award provided that, where such employment is for less than half a day, payment shall be as for a half a day and where such employment is for a half day or more payment shall be as for a full day and provided however that no additional payment shall be made in respect of periods of one hour or less.
- 6.7 Broken shift allowance
- Employees who are required to work a broken shift shall be the allowance prescribed in Table 2 Allowances of Part B, Monetary Rates per day extra as a broken shift allowance.
- 6.8 Mixed functions
- An employee engaged for more than two hours during one day on duties carrying a higher rate than his/her ordinary classification shall be paid the higher rate for such day. If so engaged for two hours or less during one day he/she shall be paid the higher rate for the time so worked.
- 6.9 Protective clothing
- Employees required to work in the rain or in mud, slurry, water or wet places shall be paid an allowance prescribed in Table 2 Allowances of Part B, Monetary Rates.
- This allowance shall not be payable to an employee who is provided by the employer with adequate protective clothing.

#### 6.10 First Aid

A standard first aid outfit shall be provided and maintained by the employer.

An employee appointed by the employer to perform first aid duty shall be paid in the first aid allowance prescribed in Table 2 Allowances of Part B, Monetary Rates in addition to their ordinary rates of pay.

#### 6.11 Meal Allowance

An employee required to work more than one and one half hours after the ordinary ceasing time shall be provided with a meal or shall be paid the amount prescribed in Table 2 Allowances of Part B, Monetary Rates for such a meal and after the completion of each four hours of continuous overtime shall be paid the amount prescribed in Table 2 Allowances of Part B, Monetary Rates for each subsequent meal in addition to his/her overtime payment.

#### 6.12 Distant places

The provisions of the Act and the Regulations apply.

### **7. Payment of Wages**

7.1 Wages shall be paid fortnightly into a bank or other account, provided that where employees work in isolated areas or where employees experience hardship or other exceptional circumstances then payment shall be made to the employee fortnightly by cheque.

7.2 One day of each pay period shall be recognised as pay day for each job: it shall be the same day in each pay period.

### **8. Deduction of Union Membership Fees**

8.1 The union shall provide the employer with a schedule setting out union fortnightly membership fees payable by members of the union in accordance with the union's rules.

8.2 The union shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of union fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.

8.3 Subject to (8.1) and (8.2) above, the employer shall deduct union fortnightly membership fees from the pay of any employee who is a member of the union in accordance with the union's rules, provided that the employee has authorised the employer to make such deductions.

8.4 Monies so deducted from employees' pay shall be forwarded regularly to the union together with all necessary information to enable the union to reconcile and credit subscriptions to employees' union membership accounts.

8.5 Unless other arrangements are agreed to by the employer and the union, all union membership fees shall be deducted on a fortnightly basis.

8.6 Where an employee has already authorised the deduction of union membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

### **9. Public Holidays**

9.1 The following days shall be observed as Public Holidays:-

New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day and any other proclaimed or gazetted holiday for the state of New South Wales.



- 9.2 Where local Show Day is a proclaimed local holiday it shall be observed as a Public Holiday for employees covered by this award. In the event that an employee cannot be spared without inconvenience to the Department, an alternative day with pay shall be given within twenty working days of the proclaimed local holiday; provided that no employee shall be entitled to payment at overtime rates for work on such proclaimed local holiday and provided further that an employee shall not be entitled to the benefit of more than one holiday upon such occasion.
- 9.3 Where an employee is absent from his or her employment on the working day before or the working day after a public holiday without reasonable excuse or without the consent of the employer the employee shall not be entitled to payment of such holiday.
- 9.4 Public Service Holiday
- 9.4.1 Unless directed to attend for duty by the Department Head a staff member is entitled to be absent from duty on a day between Boxing Day and New Year's Day determined by the Department Head as a public service holiday.
- 9.4.2 Any employee required to work on such day shall be paid at the rate of double time and a half for not less than four hours' work. Provided that an employee who is required to work on the nominated public service holiday and who fails to comply with such requirement shall not be entitled to payment for the day. An employee who is absent on the public service holiday on approved leave is not entitled to the public holiday overtime rate of pay.

## **10. Leave**

- 10.1 General leave conditions of employees under this Award shall be regulated in accordance with the provisions contained within the Act and Regulation.
- 10.2 In addition to provisions for sick leave existing under the terms of regulations made pursuant to the Act, and applicable to the employees covered under the terms of this award, the following provisions for sick leave shall apply:
- Where an employee is ill or incapacitated (within the meaning of regulations relating to sick leave under the Act) on her/his rostered day off he/she shall not be entitled to payment for sick leave on that day nor shall her/his sick leave entitlements be reduced as a result of such illness or incapacity.
- 10.3 In addition to provisions for annual (recreation) leave, long service (extended) leave, accident pay and short leave existing under the terms of regulations made pursuant to the Act, employees covered under the terms of this award shall have the following provisions apply -
- 10.3.1 All paid leave taken in service with the exception of long service (extended) leave and accident pay shall be paid as follows:
- An employee who is absent from work on paid leave shall accrue an entitlement of 0.4 of one hour for each such day as if he/she had worked on that day. The time accrued shall be paid on the scheduled day off.
- 10.3.2 Annual (recreation) leave on termination of service and long service (extended) leave and accident pay taken in service or paid on termination shall be paid as follows:
- 10.3.2.1 All accrued time against a paid day off shall be paid to the employee prior to proceeding, on leave or at the time of termination of the employee's service;
- 10.3.2.2 All leave accrued or time due shall be paid to the employee on the basis of one week of accrued leave etc., being equal to 38 hours or one day being equal to 7.6 hours.

Provided that where a full year's annual (recreation) leave of 20 days or more is accrued when the employee shall be paid a further 7.6 hours for the first 20 days and on the same basis for the remainder of accrued leave.

10.3.3 Where the employee is absent on long service (extended) leave and accident pay during the 20 day cycle and returns to work prior to or on the rostered day off the time involved during the current cycle shall be regarded as accruing 0.4 of one hour for each day of paid absence.

#### 10.4 Personal/Carer's leave

##### Use of Sick Leave

10.4.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph (ii) of subclause 10.4.3.2 shall be entitled to use, in accordance with this subclause, any sick leave for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.

10.4.2 The employee shall, if required, establish either by production of a medical certificate or statutory declaration, the illness of the person concerned.

10.4.3 The entitlement to use sick leave in accordance with this subclause is subject to:

10.4.3.1 the employee being responsible for the care of the person concerned; and

10.4.3.2 the person concerned being:

- (i) a spouse of the employee; or
- (ii) a de facto spouse, who, in relation to the employee, is a person of the opposite sex to the employee who lives with the employee as the husband or wife of the employee on a bona fide domestic basis although not legally married to that person; or
- (iii) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian ), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
- (iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (v) a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse because of marriage has to the relatives of the other; and

"household" means a family group living in the same domestic dwelling.

10.4.4 An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of the absence.

10.4.5 Subject to the evidentiary and notice requirements in 10.4.2 and 10.4.4, casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 10.4.3 of 10.4 Personal/Carer's Leave who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.

10.4.6 The employer and employee shall agree on the period for which the employee will not be entitled to be available to attend work. In the absence of agreement, the employee is entitled to not be available for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non attendance.

10.4.7 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

#### Use of Annual (Recreation) Leave

10.4.8 An employee may elect with the employer's agreement to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties to care for a person prescribed in subclause 10.4.3 of 10.4 Personal/Carer's Leave who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.

10.4.9 An employee may elect with the employer's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

#### 10.5 Bereavement Leave

10.5.1 An employee other than a casual employee shall be entitled to up to two days Bereavement Leave without deduction of pay on each occasion of the death of a member of a class of person set out in subparagraph (ii) of subclause 10.4.3.2 of this clause.

10.5.2 The employee must notify the employer as soon as practicable of the intention to take Bereavement Leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.

10.5.3 Bereavement Leave shall be available to the employee in respect of the death of a person in relation to whom the employee could have utilised Carer's Leave as prescribed by this clause. The employee need not have been responsible for the care of the person concerned to be eligible for Bereavement Leave as prescribed in this subclause.

10.5.4 An employee shall not be entitled to Bereavement Leave under this clause during any period in respect of which the employee has been granted other leave.

10.5.5 Bereavement leave may be taken in conjunction with any other leave available to employees. Where such other available leave is to be taken in conjunction with Bereavement Leave, consideration will be given to the circumstances of the employee and the reasonable operational requirements of the employer.

10.5.6 Subject to the evidentiary and notice requirements in 10.5.2, casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 10.4.3 of 10.4 Personal/Carer's Leave.

10.5.7 The employer and employee shall agree on the period for which the employee will not be entitled to be available to attend work. In the absence of agreement, the employee is entitled to not be available for up to 48 hours (ie two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

10.5.8 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

## 10.6 Parental Leave

10.6.1 Parental leave conditions of employees under this Award shall be regulated in accordance with the provisions contained within the Act and Regulation and will be in addition to those set out in the *Industrial Relations Act 1996* and the Regulation.

10.6.2 An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

### 10.6.3 Right to Request

10.6.3.1 An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

10.6.3.2 The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

10.6.3.3 The employee's request and the employer's decision made under 10.6.1 (ii) and 10.6.1 (iii) must be recorded in writing.

10.6.3.4 Where an employee wishes to make a request under 10.6.1 (iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

### 10.6.4 Communication During Parental Leave

10.6.4.1 Where an employee is on parental leave and a definite decision has been made to introduce a significant change at the workplace, the employer shall take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- 10.6.4.2 The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- 10.6.4.3 The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with 10.6.4.1.

### **11. Tea Breaks**

- 11.1 A tea break during the morning period of not more than fifteen minutes' duration shall be allowed to each individual employee, at a time to be arranged by the employer, without deduction from their wages.
- 11.2 Provided that an employer may grant a tea break of not more than ten minutes' duration during both the morning and afternoon periods of the working day, under the same conditions as above. Where an afternoon tea break is taken the employer may direct that it be taken immediately prior to ceasing time.

### **12. Accommodation**

- 12.1 Employees who reside in Departmental premises and are provided with board and lodging by the employer shall be charged at the rates determined from time to time by the Department of Premier and Cabinet according to whether the employee is provided with full board and lodging or whether he/she attends to his/her own room and waits on himself/herself at table.
- 12.2 Where employees do not reside at the Farm, the employer shall provide free of charge a dining room fitted with sufficient and suitable table and seating accommodation together with an adequate supply of boiling water for employees at meal times. Pure drinking water shall be provided at suitable locations on each farm in clean containers where it is not available from a water service pipe.
- 12.3 Change rooms shall be provided by the employer and shall be used exclusively for that purpose. Where practicable, hot and cold showers shall be provided.

### **13. Settlement of Disputes**

Subject to the provisions of the *Industrial Relations Act 1996*, the undermentioned procedures shall be applied in the settlement of disputes -

- 13.1 Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and supervising staff, it shall be referred to the Departmental Personnel/ Industrial Officer or other officer nominated by the employer who will arrange for the matter to be discussed with the union or unions concerned.
- 13.2 Failing settlement of the issue at this level, the matter should be referred to senior management.
- 13.3 If the matter remains unsolved then either party may make application to the Industrial Relations Commission of New South Wales.
- 13.4 Whilst these procedures are continuing, no stoppage of work or any form of limitation of work shall be applied.
- 13.5 The right is reserved to the parties to vary this procedure where it is considered a safety factor is involved.

#### **14. Terms of Engagement**

- 14.1 Employees shall be employed in accordance with the *Government Sector Employment Act 2013*, and except in the case of misconduct, their engagement shall only be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture of one week's wages in lieu, as the case may be.

#### **15. Fares**

- 15.1 Any person selected for work and sent by the employer or his/her agent, including a Government Employment Bureau or Private Employment Agency, from the City to the country or from one country centre to another, or from a country centre to the City, shall have the necessary fares provided by the employer.

#### **16. Anti-Discrimination**

- 16.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 16.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed in clause 13, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award, which, by its terms or operation, has a direct or indirect discriminatory effect.
- 16.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 16.4 Nothing in this clause is to be taken to affect:
- any conduct or act which is specifically exempted from anti-discrimination legislation;
  - offering or providing junior rates of pay to persons under 21 years of age;
  - any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*, or
  - a party to this award from pursuing matters of unlawful discrimination in any state or federal jurisdiction.
- 16.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### **17. Area, Incidence and Duration**

- 17.1 This award shall apply to all employees as defined herein.
- 17.2 This Award rescinds and replaces the Farm Assistants (Department of Education and Communities) Wages and Conditions Award 2018 published 24 January 2020 (386 I.G. 142) and all variations thereof.
- 17.3 This award has a nominal term of 12 months from 1 July 2019 with any increases to pay and work related allowances effective from the first full pay period on or after 1 July 2019.

#### **18. No Extra Claims**

- 18.1 Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or

proceedings instituted before the NSW Industrial Relations Commission for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the Employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

The terms of the preceding paragraph do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing award provisions.

## PART B

### MONETARY RATES

**Table 1 - Wages**

Classification	Amount as at 1/07/19 \$	Amount from first full pay period on or after 1/07/19 \$
Farm Assistant Class I	961.80	985.80
Class II	1105.80	113.40
Flower Gardener	993.40	1018.20

**Table 2 - Allowances**

Clause	Allowance	Amount as at 1/07/19 \$	Amount from first full pay period on or after 1/07/19 \$
<b>6.6 Special Rates</b>			
6.6.1	Tractor operation (per day)	4.90	5.02
6.6.2	Truck driving (per day)	4.90	5.02
6.6.3	Headers, etc. (per day)	4.90	5.02
6.7	Broken Shift (per day)	14.75	15.12
6.9	Protective Clothing (per hour)	0.80	0.82
6.11	First meal per day Subsequent meals		
6.10	First Aid (per day)	3.70	3.79

P. M. KITE, *Chief Commissioner*

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**HEALTH EMPLOYEES DENTAL OFFICERS (STATE) AWARD 2019**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 204731 of 2019)

Before Chief Commissioner Kite

4 July 2019

**AWARD****Arrangement**

Clause No.	Subject Matter
1	Definitions
2	Conditions of Service
3	Salaries
4	Classifications
5	Transitional Arrangements
6	No Extra Claims
7	Area, Incidence and Duration

**1. Definitions**

"Dental Officer" means a person appointed as such by a hospital who holds a dental qualification registrable with the Dental Board of Australia.

"Hospital" means a public hospital as defined under section 15 of the *Health Services Act 1997*.

"Ministry" means the Ministry of Health.

"Officer" means a Dental Officer, as defined herein, occupying a position as specified in clause 3, Salaries, in a hospital as defined above.

"Service", unless the context otherwise indicates or requires, means relevant service before and/or after commencement of this Award in any one or more New South Wales public health organisations or any other organisations deemed acceptable by the Ministry.

"Specialist" means a person appointed by the hospital who:

- (a) holds a dental qualification registrable in Australia;
- (b) after full registration has spent not less than six years in the practice of dentistry whether in New South Wales or elsewhere, deemed by the hospital to be of equivalent standing;
- (c) has spent not less than four years in supervised specialist training and/or experience, and either:
  - (1) has obtained an appropriate dental qualification in his/her speciality acceptable to the hospital, or
  - (2) is deemed by the Ministry to be a specialist by recognition of his/her experience and demonstrated performance at specialist level.

"Union" means Health Services Union NSW.



"Weekly rates" will be ascertained by dividing an annual amount by 52.17857 or a weekly rate can be multiplied by 52.17857 to obtain the annual amount.

## **2. Conditions of Service**

The Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award 2018, as varied or replaced from time to time, shall apply to all persons covered by this Award.

In addition, the Health Industry Status of Employment (State) Award 2018, as varied or replaced from time to time, shall also apply to all relevant employees.

## **3. Salaries**

Full time Dental Officer employees shall be paid the salaries in the Health Professional and Medical Salaries (State) Award 2018, as varied or replaced from time to time.

## **4. Classifications**

### **4.1 Dental Officer Level 1**

- (a) Dental officers employed at level 1 are newly qualified employees. Dental officers at this level are beginning practitioners who are developing their skills and competencies in dentistry.
- (b) Level 1 staff are responsible and accountable for providing a professional level of service to the health facility. Under the general oversight of a more experienced dentist, a level 1 year 1 Dental Officer performs examinations, investigations and basic treatment of commonly encountered dental diseases or dental health problems requiring standard corrective, restorative, or preventive measures.
- (c) Dental officers on level 1 year 2-4 serve as practicing dentists who perform routine dental work requiring the independent examination, investigation, treatment planning and treatment of patients. This is a moderate skill level and includes the moderately experienced dentist who is competent in basic tasks. He or she may require regular professional support and mentoring.
- (d) Level 1 staff participate in quality activities and workplace education. Level 1 year 2-4 staff may be required to provide supervision to undergraduate student on observational placements, work experience students and to level 1 year 1 Dental Officers.

### **4.2 Dental Officer Level 2**

- (a) Progression to level 2 from level 1 is dependent upon having a minimum of 2 years' clinical experience, meeting the annual performance review requirements and successfully completing the standard Dental Officers Skills Assessment set by the Centre for Oral Health Strategy conducted by the clinical supervisor.
- (b) The level 2 Dental Officer is a general dental practitioner who performs the full range of professional dental tasks described for the level 1 Dental Officer. The work differs from the level 1 Dental Officer in that the dental officer regularly encounters, diagnoses, and administers treatment for dental diseases and dental health problems of greater-than-usual difficulty.
- (c) Positions at this level are required to exercise independent professional judgement on routine matters. They may require professional supervision from more senior staff members when performing novel, complex or critical tasks.
- (d) Positions at this level assist in the development of policies, procedures, standards and practices, participate in quality improvement activities and may participate in clinical research activities as required.

- (e) Dental registrars (dentists undertaking training as Specialists by Masters degree) are placed on level 2, with remuneration linked to the proportion of time spent providing dental services to public patients.

#### **4.3 Dental Officer Level 3 - Senior Dentist**

- (a) This level is only achieved by appointment to such a position. Level 3 Dental Officers are experienced and capable of operating with a level of independence reflective of their skill and competency in general dentistry. Some of these dental officers will be entitled to clinical manager allowances.
- (b) The level 3 Dental Officer will have the majority of the following duties and attributes:
  - (i) highly advanced skills in managing most of the difficult clinical situations, complex medical histories and those with disabilities.
  - (ii) widely recognised for their exceptional competence in general dental work and has a proven record for carrying out a broad range of advanced and complex dental procedures. This may include the attainment of a Fellowship or Membership of the Royal Australasian College of Dental Surgeons (RACDS) or equivalent organisation as recognised by the Ministry of Health.
  - (iii) experienced clinician who demonstrates advanced clinical reasoning skills;
  - (iv) duties and responsibilities involving planning, implementing, evaluating and reporting on services;
  - (v) responsibility for identifying opportunities for improvement in clinical practice, develop and lead ongoing quality improvement activities with other staff;
  - (vi) conduct clinical research
  - (vii) acts as a mentor to other clinical staff and teaches undergraduate students
  - (viii) may be responsible for providing clinical supervision and support to level 1 and 2 Dental Officers, technical and support staff;
  - (ix) responsible for components of clinical governance; and
  - (x) participate in the provision of clinical development in-service education programs to staff and students.

#### **4.4 Dental Officer Level 4 - Head of Department/Senior Clinical Adviser**

- (a) This level is only achieved by appointment. Level 4 Dental Officers will have the competencies of a level 3 Dental Officer plus additional areas of expertise. They may have a clinical, education or management focus or may have elements of all three features. Current grade 5 Dental Officers will go to level 4 on transition to the new structure.
- (b) In recognition of their superior clinical expertise, a clinician at this level is responsible for quality assurance, development of better practice and clinical research within a facility and is actively involved in teaching staff and students in their field of clinical specialty. The level 4 Dental Officer also has responsibility for education support to other clinicians in the management of patients requiring ongoing specialist treatment in a geographic network, region or zone.
- (c) Staff at level 4 deliver and/or manage and direct the delivery of services in a complex clinical setting. They perform novel, complex or critical discipline specific clinical work with a high level of professional knowledge and by the exercise of substantial professional judgement.

- (d) Dental officers at this level would undertake work with significant scope and/or complexity and/or undertake professional duties of an innovative, novel and/or critical nature without direction.
- (e) Roles that may be undertaken at level 4 include, but are not limited to, the following:

#### **Level 4 - Clinical Stream**

Level 4 Dental Officers are experienced dentists who are:

- (i) widely recognised for their exceptional competence in general dental work and have a proven record for carrying out a broad range of advanced and complex dental procedures.
- (ii) maintain a clinical caseload and provides:
  - clinical education in the area of expertise through in-service training to undergraduate and/or post-graduate students;
  - in-service to other dental officers in their clinical specialist area of expertise;
  - consultation and advice to specialist teams across an area or geographic or clinical network; and
  - discipline specific professional supervision and leadership either within a facility or across facilities and/or Local Health District(s).

#### **Level 4 - Management Stream**

Level 4 Dental Officers may be appointed as:

- (i) Department Head - responsible for operational co-ordination of staffing and related clinical services and may work across a geographic region, zone or clinical network. Department Heads may also be required to maintain a clinical load.
- (ii) Unit Head or Team Leader- responsible for the leadership, guidance and line management of a multi-disciplinary clinical unit or specialist team that may work across a geographic region, zone or clinical network. The work involves supervision of other dental officers and support staff as well as a clinical load.

#### **4.5 Dental Officer Levels 1 - 3 Management Allowances**

- (a) Dental Officers in level 1 (2nd year and thereafter), level 2 and level 3 may be paid a management allowance in addition to their rate of pay. The management allowance is paid as part of an employee's permanent salary following a merit selection process. If an employee is required to relieve for 5 days or more in the role of the manager, and performs all of the duties of the supervisor, then the management allowance will be paid to such employee. There are two levels of allowances, which are paid in the following circumstances:
  - i. Clinic Manager Level 1 - A dental officer managing a dental clinical service that may encompass more than one small clinic. The work involves, clinical management, supervision of other dental officers, other oral health practitioners, and support staff as well as a clinical load. A level 1 managerial allowance would be paid.
  - ii. Clinic Manager Level 2 - is responsible for the leadership, guidance and line management of a multi-disciplinary clinical unit that may work across a geographic region, zone or clinical network. The work involves clinical management, supervision of other dental officers, other oral health practitioners, and support staff as well as a clinical load. A level 2 managerial allowance would be paid. Level 1 Dental Officers are not eligible for this allowance.

#### **4.6 Specialists**

- (a) Employees occupying positions as specialists who have satisfied the full requirements of the Dental Board of Australia in a recognised speciality will be appointed to the Specialist scale in accordance with their years of experience in the speciality.
- (b) Continued payment as a specialist will be on the basis of a dentist remaining employed in the specialist area concerned.

#### **4.7 Hospital Specialist**

- (a) These will be differentiated from the board specialists as follows:
  - (i) Hospital specialists provide specialist services in an area of work that is not a specialty recognised by the Dental Board of Australia.
  - (ii) For the purpose of this Award, a hospital specialist will work in the specialties of special needs, geriodontics or restorative dentistry. Additional specialties can be recognised with the approval of the Chief Dental Officer. The Medical and Dental Advisory Committee assesses the merit of individual specialists for recognition as a hospital specialist within the categories determined by the Chief Dental Officer.
  - (iii) Hospital specialists do not have access to the senior clinical specialist classification.

#### **4.8 Senior Clinical Specialist**

- (a) Board Specialists may progress to the level of Senior Specialist. This is seen as recognition for an exceptional clinical leader who has made significant contributions to dentistry in his/her area of speciality. This is a personal appointment, where it can also be demonstrated that the specialist is appointed to a position having such duties and responsibilities as deemed by the employer to require the services of a senior clinical specialist.
- (b) Except in exceptional circumstances, this appointment would follow about 10 years of experience as a specialist. This classification is not available to hospital specialists. This appointment is considered upon application by or on behalf of an individual board specialist to the Medical and Dental Advisory Committee of the Local Health District(s). Appeal of any such decision lies with the Chief Dental Officer.

#### **4.9 Specialist - Management Allowance**

- (a) A specialist or a senior clinical specialist managing a clinical service that involves, clinical management, supervision and teaching of other specialists, other oral health practitioners, undergraduate students and support staff as well as a clinical load. A hospital specialist may be eligible for the payment of this allowance. The management allowance is paid as part of an employee's permanent salary following a merit selection process. If an employee is required to relieve for 5 days or more in the role of the manager, and performs all of the duties of the supervisor, then the management allowance will be paid to such employee.

#### **4.10 Area Directors of Oral Health Clinical Services**

- (a) Positions at this level lead, direct and co-ordinate all public sector oral health services within a Local Health District(s). They have significant responsibility for the human physical and financial resources under their control. Positions at this level will also make a major contribution towards the development and achievement of the strategic directions of the Area.
- (b) The position exercises a high degree of independence in the determination of overall strategies, priorities, work standards and the allocation of resources. It will also make independent decisions related to area wide expert practice in their field and will be responsible for outcomes for clients

and the organisation from the practice of other dental officers and staff. The position makes strategic management and service development decisions.

(c) Positions at this level may include operational and strategic roles but are not limited to the following:

- (i) professional responsibility with regard to strategic workforce and service development and professional practice across an AHS;
- (ii) provides professional co-ordination and leadership across an area to department heads and acts as a central point of contact for strategic consultation and liaison with Senior Executive management;
- (iii) a dual role of department head within a facility;
- (iv) required to provide an expert speciality consultancy role in their area of expertise; and
- (v) involved in the provision of training to staff within the Local Health District(s).

(d) There will be three levels of Area Director of Clinical Services reflecting the size of the Local Health District(s) and the complexity and mix of the dental facilities within it.

(e) **Area Director of Oral Health Clinical Services - Level 1**

The level 1 reports to a health services manager responsible for oral health services. This is the lead dentist in a Local Health District(s) that provides the usual range of oral health services from community clinics but does not have

- (i) a dental teaching hospital where dental specialist services are also provided
- (ii) a Rural and Regional Centre of Oral Health or
- (iii) a dental clinical school.

(f) **Area Director of Oral Health Clinical Services - Level 2**

The level 2 reports to a health services manager responsible for oral health services. This is the lead dentist in a Local Health District(s) that provides the usual range of oral health services from community clinics but:

- (i) does not have a dental teaching hospital,
- (ii) has a Rural and Regional Centre of Oral Health and/or
- (iii) a dental clinical school.

(g) **Area Director of Oral Health Clinical Services - Level 3**

The level 3 would also have the role of health services manager responsible for oral health services. This is the lead dentist in a Local Health District(s) that provides the usual range of oral health services from community clinics, and, in addition, has:

- (i) a dental teaching hospital where dental specialist services are also provided
- (ii) a Rural and Regional Centre of Oral Health and/or
- (iii) a dental clinical school.

## **5. Transition Arrangements**

- (a) Employees' skills, responsibilities and qualifications will be assessed against the classification descriptors in clause 4 and will be placed on the appropriate level, maintaining their existing incremental date. Years of service at the relevant skill level will be used to determine the appropriate salary rate within the classification level. Employees will maintain their existing incremental date.

## **6. No Extra Claims**

Other than as provided for in the *Industrial Relations Act* 1996 and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

## **7. Area, Incidence and Duration**

- (i) This Award takes effect from 1 July 2019 and shall remain in force for a period of one year.
- (ii) This Award rescinds and replaces the Health Employees Dental Officers (State) Award 2018 published 31 May 2019 (384 I.G. 427) and all variations thereof.
- (ii) This Award shall apply to persons employed in classifications contained herein employed in or in connection with the New South Wales Health Service as defined in the Health Services Act 1997, or their successors, assignees or transmittes.

P. M. KITE, *Chief Commissioner*

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# HEALTH INDUSTRY STATUS OF EMPLOYMENT (STATE) AWARD 2019

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 204433 of 2019)

Before Chief Commissioner Kite

4 July 2019

## AWARD

### Arrangement

Clause No.	Subject Matter
1.	Definitions
2.	Principles
3.	Loadings
4.	Arrangements for Existing Part-time Workers
5.	Process for Resolving Inconsistencies
6.	Dispute Resolution
7.	Anti-Discrimination
8.	No Extra Claims
9.	Area, Incidence and Duration

### 1. Definitions

- 1.1 Employer means the Secretary of the Ministry of Health exercising employer functions on behalf of the Government of New South Wales.
- 1.2 Employee means a person who is engaged on either a full time, part time, temporary, exempt or casual basis under a contract of employment in the NSW Health Service under s115(1) of the *Health Services Act 1997*.
- 1.3 Casual employee means a person who may be engaged on an hourly basis, for a period which does not extend beyond one week, to provide services related to the unexpected absence of temporary, permanent or exempt employees. This provision may also encompass short-term employment associated with unanticipated peak demands.
- 1.4 Temporary employee means a person who is engaged as an employee for a period not exceeding 13 weeks, provided that fixed term contracts of employment, whether for periods greater or lesser than 13 weeks, must not be offered in preference to ongoing contracts.
- 1.5 Permanent employee means a person appointed as such or a person who has worked in the same position, including a permanent relief position, for a continuous period of 13 weeks other than as an exempt employee. Permanency is subject to the outcome of any appeal process.
- 1.6 Exempt employee means a person who is engaged for a continuous period and whose employment involves:
- relief for periods in excess of 13 weeks during the absence of existing employees or;
  - specific projects which are time limited or;
  - functions which involve funding for a specific period and which is not of a recurrent nature or;
  - forthcoming service reductions which have a predetermined date.

Exempt employees as defined do not attract casual or temporary loadings.

- 1.7 Continuous period of employment means an uninterrupted period of 13 weeks employment involving at least one shift per week in that period, but does not refer to exempt employees as defined.
- 1.8 Health Service means a Local Health District constituted under section 8 of the *Health Services Act* 1997, a Statutory Health Corporation constituted under section 11 of that Act, an Affiliated Health Organisation constituted under section 13 of that Act and the Public Health System Support Division of the NSW Health Service.
- 1.9 Secretary means the Secretary of the Ministry of Health.
- 1.10 Union means the Health Services Union NSW

## **2. Principles**

- 2.1 Employees who are engaged in meaningful work on a continuing basis are entitled to an expectation of permanency of employment subject to the provisions of this award.
- 2.2 It is the responsibility of the employer to ensure that all employees, upon engagement and at all appropriate times, are correctly classified as exempt, casual, temporary, or permanent according to the above definitions.
- 2.3 Where a person changes from casual to either temporary or permanent, the employment status of the person is deemed to have changed automatically.
- 2.4 During the period of continuing employment the status of an employee cannot be changed from permanent to temporary or casual or from temporary to casual, without the prior written consent of the employee.
- 2.5 All permanent employees are required as part of their contract of employment, to use their best endeavours to provide four weeks' notice of their intention to terminate their employment contract.
- 2.6 Any position which would involve the employment of an exempt, temporary or permanent employee, upon falling vacant, will, where such a position continues to be required in its current form by the Health Service, be advertised within the Health Service and/or external to the Health Service. Positions should be filled under the merit principle of selection.
- 2.7 A person who, by definition, is a temporary employee for a period of less than 13 weeks may be re-engaged by the same Health Service under more than one employment contract provided the aggregate period of the contracts, where consecutive, does not exceed 13 weeks.
- 2.8 Where the employee is retained beyond a continuous period of 13 weeks in the same position the employee is deemed to be permanent, subject to the outcome of any appeal. The application of this sub clause shall not be applied in a manner which is inconsistent with legislation or Government recruitment and employment policy, as varied from time to time. This subclause does not apply to an exempt employee as defined.

## **3. Loadings**

- 3.1 Casual Employees - A casual employee will be paid for the number of hours worked each week at an hourly rate, calculated at the same hourly rate as prescribed for a full time employee in the same classification and grade plus 10 per cent loading. A minimum payment of 2 hours at ordinary pay on each occasion the employee commences a shift will apply.
- 3.2 Temporary Employees - A temporary employee shall be paid for the number of hours worked each week on an hourly rate calculated at the same hourly rate as prescribed for a full time employee in the same classification plus 10 per cent loading. The loading shall cease to apply if:



- (a) the period of employment extends beyond 13 weeks
- (b) the employer and the employee agree, during the period of 13 weeks, that the employee will be employed on a permanent basis.

#### **4. Arrangements for Existing Part-Time Workers**

- 4.1 Payment of 15% Allowance - Persons engaged as at 1 January 2000 and who were paid the 15% loading at that date will continue to receive that loading but only for the remainder of the existing part time employment contract. Receipt of the allowance will cease if the contract is completed or where an employee requests a transfer or is promoted to another position.
- 4.2 Conditions - Persons covered by clause 4.1 of this clause will, for the duration of any existing part-time employment contract and while remaining in their current position, retain existing part-time provisions. They will not be entitled to pro rata entitlements as outlined elsewhere within applicable awards.

#### **5. Process for Resolving Inconsistencies**

- 5.1 The Awards contained in the attached schedule "A", as varied or replaced from time to time, shall also apply, where appropriate, to persons covered by this award.
- 5.2 To the extent that any inconsistency exists between the conditions provided by this award and that provided by an award contained in the attached schedule "A" this award will prevail.

#### **6. Dispute Resolution**

- 6.1 Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and the supervising staff, it shall be referred to the Designated Manager of the hospital or service unit or his/her nominee who will arrange for the matter to be discussed with the employee concerned and if requested a local representative or representatives of the Union.
- 6.2 If the matter is not resolved within a reasonable time it must be referred by the Designated Manager to the Chief Executive Officer of the Health Service (or his or her nominee) and may be referred by the employee to the Union's Head Office. Discussions at this level must take place within a reasonable time with a view to resolving the issue in dispute. Failing settlement of the issue at this level, the matter shall be dealt with in accordance with sub-clause 6.3 of this clause.
- 6.3 With a view to amicable and speedy settlement of all disputes that firstly cannot be settled by local management and the Union or its representatives, disputes may be submitted to a committee consisting of not more than six members with equal representation of the Secretary and the Union. Such committee shall have the power to investigate all matters in dispute and to report to the Chief Executive of the Health Service and the Union respectively, with such recommendations as it may think right and in the event of no mutual decision being arrived at by such a committee and if a dispute still exists the matter in dispute may be referred to the Industrial Relations Commission in accordance with the provisions of the *Industrial Relations Act 1996* by one of the disputing parties.
- 6.4 Whilst these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied.
- 6.5 Unless agreed otherwise by the parties the status quo before the emergence of the issue must continue whilst these procedures are being followed. For this purpose "status quo" means the work procedures and practices in place:
  - (a) immediately before the issue arose: or
  - (b) immediately before any change to those procedures or practices, which caused the issue to arise, was made

- 6.6 The Employer must ensure that all practices applied during the operation of these procedures are in accordance with safe working practices.

## **7. Anti-Discrimination**

- 7.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3 (f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 7.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 7.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 7.4 Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 7.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

### NOTES -

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

## **8. No Extra Claims**

Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

## **9. Area, Incidence and Duration**

- 9.1 This Award rescinds and replaces the Health Industry Status of Employment (State) Award 2018 published 5 July 2019 (384 I.G. 630) and all variations thereof, and take effect from 1 July 2019.
- 9.2 This Award shall apply to persons employed in classifications as contained in the awards identified in Schedule "A", as varied or replaced from time to time, employed in the New South Wales Health

Service under s115(1) of the *Health Services Act 1997*, or their successors, assignees or transmitters, excluding the County of Yancowinna.

- 9.3 This award incorporates changes under s 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of NSW on 4 December 2018.

P. M. KITE, *Chief Commissioner*

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Printed by the authority of the Industrial Registrar.

**HOSPITAL SCIENTISTS (STATE) AWARD 2019**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Ministry of Health.

(Case No. 204413 of 2019)

Before Chief Commissioner Kite

4 July 2019

**AWARD****PART A****Arrangement**

Clause No.	Subject Matter
1.	Definitions
2.	Salaries
3.	Grading Employees
4.	Hours
4A.	Multiple Assignments
5.	Shift Work and Weekend Work
6.	Rostering Hours
7.	On-Call
8.	Permanent Part-Time and Part-Time Employees
9.	Overtime
10.	Meals
11.	Higher Duties
12.	Public holidays
13.	Annual Leave
14.	Long Service Leave
15.	Sick Leave
16.	Payment and Particulars of Salary
17.	Termination of Employment
18.	Accommodation and Amenities
19.	Inspection of Lockers of Employees
20.	Uniform and Laundry Allowance
21.	Climatic and Isolation Allowance
22.	Notice Boards
23.	Union Representative
24.	Exemptions
25.	Blood Counts
26.	Settlement of Disputes
27.	Anti-Discrimination
28.	Travelling Allowance
29.	General Conditions
30.	Promotions and Appointments
31.	Board and Lodgings
32.	Maternity, Adoption & Parental Leave
32A	Lactation Breaks
33.	Family and Community Services Leave and Personal/Carer's Leave
33A.	Family Violence Leave
34.	Mobility, Excess Fares and Travelling
35.	Labour Flexibility

36. Salary Packaging
37. Reasonable Hours
38. Salary Sacrifice to Superannuation
39. No Extra Claims
40. Area, Incidence and Duration

## PART B

Table 1 - Allowances

## PART A

### 1. Definitions

Unless the context otherwise indicates or requires the several expressions hereunder defined shall have their respective meaning assigned to them:

"ADA" means the daily average of occupied beds adjusted by counting each 700 registered outpatients as one occupied bed. The average shall be taken for the twelve months for the year ending 30 June in each and every year and such average shall relate to the salary for the succeeding year.

"Day Worker" means a worker who works ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6:00 a.m. and before 10:00 a.m. otherwise than as part of a shift system.

"Director/Deputy Director" means an employee appointed as Head of a Department or as second in-charge of a Department, provided that such a position is approved as such by the employer.

"Employee" means a Hospital Scientist, Senior Hospital Scientist, Principal Hospital Scientist, or Trainee Hospital Scientist as defined.

"Employer" means the Secretary of the Ministry of Health exercising employer functions on behalf of the Government of New South Wales.

"Health Service" means a Local Health District constituted under section 8 of the *Health Services Act 1997*, a Statutory Health Corporation constituted under section 11 of that Act, and an Affiliated Health Organisation constituted under section 13 of that Act.

"Hospital" means a public hospital as defined under section 15 of the *Health Services Act 1997*

"Hospital Scientist" means an employee who has acquired the Diploma in Medical Technology of the Australian Institute of Medical Technologists (before 1974) or who has obtained a degree in science from an approved university or college of advanced education requiring a minimum of three years full-time study or such qualifications as the employer deems equivalent.

"Principal Hospital Scientist" means a Hospital Scientist who has been appointed as such and holds a post graduate degree in science at least equivalent to the degree of Master of Science of an approved university, or such other qualifications deemed by the employer to be equivalent and who has had not less than ten years post graduate experience in an appropriate scientific field.

"Senior Hospital Scientist" means an employee who is engaged in scientific work of a professional nature in a public hospital laboratory who holds a degree in science from an approved University or a college of advanced education or such other qualifications deemed by the employer to be appropriate who -

- (a) has been appointed to a position in charge of a section of a laboratory; or
- (b) has been approved by the employer for appointment on the recommendation of the Credentials Committee.

"Secretary" means the Secretary of the Ministry of Health.

"Senior or Chief Hospital Scientist" means an employee who is engaged in scientific work of a professional nature in a public hospital laboratory who holds a degree in science from an approved University or a college of advanced education or such other qualifications deemed by the employer to be appropriate who:

- (a) has been appointed to a position in charge of a laboratory; or
- (b) has been approved by the employer for appointment on the recommendation of the Credentials Committee.

"Service" means service before and/or after the commencement of this Award in any one or more hospitals as defined under section 15 of the *Health Services Act 1997*, or any other hospital deemed acceptable by the employer.

"Shift Worker" means a worker who is not a day worker as defined.

"Trainee Hospital Scientist" means an employee appointed as such who is undertaking a part-time degree course in science at an approved University and is engaged in work related to the profession for which he or she is qualifying.

"Union" means the Health Services Union NSW.

## **2. Salaries**

Full time Hospital Scientist employees, as defined herein, shall be paid the salaries as set out in the Health Professional and Medical Salaries (State) Award 2018, as varied or replaced from time to time.

## **3. Grading of Employees**

- (i) Grades: Every employee other than Trainee Hospital Scientist shall be classified in one of the grades of Hospital Scientist, Chief/Senior Hospital Scientist, or Principal Hospital Scientist as provided hereunder.
- (ii) Years of Scale -
  - (a) Within each grade employees shall, at all times be classified not lower than the year of scale corresponding to the minimum described hereunder for their respective qualifications and/or duties advanced by:
    - (1) At least one year of scale for each completed year of service in that grade and hospital; and
    - (2) At least one further year of scale for each completed year of service in the same branch of science in that grade in any other hospital or hospitals.
  - (b) In determining an employee's classification due allowance also shall be made for any post graduate experience.
- (iii) Hospital Scientists who hold or are qualified to hold a degree, diploma or other qualification, as shown hereunder shall not be classified below the respective year of scale in this grade, as follows, with advancement as provided for in subclause (ii) of this clause.

Bachelor's Degree (3 year course) - 1st year;

Bachelor's Degree with Honours (3 year course); Bachelor's degree (4 year course) - 2nd year;

Bachelor's Degree with Honours (4 year course); diploma or Bachelor's degree with at least two years' experience concurrent with or after the last two years of the course - 3rd year;

Master's Degree - 4th year;

Fellow of the Institute of Physics, and/or Fellow of the Australian Institute of Physics, Degree of Doctor of Philosophy - 6th year.

provided such degree with honours or such Master's Degree has been obtained in a subject relevant to the branch of science in which the employee is engaged.

- (iv) Credentials Committee. A committee consisting of two representatives of the employer and two representatives of the Union shall be constituted to consider and recommend to the employer upon application by the Union or the relevant Health Service.
  - (a) The appointment of a new employee as a Senior Hospital Scientist (other than a Senior Hospital Scientist in charge of a laboratory or a section of a laboratory), or a Principal Hospital Scientist.
  - (b) The promotion of an employee from Hospital Scientist to Senior Hospital Scientist.
  - (c) The promotion of an employee from Senior Hospital Scientist to Principal Hospital Scientist.

#### 4. Hours

- (i) The ordinary hours of work for day workers, exclusive of meal times, shall be 152 hours per 28 calendar days to be worked from Monday to Friday inclusive and to commence on such days at or after 6:00 a.m. and before 10:00 a.m.
- (ii) The ordinary hours of work for shift workers exclusive of meal times, shall not exceed an average of 38 hours per week in each roster cycle.
- (iii) Each day worker shall be free from duty for not less than two full days in each week and each shift worker shall be free from duty for not less than two full days in each week or four full days in each fortnight. Where practicable such days off duty shall be consecutive.
- (iv)
  - (a) The hours of work prescribed in subclauses (i) and (ii) of this clause shall, where possible, be arranged in such a manner that in each roster cycle of 28 days each employee shall not work his or her ordinary hours of work on more than nineteen days in the cycle. The hours worked on each of those days shall be arranged to include a proportion of one hour (in the case of employees working shifts of eight hours duration the proportion of 0.4 of an hour) which shall accumulate towards the employee's allocated day off duty on pay, as the twentieth working day of the cycle.
  - (b) Notwithstanding the provisions of paragraph (a) of this subclause, employees who were, as at the 30th June, 1984, working shifts of less than eight hours duration may:
    - (1) continue to work their existing hours each 28 days but spread over 19 days, or
    - (2) with the agreement of the hospital, continue to work shifts of the same duration over 20 days in each cycle of 28 days.
- (v) The employee's allocated day off duty prescribed in subclause (iv) of this clause shall be determined by mutual agreement between the employee and the employer having regards to the needs of the employer. Where practicable such allocated day off duty shall be consecutive with the days off duty prescribed by subclause (iii) of this clause.
- (vi) Once set the allocated day off duty may not be changed in a current cycle unless there are genuine unforeseen circumstances prevailing. Where such circumstances exist and the allocated day is changed, another day shall be substituted in the current cycle. Should this not be practicable, the day must be given and taken in the next cycle immediately following.

- (vii) Where the employer and the Union agree that exceptional circumstances exist in a particular Health Service, an employee's allocated days off duty prescribed by subclause (iv) of this clause may, with the agreement of the employee concerned, accumulate and be taken at a time mutually agreed between the employee and the employer. Provided that the maximum number of days off duty which may accumulate under this subclause shall be three.
- (viii) There shall be no accrual of 0.4 of an hour for each day of ordinary annual leave taken in accordance with subclause (i) of Clause 13, Annual Leave, of this Award. However where an employee has accumulated sufficient time to take his/her allocated day off duty prior to entering on annual leave, and that day would have been taken if the employee had not gone on annual leave, it shall be allowed to the employee on the first working day immediately following the period of leave.  
  
Where an employee has not accumulated sufficient time for an allocated day off duty prior to entering on annual leave, time in credit shall count towards taking the next allocated day off duty falling in sequence after the employee's return to duty.
- (ix) An employee entitled to allocated days off duty in accordance with subclause (iv) of this clause shall continue to accumulate credit towards his/her allocated day off duty whilst on sick leave. Where an employee's allocated day off duty falls during a period of sick leave, the employee's available sick leave shall not be debited for that day.
- (x) Where an employee's allocated day off duty falls due during a period of workers compensation, the employee, on returning to duty, shall be given the next allocated day off duty in sequence irrespective of whether sufficient credits have been accumulated or not.
- (xi) Where an employee's allocated day off duty falls on a public holiday as prescribed by Clause 12, Public Holidays of this Award, the next working day shall be taken in lieu thereof.
- (xii) Except for one meal break each day all time worked between the normal starting and ceasing time each day shall be at the ordinary rates of pay.
- (xii) There shall be one tea break of twenty minutes duration. This is additional to the meal break provided for in subclause (xii) of this clause.
- (xiv) There shall be a minimum break of eight (8) hours between ordinary rostered shifts.

#### **4A. Multiple Assignments**

(This Clause has had application from 13 August 2018)

- (i) Multiple assignments under this Award exist when:
  - a. An employee has more than one position under this Award within the New South Wales Health Service, and
  - b. The same conditions of employment within the Award apply to the positions.

Each of these positions is referred to in this clause as "assignments".
- (ii) Where an employee has multiple assignments with different ordinary rates of pay, the employee shall be paid in relation to the ordinary hours worked in each separate assignment at the ordinary rate of pay applicable to that assignment.
- (iii) This clause does not apply to employees who have multiple casual assignments only. The Award provisions are to apply separately to each casual assignment.



### **Multiple Assignments Within a Single Organisation in the Public Health System**

- (iv) The following provisions apply to employees with two or more assignments, that comply with 4A(i), within a single Organisation in the Public Health System:
  - (a) The work performed in each of an employee's assignments shall be aggregated for the purposes of determining all of the employee's entitlements under this Award.

### **Hours, Additional Days Off, and Overtime**

- (b) The combined total number of ordinary hours worked under an employee's multiple assignments shall not exceed the hours of work as set out in Clause 4 Hours.
- (c) Where the combined total number of ordinary hours worked under an employee's multiple assignments is equivalent to those set out for the ordinary hours of work for day workers (i.e. full time) in Clause 4 they will be considered as a full time employee for the purposes of the Award and:
  - 1. that employee is entitled to allocated days off in accordance with Clause 4, Hours, and
  - 2. Clause 9 Overtime, shall apply for the purposes of overtime.
- (d) Where the combined total number of ordinary hours worked under an employee's multiple assignments is less than those set out in subclause (c) of this subclause they will be treated in accordance with Part 1 of Clause 8, Permanent Part-Time and Part-Time Employees.
  - 1. All ordinary hours and additional hours paid at ordinary rates in each assignment shall be aggregated and treated as if they were worked under a single assignment, in accordance with Part 1 of Clause 8 Permanent Part-Time and Part-Time Employees, and
  - 2. Overtime as prescribed in Clause 9, Overtime (including subclauses (v) and (vi)).
- (e) The rostering of additional days off will be co-ordinated between the employee's line managers to ensure that the additional days off are proportionately rostered across the employee's assignments. Where an employee has multiple assignments with different ordinary rates of pay, the additional day off will be paid at the rate of pay relevant to the assignment in which it is rostered.
- (f) Where an employee has multiple assignments with different ordinary rates of pay, the rate of pay used to determine the additional hours or overtime payable shall be the rate applicable to the assignment which generated the additional hours or overtime.
- (g) Where overtime is compensated by way of time off in lieu that time off in lieu must be taken in the assignment which generated the overtime.
- (h) Employees who are in full time or part time assignments cannot be engaged on a second or further assignment as a casual employee under the Award. Any additional hours worked by such employees are to be remunerated in accordance with subclauses (c) or (d) of this subclause.

### **Public Holidays - Rostered Day Off**

- (i) Each assignment will stand alone when calculating payment for a public holiday that falls on a rostered day off under Clause 12, Public Holidays subclause (iv).

### **Temporary Employees**

- (j) Where an employee has an assignment which attracts a 10% loading in accordance with Clause 3.2 of the Health Industry Status of Employment (State) Award 2018, as varied or replaced from time to time, the 10% loading shall only apply to hours worked in that assignment. While ever

this loading is paid, the provisions of subclauses (p), (q) and (s) of this subclause shall not apply to the temporary assignment.

#### **Employees Engaged as Part Time as at 1 November 2001**

- (k) Where an employee:
1. has elected to receive the benefits set out in Part 2 of Clause 8, Permanent Part-Time and Part-Time Employees, in relation to an assignment, and
  2. after the date this clause was operative in this Award the employee commences in a second or further permanent part time assignment (as set out in Part 1 of Clause 8, Permanent Part-Time and Part-Time Employees) and their combined total number of ordinary hours worked in all assignments is less than those set out in subclause (c) of this subclause;

Part 2 of Clause 8, Permanent Part-Time and Part-Time Employees shall cease to apply and the employee will be a Permanent Part-Time Employee for the purposes of the Award.

- (l) Where an employee:
1. has elected to receive the benefits set out in Part 2 of Clause 8, Permanent Part-Time and Part-Time Employees, in relation to an assignment, and
  2. his/her combined total number of ordinary hours worked in all assignments is equal to or more than those set out in subclause (c) of this subclause,

Part 2 of Clause 8, Permanent Part-Time and Part-Time Employees shall not apply to any of their assignments.

#### **Incremental Progression**

- (m) Where an employee has multiple assignments in the same classification and pay rate, the employee will progress from one increment (year step) to the next increment after the employee has completed the full time equivalent of one year in the increment having regard to the work performed in all assignments. Further, an employee must complete a minimum of one calendar year in an increment before progressing to the next increment.
- (n) Where an employee has multiple assignments in the same classification, but different grades and/or pay rates, the employee's service in the higher grade will count for the purposes of incremental progression in the lower grade. However, service in the lower grade shall not count for the purposes of incremental progression in the higher grade.
- (o) Where an employee has multiple assignments in different classifications, the employee's service in each assignment will not count for the purpose of incremental progression in the other assignment.

#### **Leave**

- (p) All ordinary hours worked by an employee in multiple assignments shall count towards determining the employee's leave entitlements.
- (q) Employees with multiple assignments shall be entitled to take all forms of leave in any of their assignments. That is, leave accrued by an employee through work performed in one assignment, can be taken by that employee in their other assignment/s.
- (r) Where an employee has multiple assignments with different ordinary rates of pay, the employee shall be paid for leave taken at the rate of pay relevant to the assignment in which the leave was taken or rostered.

- (s) An employee's combined total number of ordinary hours worked in their multiple assignments will be used to calculate additional annual leave in accordance with subclause (iii)(b) of Clause 13, Annual Leave.
- (t) Service in all assignments will be recognised for the purposes of entitlements under Clause 32, Maternity, Adoption and Parental Leave.
- (u) Where an employee's assignment is terminated but the employee remains employed under another full time or part time assignment, all leave credits will be transferred to the remaining assignments. The employee shall not be paid out the monetary value of the annual leave or long service leave accrued in the terminated assignment.

#### **Disclosures, Notifications and Approvals**

- (v) Employees must, at the time they apply for any second or further assignment, disclose in writing that they are already employed by NSW Health and provide details of that assignment including:
  1. the position/s currently held
  2. the facility in which the existing position/s are worked
  3. the classification/s under which they are engaged in each position
  4. the number of ordinary hours worked in each position
  5. any regular additional hours or overtime that is worked in each position
  6. whether the position/s is worked according to a set roster and if so, the details of that roster arrangement; and
- (w) Prior to accepting an offer for a second or further assignment, employees must provide to their current manager details of that proposed assignment including:
  1. the position they have applied for
  2. the facility in which the proposed new assignment is to be worked
  3. the classification under which they would be engaged in the new assignment
  4. the number of ordinary hours to be worked in the proposed assignment
  5. whether the position is to be worked according to a set roster and if so, the details of that roster arrangement.
- (x) A Public Health Organisation may elect on reasonable grounds to withhold the approval of a second or further assignment to employees who are already employed in another assignment.
- (y) Before accepting any change in roster or undertaking additional hours or overtime that will impact on another assignment, employees who hold multiple assignments must notify their current manager of the details of their next shift in either assignment. Managers must not change rosters or require employees to work additional hours or overtime where these will impact on the employee's roster in the other assignment (for example by generating overtime) without first consulting the manager of the other assignment/s. (By way of example, if an employee is requested by Manager 1 in Assignment 1 to undertake additional hours in Assignment 1 that may impact on the roster in Assignment 2, the employee must notify Manager 1 of the impact. Manager 1 must not change rosters/hours that impact on Assignment 2 without first consulting Manager 2.)

#### **Multiple Assignments Across Different Organisations in the Public Health System**

- (v) Multiple Assignments, that meet the criteria in subclause (i) of this Clause and they are worked in different Organisations in the Public Health System, will be regarded as entirely separate for all purposes under the Award, including the accrual and taking of leave. The only exceptions are:

- (a) At the time an employee commences an assignment in another Organisation in the Public Health System the employee's accrued leave will be apportioned across their assignments (for example, a 0.6 full time equivalent employee who commences another 0.4 full time equivalent assignment in another Organisation in the Public Health System will have 60% of their leave accruals allocated to the former assignment and 40% to the latter assignment) unless prior to commencing the new assignment the employee elects that this apportioning does not occur. After this apportioning, leave accrues separately in each assignment, based on the hours worked in each assignment. The employer will notify the employee of their right to make this election prior to the apportioning taking place.
- (b) Employees who have multiple assignments across different Organisations in the Public Health System at the time this clause became operative in this award may elect to apportion their accrued leave across their assignments.
- (c) Service in all assignments will be aggregated for the purposes of calculating entitlements under Clause 14, Long Service Leave.
- (d) Service in all assignments will be recognised for the purposes of entitlements under Clause 32, Maternity, Adoption and Parental Leave.
- (e) Service in all assignments will be recognised for the purposes of entitlements of Family and Community Services Leave and Personal/Carer's Leave as provided in Clause 33.
- (f) Service in all assignments will be recognised for the purposes of entitlements of Family Violence Leave as provided in Clause 33A.
- (g) Where an employee terminates an assignment, any leave credits that are held against that assignment will be transferred to the remaining assignment/s.
- (h) If prior to the introduction of this clause and/or the StaffLink payroll system an employee received additional days off and/or overtime in accordance with subclause (ii) of Clause 9, Overtime, that employee shall continue to receive those benefits until one of the assignments is terminated.
- (i) Where an employee has three or more assignments, one or more of which are in different Organisation in the Public Health System, subclause (iv) of this clause shall apply to those assignments which are within a single Organisation in the Public Health System.

#### **Changes to the composition of Organisation in the Public Health System**

- (vi) The employer and the Association agree to review this clause in the event that the boundaries of any Organisation in the Public Health System change.
- (vii) Where any change to the boundaries of any Organisation in the Public Health System causes an employee's multiple assignments to which subclause (iv) of this clause previously applied to then be subject to subclause (v) of this clause, subclause (iv) of this clause shall continue to apply (to the exclusion of subclause (v) of this clause) to those assignments until one of them is terminated.

#### **5. Shift Work and Weekend Work**

- (i) Subject to the provisions of this clause, employees may be employed on shift work.
- (ii) The ordinary hours of shift workers shall be worked on not more than five days per week and shall not exceed 152 hours per 28 calendar days.
- (iii) As far as practicable, no employee shall be obliged to work shift work against his/her wishes.
- (iv) Senior Hospital Scientists and Principal Hospital Scientists shall not be required to work shift work against their wishes.

- (v) Before shift work is introduced into any section or department of a Health Service, the proposals relating thereto shall be conveyed to the Union and an opportunity given to discuss such proposals with representatives of the Health Service concerned and the employer.
- (vi) Any disputes arising out of the introduction of new shift systems shall be referred to a committee consisting of not more than six members with equal representatives of the employer and the Union.

In the event of no unanimous decision being arrived at, the matter in dispute may be notified to the Industrial Registrar for the consideration of the Public Health Employees (State) Industrial Committee or the Industrial Relations Commission of New South Wales.

- (vii) Work performed by shift workers working during ordinary hours shall be paid at the following rates:
  - (a) On Mondays to Fridays between 8:30 a.m. and 9:00 p.m. at ordinary time rate of pay.
  - (b) On Mondays to Fridays before 8:30 a.m. and after 9:00 p.m. at the rate of time and a half.
  - (c) On Saturdays at the rate of time and a half.
  - (d) On Sundays at the rate of time and three quarters.

Provided that a part-time employee shall not be entitled to be paid in addition the loading prescribed in subclause (ii) of Part 2 of clause 8, Part-Time Employees, of this Award.

Provided further that, positions which prior to 31 August 1988 were covered under the terms of the Hospital Employees Conditions of Employment (State) Award, shall continue to be paid in accordance with provisions of Penalty Rates for Shift Work, Weekend Work and Special Working Conditions, of that Award. Further provided that the provisions of subclauses (iii) and (iv) shall not apply to these positions.

## **6. Roster of Hours**

- (i) The ordinary hours of work for each employee shall be displayed on a roster in a place conveniently accessible to employees. Where reasonably practicable such roster shall be displayed two weeks, but in any case at least one week, prior to the commencing date of the first working period in any roster.

Provided that this provision shall not make it obligatory for the employer to display any roster of ordinary hours of work of members of the relieving staff.

Provided further that a roster may be altered at any time to enable the services of the Health Service to be carried on where another employee is absent from duty on account of illness or in emergency but where any such alteration involves an employee working on a day which would have been his/her day off such time worked shall, subject to subclause (vi) of clause 4, Hours, be paid for at overtime rates. Furthermore, where a change in roster hours occurs with less than 24 hours' notice to the employee affected, all time worked outside that shown on the employee's roster (prior to the alteration) shall be paid for at overtime rates.

- (ii) Where an employee is entitled to an allocated day off duty in accordance with clause 4, Hours of this Award, that allocated day off duty is to be shown on the roster of hours for that employee.

## **7. On-Call**

An employee required by the employer to be on-call in any one 24 hour period shall be paid an allowance as set out in Item 1 of table 1, Allowances, for that period or any part thereof, provided that only one allowance shall be paid in any period of 24 hours.

Provided that an on-call roster shall not be introduced by a Health Service without the approval of the employer. Principal Hospital Scientists are excluded from the provisions of this clause.

Provided that this clause shall not apply to positions covered by the Public Hospital Medical Technologists (State) Award, prior to 31 August 1988.

## **8. Permanent Part-Time and Part-Time Employees**

### **Part 1 - Permanent Part-Time Employees**

- (i) A permanent part-time employee is one who is appointed by the employer to work a specified number of hours each roster cycle which are less than those prescribed for a full-time employee.
- (ii) A permanent part-time employee shall be paid an hourly rate calculated on the basis of one thirty eighth of the normal weekly rate available for full-time employees of the same classification.
- (iii) Persons employed on a permanent part-time basis may be employed for not less than two (2) or more than thirty two (32) hours in any full week of seven days, such week to be coincidental with the pay period. Permanent part-time employees are not entitled to an allocated day off. The specified number of hours may be balanced over a roster cycle, provided that the average weekly hours worked shall be deemed to be the specified number of hours for the purposes of accrual of leave provided for by this Award. Provided further that there shall be no interruption to the continuity of employment merely by reason of an employee working on a "week-on", "week-off" basis in accordance with this subclause.
- (iv) Employees engaged under this clause shall be entitled to all other benefits of the Award not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.
- (v) All time worked by permanent part-time employees in excess of the total rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift in the ward or section concerned shall be paid for at the rate of time and one half for the first two hours and double time thereafter except that on Sundays such overtime shall be paid for at the rate of double time.
- (vi) Time worked up to the total rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on that shift in the ward or section concerned shall not be regarded as overtime but an extension of the contract hours for that day and shall be paid at the ordinary rate of pay.

### **Part 2 - Part-Time Employees**

- (i) Employees engaged as part-time employees on or before 1 November 2001 are entitled to exercise the option of receiving the benefits of employment specified in Part 1 of this clause.
- (ii) Persons employed on a part-time basis, other than on a permanent part-time basis as outlined in Part 1 of this clause, may be employed for not less than eight or more than thirty hours in any full week of seven days, such week to be coincidental with the pay period of each hospital respectively, and shall be paid for the actual number of hours worked each week an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed plus 15 per cent thereof.
- (iii) In an emergency, part-time employees may be allowed to work more than thirty hours in one week and in such case will be paid for the hours actually worked at a rate calculated in accordance with subclause (ii) of Part 2 of this clause.
- (iv) With respect to employees employed as part-time workers the provisions of clause 4, Hours, subclauses (iv) to (xi) of this Award shall not apply.
- (v) All time worked by part-time employees in excess of the total rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift in the ward or section concerned shall be paid for at the rate of time and one half for the first two hours and double time thereafter except that on Sundays such overtime shall be paid for at the rate of double time.

- (vi) Time worked up to the total rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on that shift in the ward or section concerned shall not be regarded as overtime but an extension of the contract hours for that day and shall be paid at the ordinary rate of pay.
- (vii) With respect to employees employed as part-time workers the provisions of clause 9, Overtime, of this Award, except where provided in subclauses (v) and (vi) of Part 2 of this clause, shall not apply.

## **9. Overtime**

- (i) All time worked by day workers and shift workers in excess of or outside the ordinary hours prescribed by clause 4, Hours, and clause 5, Shift Work and Weekend Work, of this Award, respectively, shall be paid for at the rate of time and one half for the first two hours and double time thereafter, provided that all time worked on Sundays shall be paid for at double time; provided further that all overtime worked on public holidays shall be paid for at the rate of double time and one half.
- (ii) Subject to subclauses (iii) - (vii) below, employees who are recalled for duty, whether notified before or after leaving the employer's premises, shall be paid for all time worked at the appropriate overtime rate, with a minimum of four hours at such rates.
- (iii) Employees may be required to perform other work that arises during the recall period. Employees shall not be required to work the full four hour minimum payment period if they complete the work they were recalled to perform and any additional work they are required to undertake, within a shorter period.
- (iv) The employer must have processes in place for the formal release of employees from recall duty.
- (v) Employees who are not formally released and who are recalled again during the four hour minimum payment period are not entitled to any additional payment until the expiration of the four hour period.
- (vi) Employees who are advised they will not be required to perform any additional work and are formally released and who are subsequently recalled again during the four hour minimum payment period, shall be entitled to another four hour minimum payment.
- (vii) Employees required to work overtime after leaving the employer's premises to provide a technology support resolution or clinical appraisal remotely without onsite presence, shall be paid for such work at the appropriate overtime rate, with a minimum payment of one hour at such rates.
- (viii) An employee recalled to work overtime as prescribed by this subclause shall be paid all fares and expenses reasonably incurred in travelling to and from his/her place or work.

Provided further that where an employee elects to use his/her own mode of transport he/she shall be paid an allowance equivalent to the "Transport Allowance" as provided by determination made under the *Health Services Act 1997*, as varied from time to time.

- (ix) When overtime is necessary it shall wherever reasonably practical, be so arranged that employees have at least eight consecutive hours off duty between the work on successive days or shifts.

For the purposes of assessing overtime each day shall stand alone, provided however, that where any one period of overtime is continuous and extends beyond midnight, all overtime hours in this period shall be regarded as if they had occurred within the one day.

- (x) An employee who works such overtime:
  - (a) between the termination of his/her ordinary work on any day or shift and the commencement of his/her ordinary work on the next day or shift that he/she has not had at least eight consecutive hours off duty between these times; or
  - (b) on a Saturday, a Sunday and a holiday, not being ordinary working day, or on a rostered day off without having had eight consecutive hours off duty in the twenty-four hours preceding his/her ordinary commencing time on his/her next day or shift;

shall, subject to this subclause, be released after completion of such overtime until he/she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of his/her employer such an employee resumes or continues to work without having had such eight consecutive hours off duty, he/she shall be paid at double rates until he/she is released from duty for such period and he/she then shall be entitled to be absent until he/she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (xi) When an employee works overtime as an extension of shift and ceases work at a time when reasonable means of transport are not available, he/she shall be paid at ordinary rates for the time reasonably spent travelling from the employer's premises to the employee's home with a maximum payment of one (1) hour.

This subclause shall not apply in the case of call-back nor where the employee has his/her own vehicle available for conveyance home.

- (xii) The provisions of this clause shall not apply to Principal Hospital Scientists.

### **10. Meals**

- (i) An employee who works authorised overtime shall be paid in addition for such overtime -
  - (a) as set out in Item 2 of Table 1, Allowances, for breakfast when commencing such overtime work at or before 6:00 a.m.;
  - (b) as set out in Item 2 of Table 1, for luncheons when such overtime extends beyond 2:00 p.m. on Saturdays, Sundays or holidays;
  - (c) as set out in Item 2 of the said Table 1, for an evening meal when such overtime is worked for at least one hour immediately following his/her normal ceasing time, exclusive of any meal break, and extends beyond or is worked wholly or after 7:00 p.m.;

or shall be provided with adequate meals in lieu of payment.

- (ii) The value of payments for meals shall be varied as the equivalent rates in the Crown Employees (Public Service Condition of Employment) Award 2009, as varied or replaced from time to time.
- (iii) Time not exceeding one hour and not less than thirty minutes shall be allowed for each meal, provided that where an employee is called upon to work for any portion of the meal break, such time shall count as ordinary working time.
- (iv) An employee required to work overtime following on the completion of his or her normal shift for more than two hours shall be allowed twenty minutes for the partaking of a meal and a further twenty minutes after each subsequent four hours' overtime; all such time shall be counted as time worked.
- (v) An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours shall be allowed twenty minutes for partaking of a meal and a further twenty minutes after each subsequent four hours overtime; all such time shall be counted as time worked.
- (vi) Where practicable, employees shall not be required to work more than four (4) hours without a meal break.

### **11. Higher Duties**

An employee who is called upon to relieve an employee in a higher classification continuously for five working days or more, and who satisfactorily performs the whole of the duties and assumes the whole of the responsibilities of the higher classification, shall be entitled to receive, for the period of relief, the minimum pay of such higher classification



## 12. Public Holidays

- (i) Public Holidays shall be allowed to employees on full pay.
- (ii) Where an employee is required to and does work on any of the holidays set out in subclause (iii) of this clause, whether for a full shift or not, the employee shall be paid one and one half day's pay in addition to the weekly rate prescribed by Clause 2 - Salaries of this Award, such payment in the case of shift workers to be in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday:

Provided that if the employer and the employee so agree, an employee may be paid one half day's pay in addition to the weekly rate and have one day added to his/her period of annual leave for each public holiday worked in lieu of the provisions of the preceding paragraph.

- (iii) For the purpose of this clause, the following shall be deemed public holidays, viz: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day, Boxing Day, Anzac Day, Queen's Birthday, local Labour Day, and other days proclaimed and observed as a public holiday within the area in which the hospital or health institution is situated.
- (iv) Where a public holiday occurs on a shift worker's rostered day off, he/she shall be paid one day's pay in addition to the weekly rate, or if the employer and the employee so agree, have one day added to his period of annual leave.
- (v) An employee who has accrued additional annual leave under subclause (ii) or (iv) of this clause can elect at any time to be paid an amount equivalent to the value of the accrued additional annual leave in lieu of taking additional leave, provided that the amount is a minimum of one weeks' accrued additional leave and that the salary for the period of additional leave paid out will be calculated as if the period of leave was actually taken.
- (vi) Subclauses (i) and (ii) of this clause shall not apply to part-time employee of this Award but each such employee who is required to work on a public holiday as defined in subclause (iii) of this clause shall be paid at the rate of double time and one-half but such employee shall not be entitled to be paid in addition the loading of 15 per cent prescribed in subclause (i) of clause 8 - Part-Time Employees, of this Award.
- (vii) Provided that this clause shall not apply to positions covered by the Hospital Employees Conditions of Employment (State) Award, prior to 31 August 1988, the provisions of "Public Holidays" of that Award shall apply.
- (viii) In addition to those public holidays specified in subclause (iii), employees are entitled to an extra public holiday each year. Such public holiday will occur on a day in the Christmas-New Year period as determined by the employer following consultation with the Union, or other suitable day as agreed between the employer and the Union. Such public holiday shall be regarded for all purposes of this clause as any other public holiday.

The foregoing will not apply in areas where in each year a day in addition to the ten named public holidays specified in subclause (iii) is proclaimed and observed as a public holiday and will not apply in areas where, in each year, at least two half days in addition to the ten named public holidays specified in the said subclause are proclaimed and observed as half public holidays.

Provided further that in areas where in each year only one half day in addition to the ten named public holidays specified in subclause (iii) is proclaimed and observed as a half public holiday for the purposes of this Award, the whole day will be regarded as a public holiday and no additional public holiday, which otherwise would, as a result of this subclause apply, will be observed.

## 13. Annual Leave

- (i) All employees: See *Annual Holidays Act 1944*.
- (ii) Annual leave on full pay shall be granted on completion of each twelve months service as follows:

- (a) Principal Hospital Scientists - 5 weeks.
- (b) All other employees - 4 weeks.

(iii)

- (a) This subclause does not apply to part-time employees.
- (b) Employees who are rostered to work their ordinary hours on Sundays and/or public holidays during the qualifying period of employment for annual leave purposes shall be entitled to receive additional annual leave as follows:
  - (1) If 35 ordinary shifts on such days have been worked - one week.
  - (2) If less than 35 ordinary shifts on such days have been worked and the employees work 38 hours per week - proportionately calculated on the basis of 38 hours leave for 35 such shifts worked.
  - (3) If less than 35 ordinary shifts on such days have been worked and the employees work less than 38 hours per week - proportionately calculated on the basis of leave equivalent to the number of hours ordinarily worked per week for 35 such shifts worked.

The calculations referred to above shall be made to the nearest one fifth of the ordinary hours worked, half or more than half of one fifth being regarded as one fifth and less than half being disregarded.

Provided that an employee, entitled to additional annual leave by virtue of this subclause, may elect to be paid an amount equivalent to the value of his or her additional leave entitlement, in lieu of taking the additional leave. Such election is to be made in writing by the employee at the commencement of each year of employment.

An employee with accrued annual leave pursuant to this subclause can elect at any time to be paid an amount equivalent to the value of the accrued additional leave in lieu of taking additional leave, provided that the amount is a minimum of one weeks' accrued additional leave and that the salary for the period of additional leave paid out will be calculated as if the period of leave was actually taken.

- (c) Provided further that on termination of employment, employees shall be entitled to payment for any untaken leave due under this subclause together with payment for any untaken leave in respect of an uncompleted year of employment, calculated in accordance with this subclause.
- (iv) The annual leave shall be given by the employer and shall be taken by the employee before the expiration of a period of six months after the date upon which the right to such holidays accrues; provided that the giving and taking of the whole or any separate period of such annual holiday may, with the consent of the employee, be postponed for a period not exceeding 18 months.
- (v) The employer shall give to each employee three months' notice where practicable and not less than one months' notice of the date upon which the employee shall enter upon annual leave.
- (vi) An employee who is normally employed to work shifts shall be paid whilst on annual leave his/her ordinary pay plus shift allowances and weekend penalties relating to ordinary time the employee would have worked if he/she had not been on annual leave, provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during a period of annual leave or for days which have been added to annual leave in accordance with the provisions of Clause 12, Public Holidays, of this Award.
- (vii) Credit of time towards an allocated day off duty shall not accrue when an employee is absent on ordinary annual leave in accordance with subclause (i) of this clause. Employees entitled to allocated days off duty in accordance with clause 4, Hours, of this Award shall accrue credit towards an allocated

day off duty in respect of each day those employees are absent on additional annual leave in accordance with subclause (ii) of clause 12, Public Holidays, of this Award.

- (viii) Employees shall be entitled to an annual leave loading of 17.5 per centum, or shift penalties as set out in subclause (vi) of this clause, whichever is the greater.

NOTATION: The conditions under when the annual leave loading shall be paid to employees are the same as generally applied through circulars issued by the Ministry of Health, as varied or replaced from time to time.

#### **14. Long Service Leave**

- (i)

- (a) Each employee shall be entitled to two months long service leave on full pay after ten years of service; thereafter additional long service shall accrue on the basis of five months long service leave on full pay for each ten years' service.

Employees with at least seven years' service and less than 10 years' service are entitled, proportionate to his or her length of service, to proceed on a proportionate period of long service leave on the basis of two months' long service leave for ten years' service on full pay.

- (b) Where the services of an employee with at least five years' service and less than seven years' service are terminated by the employer for any reason other than the employee's serious and wilful misconduct, or by the employee, on account of illness, incapacity or domestic or other pressing necessity, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service.

Where the services of an employee with at least seven years are terminated by the employer or by the employee, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service. Where the services of an employee with at least 10 years' service are terminated by the employer or by the employee, he/she shall be entitled to be paid on the basis of two months' long service leave for ten years' service and thereafter on the basis of five months long service leave for each ten years' service.

- (ii) For the purposes of subclause (i) of this clause:

- (a) Service shall mean continuous service with the employer. For the purpose of this paragraph, continuous service will be determined in accordance with Section 7 of the NSW Health Policy Directive PD2019\_010 Leave Matters for the NSW Health Service, as amended or replaced from time to time.

- (b) Broken periods of service with the employer in one or more hospitals shall count as service.

- (c) Service shall not include -

- (1) any period of leave without pay except in the case of employees who have completed at least ten years' service (any period of absence without pay being excluded there from) in which case service shall include any period of leave without pay not exceeding six months taken after 1 January, 1973;

- (2) any period of part-time service, except permanent part-time service, as provided for in subclause (ix).

- (iii) An employee with an entitlement to long service leave may elect to access such entitlement:

- (a) on full pay;
- (b) on half pay; or

- (c) on double pay.
- (iv) When an employee takes long service leave, the leave entitlement will be deducted on the following basis:
  - (a) a period of leave on full pay - the number of days so taken;
  - (b) a period of leave on half pay - half the number of days so taken; or
  - (c) a period of leave on double pay - twice the number of days so taken.
- (v) When taking long service leave and an employee would otherwise have had a rostered shift fall on a public holiday during that period, the amount of long service leave to be deducted is to be reduced by one day for the public holiday.
- (vi) Long Service Leave shall be taken at a time mutually arranged between the employer and the employee.
- (vii)
  - (a) On the termination of employment of an employee, otherwise than by his/her death, an employer shall pay to the employee the monetary value of all long service leave accrued and not taken at the date of such termination and such monetary value shall be determined according to the salary payable to the employee at the date of such termination, unless the employee elects to transfer his or her leave entitlement in accordance with Section 18 of the NSW Health Policy Directive 2019\_010 Leave Matters for the NSW Health Service, as amended or replaced from time to time.
  - (b) Where an employee who has acquired a right to long service leave, or after having had five years' service and less than ten years' service dies, the widow or the widower of such employee, or if there is no such widow or widower, the children of such employee, or if there is no such widow, widower, or children, such person who, in the opinion of the employer, was at the time of the death of such employee, a dependent relative of such employee, shall be entitled to receive the monetary value of the leave not taken or which would have accrued to such employee, had his/her services terminated as referred to in paragraph (b) of subclause (i) of this clause and such monetary value shall be determined according to the salary payable to the employee at the time of his/her death.
 

Where there is a guardian of any children entitled under this paragraph the payment, to which such children are entitled, may be made to such guardian for their maintenance, education and advancement.

Where there is no person entitled under this paragraph to receive the monetary value of any leave payable under the foregoing provisions payment in respect thereof shall be made to the legal personal representative of such employee.
- (viii) The provisions of subclauses (i) to (v) of this clause shall not apply to part-time employees who receive an adjusted hourly rate (as defined in Part II, of clause 8, of this Award). Such employees shall be entitled to long service leave in accordance with the provisions of the *Long Service Leave Act 1955*, and/or Determination under the *Health Services Act 1997*.
- (ix) A full-time employee shall be entitled to have previous part-time service which is the equivalent of at least two full days' duty per week taken into account for long service purposes in conjunction with full-time service on the basis of the proportion that the actual number of hours worked each week bears to forty hours up until 30 June 1984 and bears to 38 on and from 1 July 1984, provided the part-time service merges without break with the subsequent full-time service.
- (x) Except as provided for in subclause (xi) of this clause, rights to long service leave under this clause shall be in replacement of rights to long service leave, if any, which at the date of commencement of this Award may have accrued or may be accruing to an employee and shall apply only to persons in the employ of the employer on or after the date of commencement of this Award. Where an employee has

been granted long service leave or has been paid its monetary value prior to the date of commencement of this Award, the employer shall be entitled to debit such leave against any leave to which the employee may be entitled pursuant to this clause.

- (xi) The following provisions shall apply only to employees employed in a hospital at 1 January 1973:
  - (a) An employee who -
    - (1) has had service in a hospital, to which Clause 21, Climatic and Isolation Allowance, applies, prior to 1 January 1973;
    - (2) Is employed in a hospital, to which Clause 21, Climatic and Isolation Allowance, applies, at 1 January 1973 shall be granted long service leave in accordance with the long service leave provisions in force prior to 1st January 1973, in lieu of the provisions provided by this Award where such benefits are more favourable to the employee.
  - (b) An employee employed -
    - (1) as a part-time employee at 1st January 1973 may be allowed to continue to be granted long service leave in accordance with the long service provisions in force prior to 1st January 1973 in lieu of the provisions of the *Long Service Leave Act 1955*, as provided for in sub-clause (viii) of this clause;
    - (2) on a full-time basis at 1 January 1973, but who had prior part-time service may be allowed to continue to be granted long service leave in accordance with the long service leave provisions in force prior to 1 January 1973, in lieu of the provisions provided by this Award where such benefits are more favourable to the employee.
- (xii) Where an employee has accrued a right to an allocated day off duty on pay prior to entering a period of long service leave such day shall be taken on the next working day immediately following the period of long service leave.

An employee returning to duty from long service leave shall be given the next allocated day off duty in sequence irrespective of whether sufficient credits have been accumulated or not.

## **15. Sick Leave**

- (i) Full-time employees - a full-time employee shall be entitled to sick leave on full pay by allowing 76 rostered ordinary hours of work for each year of continuous service, less any sick leave on full pay already taken subject to the following conditions.
  - (a) All periods of sickness shall be certified to by the Medical Superintendent of the hospital or by a legally qualified Medical Practitioner approved by the employer, provided such approval shall not be unreasonably withheld; provided however, that the employer may dispense with the requirement of the medical certificate where the absence does not exceed two (2) consecutive days or where in the employer's opinion the circumstances are such as to not warrant such requirements.
  - (b) The employer shall not change the rostered hours of work of an employee fixed by the roster or rosters applicable to the seven days immediately following the commencement of sick leave merely by reason of the fact that the employee is on sick leave.
  - (c) An employee shall not be entitled to sick leave until after three months continuous service.
  - (d) Service for the purpose of this clause, shall mean service with the employer and shall be deemed to have commenced on the date of engagement by the employer in respect of any period of employment with the employer current at the date of the commencement of this Award in respect of employees then so employed and in respect of others it shall be deemed to commence on the first day of engagement by the employer after the commencement of this Award.

- (e) Employees who are employed at the date of the commencement of this Award shall retain to their credit, until exhausted, any accumulation of sick leave to their credit immediately prior to such a date; provided that such credit is not less than the entitlement otherwise prescribed by this clause.
- (f) "Continuous Service" for the purpose of this clause, shall be calculated in the same manner as provided under subclause (ii) (a) of Clause 14, Long Service Leave, of this Award, excepting that all periods of service with the employer in any hospital (providing such service is not less than three months actual service) shall be counted.
- (g) Each employee shall take all reasonably practicable steps to inform the employer of his or her inability to attend for duty and as far as possible state the estimated duration for the absence.

Where practicable such notice shall be given within twenty-four hours of the commencement of such absence.

- (ii) Part-time employees - A part-time employee shall be entitled to sick leave in the same proportion of 76 hours as the average weekly hours worked over the preceding twelve months or from the time of the commencement of the employment, whichever is the lesser, bears to 38 ordinary hours of one week. Such entitlements shall be subject to all the above conditions applying to full-time employees.
- (iii) An employee shall not be entitled to sick leave on full pay for any period in respect of which such employee is entitled to accident pay, or workers compensation; provided, however, that where an employee is not in receipt of accident pay, an employer shall pay to an employee, who has sick leave entitlements under this clause, the difference between the amount received, as workers compensation and full pay. The employee's sick leave entitlement under this clause shall for each week during which such difference is paid, be reduced by the proportion of hours which the difference bears to full pay. On the expiration of available sick leave, weekly compensation payments only shall be payable.
- (iv) For the purpose of determining a full-time employee's sick leave credit as at the 1st July 1984, sick leave entitlement shall be proportioned on the basis of 76/80.

#### **16. Payment and Particulars of Salary**

- (i) Salaries shall be paid weekly or fortnightly.
- (ii) Employees shall have their salary paid into one account with a bank or other financial institution in New South Wales as nominated by the employee except where agreement as to another method of payment has been reached between the Union and the employer due to the isolation of the work location. Salaries shall be deposited by the employer in sufficient time to ensure that salaries are available for withdrawal by employees no later than pay day provided that this requirement shall not apply where employees nominate accounts with non-bank financial institutions which lack the technological or other facilities to process salary deposits within 24 hours of the employer making deposits with such financial institutions but in such cases the employer shall take all reasonable steps to ensure that the salaries of such employees are available for withdrawal by no later than pay day.

Subject to adequate notice in writing on each occasion, employees who are rostered off on pay day shall be entitled to have their salary deposited before proceeding on their days off.

- (iii) Notwithstanding the provisions of subclauses (i) and (ii) of this clause, any employee who was given or who has been given notice of termination of employment in accordance with Clause 17, Termination of Employment, of this Award, shall be paid all monies due to him/her prior to ceasing duty on the last day of employment. Where an employee is dismissed or his or her services are terminated without notice in accordance with Clause 17, Termination of Employment, of this Award, any moneys due to him or her shall be paid as soon as possible after such dismissal or termination, but in any case, not more than three days thereafter.
- (iv) On each pay day an employee, in respect of the payment then due, shall be furnished with a statement in writing containing the following particulars, namely: name, the amount of ordinary salary, the total

hours of overtime worked, if any, other monies paid, and the purpose for which they are paid and the amount of deductions made from the total earnings and the nature thereof.

- (v) Where the retrospective adjustments of wages are paid to employees, such payments where practical shall be paid as a separate payment to ordinary wages. Such payment shall be accompanied by a statement containing particulars as set out in subclause (iv) of this clause.
- (vii) Underpayment and overpayment of salaries - the following process will apply once the issue of underpayment or overpayment is substantiated.
  - (a) Underpayment
    - (1) If the amount underpaid is equal to or greater than one day's gross base pay the underpayment will be rectified within three working days;
    - (2) If the amount underpaid is less than one day's gross base pay it will be rectified by no later than the next normal pay. However, if the employee can demonstrate that rectification in this manner would result in undue hardship, every effort will be made by the employer to rectify the underpayment within three working days.
  - (b) Overpayment
    - (1) In all cases where overpayments have occurred, the employer shall as soon as possible advise the employee concerned of both the circumstances surrounding the overpayment and the amount involved. The employer will also advise the employee of the pay period from which the recovery of the overpayment is to commence.
    - (2) One off overpayments will be recovered in the next normal pay, except that where the employee can demonstrate that undue hardship would result, the recover rate shall be at 10% of an employee's gross fortnightly base pay.
    - (3) Unless the employee agrees otherwise, the maximum rate at which cumulative overpayments can be recovered is an amount, calculated on a per fortnight basis, equivalent to 10% of the employee's gross fortnightly base pay.
    - (4) The recovery rate of 10% of an employee's gross fortnightly base pay referred to in subclause (b)(3) above may be reduced by agreement, where the employee can demonstrate that undue hardship would result.
    - (5) Where an employee's remaining period of service does not permit the full recovery of any overpayment to be achieved on the fortnightly basis prescribed in subclause (b)(3) above, the employer shall have the right to deduct any balance of such overpayment from monies owing to the employee on the employee's date of termination, resignation or retirement, as the case may be.

## **17. Termination of Employment**

- (i) During the first three months of employment, employment shall be from week to week. After three months continuous service, employment may be terminated only by twenty eight days' notice given either by the employer or the employee at any time during the week or by payment or forfeiture of twenty eight days salary, as the case may be. Nothing in this clause, however, shall prevent the summary dismissal of an employee for misconduct or neglect of duty.
- (ii) Employees with a credit of time accrued towards an allocated day off duty shall be paid for such accrual upon termination.
- (iii) Provided that this clause shall not apply to positions covered by the Hospital Employees Conditions of Employment (State) Award, prior to 31 August 1988, the provisions of "Termination of Employment", subclause (ii), of that Award, shall apply.

## 18. Accommodation and Amenities

- (i) Suitable dining room accommodation and lavatory conveniences shall be provided for all resident and non-resident employees.
- (ii) In all hospitals erected after 1st January 1960, dressing room, lockers, hot and cold showers and conveniences also shall be provided for non-resident employees and where practicable, such facilities shall be provided in hospitals erected prior to that date.
- (iii) The following outlines the minimum standards which the employer seeks to achieve in all hospitals:

### Sanitary conveniences -

- (a) Seats - in the proportion of 1 seat to every 15 employees or fraction of 15 employees of each sex.
- (b) Separate and distinct conveniences for each sex, together with screened approaches to ensure privacy. These facilities must be located conveniently to work places, they must be adequately lighted and ventilated and floors, walls and ceilings finished with a smooth faced surface resistant to moisture.

### Washing and Bathing Facilities

- (a) Washing provision by way of basins of suitable impervious material with taps set at 600mm centres with hot and cold water supplied, in proportion of one hot tap and one cold tap for each fifteen employees or part of 15 employees of each sex. Space in front of the wash points shall not be less than 900mm.
- (b) Showers spaced at not less than 900mm and with hot and cold water connected for persons ceasing work at any one time in a minimum ratio of one shower for every twenty persons or part of twenty persons of each sex ceasing work at any one time.

Washing and bathing facilities must be adequately lighted and ventilated; floors, walls and ceilings finished with a smooth-faced surface resistant to moisture.

These facilities should be incorporated in, or communicated direct with the change room and should not be contained within any closet block.

### Change Rooms and Lockers

- (a) Properly constructed and ventilated change rooms equipped with a vented steel locker, at least 300mm wide by 450mm deep and 1800mm high for each employee.
- (b) Floor area not less than 0.56 sq. m. per employee to be accommodated.
- (c) Space between lockers - set up facing one another and not less than 1.5 metres. Traffic ways not less than one metre wide.
- (d) Sufficient seating not less than 260mm wide by 380mm high should be provided.
- (e) Lockers should be set up with at least 150mm clearance between the floor of the locker and the floor of the room. Lockers shall be of the lock-up type with keys provided.

### Dining Room

- (a) Well constructed, ventilated and adequately lighted dining room(s). Generally floor area should not be less than 1.0 sq. m. per employee using the meal room at any one time.
- (b) Tables not more than 1.8 m. long, spaced 1.2 m. apart, allowing 0.6 m. of table space per person.



- (c) Chairs or other seating with back rests. Sufficient tables and chairs must be provided for all persons who will use the dining room at any one time.
- (d) Facilities for boiling water, warming and refrigerating food and for washing and storing of dining utensils shall be provided.

#### Rest Room

A well constructed and adequately lighted and ventilated room or screened off portion of the change room for women. Such rest room or rest area to be equipped with day bed or couch with mattress, blankets, pillow and hot water bottle.

- (iv) The above standards shall be the minimum to be included in working drawings approved after 1st December 1976, for new hospitals.
- (v) Where major additions to presently occupied buildings or new buildings are erected within a presently constituted hospital the amenities to be provided in such additions or new buildings shall be the subject of negotiations between the parties.

### **19. Inspection of Lockers of Employees**

Lockers may be opened for inspection in the presence of the employee but in cases where the employee neglects or refuses to be present or in any circumstances where notice to the employee is impracticable such inspection may be carried out in the absence of the employee by an employee appointed by the employer, and if practicable, a Union Branch Employee, otherwise by any two employees so appointed by the employer.

### **20. Uniform and Laundry Allowance**

- (i) Subject to clause (iii) of this clause, sufficient suitable and serviceable uniforms shall be supplied free of cost to each employee required to wear a uniform provided that an employee to whom a new uniform or part of a uniform has been supplied by the employer who, without good reason, fails to return the corresponding article last supplied to him or her, shall not be entitled to have such article replaced without payment thereof at a reasonable price.
- (ii) An employee, on leaving the service of the employer shall return any uniform or part thereof supplied by the employer which is still in use immediately prior to leaving.
- (iii) In lieu of supplying a uniform to an employee, the employer shall pay to such employee an amount per week as set in Item 3 of Table 1, Allowances.
- (iv) If at any hospital the uniform of the employee is not laundered at the expense of the employer, an allowance per week as set in Item 3 of the said Table 1, shall be paid to such employee.
- (v) Each employee whose duties require him/her to work in a hazardous situation shall be supplied with the appropriate protective clothing and equipment.
- (vi) The allowances referred to in subclauses (iii) and (iv) are payable to part-time employees on the basis of one fifth of the full weekly allowance for each shift worked in the week.

### **21. Climatic and Isolation Allowance**

- (i) Employees employed in hospitals in any place situated upon or to the west of a line drawn as specified in this subclause but not including places as specified in subclause (ii) of this clause shall be paid a weekly allowance as set in Item 4 of Table 1, Allowances, in addition to the salary to which they otherwise are entitled. The line shall be drawn as follows: commencing Tocumwal and thence to the following towns in the order stated, namely, Lockhart, Narrandera, Leeton, Peak Hill, Gilgandra, Dunedoo, Coolah, Boggabri, Inverell, and Bonshaw.

- (ii) Employees employed in hospitals in any place situated upon or to the west of a line drawn as specified in this subclause shall be paid a weekly allowance as set in Item 4 of Table 1, Allowances, in addition to the salary to which they otherwise are entitled. The line shall be drawn as follows: commencing at a point on the right bank of the Murray River at Swan Hill (Victoria) and thence to the following towns in the order stated, namely, Hay, Hillston, Nyngan, Walgett, Collarenebri and Mungindi.
- (iii) Except for the computation of overtime the allowances prescribed in this clause shall be regarded as part of the salary for the purpose of this Award.
- (iv) The allowances prescribed by this clause are not cumulative.
- (v) A part-time employee shall be entitled to the allowances prescribed in this clause in the same proportion as average hours worked each week bears to 38 ordinary hours.

## **22. Notice Boards**

The hospital shall permit notice boards of reasonable dimensions to be erected in a prominent position upon which the representative of the Union shall be permitted to post Union Notices.

## **23. Union Representatives**

An employee appointed as Union representative shall upon notification thereof in writing by the Union to the employer, be recognised as an accredited representative of the Union and shall be allowed the necessary time during working hours to interview the employer on matters affecting employees and shall be allowed suitable facilities to collect the Union's dues.

## **24. Exemptions**

This Award shall not apply to members, novices or aspirants of religious orders in public hospitals, the names of whom are included or hereafter shall be in the third schedule to the *Health Services Act 1997*.

## **25. Blood Counts**

Every employee who works in close proximity to diagnostic and/or therapeutic X-Ray equipment or any other form of radio-active equipment or substance shall have a blood count carried out free of charge, by the employer at least once in every period of three months including any such period of work.

## **26. Settlement of Disputes**

- (i) Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and the supervising staff, it shall be referred to the Chief Executive Officer of the Health Service or establishment or his/her nominee, who will arrange to have the matter discussed with the employees concerned and a local representative or representatives of the Union.
- (ii) Failing settlement of the issue at this level, the matter shall be referred to the Secretary and the Head office of the Union. The dispute will be dealt with pursuant to subclause (v) of this clause.
- (iii) Whilst these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied.
- (iv) The Union reserves the right to vary this procedure where it is considered a safety factor is involved.
- (v) With view to an amicable and speedy settlement, all disputes that firstly cannot be settled in accordance with subclauses (i) and (ii) of this clause may be submitted to the committee consisting of not more than six (6) members, with equal representatives of the Union and the Secretary. Such committee shall have the power to investigate all matters in dispute and to report to the Chief Executive Officer of the Health Service and the Union respectively with such recommendation as it may think right and, in the event of no mutual decision being arrived at by such committee, the matter in dispute may be referred to the Public Health Employees (State) Industrial Committee.

- (vi) This clause shall not interfere with the rights of either to institute proceedings for the determination of any matter in accordance with the *Industrial Relations Act 1996*.

## **27. Anti-Discrimination**

- (i) It is intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

### NOTES -

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

## **28. Travelling Allowance**

- (i) An employee seconded to another hospital may be granted a daily travel allowance at the rate of the difference between the cost of travel by public transport to his/her normal place of employment and travel by public transport to the seconding hospital. Provided that where an employee drives his/her own vehicle, he/she shall, in lieu, be eligible for an allowance based on the casual rate prescribed by the Crown Employees (Public Service Conditions of Employment) Award 2009, as varied or replaced from time to time, for the difference between the distance to his/her normal place of employment and distance to the seconding hospital.
- (ii) An employee who with the approval of the employer, uses on official business a motor vehicle primarily for other than official business, shall be paid the above mentioned allowance from time to time effective. However, where it is estimated that an employee will, with the approval of the employer, be required to use his/her private vehicle on official business on at least fifty days during any period of twelve months and during that period, aggregate at least 850 kilometres of official running, he shall be paid the official

business rate prescribed by the Crown Employees (Public Service Conditions of Employment) Award 2009, as varied or replaced from time to time, at the rate in force from time to time throughout the year.

- (iii) For the purpose of subclause (ii) travel on official business -
  - (a) occurs when an employee is required by the employer as part of his/her duty to use his/her motor vehicle to attend away from his/her normal place of employment or seconding hospital to another clinic, annexe or hospital. Where an employee travels on official business direct from his/her place of residence to a clinic, annexe or hospital, other than normal place of employment he/she shall be paid the difference between the distance to his/her normal place of employment or seconding hospital and that other clinic, annexe or hospital.
  - (b) shall include other arrangements as agreed to between the employer and the Union from time to time.
  - (c) does not include "call backs".
- (iv) Nothing in this clause shall make the employer liable for the cost of the employee's daily travel to his/her usual and normal place of employment.

### **29. General Conditions**

An employee required to answer emergency phone calls outside of ordinary working hours, but not recalled to duty, shall be reimbursed rental charges on such telephone on production of receipted accounts.

Provided that, where an employee is required to answer out of hours telephone calls on a relief basis he/she shall be paid one-twelfth of his/her yearly telephone rental for each month or part thereof he/she is so employed.

### **30. Promotions and Appointments**

- (i) Promotion and/or appointment shall be by merit.
- (ii) In the case of an employee or employees disputing a promotion and/or appointment the Union may apply to the Public Health Employees (State) Industrial Committee or its chairman or the Industrial Relations Commission of New South Wales for determination of the dispute.

### **31. Board and Lodging**

- (i) Where an employee lives at a hospital, deductions from his/her salary for accommodation and/or board may be made by the employer at the rates prescribed from time to time by the Public Health System Nurses' and Midwives' (State) Award 2018, as varied or replaced from time to time.
- (ii) Where individual meals only are provided, the employee may be charged the charges applicable under the Public Health System Nurses' and Midwives' (State) Award 2018, as varied or replaced from time to time.
- (iii) No deductions shall be made from the salary of an employee for board or lodging when the employee is absent on annual, sick or long service leave.

### **32. Maternity, Adoption and Parental Leave**

#### **A. Maternity Leave**

- (i) Eligibility for Paid Maternity Leave

To be eligible for paid maternity leave a full time or permanent part-time employee must have completed at least 40 weeks continuous service prior to the expected date of birth.

An employee who has once met the conditions for paid maternity leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid maternity leave, unless-

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after her services have been otherwise dispensed with: or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers Compensation Act 1987*.

(ii) Portability of Service for Paid Maternity Leave

Portability of service for paid maternity leave involves the recognition of service in government sector agencies for the purpose of determining an employee's eligibility to receive paid maternity leave. For example, where an employee moves between a public service department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid maternity leave.

When determining an employee's eligibility for paid maternity leave, continuous service with an organisation that is part of the government sector as defined in the *Government Sector Employment Act 2013* will be recognised, provided that:

- (a) service was on a full-time or permanent part-time basis;
- (b) cessation of service with the former employer was not by reason of dismissal on any ground, except retrenchment or reduction of work;
- (c) the employee immediately commences duty with the new employer. There may be a break in service of up to two months before commencing duty with the new employer. However, such a break in service will not be counted as service for the purpose of calculating any prior service prerequisite for paid maternity leave.

(iii) Entitlement to Paid Maternity Leave

An eligible employee is entitled to fourteen weeks at the ordinary rate of pay from the date maternity leave commences. This leave may commence up to fourteen weeks prior to the expected date of birth.

It is not compulsory for an employee to take this period off work. However, if an employee decides to work during the nine weeks prior to the date of birth it is subject to the employee being able to satisfactorily perform the full range of normal duties.

Paid maternity leave may be paid:

on a normal fortnightly basis; or

in advance in a lump sum; or

at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of maternity leave on half pay to enable an employee to remain on full pay for that period.

(iv) Unpaid Maternity Leave

- (a) Full time and permanent part time employees who are entitled to paid maternity leave are entitled to a further period of unpaid maternity leave of not more than 12 months after the actual date of birth.
- (b) Full time and permanent part time employees who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.

(v) Applications

An employee who intends to proceed on maternity leave should formally notify her employer of such intention as early as possible, so that arrangements associated with her absence can be made.

Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.

(vi) Variation after Commencement of Leave

After commencing maternity leave, an employee may vary the period of her maternity leave once only without the consent of her employer by giving the employer notice in writing of the extended period at least fourteen days' before the start of the extended period. An employer may accept less notice if convenient.

An employee may extend the period of maternity leave at any time with the agreement of the employer.

The conditions relating to variation of maternity leave are derived from Section 64 of the *Industrial Relations Act 1996*.

(vii) Staffing Provisions

In accordance with obligations established by the Industrial Relations Act 1996 (Section 69) any person who occupies the position of an employee on maternity leave must be informed that the employee has the right to return to her former position. Additionally, since an employee has the right to vary the period of her maternity leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should be also set down clearly; to a fixed date or until the employee elects to return to duty, whichever occurs first.

(viii) Effect of Maternity Leave on Accrual of Leave, Increments etc.

When the employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual leave, sick leave and long service leave and any period of maternity leave on half pay is taken into account to the extent of one half thereof when determining the accrual of annual leave, sick leave and long service leave.

Except in the case of employees who have completed ten years' service, the period of maternity leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years' service the period of maternity leave without pay shall count as service provided such leave does not exceed six months.

Maternity leave without pay does not count as service for incremental purposes. Periods of maternity leave at full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.

Where public holidays occur during the period of paid maternity leave, payment is at the rate of maternity leave received i.e., public holidays occurring in a period of full pay maternity leave are paid at full rate and those occurring during a period of half pay leave are paid at half rate.

(ix) Illness Associated with Pregnancy

If, because of an illness associated with her pregnancy an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.

Where an employee is entitled to paid maternity leave, but because of illness, is on sick, annual, long service leave, or sick leave without pay prior to the birth, such leave ceases nine weeks prior to the expected date of birth. The employee then commences maternity leave with the normal provisions applying.

(x) Transfer to a More Suitable Position

Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. This obligation arises from Section 70 of the *Industrial Relations Act 1996*. A position to which an employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.

(xi) Miscarriages

In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions

(xii) Stillbirth

In the case of a stillbirth, (as classified by the Registry of Births, Deaths and Marriages) an employee may elect to take sick leave, subject to production of a medical certificate, or maternity leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.

(xiii) Effect of Premature Birth on Payment of Maternity Leave

An employee who gives birth prematurely and prior to proceeding on maternity leave shall be treated as being on maternity leave from the date leave is commenced to have the child. Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

(xiv) Right to Return to Previous Position

In accordance with the obligations set out in Section 66 of the *Industrial Relations Act 1996*, an employee returning from maternity leave has the right to resume her former position.

Where this position no longer exists the employee is entitled to be placed in a position nearest in status and salary to that of her former position and to which the employee is capable or qualified.

(xv) Further Pregnancy While on Maternity Leave

Where an employee becomes pregnant whilst on maternity leave, a further period of maternity leave shall be granted. If an employee enters on the second period of maternity leave during the currency of the initial period of maternity leave, then any residual maternity leave from the initial entitlement ceases.

An employee who commences a subsequent period of maternity leave while on unpaid maternity leave under subclause (iv)(a) of Part A of this clause or subclause (i)(b) of Part D of this clause is

entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on maternity leave).

An employee who commences a subsequent period of maternity leave during the first 12 months of a return to duty on a part time basis as provided under subclause (i)(c) of Part D of this clause is entitled to be paid at their substantive full time rate for the subsequent period of maternity leave.

An employee who commences a subsequent period of maternity leave more than 12 months after returning to duty on a part time basis under subclause (i)(c) of Part D of this clause, will be entitled to paid maternity leave for the subsequent period of maternity leave at their part time rate.

## B. Adoption Leave

### (i) Eligibility

All full time and permanent part time employees who are adopting a child and are to be the primary care giver of the child are eligible for unpaid adoption leave.

To be eligible for paid adoption leave a full time or permanent part-time employee must also have completed at least 40 weeks continuous service prior to the date of taking custody of the child.

An employee, who has once met the conditions of paid adoption leave, will not be required to again work the 40 weeks continuous service in order to qualify for further periods of paid adoption leave, unless:

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with; or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers Compensation Act 1987*.

### (ii) Portability of Service for Paid Adoption Leave

As per maternity leave conditions.

### (iii) Entitlement

#### (a) Paid Adoption Leave

Eligible employees are entitled to paid adoption leave of fourteen weeks at the ordinary rate of pay from and including the date of taking custody of the child.

Paid adoption leave may be paid:

on a normal fortnightly basis; or

in advance in a lump sum; or

at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.



Annual and/or long service leave credits can be combined with periods of adoption leave at half pay to enable an employee to remain on full pay for that period.

(b) Unpaid Adoption Leave

Eligible employees are entitled to unpaid adoption leave as follows:

where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;

where the child is over the age of 12 months and under 18 years old - a period of up to 12 months, such period to be agreed upon by both the employee and the employer.

(iv) Applications

Due to the fact that an employee may be given little notice of the date of taking custody of a child, employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify the employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.

(v) Variation after Commencement of Leave

After commencing adoption leave, an employee may vary the period of leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.

(vi) Staffing Provisions

As per maternity leave conditions.

(vii) Effect of Adoption Leave on Accrual of Leave, Increments, etc.

As per maternity leave conditions.

(viii) Right to Return to Previous Position

As per maternity leave conditions.

C. Parental Leave

(i) Eligibility

To be eligible for parental leave a full time or permanent part-time employee must have completed at least 40 weeks continuous service prior to the expected date of birth or to the date of taking custody of the child.

An employee who has once met the conditions for paid parental leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid parental leave, unless-

(a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with: or

(b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers Compensation Act 1987*.

(ii) Portability of Service for Paid Parental Leave

As per maternity leave conditions.

(iii) Entitlements

Eligible employees whose spouse or partner (including a same sex partner) is pregnant or is taking custody of a child, are entitled to a period of leave not exceeding 52 weeks, which includes one week of paid leave, and may be taken as follows:

- (a) an unbroken period of up to one week at the time of the birth of the child, taking custody of the child or other termination of the pregnancy (short parental leave), and
- (b) a further unbroken period in order to be the primary caregiver of the child (extended parental leave).
- (c) The entitlement of one week's paid leave may be taken at anytime within the 52 week period and shall be paid:

at the employees ordinary rate of pay for a period not exceeding one week on full pay, or two weeks at half pay or the period of parental leave taken, whichever is the lesser period.

- (d) Extended parental leave cannot be taken at the same time as the employee's spouse or partner is on maternity or adoption leave except as provided for in subclause (i)(a) of Part D Right to Request of this clause.

Annual and/or long service leave credits can be combined with periods of parental leave on half pay to enable an employee to remain on full pay for that period.

(iv) Applications

An employee who intends to proceed on parental leave should formally notify their employer of such intention as early as possible, so that arrangements associated with their absence can be made.

- (a) In the case of extended parental leave, the employee should give written notice of the intention to take the leave.
- (b) The employee must, at least four weeks before proceeding on leave, give written notice of the dates on which they propose to start and end the period of leave, although it is recognised in situations of taking custody of a child, little or no notice may be provided to the employee. In such an instance, the employee should notify the employer as early as practicable.
- (c) The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that their spouse or partner is pregnant and the expected date of birth, or in the case of an adoption, an official form or notification on taking custody of the child.
- (d) In the case of extended parental leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
  - (1) if applicable, the period of any maternity leave sought or taken by his spouse, and
  - (2) that they are seeking the period of extended parental leave to become the primary care giver of the child.

(v) Variation after Commencement of Leave

After commencing parental leave, an employee may vary the period of her/his parental leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.

(vi) Effect of Parental Leave on Accrual of Leave, Increments etc.

As per maternity leave conditions.

(vii) Right to Return to Previous Position

As per maternity leave conditions.

D. Right to Request

(i) An employee entitled to maternity, adoption or parental leave may request the employer to allow the employee:

- (a) to extend the period of simultaneous maternity, adoption or parental leave use up to a maximum of eight weeks;
- (b) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
- (c) to return from a period of maternity, adoption or parental leave on a part time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

(ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(iii) The employee's request and the employer's decision made under subclauses (i)(b) and (c) must be recorded in writing.

(iv) Where an employee wishes to make a request under subclause (i)(c):

- (a) the employee is to make an application for leave without pay to reduce their full time weekly hours of work
- (b) such application must be made as early as possible to enable the employer to make suitable staffing arrangements. At least four weeks' notice must be given.
- (c) salary and other conditions of employment are to be adjusted on a basis proportionate to the employee's full time hours of work i.e. for long service leave the period of service is to be converted to the full time equivalent and credited accordingly.
- (d) employees who return from leave under this arrangement remain full time employees. Therefore the payment of any part time allowance to such employees does not arise.

E. Communication During Leave

- (i) Where an employee is on maternity, adoption or parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
  - (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing the leave; and
  - (b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing the leave.
- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of the leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part time basis.
- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with subclause (i).

NOTE:

- (a) The entitlement to maternity, adoption and parental leave for part-time employees who receive an adjusted hourly rate (as defined in clause 8, Part 2, in this Award), along with casual employees, are in accordance with the provisions of Part 4, Parental Leave of the *Industrial Relations Act 1996* and/or Determination under the *Health Services Act 1997*.
- (b) Where a casual employee is entitled to parental leave under the *Industrial Relations Act 1996*, the following provisions shall also apply in addition to those set out in the Act.

An employer must not fail to re-engage a casual employee because:

the employee or employee's spouse is pregnant; or

the employee is or has been immediately absent on parental leave.

The rights of the employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (c) Part time employees who receive an adjusted hourly rate are also entitled to the provisions of Part D Right to Request and Part E Communication During Leave of this clause.
- (d) Liability for Superannuation Contributions

During a period of unpaid maternity, adoption or parental leave, the employee will not be required to meet the employer's superannuation liability.

**32A. Lactation Breaks**

- (i) This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this Award.
- (ii) A full time employee or a part time employee working more than four hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day or per shift.

- (iii) A part time employee working four hours or less on any day or shift is entitled to only one paid lactation break of up to 30 minutes each per day or per shift worked.
- (iv) A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.
- (v) The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk. Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and the employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- (vi) Employees experiencing difficulties in effecting the transition from home based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (vii) Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave or other leave in accordance with the Award.

### **33. Family and Community Services Leave and Personal/Carers' Leave**

- (i) Family and Community Services (FACS) Leave and Personal/Carer's Leave are separate, stand alone entitlements.
- (ii) The provisions outlined in Parts A and B of this clause are available to all employees covered by this Award, other than casual employees as defined in subclause (iii) below.
- (iii) Casual employees as defined in the Health Industry Status of Employment (State) Award 2018, as varied from time to time, are entitled to the provisions outlined in Part C of this clause.

#### A. FACS Leave

##### (i) FACS Leave - General

- (a) For the purpose of this clause relating to FACS leave:

"relative" means a person related by blood, marriage or affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

- (b) The employer may grant FACS leave to an employee:

(1) to provide care and/or support for sick members of the employee's relatives or household; or

(2) for reasons related to the family responsibilities of the employee (e.g. to arrange and or attend a funeral of a relative; to accompany a relative to a medical appointment where there is an element of emergency; parent/teacher meetings; education week activities; to meet elder-care requirements of a relative); or

- (3) for reasons related to the performance of community service by the employee (e.g. in matters relating to citizenship; to office holders in local government, other than as a mayor, for attendance at meetings, conferences or other associated duties; representing Australia or the State in major amateur sport other than in Olympic/Commonwealth Games); or
  - (4) in a case of pressing necessity (e.g. where an employee is unable to attend work because of adverse weather conditions which either prevent attendance or threaten life or property; the illness of a relative; where a child carer is unable to look after their charge).
- (ii) FACS leave replaces compassionate leave.
  - (iii) An employee is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the employer approves the grant of leave in the particular case.

Applications for FACS leave to attend court, for reasons other than criminal charges, will be assessed on an individual basis.

- (iv) FACS Leave - entitlement
  - (a) The maximum amount of FACS leave on full pay that may be granted to an employee is:
    - (1) 3 working days during the first year of service, commencing on and from 1 January 1995, and thereafter 6 working days in any period of 2 years; or
    - (2) 1 working day, on a cumulative basis effective from 1 January 1995, for each year of service after 2 years' continuous service, minus any period of FACS leave already taken by the employee since 1 January 1995,

whichever method provides the greater entitlement.

- (b) For the purposes of calculating entitlements under (iv)(a)(1) and (2) above, a working day for employees working 38 hours per week shall be deemed to consist of 8 hours, and a working day for employees working 35 hours per week shall be deemed to consist of 7 hours. The rate at which FACS leave is paid out and utilised shall be on actual hours absent from a rostered shift.

Example A: An employee working 38 hours per week will have an entitlement, in their first year of employment, to 24 hours of FACS leave. If the employee takes FACS leave for a full 10 hour shift, the employee would be debited 10 hours of FACS leave.

Example B: An employee working 35 hours per week will have an entitlement, in their first year of employment, to 21 hours of FACS leave. If the employee takes FACS leave for a full 7 hour shift, the employee would be debited 7 hours of FACS leave.

Example C: An employee, employed prior to 1 January 1995, applies for FACS leave on 20 February 1997. The employee is entitled to 6 days in any period of two years. Therefore, to calculate the employee's available FACS leave as at 20 February 1997, add all FACS leave taken from 21 February 1995 to 20 February 1997 and deduct that amount from the 6 days entitlement.

- (c) FACS leave is available to part-time employees on a pro rata basis, based on the average number of hours worked per week. A working day shall consist of one-fifth of the employee's average weekly hours during the preceding 12 months or during the employee's period of employment, whichever is the lesser period.

Example: An employee working an average of 30 hours per week will have an entitlement, in his/her first year of employment, of 18 hours of FACS leave. If the employee takes FACS leave for a full rostered shift e.g. of 4 hours, the employee would be debited 4 hours of FACS leave. Likewise, if the employee was rostered for 8 hours and was absent for the full 8 hours on FACS leave, he/she would be debited 8 hours of FACS leave.

(v) Additional FACS leave for bereavement purposes

Where FACS leave has been exhausted, additional FACS leave of up to 2 days for bereavement may be granted on a discrete, "per occasion" basis to an employee on the death of a relative or member of a household as defined in subclause (i) (a) of Part A of this clause.

(vi) Use of other leave entitlements

The employer may grant an employee other leave entitlements for reasons related to family responsibilities or community service, by the employee.

An employee may elect, with the consent of the employer, to take annual leave; long service leave; or leave without pay.

B. Personal/Carer's Leave

(i) Use of sick leave to care for the person concerned - definitions

A person who needs the employee's care and support is referred to as the "person concerned" and is:

- (a) a spouse of the employee; or
- (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (e) a relative of the employee who is a member of the same household, where for the purpose of this clause relating to Personal/Carer's Leave:

"relative" means a person related by blood, marriage or affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

(ii) Use of sick leave to care for the person concerned - entitlement

- (a) The entitlement to use sick leave in accordance with this subclause is subject to:

- (1) the employee being responsible for the care and support of the person concerned; and
  - (2) the person concerned being as defined in subclause (i) of Part B of this clause.
- (b) Other than a casual or any other employee who receives a loading in lieu of sick leave, an employee with responsibilities in relation to a person who needs their care and support shall be entitled to use the untaken sick leave, from that year's annual sick leave entitlement, to provide care and support for such persons when they are ill.
  - (c) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (b) above, sick leave untaken from the previous 3 years may also be accessed by an employee with responsibilities in relation to a person who needs their care and support.
  - (d) The employer may, in special circumstances, make a grant of additional sick leave. This grant can only be taken from sick leave untaken prior to the period referred to in subclause (c) above.
  - (e) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, that the illness of the person concerned is such as to require care by another person.
  - (f) The employee has the right to choose the method by which the ground for leave is established, that is, by production of either a medical certificate or statutory declaration.
  - (g) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
  - (h) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
  - (i) In normal circumstances, the employee must not take leave under this part where another person has taken leave to care for the same person.
- (iii) Use of other leave entitlements

An employee may elect, with the consent of the employer, to take:

- (a) annual leave, including annual leave not exceeding 10 days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties. An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken. An employee may elect with the employer's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
- (b) long service leave; or
- (c) leave without pay for the purpose of providing care and support to the person concerned as defined in subclause (i) of Part B of this clause.



- (iv) Time off in lieu of payment of overtime
  - (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment of overtime at a time or times agreed with the employer within 12 months of the said election
  - (b) Overtime taken as time off during ordinary time shall be taken at the ordinary time rate, that is, one hour off for each hour of overtime worked.
  - (c) If, having elected to take time as leave in accordance with (iv)(a) above and the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the twelve 12 month period from the date the overtime was worked, or earlier by agreement, or on termination.
  - (d) Where no election is made in accordance with paragraph (iv)(a) above, the employee shall be paid overtime rates in accordance with the provisions of clause 9, Overtime.
- (v) Use of make-up time
  - (a) An employee may elect, with the consent of the employer, to work "make-up time". "Make-up time" is worked when the employee takes time off during ordinary hours for family or community service responsibilities, and works those hours at another time, during the spread of ordinary hours provided for in clause 4 of this Award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off during ordinary hours and works those hours at another time) at the applicable shift work rate which would have been applicable to the hours taken off.

C. Entitlements for Casual Employees

- (i) Bereavement entitlements for casual employees
  - (a) Casual employees are entitled to not be available to attend work or to leave work upon the death in Australia of a relative or member of a household as prescribed in subclause (i)(a) of Part A of this clause.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this part. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (ii) Personal carer's entitlement for casual employees
  - (a) Subject to the evidentiary and notice requirements in subclauses (ii)(e) - (h) of Part B of this clause casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause (i) of Part B of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the

employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this part. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

### **33A. Family Violence Leave**

- (i) For the purpose of this clause, family violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*. The violence may have been reported to the police and/or may be the subject of an Apprehended Violence Order.
- (ii) An employee experiencing family and domestic violence can utilise Award leave entitlements provided for in Sick Leave and Family and Community Services Leave provisions of the Award.
- (iii) Where leave entitlements to Sick Leave and Family and Community Services Leave are exhausted, the employer will grant up to five days per year of paid special leave to attend legal proceedings, counselling, appointments with a medical or legal practitioner and relocation and safety activities directly associated with alleviating the effects of family and domestic violence. This leave entitlement does not accumulate from year to year.
- (iv) Upon exhaustion of the paid leave entitlement, an employee may request further periods of unpaid leave, for the same activities for which paid leave would be available.
- (v) To access paid and unpaid leave, the employee must provide the employer with evidence, to the employer's satisfaction, substantiating the purpose of the leave and that the leave is related to alleviating the effects of family violence. The employer may accept a variety of agreed documentation in support of an application for leave. Supporting documentation may be presented in the form of an agreed document issued by the Police Force, a Court, a doctor, a Family Violence Support Service or a lawyer.
- (vi) Matters related to family violence can be sensitive. Information collected by the employer will be kept confidential. No information relating to the details of the family violence will be kept on an employee's personnel file without their express permission. However, records about the use of family violence leave will need to be kept.
- (vii) The employer, where appropriate, may facilitate flexible working arrangements subject to operational requirements. This may include changes to working times and locations, telephone numbers and email addresses.
- (viii) The employer will co-operate with all legal orders protecting an employee experiencing domestic violence.

### **34. Mobility, Excess Fares and Travelling**

For the purpose of this clause accustomed place of work shall mean the location where an employee is regularly required to commence duty by the employer.

- (i) An employee shall be required to proceed to the accustomed place of work and return home once on each ordinary working day or shift in the employee's own time and at the employee's own expense.
- (ii)
  - (a) Where an employee is directed to report for duty to a place of work other than the employee's accustomed place of work the employee shall travel to and from the alternative place of work in the employer's time for those periods in excess of time normally taken to travel to and from the accustomed place of work.

- (b) If the excess of travelling time on a particular day or shift is greater than the prescribed ordinary hours of duty for the particular category of staff for that day or shift, then the excess of hours shall be paid at the ordinary rate of pay to the extent of travelling time.
- (c) Fares incurred by such employee in excess of the fares normally incurred in travelling to the employee's accustomed place of work and returning home from the accustomed place of work shall be reimbursed.
- (d) Where the employee is required to report to an alternative place of work and has the prior approval of the employer to travel by his/her own mode of conveyance, the employee shall be paid a kilometre allowance for kilometres travelled in excess of the kilometres the employee normally travels between the accustomed place of work and home. The kilometre allowance will be prescribed from time to time by the Crown Employees (Public Service Conditions of Employment) Award 2009, as varied or replaced from time to time.

(iii)

- (a) Where an employer has determined that an employee or employees should report to a new accustomed place of work on a permanent basis, the decision must be discussed with the affected employee(s) and the local branch of the Union prior to notice of changed accustomed place of work being given.
- (b) The employer shall give the employee reasonable notice of the requirement to report to a new accustomed place of work. For the purpose of this subclause "reasonable notice" shall be one calendar month prior to the date the employee is first required to report to the new accustomed place of work.
- (c) Where the accustomed place of work is changed on a permanent basis by the employer, the employee shall report to the new accustomed place of work on the date specified by the employer.
- (d) If there is disagreement about such a decision after such discussion or if a significant number of employees are involved, the matter should be referred to the Secretary, who will discuss the matter with the Union and will determine the date upon which notice will be given to employee(s).

(iv)

- (a) The provision of this clause shall not apply to an employee appointed to regularly perform relief duties or to employees specifically employed to perform duties at more than one place of work except as provided in (b) hereunder.
- (b) If a reliever incurs fares in excess of \$5.18 per day in travelling to and from the relief site, the excess shall be reimbursed.

Where a reliever, with the prior approval of the employer, travels by his/her own mode of conveyance and incurs travelling costs in excess of \$5.18 per day to and from the relief site, such excess shall be reimbursed. The rate applicable shall be the kilometre allowance prescribed from time to time in the Crown Employees (Public Service Conditions of Employment) Award less \$5.18.

This \$5.18 shall be reviewed annually by the employer.

- (v) No payment shall be made under this clause unless the employer is satisfied that the employee has incurred additional expenditure in having to report to an alternative place of work, at the direction of the employer.
- (vi) Travel to an alternative place of work, either by public transport or own mode of conveyance, shall in all instances be by the most direct route.

### **35. Labour Flexibility**

- (i) The employer may direct an employee to carry out such duties as are reasonable, and within the limits of the employee's skill, competence and training consistent with employee's classification, grouping and/or career stream provided that such duties are not designed to promote deskilling.
- (ii) The employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained or has otherwise acquired the necessary skills in the use of such tools and equipment.
- (iii) Any direction issued by the employer pursuant to subclause (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy work environment.
- (iv) Existing provisions with respect to the payment of higher duties allowances shall apply in such circumstances.

### **36. Salary Packaging**

- (i) By agreement with their employer, employees may elect to package part or all of their salary in accordance with this clause, to obtain a range of benefits as set out in the NSW Health Policy Directive PD2018\_044 Salary Packaging, as amended from time to time. Such election must be made prior to the commencement of the period of service to which the earnings relate. Where an employee also elects to salary sacrifice to superannuation under this Award, the combined amount of salary packaging/sacrificing may be up to 100 per cent of salary.

Any salary packaging above the fringe benefit exemption cap will attract fringe benefits tax as described in paragraph (iv) below.

- (ii) Where an employee elects to package an amount of salary:
  - (a) Subject to Australian taxation law, the packaged amount of salary will reduce the salary subject to PAYE taxation deductions by that packaged amount.
  - (b) Any allowance, penalty rate, overtime payment, payment for unused leave entitlements, weekly workers' compensation, or other payment other than any payment for leave taken in service, to which an employee is entitled under this Award or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under this Award in the absence of any salary packaging or salary sacrificing made under this Award.
  - (c) 'Salary' for the purpose of this clause, for superannuation purposes, and for the calculation of Award entitlements, shall mean the Award salary as specified in Clause 2, Salaries, and which shall include 'approved employment benefits' which refer to fringe benefit savings, administration costs, and the value of packaged benefits.
- (iii) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be packaged. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees, and private health fund membership fees.
- (iv) The salary packaging scheme utilises a fringe benefit taxation exemption status conferred on public hospitals and Local Health Districts, which provides for a fringe benefit tax exemption cap of \$17,000 per annum. The maximum amount of fringe benefits-free tax savings that can be achieved under the scheme is where the value of benefits when grossed-up, equal the fringe benefits exemption cap of \$17,000. Where the grossed-up value exceeds the cap, the employer is liable to pay fringe benefits tax on the amount in excess of \$17,000, but will pass this cost on to the employee. The employer's share of savings, the combined administration cost, and the value of the package benefits, are deducted from pre-tax dollars.

- (v) The parties agree that the application of the fringe benefits tax exemption status conferred on public hospitals and area health services is subject to prevailing Australian taxation laws.
- (vi) If an employee wishes to withdraw from the salary packaging scheme, the employee may only do so in accordance with the required period of notice as set out in the NSW Health Policy Directive PD2018\_044 Salary Packaging , as amended or replaced from time to time.
- (vii) Where an employee ceases to salary package, arrangements will be made to convert the agreed package amount to salary. Any costs associated with the conversion will be borne by the employee, and the employer shall not be liable to make up any salary lost as a consequence of the employee's decision to convert to salary.
- (viii) Employees accepting the offer to salary package do so voluntarily. Employees are advised to seek independent financial advice and counselling to apprise them of the implications of salary packaging on their individual personal financial situations.
- (ix) The employer and the employee shall comply with the procedures set out in the NSW Health Policy Directive PD2018\_044 Salary Packaging, or as amended from time to time.

### **37. Reasonable Hours**

- (i) Subject to subclause (ii) the employer may require an employee to work reasonable overtime at overtime rates unless or as otherwise provided for under the Award.
- (ii) The employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (iii) For the purposes of subclause (ii) what is unreasonable or otherwise will be determined having regard to:
  - (a) any risk to employee health and safety.
  - (b) The employee's personal circumstances including any family and carer responsibilities.
  - (c) The needs of the workplace or enterprise.
  - (d) The notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) Any other relevant matter.

### **38. Salary Sacrifice to Superannuation**

- (i) Notwithstanding the salaries prescribed in Clause 2, Salaries, as varied from time to time, an employee may elect, subject to the agreement of the employee's employer, to sacrifice a part or all of the salary payable under the salaries clause to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. The amount sacrificed together with any salary packaging arrangements under Clause 36, Salary Packaging, of this Award may be made up to one hundred (100) per cent of the salary payable under the salaries clause, or up to one hundred (100) per cent of the currently applicable superannuable salary, whichever is the lesser.

In this clause, 'superannuable salary' means the employee's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations.

- (ii) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be packaged. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees and private health fund membership fees.

- (iii) Where the employee has elected to sacrifice a part or all of the available payable salary to additional employer superannuation contributions:
  - (a) The employee shall be provided with a copy of the signed agreement. The salary sacrifice agreement shall be terminated at any time at the employee's election and shall cease upon termination of the employee's services with the employer;
  - (b) Subject to Australian taxation law, the amount of salary sacrificed will reduce the salary subject to appropriate PAYE taxation deductions by the amount sacrificed; and
  - (c) Any allowance, penalty rate, overtime, payment for unused leave entitlements, weekly workers' compensation, or other payment, other than any payment for leave taken in service, to which an employee is entitled under the relevant Award or any applicable Award, Act, or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under the salaries clause in the absence of any salary sacrifice to superannuation made under this Award.
- (iv) The employee may elect to have the specified amount of payable salary which is sacrificed to additional employer superannuation contributions:
  - (a) paid into the superannuation scheme established under the *First State Superannuation Act 1992* as optional employer contributions; or
  - (b) subject to the employer's agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.
- (v) Where an employee elects to salary sacrifice in terms of subclause (iv) above, the employer will pay the sacrificed amount into the relevant superannuation fund.
- (vi) Where the employee is a member of a superannuation scheme established under:
  - (a) the *Police Regulation (Superannuation) Act 1906*;
  - (b) the *Superannuation Act 1916*;
  - (c) the *State Authorities Superannuation Act 1987*;
  - (d) the *State Authorities Non-contributory Superannuation Act 1987*; or
  - (e) the *First State Superannuation Act 1992*.

The employee's employer must ensure that the amount of any additional employer superannuation contributions specified in subclause (i) above is included in the employee's superannuable salary which is notified to the New South Wales public sector superannuation trustee corporations.

- (vii) Where, prior to electing to sacrifice a part or all of their salary to superannuation, an employee had entered into an agreement with their employer to have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause (v) above, the employer will continue to base contributions to that fund on the salary payable under Clause 2, Salaries, of this Award to the same extent as applied before the employee sacrificed that amount of salary to superannuation. This clause applies even though the superannuation contributions made by the employer may be in excess of the superannuation guarantee requirements after the salary sacrifice is implemented.

### **39. No Extra Claims**

Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries,

rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

**40. Area, Incidence and Duration**

- (i) This Award takes effect from 1 July 2019 and shall remain in force for a period of one year. The allowances in the second column in Table 1 of Part B, Monetary Rates, will apply from the first full pay period on or after (ffppoa) 1 July 2019.
- (ii) This Award rescinds and replaces the Hospital Scientists (State) Award 2018 published 31 May 2019 (384 IG 448) and all variations thereof.
- (iii) This Award shall apply to persons employed in classifications contained herein employed in the NSW Health Service under section 115(1) of the *Health Services Act 1997*, or their successors, assignees or transmittes.

**PART B**

**Table 1 - Allowances**

Item No.	Clause No.	Description	Rate from 01/07/2019 \$	Rate from first full pay period on or after 01/07/2019 \$
1	7	On call - per 24 hours or any part thereof	12.20	12.50
2	10	Meal Allowance for overtime		
		(a) Breakfast at or before 6.00 a.m.* (each)	30.60	30.60
		(b) Evening at least 1 hour after normal ceasing time and extends beyond or is worked wholly after 7.00 p.m.* (each)	30.60	30.60
		(c) Lunch beyond 2.00 p.m. Saturdays, Sundays or Holidays* (each)	30.60	30.60
3	20(iii)(iv)	Uniform and Laundry Allowance		
		- Uniform (per week)	2.60	2.63
		- Laundry (per week)	2.70	2.74
4	21(i)(ii)	Allowance (per week) for persons employed in hospitals upon or west of the line commencing at Tocumwal, etc. (see clause 21(i)) (per week)	3.70	3.75
		Allowance (per week) for persons employed in hospitals upon or west of the line commencing at Murray River etc. (see clause 21(ii)) (per week)	7.20	7.29

\* NB: These allowances are varied in accordance with Treasury Circular TC18-15 Meal, Traveling and other Allowances for 2018-19, as varied or replaced from time to time.

P. M. KITE, *Chief Commissioner*

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Printed by the authority of the Industrial Registrar.

**PUBLIC HOSPITAL MEDICAL OFFICERS (STATE) AWARD 2019**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 203284 of 2019)

Before Chief Commissioner Kite

4 July 2019

**AWARD****PART A****Arrangement**

Clause No.	Subject Matter
1.	Definition
2.	Salaries
3.	Payment of Salaries
4.	Qualification Allowance
5.	In-charge Allowance
6.	Hours of Work
7.	Part-Time Employees
8.	Penalty Rates
9.	Time Worked
10.	Meal Breaks
11.	Overtime
12.	On Call and Call Back
13.	Higher Duties Allowance
14.	Annual Leave
15.	Public Holidays
16.	Sick Leave
17.	Maternity, Adoption and Parental Leave
17A.	Lactation Breaks
18.	Family and Community Services Leave and Personal/Carer's Leave
18A.	Family Violence Leave
19.	Long Service Leave
20.	Board and Accommodation
21.	Uniform and Laundry Allowances
22.	Termination of Employment
23.	Settlement of Disputes
24.	Anti-Discrimination
25.	Study Leave
26.	Travelling Allowances
27.	Mobility, Excess Fares and Travelling
28.	Secondment
29.	Relocation Expenses
30.	Labour Flexibility
31.	Salary Packaging
32.	Reasonable Hours
33.	Salary Sacrifice to Superannuation
34.	No Extra Claims
35.	Area, Incidence and Duration



PART B

Table 1 - Allowances and Other Rates

PART C

**PART A**

**1. Definitions**

"Employer" means the Secretary exercising employer functions on behalf of the Government of New South Wales (and includes a delegate of the Secretary).

"Health Service" means a Local Health District constituted under section 8 of the *Health Services Act 1997*, a Statutory Health Corporation constituted under section 11 of that Act, and an Affiliated Health Organisation constituted under section 13 of that Act.

"Hospital" means a public hospital as defined under section 15 of the *Health Services Act 1997*.

"Higher Medical Qualifications" means such qualifications obtained by a medical practitioner subsequent to graduation and includes:

- (i) post-graduate university degrees and diplomas recognised by the Medical Board of Australia as qualifications, or
- (ii) membership or fellowship of the Royal College or Royal Australasian College of Physicians or fellowship of the Royal College or Royal Australasian College of Surgeons or membership or fellowship of the Royal College of Obstetricians and Gynaecologists, or
- (iii) such other post-graduate qualifications obtained by examination and recognised by the Medical Board of Australia and acceptable to the employer, including fellowship of the Royal Australian College of General Practitioners.

"Intern" means a medical officer serving in a hospital prior to obtaining full registration with the Medical Board of Australia pursuant to the Health Practitioner Regulation National Law Act.

"Registrar" means a medical officer who:

- (i) has had at least three years' experience in public hospital service as defined under this Award or any lesser period acceptable to the Ministry of Health, and
- (ii) is appointed as a registrar by a hospital, and
- (iii) is occupying a position of registrar in an established position as approved by the employer.

"Resident" means a medical officer who has obtained full registration.

"Secretary" means the Secretary of the Ministry of Health.

"Senior Registrar" means a registrar holding higher medical qualifications and occupying a position of senior registrar in an established position as approved by the employer.

"Service" for the purpose of clause 2, Salaries, means service before and/or after the commencement of this Award in one or more hospitals or in other institutions approved from time to time by agreement between the parties of this Award. It shall include service as a medical officer in the Australian Armed Forces and service, whether continuous or not, in other hospitals within the Commonwealth of Australia.

"Union" means the Health Services Union NSW and the Australian Salaried Medical Officers' Federation (New South Wales).

"Weekly Rates" will be ascertained by dividing an annual amount by 52.17857 or a weekly rate can be multiplied by 52.17857 to obtain the annual amount.

## **2. Salaries**

Full-time Medical Officer employees shall be paid the salaries as set out in the Health Professional and Medical Salaries (State) Award.

## **3. Payment of Salaries**

- (i) All salaries and other payments shall be paid fortnightly.
- (ii) Employees shall have their salary paid into one account with a bank or other financial institution in New South Wales as nominated by the employee, except where agreement as to another method of payment has been reached between the Union and the employer due to the isolation of the work location.
- (iii) Salaries shall be deposited by the employer in sufficient time to ensure that wages are available for withdrawal by employees no later than pay day, provided that this requirement shall not apply where employees nominate accounts with non-bank financial institutions which lack the technological or other facilities to process salary deposits within 24 hours of the employer making deposits with such financial institutions, but in such cases the employer shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.
- (iv) Penalty rates and overtime worked during the second week of the pay fortnight may be paid to employees in the next pay period by the employer.
- (v) Subject to adequate notice in writing on each occasion, employees who are rostered off on pay day shall be entitled to have their salary deposited before proceeding on their day or days off.
- (vi) Underpayment and overpayment of salaries - the following process will apply once the issue of underpayment or overpayment is substantiated.
  - (a) Underpayment
    - (1) If the amount underpaid is equal to or greater than one day's gross base pay the underpayment will be rectified within three working days;
    - (2) If the amount underpaid is less than one day's gross base pay it will be rectified by no later than the next normal pay. However, if the employee can demonstrate that rectification in this manner would result in undue hardship, every effort will be made by the employer to rectify the underpayment within three working days.
  - (b) Overpayment
    - (1) In all cases where overpayments have occurred, the employer shall as soon as possible advise the employee concerned of both the circumstances surrounding the overpayment and the amount involved. The employer will also advise the employee of the pay period from which the recovery of the overpayment is to commence.
    - (2) One off overpayments will be recovered in the next normal pay, except that where the employee can demonstrate that undue hardship would result, the recover rate shall be at 10% of an employee's gross fortnightly base pay.
    - (3) Unless the employee agrees otherwise, the maximum rate at which cumulative overpayments can be recovered is an amount, calculated on a per fortnight basis, equivalent to 10% of the employee's gross fortnightly base pay.

- (4) The recovery rate of 10% of an employee's gross fortnightly base pay referred to in subclause (b)(3) above may be reduced by agreement, where the employee can demonstrate that undue hardship would result.
- (5) Where an employee's remaining period of service does not permit the full recovery of any overpayment to be achieved on the fortnightly basis prescribed in subclause (b)(3) above, the employer shall have the right to deduct any balance of such overpayment from monies owing to the employee on the employee's date of termination, resignation or retirement, as the case may be.

#### **4. Qualification Allowance**

An allowance detailed in the Medical Officers section of the Health Professional and Medical Salaries Award shall be paid to officers who obtain an appropriate higher medical qualification subject to graduation.

Provided that this clause shall not apply to an officer who is appointed as a Senior Registrar, the salary rate prescribed in clause 2, Salaries, of this Award for such position having taken into account that a higher medical qualification is a prerequisite for appointment.

Provided further that, where an officer in his/her fifth and subsequent years of training is expected to meet the formal requirements of a higher medical qualification in that year, he/she shall be paid half the qualification allowance.

#### **5. in-Charge Allowance**

An allowance as set out in Item 1 of Table 1, Allowances, shall be paid to medical officers for each twelve hours, or part thereof, of continuous in-charge duty for responsibility for after-hours medical services.

#### **6. Hours of Work**

- (i) The ordinary hours of work shall not exceed an average of 38 hours per week. This shall be achieved by rostering officers for duty over either forty hours in any period of seven consecutive days or eighty hours in any period of fourteen consecutive days and, in addition, then granting officers roster leave additional to that prescribed in subclause (ii) of this clause to the extent of one additional day per calendar month. Such additional roster leave may accumulate to a maximum of three days and shall be granted in multiples of one day. Upon termination of employment an officer shall be paid the monetary value of any untaken additional roster leave, calculated at the officer's ordinary time rate of pay as prescribed by clause 2, Salaries, of this Award.
- (ii) Officers shall be free from ordinary hours of duty for not less than two days in each week or, where this is not practicable, four days in each fortnight. Where practicable, days off shall be consecutive and where possible additional rostered days off shall be combined with other rostered time off.
- (iii) No shift shall be less than four hours in length.
- (iv) No broken or split shifts shall be worked.
- (v) All time worked in excess of ten hours in any one shift shall be paid as overtime.
- (vi) Where in any pay period, an officer is not employed by a hospital for the whole of the pay period, the ordinary hours of work for the purpose of calculating salary for that pay period (i.e., 38 or 76 hours) will be adjusted by the following factor, rounded to the nearest whole number:

$$\frac{\text{Number of calendar days employed}}{\text{Number of calendar days in pay period}}$$

- (vii) Officers shall be given at least two weeks' notice of rosters to be worked in relation to ordinary hours of work and also, where practicable, in relation to additional (overtime) rostered hours of work, provided that the employer may change the rosters without notice to meet any emergent situation. This clause

shall not apply in respect of the granting by the employer of additional roster leave pursuant to this clause.

## **7. Part-Time Employees**

- (i) Medical officers engaged on a part-time basis as at 1 June 1993 under the provisions of Agreement No 1 of 1975 made in accordance with section 40BA of the *Public Hospitals Act* 1929, were able to elect to be employed as part-time employees under the provisions of this clause. Part-time employees who did not make such an election continue to be subject to the provisions of Agreement No. 1 of 1975 (see Ministry of Health Policy Directive PD2005\_474) in lieu of the provisions of this clause.
- (ii) A part-time medical officer is one who is appointed by the employer to work a specified number of hours which are less than those prescribed for the same classification employed on a full-time basis under this Award.
- (iii) A part-time medical officer shall be entitled to all other benefits of this Award not expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.
- (iv) A part-time medical officer shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed for the same classification employed on a full-time basis under clause 2, Salaries of this Award with a minimum payment for two hours for each start.
- (v) A part-time medical officer shall not be entitled to an additional day off or part thereof as prescribed in subclause (ii) of clause 6, Hours of Work, of this Award.

### **(vi) Annual Leave**

A part-time medical officer shall be granted on completion of each 12 months service four weeks annual leave on ordinary pay.

### **(vii) Overtime**

- (a) Overtime shall be paid for at the rate of time and one half for the first two hours and double time for the remaining hours worked provided that all overtime performed on Sundays shall be paid for at the rate of double time.
- (b) Overtime will be paid to part-time medical officers as follows:
  - (1) All time worked in excess of the ordinary hours as prescribed in clause 6, Hours of Work, of this Award; or
  - (2) All time worked in excess of ten hours in any one shift.

### **(viii) Public Holidays**

- (a) For the purposes of this clause, public holidays are as set out in subclause (iv) of clause 15, Public Holidays, of this Award.
- (b) A public holiday occurring on a part-time medical officer's ordinary working day shall be allowed to employee's without loss of pay.
- (c) Where a part-time medical officer is required to and does work on a public holiday, the medical officer shall have their ordinary rostered hours on that day added to the period of their annual leave for each public holiday so worked unless time off in respect of time worked on any such public holiday has already been granted to the medical officer.
- (d) Hours worked on public holidays shall be paid at the rate of time and one half.

## **8. Penalty Rates**

Any ordinary hours worked between the following hours shall be paid at ordinary time plus the appropriate penalty rate.

- (i) Hours worked between 6.00 p.m. and midnight, Monday to Friday - 12.5 per cent.
- (ii) Midnight and 7.00 a.m., midnight Sunday to midnight Friday - 25 per cent.
- (iii) Midnight Friday and midnight Saturday - 50 per cent.
- (iv) Midnight Saturday and midnight Sunday - 75 per cent.

## **9. Time Worked**

Time worked means the time during which an officer is required by the employer to be in attendance at a hospital for the purpose of carrying out such functions as the employer may call on him/her to perform, and it shall include times when the officer, in waiting to carry out some active function, is studying or resting or sleeping or engaged in any other activity.

Provided that time worked does not include breaks allowed and actually taken for meals.

Provided further that where an officer attends of his/her own volition outside of hours rostered on duty, or where an officer remains in attendance when formally released from the obligation to perform professional duties, the employer shall not be liable to make any payment for such attendance.

## **10. Meal Breaks**

The principles to be applied by the employer in relation to meal breaks for Resident Medical Officers are outlined in Ministry of Health Circular No. 88/251.

Day Shifts - Monday to Friday

- (i) In the interests of patient care and the health and welfare of medical staff, officers must have a break from duty for the purpose of taking a meal.
- (ii) There shall be a uniform meal break of 30 minutes except where locally agreed arrangements for a longer period are made (which shall not exceed one hour).
- (iii) If officers are required to work during their meal break they shall be paid for the time worked.
- (iv) Medical Administrators are to establish simple and effective procedures in consultation with officers to record when staff are required to work through their meal break and to ensure that payment is made.

Shifts Other than Day Shifts - Monday to Friday.

The arrangements outlined in Circular No. 83/250 of 19 August, 1983 in relation to meal breaks during shifts other than Day Shifts, Monday to Friday, will continue to apply.

## **11. Overtime**

- (i) All time worked by officers in excess of the ordinary hours specified in clause 6, Hours of Work, of this Award, shall be paid at the rate of time and one-half for the first two hours, and double time thereafter provided that all overtime performed on a Sunday, shall be at double time.
- (ii) An officer who works authorised overtime and was not notified on or prior to his/her previous shift of the requirement to work such overtime shall be paid in addition to payment for such overtime:

- (a) as set out in Item 2 of Table 1, Allowances, for breakfast when commencing such overtime work at or before 6.00 a.m.;
- (b) as set out in Item 2 of Table 1, Allowances, for an evening meal when such overtime is worked for at least one hour immediately following his/her normal ceasing time, exclusive of any meal break and extends beyond or is worked wholly after 7.00 p.m.;
- (c) as set out in Item 2 of Table 1, Allowances, for luncheon when such overtime extends beyond 2.00 p.m. on Saturdays, Sundays or holidays;

or shall be provided with adequate meals in lieu of such payments.

The rates prescribed in this subclause shall be varied in accordance with any variations in the rates payable under Crown Employees (Public Service Conditions of Employment) Award.

## **12. On Call and Call Back**

- (i) An "on call period" is a period during which an officer is required by the employer to be on call.
- (ii) For the purposes of calculation of payment of on-call allowances and for call-back duty, an on-call period shall not exceed 24 hours.
- (iii) An officer shall be paid for each on-call period which coincides with a day rostered on duty an allowance as set out in Item 3 of Table 1, Allowances, and for each on-call period coinciding with a rostered day off an allowance as set in the said Item 3 with a maximum payment as set out in the said Item 3 per week.
- (iv) Subject to subclauses (v) - (ix) below, officers who are recalled for duty, whether notified before or after leaving the employer's premises, shall be paid for all time worked at the appropriate overtime rate, with a minimum of four hours at such rates.
- (v) Officers may be required to perform other work that arises during the recall period. Officers shall not be required to work the full four hour minimum payment period if they complete the work they were recalled to perform and any additional work they are required to undertake, within a shorter period.
- (vi) The employer must have processes in place for the formal release of officers from recall duty.
- (vii) Officers who are not formally released and who are recalled again during the four hour minimum payment period are not entitled to any additional payment until the expiration of the four hour period.
- (viii) Officers who are advised they will not be required to perform any additional work and are formally released and who are subsequently recalled again during the four hour minimum payment period, shall be entitled to another four hour minimum payment.
- (ix) Officers required to work overtime after leaving the employer's premises to provide a technology support resolution or clinical appraisal remotely without onsite presence, shall be paid for such work at the appropriate overtime rate, with a minimum payment of one hour at such rates.
- (x) The amounts specified in subclause (iii) shall be taken to include expenses incurred in taking telephone calls at one's own residence and other expenses incurred in being available for emergency duty.
- (xi) For the purposes of subclause (ix) "clinical appraisal remotely" means as provided in either (a) or (b) below:
  - (a) assessing (by an on-call resident medical officer or registrar) a patient's physical condition to make a diagnosis or a differential diagnosis away from a hospital that incorporates all of the following:

1. The taking of a telephone call or calls, or receiving an email or emails, from a medical practitioner on duty in a hospital about a patient.
  2. Receiving the history of the patient so that the patient's current medical condition and any relevant past medical history including previous surgery and use of medications, if known, is provided.
  3. Discussing with the medical practitioner on duty the patient's current medical condition and asking questions in respect of the condition as necessary such that the information provided enables an evaluation of the patient's physical condition.
  4. Directing further examination to be conducted as clinically required, and obtaining other clinical information or opinion from other medical practitioners as necessary.
  5. Identifying the likely cause of the patient's condition and providing a diagnosis and a prognosis based on the information provided from undertaking 1 to 4 above.
  6. Ensuring that there is a sufficient clinical justification for the proposed treatment including, if relevant, admission to hospital.
  7. Instructing the medical practitioner on duty in a hospital what course of treatment should be followed including ensuring the proposed treatment is not contraindicated, being satisfied that such treatment is able to be determined, and can be properly implemented, without requiring the return of the on-call resident medical officer or registrar. This would include developing or confirming a management plan, or varying an existing management plan with the endorsement of the staff specialist or VMO responsible for the care of the patient.
  8. Directing follow-up requirements and subsequently reviewing the patient, if appropriate, based on those requirements.
  9. Complying with relevant NSW Health and local policies, procedures and directions.
- (b) the provision of a report by an on call registrar on images forwarded electronically in circumstances where:
1. had the communications technology involved not been utilised the registrar would have had to have returned to the workplace to provide that report; and
  2. there has been prior approval at the facility level to the use, and the conditions of use, of such technology by the registrar.

- (xii) A clinical appraisal provided remotely pursuant to subclause (xi) (a) above shall attract a minimum payment of one hour at the appropriate overtime rate only in circumstances where, if it had not been provided remotely, the on-call resident medical officer or registrar would have otherwise needed to have returned to the workplace. Any additional requirement to provide further clinical appraisal falling within the hour from which the initial clinical appraisal commenced shall not attract an additional payment. Any time worked beyond the expiration of one hour shall be paid at overtime rates. Time where work is not being performed will not be counted as time for the purposes of overtime payment.

### **13. Higher Duties Allowance**

An employee who is called upon to relieve an employee in a higher classification continuously for five working days or more and who satisfactorily performs the whole of the duties and assumes the whole of the responsibilities of the higher classification, shall be entitled to receive, for the period of relief, the minimum pay of such higher classification.

#### 14. Annual Leave

- (i) All officers shall be allowed four calendar weeks leave of absence on full pay in respect of each twelve months' service plus one day on full pay in respect of each public holiday occurring within the period of such leave.
- (ii) Officers who are required to work on Sundays and/or public holidays during a qualifying period of employment for annual leave purposes shall be entitled to receive additional annual leave in respect of each complete period of eight hours so worked as follows:
  - (a) if 35 or more such periods on such days have been worked - one week;
  - (b) if less than 35 such periods on such days have been worked - leave proportionately calculated on the basis of 38 hours leave for 35 such periods worked;
  - (c) work performed by reason of call backs pursuant to clause 12, On Call and Call Back, of this Award shall be disregarded when assessing an officer's entitlement under the subclause.
  - (d) The calculations referred to in paragraphs (a) and (b) of this subclause shall be made to the nearest one-fifth of the ordinary hours worked, half or more than half of one-fifth being regarded as one-fifth and less than half being disregarded.
  - (e) An officer with accrued additional annual leave pursuant to this subclause can elect at any time to be paid an amount equivalent to the value of accrued additional annual leave in lieu of taking additional leave, provided that the amount is a minimum of one weeks' accrued additional leave and that the salary for the period of additional leave paid out will be calculated as if the period of leave was actually taken.
- (iii) Annual leave shall be given and shall be taken in one consecutive period, or, if the officer and the employer so agree, in either two or three separate periods, but not otherwise.
- (iv) Annual leave shall be given and shall be taken within a period of six months after the date when the right to annual leave accrued; provided that the giving and taking of the whole or any separate period of such annual leave may, by mutual agreement between the employer and the officer, be postponed for a further period not exceeding six months.
- (v) If the officer and the employer so agree, the annual leave or any such separate periods, may be taken wholly or partly in advance before the officer has become entitled to that leave, but where leave is taken in such circumstances a further period of annual leave shall not commence to accrue until the expiration of the twelve months in respect of which the annual leave or part thereof has been so taken.
- (vi) Except as provided by this clause, payment shall not be made by the employer to an officer in lieu of any annual leave or part thereof nor shall any such payment be accepted by the officer.
- (vii) The employer shall give the officer at least two months' notice of the date from which his or her annual leave is to be taken.
- (viii) The employer shall pay each officer before entering upon annual leave his or her ordinary rate of salary for the period of leave. For the purposes of this subclause "ordinary rate of salary" means the Award rate of salary and qualification allowance if applicable.
- (ix) Where the employment of an officer is terminated, the officer shall be entitled to receive proportionate payment for each completed month of service together with such additional annual leave entitlements due under subclause (ii). All payments are to be made at the rate of salary to which such officer is entitled under this Award.
- (x) Where the annual leave under this clause or any part thereof has been taken in advance by an officer pursuant to subclause (v), of this clause; and



- (a) the employment of the officer is terminated before he/she has completed the year of employment in respect of which such annual leave or part was taken; and
- (b) the sum paid by the employer to the officer as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay to the officer under subclause (ix) of this clause;
- (c) the employer shall not be liable to make any payment to the officer under the said subclause (ix) and shall be entitled to deduct the amount of such excess from any remuneration payable to the officer upon the termination of the employment.

NOTATION: The conditions under when the annual leave loading shall be paid to officers are the same as generally applied through circulars issued by the Ministry of Health.

### **15. Public Holidays**

- (i) Public holidays shall be allowed to officers on full pay.
- (ii) Where an officer is required to, and does work on any of the public holidays set out in this clause, the officer shall be paid for the hours worked at the rate of time and one-half. In addition, the officer shall have one day added to annual leave for each public holiday so worked unless time off in respect of time worked on such public holiday has been granted.
- (iii) Where a public holiday falls on a rostered day off, the officer shall have one day added to annual leave.
- (iv) Provided that an employee who has accrued additional annual leave referred to in subclauses (ii) and (iii) of this clause can elect at any time to be paid an amount equivalent to the value of the accrued additional annual leave in lieu of taking additional leave, provided that the amount is a minimum of one weeks' accrued additional leave and that the salary for the period of additional leave paid out will be calculated as if the period of leave as actually taken.
- (v) For the purpose of this clause the following shall be deemed to be public holidays: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Eight Hour Day, Christmas Day, Boxing Day, or in lieu of any such day any holiday proclaimed in lieu thereof, together with any other day duly proclaimed as a special day and observed as a public holiday within the area in which the hospital is situated.

### **16. Sick Leave**

- (i) An officer shall be allowed sick leave on full pay calculated by allowing 76 "ordinary" hours per year for each year of continuous service less any sick leave on full pay already taken, subject to the following conditions:
  - (a) the employer may require the sickness to be certified to by the medical superintendent or by a legally qualified medical practitioner approved by the employer, or may require other satisfactory evidence thereof;
  - (b) an officer shall not be entitled to sick leave until the expiration of three months' continuous service;
  - (c) each officer shall take all reasonably practicable steps to inform the employer of his or her inability to attend for duty and as far as possible state the estimated duration of the absence. Where practicable such notice shall be given within twenty-four hours of the commencement of such absence;
  - (d) an officer shall not be entitled to sick leave on full pay for any period in respect of which such officer is entitled to accident pay or workers' compensation; provided, however, that where an officer is not in receipt of accident pay an employer shall pay to an officer who has sick leave entitlements under this clause, the difference between the amount received as workers'

compensation and full pay. The officer's sick leave entitlements under this clause shall, for each week during which such difference is paid, be reduced by that proportion of hours which the difference paid bears to full pay. On the expiration of available sick leave, weekly compensation payments only shall be payable;

- (e) an officer is not eligible for sick leave during periods when he would have normally been rostered on overtime shifts;
- (f) an officer is not entitled to more than 8 hours' sick leave in respect of any one day.
- (ii) Continuous service for the purpose of this clause shall be calculated in the same manner as provided for in paragraph (a) of subclause (ii) of clause 19, Long Service Leave, of this Award.
- (iii) Full pay for the purpose of this clause shall include the uniform allowance where payable, under clause 21, Uniform and Laundry Allowance, of this Award.
- (iv) The employer shall not terminate the services of an officer except on the grounds of misconduct during the currency of any periods of paid sick leave.
- (v) Sick leave as defined, shall accrue and be transferable between hospitals, at the rate of 76 hours per year of continuous service, minus hours taken.

## **17. Maternity, Adoption and Parental Leave**

### **A. Maternity Leave**

#### **(i) Eligibility for Paid Maternity Leave**

To be eligible for paid maternity leave a full-time or permanent part-time employee must have completed at least 40 weeks continuous service prior to the expected date of birth.

An employee who has once met the conditions for paid maternity leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid maternity leave, unless-

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after her services have been otherwise dispensed with: or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987* as varied from time to time.

#### **(ii) Portability of Service for Paid Maternity Leave**

Portability of service for paid maternity leave involves the recognition of service in government sector agencies for the purpose of determining an employee's eligibility to receive paid maternity leave. For example, where an employee moves between a public service department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid maternity leave.

When determining an employee's eligibility for paid maternity leave, continuous service with an organisation that is part of the government sector as defined in the *Government Sector Employment Act 2013* will be recognised, provided that:

- (a) service was on a full-time or permanent part-time basis:

- (b) cessation of service with the former employer was not by reason of dismissal on any ground, except retrenchment or reduction of work;
- (c) the employee immediately commences duty with the new employer. There may be a break in service of up to two months before commencing duty with the new employer. However, such a break in service will not be counted as service for the purpose of calculating any prior service prerequisite for paid maternity leave.

(iii) Entitlement to Paid Maternity Leave

An eligible employee is entitled to fourteen weeks at the ordinary rate of pay from the date maternity leave commences. This leave may commence up to fourteen weeks prior to the expected date of birth.

It is not compulsory for an employee to take this period off work. However, if an employee decides to work during the nine weeks prior to the date of birth it is subject to the employee being able to satisfactorily perform the full range of normal duties.

Paid maternity leave may be paid:

on a normal fortnightly basis; or

in advance in a lump sum; or

at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of maternity leave on half pay to enable an employee to remain on full pay for that period.

(iv) Unpaid Maternity Leave

(a) Full-time and permanent part-time employees who are entitled to paid maternity leave are entitled to a further period of unpaid maternity leave of not more than 12 months after the actual date of birth.

(b) Full-time and permanent part-time employees who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.

(v) Applications

An employee who intends to proceed on maternity leave should formally notify her employer of such intention as early as possible, so that arrangements associated with her absence can be made.

Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.

(vi) Variation after Commencement of Leave

After commencing maternity leave, an employee may vary the period of her maternity leave once only without the consent of her employer by giving the employer notice in writing of the extended period at least fourteen days' before the start of the extended period. An employer may accept less notice if convenient.

An employee may extend the period of maternity leave at any time with the agreement of the employer.

The conditions relating to variation of maternity leave are derived from Section 64 of the *Industrial Relations Act 1996*.

(vii) Staffing Provisions

In accordance with obligations established by the Industrial Relations Act 1996 (Section 69) any person who occupies the position of an employee on maternity leave must be informed that the employee has the right to return to her former position. Additionally, since an employee has the right to vary the period of her maternity leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should be also set down clearly; to a fixed date or until the employee elects to return to duty, whichever occurs first.

(viii) Effect of Maternity Leave on Accrual of Leave, Increments etc.

When the employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual leave, sick leave and long service leave and any period of maternity leave on half pay is taken into account to the extent of one half thereof when determining the accrual of annual leave, sick leave and long service leave.

Except in the case of employees who have completed ten years' service the period of maternity leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years' service the period of maternity leave without pay shall count as service provided such leave does not exceed six months.

Maternity leave without pay does not count as service for incremental purposes. Periods of maternity leave at full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.

Where public holidays occur during the period of paid maternity leave, payment is at the rate of maternity leave received i.e., public holidays occurring in a period of full pay maternity leave are paid at full rate and those occurring during a period of half pay leave are paid at half rate.

(ix) Illness Associated with Pregnancy

If, because of an illness associated with her pregnancy an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.

Where an employee is entitled to paid maternity leave, but because of illness, is on sick, annual, long service leave, or sick leave without pay prior to the birth, such leave ceases nine weeks prior to the expected date of birth. The employee then commences maternity leave with the normal provisions applying.

(x) Transfer to a More Suitable Position

Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. This obligation arises from Section 70 of the *Industrial Relations Act 1996*. A position to which an employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.

(xi) Miscarriages

In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions

(xii) Stillbirth

In the case of a stillbirth, (as classified by the Registry of Births, Deaths and Marriages) an employee may elect to take sick leave, subject to production of a medical certificate, or maternity leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.

(xiii) Effect of Premature Birth on Payment of Maternity Leave

An employee who gives birth prematurely and prior to proceeding on maternity leave shall be treated as being on maternity leave from the date leave is commenced to have the child. Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

(xiv) Right to Return to Previous Position

In accordance with the obligations set out in Section 66 of the *Industrial Relations Act 1996*, an employee returning from maternity leave has the right to resume her former position.

Where this position no longer exists the employee is entitled to be placed in a position nearest in status and salary to that of her former position and to which the employee is capable or qualified.

(xv) Further Pregnancy While on Maternity Leave

Where an employee becomes pregnant whilst on maternity leave a further period of maternity leave shall be granted. If an employee enters on the second period of maternity leave during the currency of the initial period of maternity leave, then any residual maternity leave from the initial entitlement ceases.

An employee who commences a subsequent period of maternity leave while on unpaid maternity leave under subclause (iv)(a) of Part A of this clause or subclause (i)(b) of Part D of this clause is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on maternity leave).

An employee who commences a subsequent period of maternity leave during the first 12 months of a return to duty on a part-time basis as provided under subclause (i)(c) of Part D of this clause is entitled to be paid at their substantive full-time rate for the subsequent period of maternity leave.

An employee who commences a subsequent period of maternity leave more than 12 months after returning to duty on a part-time basis under subclause (i)(c) of Part D of this clause, will be entitled to paid maternity leave for the subsequent period of maternity leave at their part-time rate.

**B. Adoption Leave**

(i) Eligibility

All full-time and permanent part-time employees who are adopting a child and are to be the primary care giver of the child are eligible for unpaid adoption leave.

To be eligible for paid adoption leave a full-time or permanent part-time employee must also have completed at least 40 weeks continuous service prior to the date of taking custody of the child.

An employee who has once met the conditions of paid adoption leave, will not be required to again work the 40 weeks continuous service in order to qualify for further periods of paid adoption leave, unless

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with; or
  - (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the Worker's Compensation Act.
- (ii) Portability of Service for Paid Adoption Leave
- As per maternity leave conditions.
- (iii) Entitlement
- (a) Paid Adoption Leave
 

Eligible employees are entitled to paid adoption leave of fourteen weeks at the ordinary rate of pay from and including the date of taking custody of the child.

Paid adoption leave may be paid:

    - on a normal fortnightly basis; or
    - in advance in a lump sum; or
    - at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of adoption leave at half pay to enable an employee to remain on full pay for that period.
  - (b) Unpaid Adoption Leave
 

Eligible employees are entitled to unpaid adoption leave as follows:

    - where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;
    - where the child is over the age of 12 months and under 18 years old - a period of up to 12 months, such period to be agreed upon by both the employee and the employer.
- (iv) Applications
- Due to the fact that an employee may be given little notice of the date of taking custody of a child, employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify the employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.
- (v) Variation after Commencement of Leave
- After commencing adoption leave, an employee may vary the period of leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.
- (vi) Staffing Provisions
- As per maternity leave conditions.

- (vii) Effect of Adoption Leave on Accrual of Leave, Increments, etc.

As per maternity leave conditions.

- (viii) Right to return to Previous Position

As per maternity leave conditions.

### C. Parental Leave

- (i) Eligibility

To be eligible for parental leave a full-time or permanent part-time employee must have completed at least 40 weeks continuous service prior to the expected date of birth or to the date of taking custody of the child.

An employee who has once met the conditions for paid parental leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid parental leave, unless-

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with: or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987* as varied from time to time.

- (ii) Portability of Service for Paid Parental Leave

As per maternity leave conditions.

- (iii) Entitlements

Eligible employees whose spouse or partner (including a same sex partner) is pregnant or is taking custody of a child, are entitled to a period of leave not exceeding 52 weeks, which includes one week of paid leave, and may be taken as follows:

- (a) an unbroken period of up to one week at the time of the birth of the child, taking custody of the child or other termination of the pregnancy (short parental leave), and
- (b) a further unbroken period in order to be the primary caregiver of the child (extended parental leave).
- (c) The entitlement of one week's paid leave may be taken at anytime within the 52 week period and shall be paid:

at the employees ordinary rate of pay for a period not exceeding one week on full pay, or

- two weeks at half pay or the period of parental leave taken, whichever is the lesser period.

- (d) Extended parental leave cannot be taken at the same time as the employee's spouse or partner is on maternity or adoption leave except as provided for in subclause (i)(a) of Part D, Right to Request, of this clause.

Annual and/or long service leave credits can be combined with periods of parental leave on half pay to enable an employee to remain on full pay for that period.

(iv) Applications

An employee who intends to proceed on parental leave should formally notify their employer of such intention as early as possible, so that arrangements associated with their absence can be made.

- (a) In the case of extended parental leave, the employee should give written notice of the intention to take the leave.
- (b) The employee must, at least four weeks before proceeding on leave, give written notice of the dates on which they propose to start and end the period of leave, although it is recognised in situations of taking custody of a child, little or no notice may be provided to the employee. In such an instance, the employee should notify the employer as early as practicable.
- (c) The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that their spouse or partner is pregnant and the expected date of birth, or in the case of an adoption, an official form or notification on taking custody of the child.
- (d) In the case of extended parental leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
  - (1) if applicable, the period of any maternity leave sought or taken by his spouse, and
  - (2) that they are seeking the period of extended parental leave to become the primary care giver of the child.

(v) Variation after Commencement of Leave -

After commencing parental leave, an employee may vary the period of her/his parental leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.

(vi) Effect of Parental Leave on Accrual of Leave, Increments etc.

As per maternity leave conditions.

(vii) Right to Return to Previous Position

As per maternity leave conditions.

**D. Right to Request**

- (i) An employee entitled to maternity, adoption or parental leave may request the employer to allow the employee:
  - (a) to extend the period of simultaneous maternity, adoption or parental leave use up to a maximum of eight weeks;
  - (b) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
  - (c) to return from a period of maternity, adoption or parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.



- (ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (iii) The employee's request and the employer's decision made under subclauses (i)(b) and (c) must be recorded in writing.
- (iv) Where an employee wishes to make a request under subclause (i)(c):
  - (a) the employee is to make an application for leave without pay to reduce their full-time weekly hours of work
  - (b) such application must be made as early as possible to enable the employer to make suitable staffing arrangements. At least four weeks notice must be given;
  - (c) salary and other conditions of employment are to be adjusted on a basis proportionate to the employee's full-time hours of work i.e. for long service leave the period of service is to be converted to the full-time equivalent and credited accordingly.
  - (d) employees who return from leave under this arrangement remain full-time employees. Therefore the payment of any part-time allowance to such employees does not arise.

**E. Communication During Leave**

- (i) Where an employee is on maternity, adoption or parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
  - (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing the leave; and
  - (b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing the leave.
- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of the leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with subclause (i).

**NOTE:**

- (a) The entitlement to maternity, adoption and parental leave for part-time employees who receive an adjusted hourly rate, along with casual employees, are in accordance with the provisions of Part 4, Parental Leave of the *Industrial Relations Act 1996* and/or Ministry Determination.
- (b) Where a casual employee is entitled to parental leave under the *Industrial Relations Act 1996*, the following provisions shall also apply in addition to those set out in the Act.

An employer must not fail to re-engage a casual employee because:

the employee or employee's spouse is pregnant; or

the employee is or has been immediately absent on parental leave.

The rights of the employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (c) Part-time employees who receive an adjusted hourly rate are also entitled to the provisions of Part D, Right to Request and Part E, Communication During Leave of this clause.
- (d) Liability for Superannuation Contributions

During a period of unpaid maternity, adoption or parental leave, the employee will not be required to meet the employer's superannuation liability.

#### **17A. Lactation Breaks**

- (i) This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this Award.
- (ii) A full-time employee or a part-time employee working more than four hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day or per shift.
- (iii) A part-time employee working four hours or less on any day or shift is entitled to only one paid lactation break of up to 30 minutes each per day or per shift worked.
- (iv) A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.
- (v) The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk. Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and the employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- (vi) Employees experiencing difficulties in effecting the transition from home based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (vii) Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave or other leave in accordance with the Award.

#### **18. Family and Community Services Leave and Personal/Carers' Leave**

- (i) Family and Community Services (FACS) Leave and Personal/Carer's Leave are separate, and alone entitlements.
- (ii) The provisions outlined in Parts A and B of this clause are available to all employees covered by this Award, other than casual employees as defined in subclause (iii) below.
- (iii) Casual employees as defined in the Health Industry Status of Employment (State) Award are entitled to the provisions outlined in Part C of this clause.

##### **A. FACS Leave**

- (i) FACS Leave - General

- (a) For the purpose of this clause relating to FACS leave:
- "relative" means a person related by blood, marriage or affinity;
- "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
- "household" means a family group living in the same domestic dwelling.
- (b) The employer may grant FACS leave to an employee:
- (1) to provide care and/or support for sick members of the employee's relatives or household; or
  - (2) for reasons related to the family responsibilities of the employee (e.g. to arrange and or attend a funeral of a relative; to accompany a relative to a medical appointment where there is an element of emergency; parent/teacher meetings; education week activities; to meet elder-care requirements of a relative); or
  - (3) for reasons related to the performance of community service by the employee (e.g. in matters relating to citizenship; to office holders in local government, other than as a mayor, for attendance at meetings, conferences or other associated duties; representing Australia or the State in major amateur sport other than in Olympic/Commonwealth Games); or
  - (4) in a case of pressing necessity (e.g. where an employee is unable to attend work because of adverse weather conditions which either prevent attendance or threaten life or property; the illness of a relative; where a child carer is unable to look after their charge).
- (ii) FACS leave replaces compassionate leave.
- (iii) An employee is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the employer approves the grant of leave in the particular case.
- Applications for FACS leave to attend court, for reasons other than criminal charges, will be assessed on an individual basis.
- (iv) FACS Leave - entitlement
- (a) The maximum amount of FACS leave on full pay that may be granted to an employee is:
- (1) 3 working days during the first year of service, commencing on and from 1 January 1995, and thereafter 6 working days in any period of 2 years; or
  - (2) 1 working day, on a cumulative basis effective from 1 January 1995, for each year of service after 2 years' continuous service, minus any period of FACS leave already taken by the employee since 1 January 1995,
- whichever method provides the greater entitlement.
- (b) For the purposes of calculating entitlements under (vi)(a)(1) and (2) above, a working day for employees working 38 hours per week shall be deemed to consist of 8 hours, and a working day for employees working 35 hours per week shall be deemed to consist of 7 hours. The rate at which FACS leave is paid out and utilised shall be on actual hours absent from a rostered shift.

Example A: An employee working 38 hours per week will have an entitlement, in their first year of employment, to 24 hours of FACS leave. If the employee takes FACS leave for a full 10 hour shift, the employee would be debited 10 hours of FACS leave.

Example B: An employee working 35 hours per week will have an entitlement, in their first year of employment, to 21 hours of FACS leave. If the employee takes FACS leave for a full 7 hour shift, the employee would be debited 7 hours of FACS leave.

Example C: An employee, employed prior to 1 January 1995, applies for FACS leave on 20 February 1997. The employee is entitled to 6 days in any period of two years. Therefore, to calculate the employee's available FACS leave as at 20 February 1997, add all FACS leave taken from 21 February 1995 to 20 February 1997 and deduct that amount from the 6 days entitlement.

- (c) FACS leave is available to part-time employees on a pro rata basis, based on the average number of hours worked per week. A working day shall consist of one-fifth of the employee's average weekly hours during the preceding 12 months or during the employee's period of employment, whichever is the lesser period.

Example: An employee working an average of 30 hours per week will have an entitlement, in his/her first year of employment, of 18 hours of FACS leave. If the employee takes FACS leave for a full rostered shift e.g. of 4 hours, the employee would be debited 4 hours of FACS leave. Likewise, if the employee was rostered for 8 hours and was absent for the full 8 hours on FACS leave, he/she would be debited 8 hours of FACS leave.

- (v) Additional FACS leave for bereavement purposes

Where FACS leave has been exhausted, additional FACS leave of up to 2 days for bereavement may be granted on a discrete, "per occasion" basis to an employee on the death of a relative or member of a household as defined in subclause (i) (a) of Part A of this clause.

- (vi) Use of other leave entitlements

The employer may grant an employee other leave entitlements for reasons related to family responsibilities or community service, by the employee.

An employee may elect, with the consent of the employer, to take annual leave; long service leave; or leave without pay.

## **B. Personal/Carer's Leave**

- (i) Use of sick leave to care for the person concerned - definitions

A person who needs the employee's care and support is referred to as the "person concerned" and is:

- (a) a spouse of the employee; or
- (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or

- (e) a relative of the employee who is a member of the same household, where for the purpose of this clause relating to Personal/Carer's Leave:

"relative" means a person related by blood, marriage or affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

(ii) Use of sick leave to care for the person concerned - entitlement

- (a) The entitlement to use sick leave in accordance with this subclause is subject to:
  - (1) the employee being responsible for the care and support of the person concerned; and
  - (2) the person concerned being as defined in subclause (i) of Part B of this clause.
- (b) Other than a casual or any other employee who receives a loading in lieu of sick leave, an employee with responsibilities in relation to a person who needs their care and support shall be entitled to use the untaken sick leave, from that year's annual sick leave entitlement, to provide care and support for such persons when they are ill.
- (c) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (b) above, sick leave untaken from the previous 3 years may also be accessed by an employee with responsibilities in relation to a person who needs their care and support.
- (d) The employer may, in special circumstances, make a grant of additional sick leave. This grant can only be taken from sick leave untaken prior to the period referred to in subclause (c) above.
- (e) The employee shall, if required, establish either by production of a medical certificate or statutory declaration that the illness of the person concerned is such as to require care by another person.
- (f) The employee has the right to choose the method by which the ground for leave is established, that is, by production of either a medical certificate or statutory declaration.
- (g) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
- (h) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
- (i) In normal circumstances, the employee must not take leave under this part where another person has taken leave to care for the same person.

(iii) Use of other leave entitlements

An employee may elect, with the consent of the employer, to take:

- (a) annual leave, including annual leave not exceeding 10 days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties. An employee and

employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken. An employee may elect with the employer's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

- (b) long service leave; or
  - (c) leave without pay for the purpose of providing care and support to the person concerned as defined in subclause (i) of Part B of this clause.
- (iv) Time off in lieu of payment of overtime
- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment of overtime at a time or times agreed with the employer within 12 months of the said election.
  - (b) Overtime taken as time off during ordinary time shall be taken at the ordinary time rate, that is, one hour off for each hour of overtime worked.
  - (c) If, having elected to take time as leave in accordance with (iv)(a) above and the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the twelve 12 month period from the date the overtime was worked, or earlier by agreement, or on termination.
  - (d) Where no election is made in accordance with paragraph (iv)(a) above, the employee shall be paid overtime rates in accordance with the provisions of clause 11, Overtime.
- (v) Use of make-up time
- (a) An employee may elect, with the consent of the employer, to work "make-up time". "Make-up time" is worked when the employee takes time off during ordinary hours for family or community service responsibilities, and works those hours at another time, during the spread of ordinary hours provided for in clause 6 of this Award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off during ordinary hours and works those hours at another time) at the applicable shift work rate which would have been applicable to the hours taken off.

### **C. Entitlements for Casual Employees**

- (i) Bereavement entitlements for casual employees
  - (a) Casual employees are entitled to not be available to attend work or to leave work upon the death in Australia of a relative or member of a household as prescribed in subclause (i)(a) of Part A of this clause.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this part. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

- (ii) Personal carer's entitlement for casual employees
  - (a) Subject to the evidentiary and notice requirements in subclauses (ii)(e) - (h) of Part B of this clause casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause (i) of Part B of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this part. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

#### **18A. Family Violence Leave**

- (i) For the purpose of this clause, family violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007* as varied from time to time. The violence may have been reported to the police and/or may be the subject of an Apprehended Violence Order.
- (ii) An employee experiencing family and domestic violence can utilise Award leave entitlements provided for in Sick Leave and Family and Community Services Leave provisions of the Award.
- (iii) Where leave entitlements to Sick Leave and Family and Community Services Leave are exhausted, the employer will grant up to five days per year of paid special leave to attend legal proceedings, counselling, appointments with a medical or legal practitioner and relocation and safety activities directly associated with alleviating the effects of family and domestic violence. This leave entitlement does not accumulate from year to year.
- (iv) Upon exhaustion of the paid leave entitlement, an employee may request further periods of unpaid leave, for the same activities for which paid leave would be available.
- (v) To access paid and unpaid leave, the employee must provide the employer with evidence, to the employer's satisfaction, substantiating the purpose of the leave and that the leave is related to alleviating the effects of family violence. The employer may accept a variety of agreed documentation in support of an application for leave. Supporting documentation may be presented in the form of an agreed document issued by the Police Force, a Court, a doctor, a Family Violence Support Service or a lawyer.
- (vi) Matters related to family violence can be sensitive. Information collected by the employer will be kept confidential. No information relating to the details of the family violence will be kept on an employee's personnel file without their express permission. However, records about the use of family violence leave will need to be kept.
- (vii) The employer, where appropriate, may facilitate flexible working arrangements subject to operational requirements. This may include changes to working times and locations, telephone numbers and email addresses.
- (viii) The employer will co-operate with all legal orders protecting an employee experiencing domestic violence.

## 19. Long Service Leave

(i)

- (a) Each employee shall be entitled to two months long service leave on full pay after ten years of service; thereafter additional long service shall accrue on the basis of five months long service leave on full pay for each ten years service.

Employees with at least seven years service and less than 10 years service are entitled, proportionate to his or her length of service, to proceed on a proportionate period of long service leave on the basis of two months' long service leave for ten years' service on full pay.

- (b) Where the services of an employee with at least five years service and less than seven years service are terminated by the employer for any reason other than the employee's serious and wilful misconduct, or by the employee, on account of illness, incapacity or domestic or other pressing necessity, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service.

Where the services of an employee with at least seven years are terminated by the employer or by the employee, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service.

Where the services of an employee with at least 10 years service are terminated by the employer or by the employee, he/she shall be entitled to be paid on the basis of two months' long service leave for ten years' service and thereafter on the basis of five months long service leave for each ten years service.

(ii) For the purposes of subclause (i) of this clause:

- (a) Service shall mean continuous service with the employer. For the purpose of this paragraph, continuous service shall be determined in accordance with the provisions of Section 7 of the NSW Health Policy Directive PD2019\_010 Leave Matters for the NSW Health Service, as amended from time to time.

- (b) Broken periods of service with the employer in one or more hospitals shall count as service subject to the following:

(1) where an officer, after ceasing employment with the employer is re-employed by the employer a subsequent to the 1st July 1974, any service of that officer before he/she was so re-employed shall not be counted for the purpose of determining any long service leave due to that officer in respect of his/her service after he/she was so re-employed unless he/she has completed at least five years' continuous service from the date of his/her being so re-employed;

(2) an officer employed at the 1st July 1974, and who was entitled to count broken service under the provisions of the Award in force prior thereto shall be entitled to count such broken service prior to the 1st July 1974.

- (c) Service shall not include -

(1) any period of leave without pay except in the case of employees who have completed at least ten years service (any period of absence without pay being excluded there from) in which case service shall include any period of leave without pay not exceeding six months taken after 1 July, 1974;

(2) any period of part-time service (excluding part-time service under clause 7 of this Award), except as provided in subclause (d) of this clause.



- (d) An employee shall be entitled to have previous part-time service under Agreement No.1 of 1975 which is the equivalent of at least two full day's duty per week taken into account for long service leave purposes in conjunction with full-time service or part-time service under clause 7 of this Award, on the basis of the proportion that the actual number of hours worked each week bears to 40 hours up until 30 June 1987 and bears to 38 on and from 1 July 1987, provided the part-time service merges without break with the subsequent full-time or part-time service.
- (iii) An employee with an entitlement to long service leave may elect to access such entitlement:
- on full pay;
- on half pay; or
- on double pay.
- (iv) When an employee takes long service leave, the leave entitlement will be deducted on the following basis:
- a period of leave on full pay - the number of days so taken;
- a period of leave on half pay - half the number of days so taken; or
- a period of leave on double pay - twice the number of days so taken.
- (v) When taking long service leave and an employee would otherwise have had a rostered shift fall on a public holiday during that period, the amount of long service leave to be deducted is to be reduced by one day for the public holiday.
- (vi) Long Service Leave shall be taken at a time mutually arranged between the employer and the employee.
- (vii)
- (a) On the termination of employment of an employee, otherwise than by his/her death, an employer shall pay to the employee the monetary value of all long service leave accrued and not taken at the date of such termination and such monetary value shall be determined according to the salary payable to the employee at the date of such termination unless the employee transfers his/her leave entitlement in accordance with Section 7 of the NSW Health Policy Directive PD2019\_010 Leave Matters for the NSW Health Service, as amended from time to time.
- (b) Where an employee who has acquired a right to long service leave, or after having had five years service and less than ten years service dies, the widow or the widower of such employee, or if there is no such widow or widower, the children of such employee, or if there is no such widow, widower, or children, such person who, in the opinion of the employer, was at the time of the death of such employee, a dependent relative of such employee, shall be entitled to receive the monetary value of the leave not taken or which would have accrued to such employee, had his/her services terminated as referred to in paragraph (b) of subclause (i) of this clause and such monetary value shall be determined according to the salary payable to the employee at the time of his/her death.
- Where there is a guardian of any children entitled under this paragraph the payment, to which such children are entitled, may be made to such guardian for their maintenance, education and advancement.
- Where there is no person entitled under this paragraph to receive the monetary value of any leave payable under the foregoing provisions payment in respect thereof shall be made to the legal personal representative of such employee.
- (viii) Rights to long service leave under this clause shall be in replacement of rights to long service leave, if any, which at the 1st July 1974, may have accrued or may be accruing to an officer and shall apply only

to persons in the employ of the employer on or after the 1st July 1974. Where an officer has been granted long service leave or has been paid its monetary value prior to the 1st July 1974, the employer shall be entitled to debit such leave against any leave to which the officer may be entitled pursuant to this clause.

#### **20. Board and Accommodation**

- (i) Where an officer lives at a hospital, deductions from his/her salary for accommodation and/or board may be made by the employer at the rates prescribed from time to time by the Public Health System Nurses' and Midwives' (State) Award.
- (ii) Where individual meals only are provided, the officer may be charged the charges applicable under the Public Health System Nurses' and Midwives' (State) Award.
- (iii) No deduction shall be made from the salary of an officer for board and accommodation when the officer is absent on annual, sick or long service leave, provided that the employer shall be entitled to make the deduction for accommodation where the officer:
  - (a) having been requested to leave his/her room completely vacant fails to do so; or
  - (b) is absent on sick leave and such absence does not exceed six consecutive days.

#### **21. Uniform and Laundry Allowance**

- (i) Sufficient suitable and serviceable uniforms shall be provided for each officer required to wear a uniform and such uniforms shall be laundered at the expense of the employer.
- (ii) Where the employer requires a uniform to be worn but does not provide such uniform, the following allowances shall be paid:
  - (a) where a full uniform, including special shoes, is required, an amount per week as set in Item 4 of Table 1, Allowances ;
  - (b) in other cases, an amount as also set in Item 4 of Table 1.

#### **22. Termination of Employment**

Employment may be terminated only by four weeks' notice given in writing either by the employer or the officer at any time during the week or by payment or forfeiture of four weeks' salary as the case may be, provided that the officer and the employer may agree to a lesser period of notice. Nothing in this clause shall prevent the summary dismissal of an officer for misconduct or neglect of duty.

#### **23. Settlement of Disputes**

- (i) Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and the supervising staff, it shall be referred to the Chief Executive Officer of the Health Service or establishment or his/her nominee, who will arrange for the matter to be discussed with the employees concerned and a local representative or representatives of the Union.
- (ii) Failing settlement of the issue at this level, the matter shall be referred to the Secretary, and the Head Office of the Union. The dispute will then be dealt with pursuant to subclause (v) of this clause.
- (iii) Whilst these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied.
- (iv) The Union reserves the right to vary this procedure where it is considered a safety factor is involved.
- (v) With a view to an amicable and speedy settlement, all disputes that firstly cannot be settled in accordance with subclauses (i) and (ii) of this clause may be submitted to a committee consisting of not

more than six members, with equal representatives of the Secretary and the Union. Such committee shall have the power to investigate all matters in dispute and to report to the Chief Executive Officer of the Health Service and the Union respectively with such recommendations as it may think right and, in the event of no mutual decision being arrived at by such committee, the matter in dispute may be referred to the Public Health Employees (State) Industrial Committee.

- (v) This clause shall not interfere with the rights of either party to institute proceedings for the determination of any matter in accordance with the *Industrial Relations Act 1996*.

#### **24. Anti-Discrimination**

- (i) It is intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### **NOTES -**

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion:.

#### **25. Study Leave**

- (i) Subject to the terms of this clause the employer may grant to officers other than interns, study leave without loss of pay as follows:

Face-to-face courses: Half hour study time for every hour of compulsory lecture and/or tutorial attendance, up to a maximum of four hours study time per week. Where no face-to-face course is provided: A maximum of four hours study time per week for a maximum of 27 weeks per year.

- (ii) Study leave shall only be granted in respect of a course:
  - (a) leading to higher medical qualifications as defined in clause 1, Definitions, of this Award; and
  - (b) in respect of a qualification which when obtained would be relevant to the needs of the hospital.
- (iii) The officer shall submit to the employer a timetable of the proposed course of study and evidence of the officer's enrolment in the course.
- (iv) The grant of study leave is subject to the convenience of the employer and should not interfere with the maintenance of essential services or with patient care.
- (v) Periods of study leave granted shall not be taken into account for the purposes of calculating overtime payments;
- (vi) Study leave granted subject to the terms of this clause, may be accrued to a maximum of seven working days for the purpose of enabling the officer to study prior to a written, oral or clinical examination. An option to accumulate study leave in terms of this subclause shall be exercised at the commencement of each academic year and the officer shall notify the employer accordingly;
- (vii) Officers who have given continuous service of more than one year shall be allowed to accrue study leave not taken up to a maximum of fourteen calendar days.

## **26. Travelling Allowances**

- (i) An officer seconded to another hospital may be granted a daily travel allowance at the rate of the difference between the cost of travel by public transport to his/her normal place of employment and travel by public transport to the seconding hospital. Provided that where an officer drives his/her own vehicle, he/she shall, in lieu, be eligible for a mileage allowance equivalent to the "Transport Allowance" as determined under the *Health Services Act 1997* from time to time, for the difference between the distance to his/her normal place of employment and the distance to the seconding hospital.
- (ii) An officer who, with the approval of the employer, uses on official business, a motor vehicle maintained primarily for other than official business, shall be paid the above-mentioned mileage allowance from time to time effective. However, where it is estimated that an officer will, with the approval of the employer, be required to use his/her private vehicle on official business on at least 50 days during any period of 12 months and during that period aggregate at least 850 kilometres of official running, he/she shall be paid at the "Official Business Rate" prescribed by clause 36 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 at the rate in force from time to time throughout the year.
- (iii) For the purpose of subclause (ii) travel on official business:
  - (a) occurs when an officer is required by the employer as part of his/her duty to use his/her motor vehicle to attend away from his/her normal place of employment or seconding hospital to another clinic, annexe or hospital. Where an officer travels on official business direct from his/her place of residence to a clinic, annexe or hospital, other than his/her normal place of employment he/she shall be paid for the difference between the distance to his/her normal place of employment or seconding hospital and that other annexe, clinic or hospital;
  - (b) does not include "call backs";
  - (c) shall include other arrangements as agreed to between the employer and the Union from time to time.
- (iv) Nothing in this clause shall make the employer liable for the cost of the officer's daily travel to his/her usual and normal place of employment.

## 27. Mobility, Excess Fares and Travelling

For the purpose of this clause accustomed place of work shall mean the location where an employee is regularly required to commence duty by the employer.

- (i) An employee shall be required to proceed to the accustomed place of work and return home once on each ordinary working day or shift in the employee's own time and at the employee's own expense.
- (ii)
  - (a) Where an employee is directed to report for duty to a place of work other than the employee's accustomed place of work the employee shall travel to and from the alternative place of work in the employer's time for those periods in excess of time normally taken to travel to and from the accustomed place of work.
  - (b) If the excess of travelling time on a particular day or shift is greater than the prescribed ordinary hours of duty for the particular category of staff for that day or shift, then the excess of hours shall be paid at the ordinary rate of pay to the extent of travelling time.
  - (c) Fares incurred by such employee in excess of the fares normally incurred in travelling to the employee's accustomed place of work and returning home from the accustomed place of work shall be reimbursed.
  - (d) Where the employee is required to report to an alternative place of work and has the prior approval of the employer to travel by his/her own mode of conveyance, the employee shall be paid a kilometre allowance for kilometres travelled in excess of the kilometres the employee normally travels between the accustomed place of work and home. The kilometre allowance will be prescribed from time to time by the Industrial Relations Secretary.
- (iii)
  - (a) Where an employer has determined that an employee or employees should report to a new accustomed place of work on a permanent basis, the decision must be discussed with the affected employee(s) and the local branch of the Union prior to notice of changed accustomed place of work being given.
  - (b) The employer shall give the employee reasonable notice of the requirement to report to a new accustomed place of work. For the purpose of this subclause "reasonable notice" shall be one calendar month prior to the date the employee is first required to report to the new accustomed place of work.
  - (c) Where the accustomed place of work is changed on a permanent basis by the employer, the employee shall report to the new accustomed place of work on the date specified by the employer.
  - (d) If there is disagreement about such a decision after such discussion or if a significant number of employees are involved, the matter should be referred to the Secretary who will discuss the matter with the Union and will determine the date upon which notice will be given to employee(s).
- (iv)
  - (a) The provision of this clause shall not apply to an employee appointed to regularly perform relief duties or to employees specifically employed to perform duties at more than one place of work except as provided in (b) hereunder.
  - (b) If a reliever incurs fares in excess of \$5 per day in travelling to and from the relief site, the excess shall be reimbursed.

Where a reliever, with the prior approval of the employer, travels by his/her own mode of conveyance and incurs travelling costs in excess of \$5 per day to and from the relief site, such excess shall be reimbursed. The rate applicable shall be the kilometre allowance prescribed from time to time by the Industrial Relations Secretary less \$5.

This \$5 shall be reviewed annually by the employer.

- (v) No payment shall be made under this clause unless the employer is satisfied that the employee has incurred additional expenditure in having to report to an alternative place of work, at the direction of the employer.
- (vi) Travel to an alternative place of work, either by public transport or own mode of conveyance, shall in all instances be by the most direct route.

### **28. Secondment**

- (i) Allowance - An officer, other than an intern, seconded to work in a hospital listed at Part C of this Award shall have his/her salary increased by one incremental step, by way of allowance, for the period the officer works in such hospital.

For the duration of the officer's secondment, other than periods of leave, the allowance shall be treated as salary for the purpose of calculating overtime and shift penalties.

- (ii) Travel - An officer referred to in subclause (i) of this clause shall be allowed a paid journey to Sydney and return by economy class airfare or equivalent thereof for each period of 7 weeks in the employment of a hospital listed at Part C of this Award.

At the discretion of the employer the paid journey may be taken in advance. Such travel may be used for the purpose of furthering the officer's medical education.

### **29. Relocation Expenses**

Where an officer is employed by the employer within the metropolitan area and applies for and obtains a permanent position at a country location (being either a position covered by this Award or a Career Medical Officer position), the costs incurred by the officer in respect to removal of furniture and effects and conveyancing in the purchase of a residence are to be refunded by the employer on the following basis:

At the time the appointment is taken up: 50% of costs incurred.

After one year's service at the country location: a further 25% of the costs incurred.

After two years service at the country location: the remaining 25% of the costs incurred.

These arrangements become effective in relation to country appointments made after 1 January 1989.

### **30. Labour Flexibility**

- (i) The employer may direct an employee to carry out such duties as are reasonable, and within the limits of the employee's skill, competence and training consistent with the employee's classification, grouping and/or career stream provided that such duties are not designed to promote de-skilling.
- (ii) The employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained or has otherwise acquired the necessary skills in the use of such tools and equipment.
- (iii) Any direction issued by the employer pursuant to subclauses (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy work environment.

- (iv) Existing provisions with respect to the payment of higher duties allowances shall apply in such circumstances.

### **31. Salary Packaging**

- (i) By agreement with their employer, employees may elect to package part or all of their salary in accordance with this clause, to obtain a range of benefits as set out in the NSW Health Policy Directive PD2018\_044 Salary Packaging, as amended from time to time. Such election must be made prior to the commencement of the period of service to which the earnings relate. Where an employee also elects to salary sacrifice to superannuation under this Award, the combined amount of salary packaging/sacrificing may be up to 100 per cent of salary.

Any salary packaging above the fringe benefit exemption cap will attract fringe benefits tax as described in paragraph (iv) below.

- (ii) Where an employee elects to package an amount of salary:
  - (a) Subject to Australian taxation law, the packaged amount of salary will reduce the salary subject to PAYE taxation deductions by that packaged amount.
  - (b) Any allowance, penalty rate, overtime payment, payment for unused leave entitlements, weekly workers' compensation, or other payment other than any payment for leave taken in service, to which an employee is entitled under this Award or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under this Award in the absence of any salary packaging or salary sacrificing made under this Award.
  - (c) 'Salary' for the purpose of this clause, for superannuation purposes, and for the calculation of Award entitlements, shall mean the Award salary as specified in clause 2. Salaries, and which shall include 'approved employment benefits' which refer to fringe benefit savings, administration costs, and the value of packaged benefits.
- (iii) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be packaged. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees, and private health fund membership fees.
- (iv) The salary packaging scheme utilises a fringe benefit taxation exemption status conferred on public hospitals and local health districts, which provides for a fringe benefit tax exemption cap of \$17,000 per annum. The maximum amount of fringe benefits-free tax savings that can be achieved under the scheme is where the value of benefits when grossed-up, equal the fringe benefits exemption cap of \$17,000. Where the grossed-up value exceeds the cap, the employer is liable to pay fringe benefits tax on the amount in excess of \$17,000, but will pass this cost on to the employee. The employer's share of savings, the combined administration cost, and the value of the package benefits, are deducted from pre-tax dollars.
- (v) The parties agree that the application of the fringe benefits tax exemption status conferred on public hospitals and local health districts is subject to prevailing Australian taxation laws.
- (vi) If an employee wishes to withdraw from the salary packaging scheme, the employee may only do so in accordance with the required period of notice as set out in the NSW Health Policy Directive PD 2018\_044 Salary Packaging, as varied from time to time.(vii) Where an employee ceases to salary package, arrangements will be made to convert the agreed package amount to salary. Any costs associated with the conversion will be borne by the employee, and the employer shall not be liable to make up any salary lost as a consequence of the employee's decision to convert to salary.
- (viii) Employees accepting the offer to salary package do so voluntarily. Employees are advised to seek independent financial advice and counselling to apprise them of the implications of salary packaging on their individual personal financial situations.

- (ix) The employer and the employee shall comply with the procedures set out in the NSW Health Policy Directive PD2018\_044 Salary Packaging as amended from time to time.

### **32. Reasonable Hours**

- (i) Subject to subclause (ii) the employer may require an employee to work reasonable overtime at overtime rates unless or as otherwise provided for under the Award.
- (ii) The employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (iii) For the purposes of subclause (ii) what is unreasonable or otherwise will be determined having regard to:
  - (a) any risk to employee health and safety.
  - (b) The employee's personal circumstances including any family and carer responsibilities.
  - (c) The needs of the workplace or enterprise.
  - (d) The notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) Any other relevant matter.

### **33. Salary Sacrifice to Superannuation**

- (i) Notwithstanding the salaries prescribed in clause 2, Salaries, as varied from time to time, an employee may elect, subject to the agreement of the employee's employer, to sacrifice a part or all of the salary payable under the salaries clause to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. The amount sacrificed together with any salary packaging arrangements under clause, 31 Salary Packaging, of this Award may be made up to one hundred (100) per cent of the salary payable under the relevant salaries clause, or up to one hundred (100) per cent of the currently applicable superannuable salary, whichever is the lesser.

In this clause, 'superannuable salary' means the employee's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations.

- (ii) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be packaged. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees and private health fund membership fees.
- (iii) Where the employee has elected to sacrifice a part or all of the available payable salary to additional employer superannuation contributions:
  - (a) The employee shall be provided with a copy of the signed agreement. The salary sacrifice agreement shall be terminated at any time at the employee's election and shall cease upon termination of the employee's services with the employer.
  - (b) Subject to Australian taxation law, the amount of salary sacrificed will reduce the salary subject to appropriate PAYE taxation deductions by the amount sacrificed; and
  - (c) Any allowance, penalty rate, overtime, payment for unused leave entitlements, weekly workers' compensation, or other payment, other than any payment for leave taken in service, to which an employee is entitled under the relevant Award or any applicable Award, act, or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference



to the salary which would have applied to the employee under the salaries clause of the relevant Award in the absence of any salary sacrifice to superannuation made under this Award.

- (iv) The employee may elect to have the specified amount of payable salary which is sacrificed to additional employer superannuation contributions:
  - (a) paid into the superannuation scheme established under the First State Superannuation Act 1992 as optional employer contributions; or
  - (b) subject to the employer's agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.
- (v) Where an employee elects to salary sacrifice in terms of subclause (iv) above, the employer will pay the sacrificed amount into the relevant superannuation fund.
- (vi) Where the employee is a member of a superannuation scheme established under:
  - (a) the *Police Regulation (Superannuation) Act 1906*;
  - (b) the *Superannuation Act 1916*;
  - (c) the *State Authorities Superannuation Act 1987*;
  - (d) the *State Authorities Non-contributory Superannuation Act 1987*; or
  - (e) the *First State Superannuation Act 1992*.

The employee's employer must ensure that the amount of any additional employer superannuation contributions specified in subclause (i) above is included in the employee's superannuable salary which is notified to the New South Wales public sector superannuation trustee corporations.

- (vii) Where, prior to electing to sacrifice a part or all of their salary to superannuation, an employee had entered into an agreement with their employer to have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause (v) above, the employer will continue to base contributions to that fund on the salary payable under clause 2, Salaries of the Award to the same extent as applied before the employee sacrificed that amount of salary to superannuation. This clause applies even though the superannuation contributions made by the employer may be in excess of the superannuation guarantee requirements after the salary sacrifice is implemented.

#### **34. No Extra Claims**

Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

#### **35. Area, Incidence and Duration**

- (i) This Award takes effect from 1 July 2019 and shall remain in force for a period of one year. The allowances will apply from the first full pay period on or after the dates specified at Table 1 of Part B.
- (ii) This Award rescinds and replaces the Public Hospital Medical Officers (State) Award 2018 published 29 March 2019 (384 I.G. 141) and all variations thereof.
- (iii) This Award shall apply to persons employed in classifications contained herein employed in the New South Wales Health Service under section 115(1) of the *Health Services Act 1997*, or their successors, assignees or transmittes.

## PART B

**Table 1 - Allowances and Other Rates**

Item. No	Clause No.	Allowance Description	Frequency	Rate from first full pay period on or after 01-Jul-2018 \$	Rate from first full pay period on or after 01-Jul-2019 \$
		In Charge			
1	5	In charge Allowance	Per Hour	20.40	20.90
		Meal Allowance for Overtime			
2	11(ii)	(a) Breakfast at or before 6.00 a.m.	Each	30.60	30.60*
2	11(ii)	(b) Evening at least 1 hour after normal ceasing time and extends beyond or is worked wholly after 7.00 pm.	Each	30.60	30.60*
2	11(ii)	(c) Lunch beyond 2.00pm Saturdays, Sundays or Holidays	Each	30.60	30.60*
		On-call			
3	12(iii)	On-call allowance per on-call period which coincides with a day rostered on duty	Per Day	15.90	16.30
3	12(iii)	On-call allowance per on-call period which coincides with a day rostered off duty	Per Day	31.80	32.60
3	12(iii)	On Call Per Week (Medical Officers)	Per Week	111.00	113.80
		Uniform			
4	21(iii)	Full uniform including special shoes if required	Per Week	2.46	2.49
4	21(iii)	Other Cases	Per Week	1.81	1.83

\* NB: These rates are varied in accordance with any variations in the rates payable under Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009.

## PART C

Albury Base Hospital

Armidale Hospital

Bathurst Base Hospital

Byron Central Hospital

South East Regional Hospital

Broken Hill Base Hospital

Coffs Harbour Health Campus

Dubbo Base Hospital

Goulburn Base Hospital

Grafton Base Hospital

Griffith Base Hospital

Lismore Base Hospital

Orange Health Service

Port Macquarie Base Hospital

Shoalhaven District Memorial Hospital

Tamworth Rural Referral hospital

Manning Base Hospital (Taree)

Tweed Hospital

Wagga Wagga Health Service

P. M. KITE, *Chief Commissioner*

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Printed by the authority of the Industrial Registrar.

## **PUBLIC HOSPITALS LIBRARY STAFF (STATE) AWARD 2019**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 203654 of 2019)

Before Chief Commissioner Kite

4 July 2019

### **AWARD**

#### **Arrangement**

Clause No.	Subject Matter
1.	Title
2.	Conditions of Employment
3.	Salaries
4.	Definitions
5.	Descriptors
6.	Commencing rates of Pay
7.	Grading Committee
8.	No Extra Claims
9.	Area, Incidence and Duration

#### **1. Title**

This Award shall be known as the Public Hospitals Library Staff (State) Award 2019.

#### **2. Conditions of Employment**

The conditions of employment for employees covered by this Award shall be as prescribed by the Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award 2018, as varied or replaced from time to time.

#### **3. Salaries**

Full time Library Staff employees shall be paid the salaries as set out in the Health Professional and Medical Salaries (State) Award 2018, as varied or replaced from time to time.

The classifications of library staff shall be as follows:

Librarian

Library Technician

Library Assistant

#### **4. Definitions**

"Employer" means the Secretary of the Ministry of Health exercising employer functions on behalf of the Government of New South Wales.

"Hospital" means a public hospital as defined under section 15 of the *Health Services Act 1997*.

"Librarian" means an employee appointed as such who possesses qualifications acceptable for professional membership of the Australian Library and Information Association (ALIA) or other combination of qualifications and experience deemed by the employer to be equivalent, that meets the minimum standard of skill and knowledge inherent in the ALIA standard.

"Library Technician" means an employee appointed as such who possesses qualifications acceptable for library technician membership of the Australian Library and Information Association (ALIA) or other combination of qualifications and experience deemed by the employer to be equivalent that meets the minimum standard of skill and knowledge inherent in the ALIA standard.

"Library Assistant" means an employee appointed as such who is eligible for enrolment in a course of study that leads to a qualification acceptable for either professional or library technician membership of the Australian Library and Information Association (ALIA).

"Local Health District" means a Local Health District constituted pursuant to section 17 of the *Health Services Act 1997*.

"Union" means the Health Services Union NSW.

"Weekly Rates" will be ascertained by dividing the annual amount by 52.17857 or a weekly rate can be multiplied by 52.17857 to obtain an annual amount.

## 5. Descriptors

### Library Assistant

A practitioner at this level:

- (a) Performs routine activities to gain practical experience required for the operation of information systems and services to clients.
- (b) Requires ability to develop skills in, and knowledge of library and information standards, procedures, practices and operations, and specific library collections obtained from formal course work and/or workplace training.
- (c) Exercises judgment, where a choice of action is available within the application of clearly established standards, practices and procedures.
- (d) Works under direct supervision of a senior paraprofessional or a professional, but exercises increasing autonomy in prioritising and completing tasks. This may involve working co-operatively in the organisation of work.
- (e) The outcome of work undertaken is usually of direct, but short-term effect on clients, collections and co-workers.

### Library Technician

Grade 1 - A para-professional practitioner at this level:

- (a) Performs and/or assists in co-ordinating activities required for the operation and maintenance of library and information services and systems.
- (b) Requires sound knowledge and skill and the ability to develop expertise in library and information management concepts necessary to undertake a varied range of tasks in library procedures and operations.
- (c) Exercises judgment in dealing with a range of general or specialist tasks and problems, with reference to established standards, practices and procedures. Some adaptation of systems, standards or practices may be undertaken.

- (d) Works under general supervision of a senior paraprofessional or a professional or manager. Works either individually or co-operatively as a member of a team, or as the leader of a small non-hierarchical team.
- (e) The outcome of work is usually direct or short-term to intermediate, but may be long term in its effect on clients, collections and co-workers. Work may assist in the formulation of procedures or policies.

#### Librarian

Grade 1 - A professional practitioner at this level:

- (a) Provides professional library and information services and/or assists in the development of library and information services and systems. May co-ordinate discrete library and information management projects or assist in the operations and systems of a unit, team or library service.
- (b) Requires sound knowledge of library and information service concepts, principles and theory, and a sound understanding of library systems, practices and procedures.
- (c) Exercises judgment in dealing with a range of operational and/or conceptual tasks and problems with reference to established standards, practices and procedures. Is able to adapt systems, standards or priorities and deviate to a limited extent from precedent. With experience may solve non-routine problems by applying principle and theory with reference to precedent.
- (d) Works under general supervision of a senior professional or manager. Works either individually or co-operatively as a member of a team or as the leader of a small non-hierarchical team.
- (e) The outcome of work is usually direct or short-term to intermediate, but may be long term in its effect on clients, collections and co-workers. Work may assist in the formulation of procedures or policies and contribute to the body of professional knowledge.

Grade 2 - An experienced professional practitioner and/or developing specialist at this level:

- (a) Provides complex or specialist library and information services. May co-ordinate/supervise a discrete library and information management project, or the operations and systems of a unit, team or library service. This is the first level at which a Librarian may be responsible for managing a budget.
- (b) Requires a well-developed knowledge of library and information management concepts, principles and theory, and well-developed skills in the application of library and information systems, collections, services or subject knowledge.
- (c) Exercises judgment and initiative in dealing with a wide range of complex tasks and problems, with reference to established standards, practices and procedures. Is able to adapt systems, standards or priorities and deviate substantially from precedent.
- (d) Works under general direction of a senior professional or manager. Works either individually as a specialist or co-operatively as a member of a non-hierarchical team, or as a leader or supervisor of a team or discrete project.
- (e) The outcome of work including decisions is direct, but may be long term in its effect on clients, collections and co-workers. May assist in the formulation of policy and advice to senior management. Work often contributes to the body of professional knowledge.

Grade 3 - A senior professional practitioner, manager and/or specialist at this level:

- (a) Manages and/or provides complex or specialist library and information services. May manage substantial library and information management projects, or the operations and systems of a unit, team or library service.
- (b) Requires substantial knowledge of library and information management concepts, principles and theory. Has a high-level of proficiency and expertise in specific systems, collections, services or subject

knowledge. Requires either management expertise or standing as a recognised internal authority in an area of the discipline of significance to the organisation.

- (c) Exercises judgment and initiative in dealing with a range of complex and detailed operational or conceptual problems and tasks that may extend beyond the immediate work area. May develop and/or introduce enhancements to practices, systems and procedures with limited reference to precedent. Demonstrates a sound understanding and ability to interpret professional standards, practices and theory.
- (d) Works under guidance of a senior professional or manager. Work may be reviewed periodically or at key stages for soundness of judgment and adherence to organisational objectives and policies.
- (e) The outcome of work including decisions is usually intermediate to long term, and may have considerable effect and impact on the objectives and performance of service delivery for clients, collections and co-workers within the legal, library and information management context. May formulate policy and advice to senior management. Work often contributes to the body of professional, subject or policy area of knowledge.

Grade 4 - A principal professional practitioner and/or senior manager and/or senior specialist at this level:

- (a) Leads and manages significant organisational service/s, project/s or program/s, and/or provides authoritative highly specialised advice to senior management, the organisation as a whole, or external parties. May initiate and implement a major library and information management project or program, or oversee the operations and systems of a significant unit, team or library service, or may contribute towards the research activities at a tertiary teaching hospital.
- (b) Requires and applies significant knowledge of library and information management concepts, principles and theory extending across multiple aspects of the profession. Also requires either significant management expertise or standing as a recognised internal or external authority on systems, collections, services or subject knowledge, or an area of the discipline of significance to the organisation, industry or profession.
- (c) Exercises independent or interpretive judgment and initiative in dealing with a range of highly complex and detailed operational or conceptual problems and tasks. Is able to create new systems, standards or approaches and interprets information where there is little or no precedent. Demonstrates an extensive understanding of professional standards and multiple aspects of library and information services that may require new or unique solutions.
- (d) Works with occasional managerial or professional review or independently as a recognised specialist. Work is primarily reviewed for effectiveness and progress towards agreed organisational objectives.
- (e) The outcome of work including decisions has significant long-term effect, and usually contributes substantially to organisational performance, and/or to the body of professional or subject knowledge. Work is expected to have significant policy, legal or service delivery implications at the organisational level and may also have an impact at the State or National level.

#### **6. Commencing Rates of Pay**

- (i) An employee appointed as a Librarian who has a qualification acceptable for appointment that required three years full-time study (or equivalent for part-time) shall have a commencing salary of the rate prescribed for the first year of service as set out in the Health Professional and Medical Salaries (State) Award 2018, as varied or replaced from time to time.
- (ii) An employee appointed as a Librarian who has a qualification acceptable for appointment that required a minimum of four years full-time study (or equivalent for part-time) shall have a commencing salary of the rate prescribed for the second year of service as set out in the Health Professional and Medical Salaries (State) Award 2018, as varied or replaced from time to time.

## **7. Grading Committee**

A committee consisting of two representatives of the employer and two representatives of the Union shall be constituted to consider and recommend to the employer upon application by the Union or a hospital/Local Health District:

- (i) The grading of any new position or variation of grading of a position as the result of substantial change in the duties and/or responsibilities or any grading anomaly; and
- (ii) The date of the effect of the grading recommended.

Provided that -

- (a) an employee shall, whilst the grading of the position is under consideration, be ineligible to be a member of the committee;
- (b) the committee shall not, without sufficient reason, recommend the retrospective operation of any grading or remuneration; and
- (c) where a retrospective date of effect is recommended such date shall not be earlier than a date six months prior to the date on which the matter was referred to the committee.

## **8. No Extra Claims**

Other than as provided for in the *Industrial Relations Act* 1996 and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

## **9. Area, Incidence and Duration**

- (i) This Award takes effect from the first full pay period on or after 1 July 2019 and shall remain in force for a period of one year.
- (ii) This Award rescinds and replaces the Public Hospitals Library Staff (State) Award 2018 published 5 July 2019 (384 I.G. 764) and all variations thereof.
- (ii) This Award shall apply to persons employed in classifications contained herein employed in the New South Wales Health Service under s115(1) of the *Health Services Act* 1997, or their successors, assignees or transmittes, excluding the County of Yancowinna.

P. M. KITE, *Chief Commissioner*

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**PUBLIC HOSPITALS MEDICAL RECORD LIBRARIANS (STATE)  
AWARD 2019**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 203340 of 2019)

Before Chief Commissioner Kite

4 July 2019

**AWARD**

Clause No.	Subject Matter
1.	Definitions
2.	Salary and Grading Structure
3.	Grading Committee
4.	Labour Flexibility
5.	Anti-Discrimination
6.	Conditions of Service
7.	Dispute Resolution
8.	No Extra Claims
9.	Area, Incidence and Duration

**1. Definitions**

"Employer" means the Secretary of the Ministry of Health exercising employer functions on behalf of the Government of New South Wales.

"Hospital" means a public hospital as defined under section 15 of the *Health Services Act 1997*.

"Medical Record Librarian" means a person employed in the industry of medical record librarianship in Public Hospitals who has qualifications acceptable to the New South Wales Association of Medical Record Librarians or such other qualifications deemed to be equivalent by the employer.

"Officer" means a medical record librarian employed by the employer.

"Service" for the purpose of salaries means service as a medical record librarian in a public hospital whether in New South Wales or elsewhere in Australia or other service acceptable to the employer.

"Union" means the Health Services Union NSW.

**2. Salary and Grading Structure**

Full time Medical Record Librarian employees shall be paid the salaries as set out in the Health Professional and Medical Salaries (State) Award 2018, as varied or replaced from time to time.

Medical Records Administrator / Medical Records Manager

Grade 1	All other hospitals including, Western Suburbs, Balmain, Grafton, St. Margaret's, Royal South Sydney, St. Josephs, Hawkesbury, Blue Mountains.
Grade 2	Albury, Bathurst, Canterbury, Coffs Harbour, Dubbo, Fairfield, Griffith, Manning, Port Kembla, Shellharbour.

Grade 3	Auburn, Campbelltown, Camden, Lismore, Wagga.
Grade 4	Mt. Druitt, Manly, Bankstown, Ryde, Mona Vale, Nepean, Blacktown, Sydney, Royal Women, Sutherland.
Grade 5	Hornsby, Liverpool, St. George, Wollongong, Gosford, Newcastle, Royal Alexandra Children's Hospital and Country Regions.
Grade 6	St. Vincent's and Royal North Shore Hospital.
Grade 7	Royal Prince Alfred Hospital, Prince of Wales and Prince Henry Hospital.
Grade 8	Parramatta Hospitals - Westmead.

### **3. Grading Committee**

- (i) A committee consisting of up to three representatives of the employer and up to three representatives of the Union shall be constituted to consider and recommend to the employer
  - (a) the grading of any new position or any variation of grading or classification of a position as a result of any substantial alteration of duties and/or responsibilities or in any case of anomaly; and
  - (b) the date of effect of the grading recommended. Provided that:
    - (1) an employee shall, while the grading of his position is under consideration by the committee be ineligible to be a member of the committee;
    - (2) the committee shall not, without sufficient reason, recommend the retrospective operation of any grading; and
    - (3) where a retrospective date of effect is recommended such a date shall not be earlier than a date six months prior to the date on which the matter was referred to the committee.
- (ii) The members of the committee shall be entitled to examine any statement of duties pertaining to any position referred to the committee and any papers which illustrate the type of work performed by the occupant of the position or, if the employer approves papers which are otherwise relevant to the question of the grading of the position, including statements of duties of other positions.
 

Except as otherwise provided, the matters to be referred to the committee shall be:

  - (a) any application by an employee for review of the grading of the position he occupies if the chief executive officer of the hospital certifies that in his opinion there has been a substantial alteration of duties and/or responsibilities since the last grading of the position and states the nature of such alteration, or that the grading of the position is markedly out of keeping with that of other positions in the hospital;
  - (b) the grading of any new position;
  - (c) such cases as the Union may raise where the Union has stated the grounds and indicated the basis on which it desires such cases to be considered by the committee; and
  - (d) such other cases as the employer may approve.
- (iii) The committee shall meet to consider the grading of a position within twenty-one days of such grading having been referred to the committee.
- (iv) In the event of the members of the committee being in disagreement as to the grading to be recommended for a position or as to the date of effect, the members representing the Union shall, within twenty-one days of the meeting of the committee at which such disagreement occurred, furnish to the

employer, a written report stating the grading or date of effect which they consider appropriate with their reasons therefore and indicating also whether they wish to interview the employer in connection with their representations.

- (v) The report of the committee shall be signed by at least one representative of the employer and of the Union.
- (vi) Nothing in this clause shall affect the right of the Union to apply to the Public Health Employees (State) Industrial Committee for the settlement of any dispute arising from the grading of any employee under this Award.

#### **4. Labour Flexibility**

- (i) The employer may direct an employee to carry out such duties as are reasonable and within the limits of the employee's skill, competence and training, consistent with the employee's classification, grouping and/or career stream, provided that such duties are not designed to promote deskilling.
- (ii) The employer may direct an employee to carry out such duties and use such tools and equipment as may be required, provided that the employee has been properly trained or has otherwise acquired the necessary skills in the use of such tools and equipment.
- (iii) Any direction issued by the employer pursuant to subclauses (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy work environment.
- (iv) Existing provisions with respect to the payment of mixed functions/higher duties allowances shall apply in such circumstances.

#### **5. Anti-Discrimination**

- (i) *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTES -

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

**6. Conditions of Service**

The Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award 2018, as varied or replaced from time to time, shall apply to all persons covered by this Award.

In addition, the Health Industry Status of Employment (State) Award 2018, as varied or replaced from time to time, shall also apply to all relevant employees.

**7. Dispute Resolution**

The dispute settlement procedures contained in the applicable conditions award as outlined in Clause 6, Conditions of Service (and as varied or replaced from time to time), shall apply.

**8. No Extra Claims**

Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

**9. Area, Incidence and Duration**

- (i) This Award takes effect from 1 July 2019 and shall remain in force for a period of one year.
- (ii) This Award rescinds and replaces the Public Hospitals Medical Records Librarians Award 2018 published 31 May 2019 (384 I.G. 582) and all variations thereof.
- (ii) This Award shall apply to persons employed in classifications contained herein employed in the New South Wales Health Service under s115(1) of the *Health Services Act 1997*, or their successors, assignees or transmittes, excluding the County of Yancowinna.

P. M. KITE, *Chief Commissioner*

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Printed by the authority of the Industrial Registrar.

**TEACHERS' (NSW HEALTH EARLY CHILDHOOD SERVICE CENTRES) SALARIES AND MISCELLANEOUS CONDITIONS AWARD 2019**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 203371 of 2019)

Before Chief Commissioner Kite

4 June 2019

**AWARD**

**PART A**

**Arrangement**

Clause No.	Subject Matter
1.	Definitions
2.	Salaries
3.	Director's and Nominated Supervisor's Allowances
4.	Miscellaneous
5.	Conditions of Employment
6.	Terms of Engagement and Information to be provided to Teachers
7.	Disputes and Grievance Procedures
8.	No Extra Claims
9.	Area, Incidence and Duration

**PART B**

**MONETARY RATES**

Table 1 - Rates of Pay

Table 2 - Director's Allowances

Table 3 - Nominated Supervisor's Allowance

**PART A**

**1. Definitions**

For the purposes of this Award, except for Clause 3, Director's and Nominated Supervisor's Allowance, all reference to teachers in this Award shall include Director or Nominated Supervisor.

- (a) "Teacher" means any person employed as such in an ECS Centre as defined in subclause (d) of this clause, holding Early Childhood qualifications as defined in subclauses (h), (i), (j) and (k) of this clause.
  - (i) "Casual Teacher" means a person who may be engaged on an hourly basis, for a period which does not extend beyond one week, to provide services related to the unexpected absence of temporary, permanent or exempt employees. This provision may also encompass short-term employment associated with unanticipated peak demands.

- (ii) "Temporary Teacher" means a person who is engaged as an employee for a period not exceeding 13 weeks, provided that fixed term contracts of employment, whether for periods greater or lesser than 13 weeks, must not be offered in preference to ongoing contracts.
- (b) "Centre Year" means the number of weeks for which a particular ECS Centre is open over the course of a calendar year.
- (c) "Director" means the teacher who is responsible for the day to day operation and management of the Early Childhood Services Centre as defined in subclause (d) of this clause, holding Early Childhood qualifications as defined in subclauses (p), (q), (r) and (s) of this clause.
- (d) "Early Childhood Services (ECS) Centre" means an establishment which provides child care and/or educational development programmes and/or services for children under school age and shall include long day care centres. It shall not include a Recognised School or Pre-School. For the purposes of this clause:
  - (i) "Long Day Care Centre" means a child care establishment which usually provides services over a period of approximately eight hours or more each day for approximately 48 weeks or more during the year;
- (e) "Unit" means a group or class of children which does not at any one time exceed 25 children, but which need not necessarily consist of the same children at all times.
- (f) "Teacher Training Institution" means an Australian College of Advanced Education, Australian Teachers College or Australian Institute of Education recognised by the Tertiary Education Commission or its replacement.
- (g) "University" means an Australian University
- (h) "Graduate" means a teacher who holds specialist B. Ed (Early Childhood) from a Recognised University or Recognised Teacher Training Institution.
- (i) "Equivalent Qualifications or Equivalent Course" means a qualification or course as the case may be which the employer and the teacher agree as being equivalent to the qualification or course prescribed by the clause in question in this award, or which the Conciliation Committee determines as being so equivalent.
- (j) "Three Years Trained Teacher" means:
  - (i) A teacher who has satisfactorily completed a Three Years full-time course of study in Early Childhood Education at a Recognised Teacher Training Institution; or
  - (ii) A teacher who, in addition to satisfying the requirements for classification as a Two Years Trained Teacher, has satisfactorily completed a course of study in Early Childhood Education at Category UG2 level; or
  - (iii) A teacher who has acquired other equivalent qualifications; or
  - (iv) A three year Primary School trained teacher who has been recognised as equivalent by the New South Wales Department of Community Services.
- (k) "Four Years Trained Teacher" means:
  - (i) A teacher who is a graduate holding B. Ed (Early Childhood) (four years full-time course); or
  - (ii) A teacher who is a graduate and who holds a Diploma in Early Childhood Education from a recognised University or Recognised Teacher Training Institution; or

- (iii) A teacher who has, in addition to satisfying the requirements for classification as a Three Years Trained Teacher, satisfactorily completed a course of study in Early Childhood Education at Category PGI Level; or
  - (iv) A teacher who has acquired other equivalent qualifications; or
  - (v) A four year Primary School trained teacher who has been recognised as equivalent by the New South Wales Department of Community Services.
- (l) "Nominated Supervisor" means a teacher who is appointed as Nominated Supervisor under the Children (Education and Care Services National Law Application) Act (NSW) 2010 or its replacement.
- (m) "Union" means the NSW Independent Education Union and/or HSU NSW.

## **2. Salaries**

- 2.1 Full time Teacher employees shall be paid the rates and allowances in the tables of Part B - Monetary Rates of this Award.
- 2.2 The minimum weekly salary payable to full-time teachers shall, subject to the other provisions of this Award, be calculated by dividing the per annum rates as set out in Table 1 - Rates of Pay, of Part B, Monetary Rates, by 52.17857.
- (a) Three Years Trained Teachers
    - (i) A Three Years Trained Teacher shall commence on Step 1 of the scale and progress according to normal years of service to Step 11 of the scale.
  - (b) Four Years Trained Teachers
    - (i) A Four Years Trained Teacher shall commence on Step 1 of the scale and progress according to normal years of service to Step 9 of the scale.
- 2.3 Part-Time and Temporary Teachers
- (a) A permanent part-time employee is one who is permanently appointed by the employer to work a specified number of hours which are less than those prescribed for a full-time employee. Permanent part-time employees shall be paid an hourly rate calculated on the basis of one thirty-eighth of the rate prescribed by the salaries clause of each relevant calling, with a minimum payment of 3 hours for each start.
  - (b) The days of attendance and normal hours of work of a part-time teacher may be varied or increased at any time only by mutual agreement between the employer and the teacher. Such agreement will not be unreasonably withheld by either party.
  - (c) A temporary full-time teacher shall be paid at the same rate as that prescribed for a full-time teacher with the corresponding classification. Where the temporary contract is 13 weeks or less, a loading of 10% shall be applied.
- 2.4 Casual Teachers
- (a) The hourly rate of a casual teacher shall be calculated by dividing the weekly salary prescribed in 2.1 of this clause by 38. A loading of 10% shall then be added to the hourly rate. A casual teacher shall be paid a minimum of 2 hours for each engagement.
  - (b) The amount obtained by the operation of paragraphs (a) and (b) of this subclause is exclusive of the pro rata payment to which the teacher is entitled under the Annual Holidays Act 1944.

## 2.5 Calculation of Service

- (a) For the purpose of this clause, any teacher if required by the employer, shall upon engagement establish to the satisfaction of the employer, the length of his or her teaching service in any Pre-school, ECS Centre, Multi-Purpose Centre or in early childhood education services for children up to eight years of age, or in the Infants Department of Schools registered or certified under the appropriate legislation in other States or Territories of the Commonwealth of Australia. That period so established shall be taken to be the length of service for the purpose of that employment.
- (b) Teachers employed at the time of the making of this Award with existing recognised experience which may not directly fall into the categories as prescribed in paragraph (a) above, shall continue to have their experience recognised for the purposes of incremental progression.
- (c) For the purpose of calculating service:
  - (i) Any employment as a full-time employee (including employment as a temporary full-time employee) as referred to in paragraph (a) of this subclause shall be counted as service.
  - (ii) The amount of service of a part-time teacher (including a temporary part-time teacher) shall total one year for every 1,982 hours of service. (1,982 hours is the number of ordinary hours worked by a full-time ECS teacher in a calendar year).
  - (iii) The amount of service of a casual teacher shall be calculated as one year for every 1,982 hours of service. (1,982 hours is the number of ordinary hours worked by a full-time ECS teacher in a calendar year). Casual service performed only in the preceding four years shall be included in determining incremental progression.

## 2.6 Re-Classification

The transfer to a higher salary scale of a teacher who has completed a course of training which makes the teacher eligible to be so transferred and the progression of such teacher through the salary steps on that higher salary scale shall be effected as follows:-

- (a) A teacher seeking such transfer shall make application in writing to the employer and shall attach to such application documentary evidence establishing that he or she has had or will have conferred on him or her the diploma, degree or equivalent recognition of the completion of the course of training which makes him or her eligible to be so transferred.
- (b) Where an application is made under paragraph (a) above which establishes that a teacher is eligible to be transferred to a higher salary scale, such transfer shall take effect:
  - (i) From the beginning of the first pay period to commence on or after the date of completion of formal course requirements. Provided that the application for transfer is received by the employer no later than four months after the conferral of the diploma, degree or equivalent recognition of the completion of such course of training; or
  - (ii) Where the application for transfer is not received by the employer within the time specified in subparagraph (i) of this paragraph, from the beginning of the first pay period to commence on or after the date on which the employer receives such application.
- (c) A teacher who has completed a course of training entitling the teacher to transfer to a higher salary scale pursuant to this subclause shall, for the purpose of advancing through the steps on the higher salary scale to which the teacher has been so transferred, retain the teacher's normal salary incremental date.

Provided that if the transfer of the teacher to the higher salary scale coincides with the teacher's normal salary incremental date, the increment shall be applied prior to the teacher being transferred to the higher salary scale.



- (d) A teacher shall be transferred to the higher salary scale on the following basis:
  - (i) A Three or Four Years Trained Teacher shall be transferred to the salary step on the higher salary scale which shall be determined by the teachers years of service on the lower scale.
- (e) The transfer to a higher salary scale of a teacher who has acquired a qualification (other than the completion of a course of training) which makes the teacher eligible to be so transferred, and the progression of such teacher through the steps on that higher salary scale shall be effected in accordance with the provisions of paragraphs (a), (b), (c) and (d) of this subclause.

### **3. Director's and Nominated Supervisor's Allowance**

#### **3.1 Director's Allowance**

- (a) A full-time teacher who is appointed as a Director as defined in Clause 1, Definitions, shall be paid, in addition to the amounts payable pursuant to Clause 2, Salaries, on a weekly basis, an allowance for a Director calculated by dividing the per annum rates as set out in Table 2 - Directors' Allowance, of Part B, Monetary Rates, by 52.17857.
- (b) The level of the director's allowance shall be determined by the number of units of the service.
- (c) A part-time teacher who is appointed as a Director as defined in Clause 1, Definitions, of this Award, shall be paid, in addition to the amounts payable pursuant to Clause 2, Salaries, of this Award, an allowance in accordance with Table 2 - Director's Allowance, a proportionate basis to the hours they work.

#### **3.2 Nominated Supervisor's Allowance**

- (a) A full time teacher who is not the Director and is appointed as the Nominated Supervisor as defined in clause 1 shall be paid an allowance as set in Table 3 and shall be advised by the employer on appointment which allowance is to apply.
- (b) The level of the Director's Allowance shall be determined by the number of units of the service.
- (c) A part-time teacher who is appointed as a Nominated Supervisor, as defined in clause 1, Definitions of this Award, shall be paid, in addition to the amounts payable pursuant to clause 2, Salaries of this Award, an allowance in accordance with Table 3 - Nominated Supervisor's Allowance on a proportionate basis to the hours they work.
- (d) It is not intended that Directors shall be displaced by the appointment of an Nominated Supervisor as a result of the operation of this clause.

### **4. Miscellaneous**

#### **4.1 Crib Break**

Not more than 30 minutes nor less than 20 minutes shall be allowed to teachers each day for a midday paid crib break. Such crib break shall be counted as time worked.

Provided however that a teacher may, by agreement with the employer, leave the premises or elect not to be on call during the crib break. Where a reasonable request has been made by the teacher, the employer shall give favourable consideration to any such request. During this time the teacher cannot be counted as part of the child/staff ratios under the Education and Care Services National Regulations. Such time away from the premises or not on call shall not count as time worked nor shall any payment be made for such time.

However if the teacher is called back to perform any duties within the centre or the break is interrupted for any reason the teacher shall be paid at time and a half for a minimum of 15 minutes and thereafter to the nearest quarter hour until an uninterrupted break or the balance of the break is taken.

Notation: It is agreed between the parties that any agreement between the teacher and the employer concerning an unpaid crib-break must be genuine. For example, a teacher cannot be required by the employer to agree to an unpaid crib-break as a condition of on-going employment. Any agreement should be recorded in writing and kept with pay records.

#### 4.2 Professional Development, Training and Planning

- (a) Teachers are required to attend Professional Development and Training as mandated by the Education and Care Services National Regulations.
- (b) Where a Teacher attends a course as requested and required by the employer after hours, the teacher shall either receive time in lieu at ordinary rates, or be paid at overtime rates for the time in attendance at the course. A teacher may not unreasonably refuse to attend courses as required under the Education and Care Services National Regulations.
- (c) Any dispute in relation to attendance shall be dealt with in accordance with Clause 7, Disputes and Grievance Procedures.

#### 4.3 First Aid Certificate

- (a) Teachers shall be required to obtain and maintain an approved first aid certificate.
- (b) Teachers will be granted paid leave to attend a first aid course, or when a first aid course is in the teacher's own time, teachers will receive time in lieu at ordinary rates or be paid at overtime rates for course attendance time.

#### 4.4 Non-Contact Time

- (a) Teachers shall receive a minimum of two hours per week non-contact time to perform programming and planning duties. Teachers will not be required to supervise children during this time.
- (b) Teachers appointed as Directors or Nominated Supervisors shall receive a minimum of two and a half hours per week of non-contact time in addition to non-contact time as teacher and/or Director to perform administrative duties.

#### 4.5 Child-Free Days

- (a) Teachers covered by this Award may, depending on the operational requirements of the Centre, participate in a child-free day(s). Child-free days may be allocated solely for the purposes of setting up the centre, group planning and cleaning of premises and resources. The number and timing of such days shall be determined at a local level. Child-free days are not guaranteed from Centre to Centre.

### **5. Conditions of Employment**

- 5.1 Directors and Teachers employed under this Award will have all other conditions of employment established by those contained in the Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award 2018, as varied or replaced from time to time.

### **6. Terms of Engagement and Information to be Provided to Teachers**

- 6.1 The employer shall provide all full-time, part-time and temporary teachers with a letter of appointment on engagement stating the classification and rate of salary on appointment, the hours of operation of the

Centre, the teacher's entitlements to personal leave, annual leave and long service leave, the procedure as to alteration of days of attendance and notice on termination.

- 6.2 The employer may, if the employer deems appropriate, provide a teacher of children with special needs with a letter of appointment which outlines the teacher's teaching load, days of attendance, and place of employment which may be varied throughout the period of engagement. Such variations would occur from time to time and with not less than four weeks' notice or otherwise by agreement.
- 6.3 During the first three months of employment, employment shall be from week to week. After three months of continuous service, employment may be terminated only by 28 days' notice given either by the employer or the employee or by payment or forfeiture of 28 days salary, as the case may be. Nothing in this clause, however, shall prevent the summary dismissal of an employee for misconduct or neglect of duty.
- 6.4 Upon the termination of service of a teacher other than a casual teacher, the employee may request from the employer for a statement of service. The statement of service shall:
  - (a) set out the length of service, the age of children taught, the positions held and any special and/or additional duties performed by such teacher, or
  - (b) include a Job Description or List of Duties.
- 6.5 On Termination of Casual Employment, a Casual Teacher Shall be Supplied With a Statement Setting Out the Number of Days of Duty Undertaken By the Casual Teacher During the Period of His Or Her Engagement Provided that Such Request is Made During Or on Termination of the Casual Engagement.

## **7. Disputes and Grievance Procedures**

- 7.1 Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and the supervising staff, it shall be referred to the Chief Executive of the Public Health Organisation or his/her nominee, who will arrange for the matter to be discussed with the employee concerned and a local representative or representatives of the employee's Union.
- 7.2 Failing settlement of the issue at this level, the matter shall be referred to the Secretary and the relevant Head Office of the employee's Union. This dispute will then be dealt with pursuant to clause 7.5 of this clause.
- 7.3 Whilst these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied.
- 7.4 The employee's Union may vary this procedure where it is considered a safety factor is involved.
- 7.5 With a view to an amicable and speedy settlement, all disputes that cannot be settled in accordance with clauses 7.1 and 7.2 above may be submitted to a committee consisting of not more than 6 members, equally represented by NSW Health and the employee's Union. The committee shall have the power to investigate all matters in dispute and to report to the Public Health Organisation and the employee's Union with recommendations. In the event that no mutual decision is reached by the committee, the matter in dispute may be referred to the Public Health Employees (State) Industrial Committee.
- 7.6 This clause shall not interfere with the rights of either party to institute proceedings for the determination of any matter in accordance with the *Industrial Relations Act 1996*.

## **8. No Extra Claims**

- 8.1 Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/ demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

8.2 The terms of the preceding paragraph do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing Award provisions.

### **9. Area, Incidence and Duration**

- 9.1 This Award shall apply to all teachers employed in ECS centres as defined in subclause (d) of Clause 1, Definitions, of this Award.
- 9.2 Other conditions of employment not included in this Award shall be governed by the Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award 2018, as varied or replaced from time to time.
- 9.3 This Award shall take effect from 1 July 2019 and shall remain in force for a period of one year. The rates and allowances in the second column in the tables of Part B - Monetary Rates will apply from the first full pay period on or after (ffppoa) 1 July 2019.
- 9.4 This Award rescinds and replaces the Teachers (NSW Health Early Childhood Service Centres) Salaries and Miscellaneous Conditions Award 2018 published 2 August 2019 (384 I.G. 879) and all variations thereof.

## **PART B**

### **MONETARY RATES**

**Table 1 - Rates of Pay**

The following minimum annual salaries have effect from the dates specified at the head of each column:

Classification/Incremental Salary Step	Rate as at 1 July 2019 Per Annum  \$	Increased Annual Rate FFPPOA 1 July 2019 Per Annum  \$
<b>Three Years Trained Teachers</b>		
Step 1	54,811	56,181
Step 2	57,602	59,042
Step 3	60,611	62,126
Step 4	63,395	64,980
Step 5	66,325	67,983
Step 6	69,486	71,223
Step 7	71,232	73,013
Step 8	72,966	74,790
Step 9	75,872	77,769
Step 10	78,906	80,879
Step 11 and Thereafter	81,031	83,057
<b>Four Years Trained Teachers</b>		
Step 1	58,282	59,739
Step 2	61,893	63,440
Step 3	65,376	67,010
Step 4	69,234	70,965
Step 5	72,822	74,643
Step 6	75,872	77,769
Step 7	78,906	80,879
Step 8	82,325	84,383
Step 9 and Thereafter	85,616	87,756

**Table 2 - Director's Allowance (Clause 3.1)**

Units	Allowance Description	Rate as at 1 July 2019 Per annum \$	Increased Annual Rate FFPPOA 1 July 2019 Per annum \$
1	Director's Allowance - Unit 1	6,120	6,273
2	Director's Allowance - Unit 2	7,467	7,654
3	Director's Allowance - Unit 3	9,321	9,554
4	Director's Allowance - Unit 4	11,644	11,935

**Table 3 - Nominated Supervisor's Allowance (Clause 3.2)**

Units	Allowance Description	Rate as at 1 July 2019 Per annum \$	Increased Annual Rate FFPPOA 1 July 2019 Per annum \$
1	Nominated Supervisor's Allowance - Unit 1	1,987	2,037
2	Nominated Supervisor's Allowance - Unit 2	2,426	2,487
3	Nominated Supervisor's Allowance - Unit 3	3,035	3,111
4	Nominated Supervisor's Allowance - Unit 4	3,793	3,888

P. M. KITE, *Chief Commissioner*

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Printed by the authority of the Industrial Registrar.

**CROWN EMPLOYEES (GENERAL ASSISTANTS IN SCHOOLS - DEPARTMENT OF EDUCATION) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(Case No. 285921 of 2018)

Before Chief Commissioner Kite

13 February 2019

**REVIEWED AWARD**

**PART A**

**1. Arrangement**

PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Purpose of this Award
3.	Definitions
4.	Anti-Discrimination
5.	Rates of Pay
5A.	Payment during school vacations
6.	Hours
7.	Training and Development
8.	Dispute Resolution Procedures
9.	Duties as Directed
10.	Deduction of Union Membership Fees
11.	Entitlements for Short Term Temporary Employees
12.	No Further Claims
13.	Area, Incidence and Duration

PART B

MONETARY RATES

Table 1 - Rates of Pay

**2. Purpose of This Award**

2.1 This award establishes the rates of pay of General Assistants.

**3. Definitions**

3.1 "Act" means the *Government Sector Employment Act* 2013.

3.2 "Association" means the Public Service Association and Professional Officers Association Amalgamated Union of New South Wales.

3.3 "General assistant" means a person employed as such in a government school by the Secretary under the Act. The primary purpose of the role is to perform a range of tasks relating to the routine maintenance

and upkeep of a Departmental school/grounds. The role may assist with the set-up and removal of furniture and equipment for school activities.

- 3.4 "Department" means the New South Wales Department of Education.
- 3.5 "Full-time general assistant" means a general assistant employed for 38 hours per week.
- 3.6 "Industrial Relations Commission" means the Industrial Relations Commission established by the New South Wales *Industrial Relations Act 1996*.
- 3.7 "Long term temporary general assistant" means a general assistant employed on a temporary basis, either full-time or part-time, under Section 43 of the Act, for a period in excess of one school term.
- 3.8 "Ongoing general assistant" means any general assistant employed on an ongoing basis, either full-time or part-time, under Section 43 of the Act.
- 3.9 "Part-time general assistant" means a general assistant who works up to 35.5 hours per week.
- 3.10 "Parties" means the Secretary of the Department of Education and the Association.
- 3.11 "Principal" means the principal of a Departmental school.
- 3.12 "School" means a Department school or other centre where instruction is provided by the Department and includes any place designated as part of, or as an annexe to, such school.
- 3.13 "Secretary" means the Secretary of the Department of Education.
- 3.14 "Short term temporary general assistant" means a general assistant employed on a temporary basis, either full-time or part-time, under Section 43 of the Act, for a period of one school term or less.

#### **4. Anti-Discrimination**

- 4.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 4.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 4.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 4.4 Nothing in this clause is to be taken to affect:
  - 4.4.1 any conduct or act which is specifically exempted from anti-discrimination legislation;
  - 4.4.2 offering or providing junior rates of pay to persons under 21 years of age;
  - 4.4.3 any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - 4.4.4 a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

- 4.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

## **5. Rates of Pay**

- 5.1 The rates of pay that apply to general assistants are set out in Table 1 - Rates of Pay of Part B, Monetary Rates.
- 5.2 Part-time general assistants who work 35.5 hours per week or less receive the relevant part-time rates of pay as set out in the said Table 1.
- 5.3 Short term temporary general assistants who work for one term or less receive a loaded rate of pay.
- 5.4 Long term temporary general assistants who work for more than one school term receive an unloaded rate of pay.
- 5.5 Salary Packaging Arrangements, including Salary Sacrifice to Superannuation An employee may elect, subject to the agreement of the Department to enter into a Salary Packaging Arrangement in accordance with the provisions of Clause 5 of the Crown Employees (Public Sector - Salaries 2018) Award or any variation or replacement Award.

### **5A. Payment during school vacations**

This clause applies to general assistants employed under Section 43(1)(b) of the *Government Sector Employment Act 2013*.

- 5A.1 When schools are in recess and employees are not required to work they shall be paid half ordinary pay for the period of recess provided that they are continuously employed for the school term immediately preceding and for the full school term immediately following the recess.

Provided that where an employee takes leave without pay, in accordance with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 exceeding five continuous days in a school term, the period of the school action next following such leave for which payment is made pursuant to this clause and shall be reduced proportionately. A period of leave without pay of five continuous days or less shall not lead to a reduction in award entitlement.

- 5A.2 Subclause 6.1 shall not apply in the first four weeks of the summer vacation whether or not the employee is receiving payment for recreation leave pursuant to the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or when the employee is being paid for a public holiday.

## **6. Hours**

- 6.1 The ordinary hours of work for full-time general assistants shall be 38 per week and shall be worked between the hours of 6.00 am and 6.00 pm Monday to Friday (inclusive) for eight hours per day on 19 days of each 20 day cycle.
- 6.2 A general assistant shall be credited with 0.4 of one hour for each day worked with such time accruing as an entitlement to take one day off duty, with pay, in each four weekly cycle of 20 working days.
- 6.3 A general assistant who has not worked, or is not regarded by reason of subclauses 6.6 and 6.7 of this clause as having worked a complete four week cycle, shall receive pro-rata accrued entitlements for each day worked (or each fraction of a day worked) or regarded as having been worked in such cycle, payable for the rostered day off or, in the case of termination of employment on termination.
- 6.4 The general assistant's rostered day off duty prescribed in subclause 6.2 of this clause, shall be determined by mutual agreement between a general assistant and the principal of the school concerned. It may be taken on a rostered basis or accumulated and taken in the school vacation next occurring or such other method as may be agreed upon.



- 6.5 Once set the rostered day off duty may not be changed in a current cycle unless there are genuine unforeseen circumstances prevailing. Where such circumstances exist and the rostered day off is changed, another day shall be substituted in the current cycle. Should this not be practicable the day must be given and taken in the next cycle immediately following.
- 6.6 A general assistant entitled to rostered days off duty in accordance with subclause 6.2 of this clause, shall continue to accumulate credit towards their rostered day off duty whilst on recreation, military, short, study, special and sick leave. Where a general assistant's rostered day off duty falls during a period of sick leave, the general assistant's available sick leave shall not be debited for that day.
- 6.7 Where a general assistant is absent on extended leave and/or workers' compensation during a cycle and returns prior to or on the rostered day off, time absent during that cycle shall be regarded as accruing 0.4 of one hour as prescribed in subclause 6.2 for each day towards the next rostered day off (pro-rata for part of a day). A general assistant who is absent on extended leave and/or workers' compensation for a full cycle shall not be entitled to an allocated day off.
- 6.8 Part-time general assistants shall not be entitled to a rostered day off but have ordinary daily hours of 7.6 or pro-rata for part of a day.

## **7. Training and Development**

- 7.1 The Department confirms its commitment to training and development for general assistants.
- 7.2 Where required by the Department, general assistants will be provided with opportunities for training and development so that they will form a highly skilled, competent and committed workforce, experiencing job satisfaction and providing high quality service.
- 7.3 General assistants will be entitled to reimbursement of any necessary expenses, as determined by the Department, regarding travel, meals and accommodation in attending training and development activities.

## **8. Dispute Resolution Procedures**

- 8.1 Subject to the provisions of the *Industrial Relations Act* 1996, should any dispute (including a question or difficulty) about an industrial matter arise, then the following procedures shall apply.
- 8.1.1 Should any dispute, or question or difficulty arise as to matters occurring in a particular workplace, then the employee and/or Association workplace representative will raise the dispute, question or difficulty with the principal or supervisor as soon as practicable.
- 8.1.2 The principal or supervisor will discuss the matter with the employee and/or Association representative within two working days with a view to resolving the dispute, question or difficulty or by negotiating an agreed method and time frame for proceeding.
- 8.1.3 Should the above procedure be unsuccessful in producing a resolution of the dispute, question or difficulty or should the matter be of a nature which involves multiple workplaces, then the individual employee or the Association may raise the matter with an appropriate officer of the Department with a view to resolving the dispute, question or difficulty or negotiating an agreed method and time frame for proceeding.
- 8.1.4 Where the procedures in paragraph 8.1.3 of this subclause do not lead to resolution of the dispute, question or difficulty, the matter will be referred to the Director, Industrial Relations of the Department and the General Secretary of the Association. They or their nominees will discuss the dispute, question or difficulty with a view to resolving the matter or by negotiating an agreed method and time frame for proceeding.
- 8.1.5 Should the above procedures not lead to resolution then either party may make application to the Industrial Relations Commission of New South Wales.

## **9. Duties as Directed**

- 9.1 The Secretary, delegate, nominee or representative may direct a general assistant to carry out such duties as are within the limits of the general assistant's skills, competence and training.
- 9.2 Any directions issued by the Secretary pursuant to subclause 9.1 of this clause shall be consistent with the Secretary's responsibility to provide a safe, healthy working environment.

## **10. Deduction of Union Membership Fees**

- 10.1 The Association shall provide the employer with a schedule setting out the Association's fortnightly membership fees payable by members of the Association in accordance with the Association's rules.
- 10.2 The Association shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of Association fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.
- 10.3 Subject to 10.1 and 10.2 above, the employer shall deduct Association fortnightly membership fees from the pay of any employee who is a member of the Association in accordance with the Association's rules, provided that the employee has authorised the employer to make such deductions.
- 10.4 Monies so deducted from employees' pay will be forwarded regularly to the Association together with all necessary information to enable the Association to reconcile and credit subscriptions to employees' Association membership accounts.
- 10.5 Unless other arrangements are agreed to by the Department and the Association, all Association membership fees shall be deducted on a fortnightly basis.
- 10.6 Where an employee has already authorised the deduction of Association membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

## **11. Entitlements for Short Term Temporary Employees**

- 11.1 Other than as described under subclauses 11.3, 11.4, 11.5 and 11.6 of this clause, short term temporary employees are not entitled to any other paid or unpaid leave.
- 11.2 As set out in subclause 5.3, the short term temporary rates of pay incorporate a payment in lieu of a recreation leave entitlement.
- 11.3 Short term temporary employees will be entitled to Long Service Leave in accordance with the provisions of the *Long Service Leave Act 1955*.
- 11.4 Short term temporary employees will be entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, Section 54 Entitlement to Unpaid Parental leave, *Industrial Relations Act 1996*, if they meet the definition of a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- 11.4.1 The Secretary must not fail to re-engage a short term temporary employee who meets the definition of a regular casual employee because:
- (i) the employee or employee's spouse is pregnant; or
  - (ii) the employee is or has been immediately absent on parental leave.

The rights of the Secretary in relation to engagement and re-engagement of short term temporary employees are not affected, other than in accordance with this clause.

## 11.5 Personal Carers entitlement for short term temporary employees

11.5.1 Short term temporary employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in 11.8.2 of the award who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in 11.5.4, and the notice requirements set out in 11.5.5.

11.5.2 The Secretary and the short term temporary employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The short term temporary employee is not entitled to any payment for the period of non-attendance.

11.5.3 The Secretary must not fail to re-engage a short term temporary employee because the employee accessed the entitlements provided for in this clause. The rights of the Secretary to engage or not to engage a short term temporary employee are otherwise not affected.

11.5.4 The short term temporary employee shall, if required,

- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (ii) establish by production of documentation acceptable to the Secretary or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a short term temporary employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

11.5.5 The short term temporary employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Secretary of their inability to attend for duty. If it is not reasonably practicable to inform the Secretary during the ordinary hours of the first day or shift of such absence, the employee will inform the Secretary within 24 hours of the absence.

## 11.6 Bereavement entitlements for short term temporary employees

11.6.1 Short term temporary employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the Secretary).

11.6.2 The Secretary and the short term temporary employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The short term temporary employee is not entitled to any payment for the period of non-attendance.

11.6.3 The Secretary must not fail to re-engage a short term temporary employee because the employee accessed the entitlements provided for in this clause. The rights of the Secretary to engage or not engage a short term temporary employee are otherwise not affected.

11.6.4 The short term temporary employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Secretary of their inability to attend for duty. If it is not reasonably practicable to inform the Secretary during the ordinary hours of the first day or shift of such absence, the employee will inform the Secretary within 24 hours of the absence.

11.7 The entitlement in accordance with this clause is subject to:

11.7.1 the employee being responsible for the care and support of the person concerned; and

11.7.2 the person concerned being:

- (i) a spouse of the employee; or
- (ii) a de facto spouse, being a person of the opposite sex to the employee who lives with the employee as her husband or his wife on a bona fide domestic basis although not legally married to that employee; or
- (iii) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or of the spouse or of the de facto spouse of the employee; or
- (iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (v) a relative of the employee who is a member of the same household where, for the purposes of this definition:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

"household" means a family group living in the same domestic dwelling.

## **12. No Further Claims**

12.1 The no extra claims clause (clause 8) contained in the Crown Employees (Public Sector – Salaries 2018) Award shall apply to employees covered by this award.

## **13. Area, Incidence and Duration**

13.1 This award shall apply to all General Assistants as defined in clause 3, Definitions above.

13.2 This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees (General Assistants in Schools - Department of Education) Award published 15 January 2016 (378 I.G. 1073), as varied.

13.2 The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 18 February 2019.

13.3 This award remains in force until varied or rescinded, the period for which it was made having already expired.

13.4 Changes made to this award subsequent to it first being published on 15 January 2016 (378 I.G. 1073) have been incorporated into this award as part of the review.

**PART B**

**MONETARY RATES**

**Table 1 - Rates of Pay**

Effective from the beginning of the first pay period to commence on or after 1.7.18

General Assistant		\$
<b>Full-time Ongoing</b>		
Junior	On employment	34,311
	After 12 months or at age 20	44,113
Adult	1st year	49,016
	2nd year	49,431
	3rd year	50,367
	4th year	51,522
	5th year	52,456
<b>Part-time (Up to 35.5 HPW) Ongoing</b>		
Junior	On employment	19.03
	After 12 months or at age 20	24.47
Adult		27.95
<b>Full-time (38 HPW) Temporary</b>		
<b>Unloaded</b>		
Junior	On employment	17.32
	After 12 months or at age 20	22.25
Adult		24.70
<b>Loaded</b>		
Junior	On employment	18.76
	After 12 months or at age 20	24.08
Adult		26.81
<b>Part-time (Up to 35.5 HPW) Temporary</b>		
<b>Unloaded</b>		
Junior	On employment	19.03
	After 12 months or at age 20	24.47
Adult		27.95
<b>Loaded</b>		
Junior	On employment	20.63
	After 12 months or at age 20	26.52
Adult		30.26

P. M. KITE, *Chief Commissioner*

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# RESTAURANTS, &c., EMPLOYEES (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(Case No. 289530 of 2018)

Before Chief Commissioner Kite

13 February 2019

## REVIEWED AWARD

### PART A

#### 1. Arrangement

Clause No.	Subject Matter
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#### PART A

- |      |   |
|------|---|
| 1.   | Arrangement   |
| 2.   | Definitions   |
| 3.   | Classification Structure  |
| 4.   | Terms of Employment   |
| 5.   | Hours   |
| 6.   | Make-Up Time  |
| 7.   | Meal Break/Rest Pause   |
| 8.   | Casual Employees  |
| 9.   | Wages   |
| 10.  | Mixed Functions   |
| 11.  | Overtime and Penalty Rates  |
| 12.  | Public Holidays   |
| 13.  | Juniors   |
| 14.  | Apprentices   |
| 15.  | Payment of Wages  |
| 16.  | Working Together  |
| 17.  | Annual Leave  |
| 18.  | Parental Leave  |
| 19.  | Sick Leave  |
| 20.  | Personal/Carers' Leave  |
| 21.  | Bereavement Leave   |
| 22A. | Secure Employment (Occupational Health and Safety)                      |
| 22.  | Work Clothes and Safety Equipment                                       |
| 23.  | Laundry Allowance   |
| 24.  | Jury Service  |
| 25.  | Blood Donors  |
| 26.  | Redundancy and Technological Change                                     |
| 27.  | Supported Wage  |
| 28.  | Traineeships  |
| 29.  | Grievance Handling and Dispute Procedure                                |
| 30.  | Exhibition of Award in Workplace  |
| 31.  | Employee Representative and Union Business                              |
| 32.  | Anti-Discrimination   |
| 33.  | Area, Incidence and Duration  |
| 31A. | Operation of the Sydney Olympic and Paralympic Games 2000 (State) Award |

## PART B

### MONETARY RATES

Table 1 - Wage Rates

Table 2 - Other Rates and Allowances

### 2. Definitions

- 2.1 "Casual Employee" means an employee who is engaged as such and paid as such.
- 2.2 "Establishment" includes more than one restaurant if they are operated by the same employer and are located in the same structure or place.
- 2.3 "Employee" means an employee whose conditions of employment are regulated by this award.
- 2.4 "Full-time employee" means a permanent employee who is engaged to work an average of 38 ordinary hours in accordance with this award.
- 2.5 "Part-time employee" means a permanent employee who is engaged to work not less than 9 or 15 hours per week (as set out in clause 5.7), nor more than 32 ordinary hours per week.
- 2.6 "Restaurant" means any building, stand, stall, tent, vehicle or boat or any other structure or place on or from which food is sold or served principally for consumption at that structure or place or adjacent to it.
- 2.7 School based apprentice is an employee who is undertaking an apprenticeship under a training contract while also enrolled in the Higher School Certificate. The school based apprenticeship may commence upon the completion of the Year 10 School Certificate exams. Such school based apprenticeships are undertaken at a minimum Certificate III Australian Qualifications Framework (AQF) qualification level as specified in the relevant Vocational Training Order pursuant to the *Apprenticeship and Traineeship Act 2001*.

### 3. Classification Structure

- 3.1 The following classification structure shall apply:
- 3.1.1 GRADE 1 is an employee who is:
- 3.1.1.1 undertaking up to three months on-the-job training so as to enable the employee to be employed as a Grade 2 employee; or
- 3.1.1.2 providing general assistance to employees of a higher grade, not including cooking or direct service to customers, and is primarily engaged in one or more of the following:
- Cleaning, tidying and setting up of kitchen, food preparation and customer services areas, including the cleaning of equipment, crockery and general utensils;
- Assembly and preparation of ingredients for cooking;
- Handling pantry items and linen;
- Setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses.
- General cleaning, gardening and labouring tasks.

3.1.2 GRADE 2 is an employee who is primarily engaged in one or more of the following:

"Heating pre prepared meals and/or preparing simple food items, such as sandwiches, salads and toasted foodstuffs.

Undertaking general waiting duties of both food and/or beverages, including cleaning of restaurant equipment, preparing tables and sideboards, clearing tables, taking customer orders at a table.

Taking orders by telephone or whilst stationed at a fixed ordered point, serving food and/or beverages to tables.

Service from a snack bar, buffet or meal counter.

Receipt of monies, giving change, operation of cash registers, and use of electronic swipe input devices.

Greeting and seating guests under general supervision.

Supplying, dispensing or mixing of liquor, including cleaning of bar areas and equipment, preparing the bar for service, taking orders and serving drinks and assisting in the cellar.

Receiving, storing and distributing goods not involving the extensive use of documents and records.

Attending a cloakroom.

Laundry and specialised cleaning duties involving the use of specialised cleaning equipment and/or chemicals.

Allocated building, maintenance and/or gardening duties."

3.1.3 GRADE 3 is an employee who is primarily engaged in one or more of the following:

Preparing and cooking a limited range of basic food items such as breakfasts, grills and snacks.

Waiting duties of food and/or beverages, including providing assistance in choosing the meal and wines by providing detailed information when required of each item listed on menus, advising customers on the appropriate choices of wine and providing information on wine types and all items on the wine list, taking customer orders, serving food and/or beverages, supervises or undertakes the clearing of tables after and during meals, receipt of monies, taking reservations, greeting and seating guests.

Preparing and serving a range of drinks, including blended and other cocktails.

Receiving, storing and distributing goods not involving the control of the store or cellar.

Security work requiring the holding of an appropriate licence.

Assisting in the instruction on a one to one basis of employees of a lower grade.

3.1.4 GRADE 4 is an employee who is primarily engaged in one or more of the following:

Undertaking general cooking duties, including a la carte cookery, baking, pastry cooking or butchery.

Full control of a cellar and/or store, including stock control and ordering.

Designing, preparing and serving a range of sophisticated cocktails and other drinks, or duties performed by a head bar person.



Performing specialist waiting duties in a fine dining or otherwise complex restaurant environment, such as those performed by a head waiter.

Performing specialist wine waiting and ordering duties.

Providing basic supervision and instruction to employees of a lower grade.

- 3.1.5 GRADE 5 is an employee who has completed an apprenticeship or who has passed the appropriate trade test and who is engaged in any of the following:

Undertaking cooking, baking, pastry cooking or butchering duties.

Undertaking general and specialised waiting duties in a restaurant.

Other trade work appropriate to an employee's trade.

The employer may require the employee to provide proof of any previous service or a trade certificate at the time of commencing employment. Where it is established that the employee failed to disclose that information when required to do so such service or qualification shall not be taken into account when assessing any later claim on the employer.

- 3.1.6 GRADE 6 is an employee who is engaged in supervising, training and co-ordinating staff and who is responsible for the maintenance of service and operational standards. Duties may include preparation of operational reports, development of stock control and security procedures, menu planning, staff rostering and staff recruitment and induction, but an employee at this grade shall not have the right to engage or terminate the services of employees.

- 3.1.7 GRADE 7 is an employee who has completed an apprenticeship or has passed the appropriate trade test in cookery, butchery, baking or pastry cooking and has completed appropriate additional training and who is engaged in supervising other trade qualified cooks.

- 3.2 In the event of uncertainty or any dispute arising over classifying employee(s) within the classification structure, the parties shall refer to the training guidelines issued by Tourism Training Australia. These guidelines indicate the relevant training modules, and in more detail, the required competencies that relate to each grade.

- 3.3 If an employee has been assessed as having achieved the competency level by either:

completing a course recognised by the Australian Hospitality Review Panel; or ACCESS skills assessment scheme

and is performing the duties/functions referred to within the appropriate grade then the employee shall be paid at that grade.

- 3.4 The above grades cover all employees working in a restaurant, but not managerial staff whose principal functions are not described in the grade descriptions. Where an employee's duties are not mentioned within these classifications, the employee shall be classified in a grade which, by reference to the grading descriptors, most closely reflects the skills and responsibilities of the job.

#### **4. Terms of Employment**

- 4.1 Employees shall be engaged on a full-time, part-time or casual basis. The basis of the engagement will not be changed without giving the employee 28 day's notice of the change.

- 4.2 Upon engagement an employee shall be informed of:

4.2.1 Whether the employee is to be engaged on a full time, part time or casual basis.

4.2.2 The employee's classification, job description and the duties to be performed.

- 4.2.3 The working times including when meal breaks and rest breaks will be taken.
- 4.2.4 Who will supervise the employee.
- 4.2.5 The training the employee will receive.
- 4.2.6 The career path the employee can expect.
- 4.2.7 Whether the employee start work on probation (not applicable to apprentices or trainees).
- 4.3 Probationary Employment:
  - 4.3.1 Employees engaged as full-time or part-time employees without any previous service with the employer may be employed on probation for the first 14 days of employment, during which period the employment may be terminated with one day's notice.
  - 4.3.2 The work of employees on probation will be assessed by the employer, and, the employee will be told no later than 14 days after the employee has started whether the employee will continue in employment after the probation period.
- 4.4 Leaving Employment.
  - 4.4.1 An employer may terminate the employment of a full-time or part-time employee by giving the amount of notice set out below for the employee's period of continuous employment or by paying the employee the monies the employee would otherwise have earned during this period:
 

less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks
  - 4.4.2 An employer will not terminate an employee's employment unless the employee has been employed with the employer for less than one month or the employer has told the employee that the employer is unhappy with the employee's employment and the employee has not improved after being given a chance to do so.
  - 4.4.3 Nothing in this clause shall affect the right of the employer to dismiss an employee without notice or without paying any monies instead of notice if the employee has acted dishonestly in employment, the employee has unreasonably failed to carry out a direction properly given to them by a person in charge, or the employee has otherwise behaved so badly as to justify being dismissed without notice.
  - 4.4.4 A full-time or part-time employee when leaving employment must give the employer at least one week's notice or the employer may deduct from wages owing any part of the notice period not worked. An employer shall not terminate an employee's employment only because the employee has given notice.
  - 4.4.5 On termination of employment for any reason the employer will give a full or part-time employee a certificate of service stating how long the employee had worked for the employer and what job the employee did.
- 4.5 Employees shall perform such work as the employer shall, from time to time, reasonably require (including working reasonable overtime) provided the employee is competent to do the work or, if not, the employer is prepared to train the employee to do the work.
- 4.6 Where an employee is detained at work after the normal finishing time and it is then too late to travel by the employee's usual transport to go home, the employer shall either arrange transport or repay the employee's taxi fare.

- 4.7 Employees shall not be asked to pay any cash shortages unless the employee deliberately failed to charge the customer the full amount or deliberately failed to collect the amount payable.

## **5. Hours**

- 5.1 Full time employees will work not more than an average of 38 ordinary hours per week in accordance with this award. These ordinary hours may not be averaged over more than a 4 week period (except if the employee is a seasonal employee).
- 5.2 Full-time and part-time employees will work not more than 5 days per week or, by agreement between the employer and the employee, not more than 20 days in a 4 week period.
- 5.3 Rosters:
- 5.3.1 The employer shall display a roster in a place accessible to all employees. The roster shall set out the starting, finishing and meal times for full-time and part-time employees for each week. The roster shall be posted at least seven days before its commencement.
- 5.3.2 Subject to other clauses of this award, employees must work at such times and on such days as the employer needs them. An employer cannot change the roster of a full-time or part-time employee without giving the employee 7 days' notice except in an emergency beyond the employer's control. The employer will discuss any change with the employee and try to take into account the employee's family and personal needs.
- 5.4 The ordinary daily working hours of full-time and part-time employees will not be more than 10 hours in any one shift not including the time taken for meal breaks. By agreement between the employer and the employee, an employee, other than an employee under 18 years old, may work up to 12 ordinary hours including the time taken for a paid meal break, without the payment of a penalty under clause 11.1.
- 5.5 Full-time and part-time employees will be given 10 clear hours off between finishing work on one shift and starting work on the next shift or paid double the employee's ordinary rate of pay for all time worked until the employee has had ten clear hours off.
- 5.6 If a full-time or part-time employee works less than 3 hours on a shift the employee will be paid for no less than 3 hours worked.
- 5.7 A part time employee's ordinary hours shall be:
- 5.7.1 where there are less than 15 full-time and part-time employees employed at the establishment, not less than 9 hours per week and not more than 128 hours per four week period.
- 5.7.2 where there are 15 or more full-time and part-time employees employed at the establishment, not less than 15 hours per week and not more than 128 hours per four week period.
- 5.8 If a part-time employee is not given at least 7 days' notice of a change of rostered hours the employee will be paid an extra 10% for the whole of the period of any affected shift(s) (and any overtime or other penalty payments will be calculated on this extra 10%) except where the change of roster has been requested by the employee.
- 5.9 Subject to clause 11, Overtime and Penalty Payments, if a part-time employee is asked to work extra hours beyond the employee's rostered hours, the employer will pay the employee for the employee's work during that time at the rate that would be paid to a casual employee. In addition to all other payments, the rate shall include payment required by the Annual Holidays Act on termination of employment. Hours worked under the provisions of this subclause shall not otherwise be taken into account in determining a person's entitlement to annual leave payments whether on termination of employment or otherwise.

#### 5.10 Seasonal Workers:

5.10.1 If the amount of the employer's business changes substantially during the year because of seasonal factors, the employee and the employer can agree to treat a full-time or part-time employee as a seasonal employee. If so, the employer will pay the employee by equal weekly or fortnightly payments notwithstanding the number of hours the employee works in any one day provided that averaged over any period of 52 weeks the employer will not have paid the employee less than the monies the employee would be entitled to receive throughout that period under this award.

5.10.2 If an employee is terminated by the employer, except in circumstances allowing the employer to dismiss them without notice or by the employee for pressing social or domestic or personal reasons the employer will pay the employee any higher amount which would have been earned if the employee had not become a seasonal worker under this clause, calculated from the last anniversary of the date the employee commenced working for the employer as a full-time or part-time employee.

5.11 Where an employee works a broken shift the employer will pay the employee for not less than 8 hours worked on any one shift. The shift will be spread over not more than 2 periods within a span of not more than 14 hours inclusive of meal breaks. For each broken shift worked, an employee shall be paid an allowance of one half of the hourly ordinary rate of pay payable from time to time to employees at the level 2 work classification.

### **6. Make-Up Time**

6.1 An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.

6.2 An employee on a regular night shift may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

### **7. Meal Break/Rest Pause**

7.1 An employee will be given a meal break of between 30 minutes and 1 hour after working not more than 5 hours. The first meal break taken on any shift shall be unpaid. The second meal break will be a paid break, and the employee will be paid a meal allowance for the second break the amount of which is set out in Item 1 of Table 2 of Part B or given a meal. If because (and only because) the work the employee is doing means that the employee cannot take a meal break by the end of 5 hours, the employer can ask the employee to work up to a further hour before the employee takes the break, and that break will become a paid break.

7.2 In addition to the employee's meal break(s), an employee will be given a paid rest pause of ten minutes once during each work period of 5 hours.

### **8. Casual Employees**

8.1 Casual employees will not be entitled to annual leave loading or compassionate or bereavement leave or to payment for jury service or as a blood donor and clauses 5, 6, 18, 19, 20, 21, 25, 26, 27 and 29 do not apply to them.

8.2 The ordinary daily working hours of casual employees will not be more than 10 hours in any one shift not including the time taken for meal breaks. By agreement between the employer and the employee, hours per shift may be not more than 12 including the time taken for meal breaks (employees under 18 years old will not be required to work more than 10 hours in any one shift), without the payment of a penalty under clause 11. 1.

8.3 If a casual employee works less than 3 hours on a shift the employee will be paid for no less than 3 hours worked.

8.4 Casual employees will not be entitled to any public holiday penalty unless the employee works on a public holiday.

8.5 Secure Employment

(a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

(b) Casual Conversion

(i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of twelve months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.

(ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of twelve months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.

(iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach-agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

(iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.

(v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.

(vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:

- (1) whether the employee will convert to full-time or part-time employment; and
- (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award pursuant to a part time work

agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

(vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

(viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

(c) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

(d) This clause has no application in respect of organisations which are properly registered as Group Training

Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

(e) Exemption

The abovementioned casual conversion clause will not apply to persons who:

(a) perform work pursuant to the *Technical and Further Education Commission Act 1990*.

## 9. Wages

### 9.1 Full-Time Employees:

9.1.1 Adult full-time employees shall be paid the appropriate minimum weekly wage rate for the employees grade as set out in Table 1 of Part B of this award.

9.1.2 Wage rates will be calculated to the nearest 10 cents.

### 9.2 Part-Time Employees:

9.2.1 Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by thirty-eight.

9.2.2 Terms and conditions of this award applicable to full-time employees shall apply to part-time employees on a pro-rata basis.

9.3 Casual Employees:

9.3.1 Casual employees will be paid for each hour worked 1/38th of the weekly rate for the grade which applies to the employee plus 20%. All overtime and other penalty payments will be calculated on this rate.

9.3.2 Casual employees are also entitled to be paid 1/12th of the employees ordinary pay, as defined in the *Annual Holidays Act 1944* as amended, to pay for the employees annual holiday entitlement.

9.4 Rates of Pay for school based apprentice

9.4.1 The hourly rates for full time apprentices as set out in this Award shall apply to school based apprentices for total hours worked including time deemed to be spent in off-the job training.

9.4.2 For the purposes of subclause 9.4.1 of this clause, where a school based apprentice is a full time school student, the time spent in off-the-job training for which the school based apprentice is paid is deemed to be 25 per cent of the actual hours worked on-the-job each week. The wages paid for training time may be averaged over the school term or year.

9.4.3 Where this Award specifies a weekly rate for full time apprentices the hourly rate shall be calculated by dividing the applicable weekly rate by 38.

**10. Mixed Functions**

An employee who is required by the employer to carry out work on a temporary basis that carries a higher rate of pay than the employee's ordinary classification, shall be paid the higher rate while doing that work. This clause shall not apply to work performed under supervision for training purposes.

**11. Overtime and Penalty Rates**

11.1 If the employer requires an employee to work:

11.1.1 overtime being for full time employees more than 38 hours per week or the employer may average these hours over up to a 4 week period (except if the employee is a seasonal employee),

11.1.2 overtime being for part time employees more than 128 hours in a 4 week period (except if the employee is a seasonal employee),

11.1.3 overtime being more than the ordinary daily working hours set out in subclause 5.4,

11.1.4 on a Saturday (except if the employee works a regular night shift referred to in clause 11.2),

11.1.5 on a Sunday, or

11.1.6 on a public holiday

the employer will pay the employee extra wages (called a penalty) being:

in the case of 11.1.1 and 11.1.2 time and one half of the ordinary rate of pay for the first 2 hours worked and after that double time,

in the case of 11.1.3 double the ordinary rate of pay for an overtime worked,

in the case of Saturday work time and a quarter of the ordinary rate of pay for all time worked,

in the case of Sunday work time and a half of the ordinary rate of pay for all time worked, and

in the case of public holidays work two and a half times the ordinary rate of pay for all time worked.

11.2 Where an employee works ordinary hours between midnight and 6.00am, they are to be paid an extra 30% penalty for all time worked during these hours. Notwithstanding the foregoing, if the employee works more than half of a regular shift on any day between midnight and 6.00am, the employer will pay the employee for all time worked on that shift an extra 30% penalty and clauses 11.1.3 and 11.1.4 will not apply to the employee. The above penalties are not payable for work on Sundays and public holidays, or for overtime worked under clause 11. 1.

11.3 Time off in lieu of payment for overtime:

The employee may, with the consent of the employer take time off within 12 months of becoming entitled to these payments instead of being paid with the time off being calculated at the rate of one hour off for every hour worked. Time off not taken within 12 months will be paid out at the overtime rates applying at the time it was earned.

## **12. Public Holidays**

12.1. Public holidays are New Year's Day, Good Friday, Easter Saturday, Easter Monday, Easter Sunday Christmas Day, Boxing Day and the days on which Australia Day, Anzac Day, Queen's Birthday and Labour Day are observed as public holidays.

12.1. Where a substitute day is proclaimed or gazetted to replace any of the above days, the substituted day shall be the public holiday in lieu of the original day.

12.2 If an employee works on a public holiday, the employee shall be paid at the rate of double time and one-half for all time worked.

12.3 If an employee, other than a casual employee, does not work and would normally be rostered to work on a public holiday, the employee will be paid the employees normal ordinary wages for that week.

12.4 If an employee, other than a casual employee, is not normally rostered to work regularly on the same days each week and the employee is not rostered to work on a public holiday, the employer will either pay the employee an additional day's wages, or add a day to the employees annual holiday's leave, or give the employee another day off on ordinary pay within 28 days after or within one week before that public holiday.

12.5 An employer may not change an employee's normal rosters to avoid paying the employee for a public holiday.

12.6 If an employee, other than a casual employee, is absent from work on the working day before or the working day after a public holiday without reasonable excuse, the employee shall not be entitled to payment for such a holiday.

12.7 An employee, other than a casual employee, will be given an additional day as a public holiday. The employee will become entitled to this on the anniversary of each continuous year of employment with an employer. That day can be taken on a day which is convenient to the employee and employer as a public holiday and is instead of a union picnic day.

## **13. Juniors**

The minimum weekly wage rate for a junior employee shall be calculated by applying the following percentages of the appropriate adult rate for the classification in which the employee is employed:



Age	%
17 years of age and under	62
18 years of age	70
19 years of age	80
20 years of age	90

#### 14. Apprentices

- 14.1 The minimum weekly wage rate for apprentices shall be calculated by applying the following percentages to the total rate of a Grade 5 employee:

% of Grade 5	
Four year apprentice cooks	
1st year (or equivalent training stage)	46
2nd year (or equivalent training stage)	54
3rd year (or equivalent training stage)	67
4th year (or equivalent training stage)	80

"Equivalent training stage" recognises that an employee could receive credit for training undertaken prior to the commencement of the employees apprenticeship or have the ability to accelerate the period of the employees apprenticeship.

- 14.2 Tool Allowance

An apprentice in cooking who provides the employees own tools shall be paid an allowance set out in Item 2 of Table 2 of Part B.

- 14.3 Progression through Wage Structure

- 14.3.1 School based apprentices progress through the wage scale at the rate of 12 months' progression for each two years of employment as an apprentice.
- 14.3.2 The rates of pay are based on a standard apprenticeship of four years. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school based apprentice undertaking the applicable apprenticeship.

- 14.4 Conversion from a school based to a full time apprenticeship

Where an apprentice converts from a school based to a full-time apprenticeship, all time spent as a full-time apprentice counts for the purpose of progression through the wage scale set out in this Award. This progression applies in addition to the progression achieved as a school based apprentice.

- 14.5 Conditions of Employment

Except as provided by this award, school based apprentices are entitled to pro rata entitlements of all other conditions of employment contained in this Award.

- 14.6 Disputes and Disciplinary Matters

The provisions of the *Apprenticeship and Traineeship Act 2001* shall apply for the resolution of disputes and disciplinary matters.

#### 15. Payment of Wages

- 15.1 All wages will be paid weekly or fortnightly by cheque or electronic funds transfer into up to two accounts nominated by the employee from time to time or by cash as the employer may choose.

- 15.2 Casual employees will be paid at the end of each continuous pay period that they work (but no longer than weekly) either by cash or as the employer may choose.
- 15.3 Wages will be paid within 2 business days of the end of each pay period.
- 15.4 All wages will be calculated in 10 minute intervals for time worked of less than an hour.

## **16. Working Together**

- 16.1 The parties to this award recognise the need for employers and employees to work closely to make the employers organisation a better place to work and to make business better. Employers shall consult with employees either individually, within working groups, or altogether.
- 16.2 Individually:
- Employers shall meet with employees from time to time and at least twice a year to discuss matters such as the employees' progress, job performance, problems, training programme and career prospects.
- 16.3 As work groups:
- Employers and employees shall hold meetings from time to time and at least twice a year to discuss how the business is doing, what changes can be made to increase business and work efficiency, any concerns either party has about work or work related matters and any proposed changes that may lead to employees being made redundant.
- 16.4 An employer shall not harm an employee in employment because an employee has expressed an opinion.

## **17. Annual Leave**

(See the *Annual Holidays Act*)

- 17.1 After an employee has worked for the employees employer for 12 consecutive months the employer will pay the employee a loading of 17 ½% on the employees annual holiday pay each time the employee take holidays or on termination of employment.
- 17.2 An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
- 17.3 An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- 17.4 An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

## **18. Parental Leave**

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
- (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

(3) Right to request

- (a) An employee entitled to parental leave may request the employer to allow the employee:
- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
  - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
  - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;
- to assist the employee in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

## 19. Sick Leave

- 19.1 An employee, other than a casual employee, who has worked for the employer for more than one month shall be entitled to up to 38 hours off in the first year of employment and 60.8 hours off in each of the second and subsequent years of employment without loss of pay if the employee is unable to attend work because the employee is ill or has been injured.

- 19.2 An employee employed by the employer on 15 February, 1993 and who is still employed by that employer may have rights to cash in some or all of any sick leave entitlement accumulated to that date when the employee's employment terminates, in accordance with the *Industrial Relations Act 1996*.
- 19.3 An employee must give the employer as much notice as possible if the employee is to take sick leave, and give the employer any reasonable proof that the employer may ask.
- 19.4 Sick Leave accumulates from year to year for three years, that is, sick leave not taken in each year of service will be available to the employee for a period of three years from the end of each such year.

## **20. Personal/Carer's Leave**

### 20.1 Use of Sick Leave

20.1.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 20.1.3.2 who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 19, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

20.1.2 The employee shall, if required,

- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

20.1.3 The entitlement to use sick leave in accordance with this subclause is subject to:

20.1.3.1 the employee being responsible for the care and support of the person concerned;  
and

20.1.3.2 the person concerned being:

20.1.3.2.1 a spouse of the employee; or

20.1.3.2.2 a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person or;

20.1.3.2.3 a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or

20.1.3.2.4 a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or

20.1.3.2.5 a relative of the employee who is a member of the same household, where for the purposes of this paragraph:

20.1.3.2.5.1 "relative" means a person related by blood, marriage or affinity;

20.1.3.2.5.2 "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

20.1.3.2.5.3 "household" means a family group living in the same domestic dwelling.

20.1.4 An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 29, Grievance Handling and Disputes Procedure, should be followed.

20.2 Unpaid Leave for Family Purpose - An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 20.1.3.2 above who is ill or who requires care due to an unexpected emergency.

20.3 Personal Carers Entitlement for casual employees -

(1) Subject to the evidentiary and notice requirements in 20.1.2 and 20.1.4 casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 20.1.3.2 of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

(2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

(3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## **21. Bereavement Leave**

21.1 An employee, other than a casual employee, shall be entitled to up to three days bereavement leave in each year of employment without deduction of pay on the death of a person prescribed in 21.3 below.

21.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.

21.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of Personal/Carer's Leave in 20.1.3, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.

21.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has already been granted other leave.

21.5 Bereavement leave may be taken in conjunction with other leave available under subclauses 20.2, 20.1.3, 20.1.4 of clause 20, Personal Carer's Leave. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

## 21.6 Bereavement entitlements for casual employees

- 21.6.1 Subject to the evidentiary and notice requirements in 21.2 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 20.1.3.2 of clause 20, Personal/Carer's Leave.
- 21.6.2 The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- 21.6.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

## **22. Work Clothes and Safety Equipment**

- 22.1 The employer will provide an employee with all necessary safety equipment and clothing. The employee must use/wear these items at all times when necessary and must take good care of them.
- 22.2 The employer will replace all broken or lost items but the employer can ask the employee to pay the employer back if they are lost or broken because of carelessness of the employee. The onus of proving this will be on the employer.

### **22A. Secure Employment (Occupational Health and Safety)**

#### Occupational Health and Safety

- (i) For the purposes of this subclause, the following definitions shall apply:
- (a) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
- (b) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Work Health and Safety Act 2011* or the *Workplace Injury Management and Workers Compensation Act 1998*.

### **23. Laundry Allowance**

- 23.1 The employer will launder an employee's special clothing or pay the employee a laundry allowance the amount of which is set out in Item 3 of Table 2 of Part B
- 23.2 Special clothes are those which the employer asks the employee to wear as a uniform and which the employee could not use for everyday wear or, if the employee is a chef or cook, the employees uniform.

### **24. Jury Service**

- 24.1 If an employee, other than a casual employee, is required to attend for jury service the employer will pay the employee the difference between what the employee would have earned while working for the employer and the amount of jury pay received by the employee.
- 24.2 The employee shall give the employer proof that the employee was on jury service and the amount received.
- 24.3 The employee must tell the employer as soon as the employee knows that the employee is required for jury service.

### **25. Blood Donors**

If an employee wishes to donate blood, the employee may do so during working hours without loss of pay provided that:

- 25.1 The time and day selected meet with the employer's convenience and does not unduly disrupt the employers operations.
- 25.2 The employee is able to donate blood at a place within 5 walking minutes of the restaurant.
- 25.3 The employee must provide the employer with proof that the employee donated blood.
- 25.4 This entitlement is limited to a maximum of 2 hours on no more than 3 occasions in any one year of employment.

### **26. Redundancy and Technological Change**

- 26.1 Application
- 26.1.1 This Clause shall apply in respect to full time and part time persons employed in the classifications specified by Clause 3, Classification Structure.
- 26.1.2 In respect to employers who employ 15 or more employees immediately prior to the termination of employment of employees, in the terms of Clause 26.5.
- 26.1.3 Notwithstanding anything contained elsewhere in this Clause, this Clause shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.
- 26.1.4 Notwithstanding anything contained elsewhere in this Clause, this Clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a

specified task or tasks, or where employment is terminated due to the ordinary and customary turnover of labour.

## 26.2 Introduction of Change - Employer's Duty to Notify

26.2.1 Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the Union to which they belong.

26.2.2 "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's 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 transfer of employees to other work or locations and the restructuring of jobs.

Provided that where this award makes provision for alteration, it shall be deemed not to have significant effect.

## 26.3 Employer's Duty to Discuss Change

26.3.1 The employer shall discuss with the employees affected and the Union to which they belong, inter alia, the introduction of the changes referred to in subclause 26.2 above, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the Union in relation to the changes:

26.3.2 The discussions shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause 26.2 of this Clause.

26.3.3 For the purpose of such discussions, the employer shall provide to the employees concerned and the Union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

## 26.4 Redundancy - Discussions Before Terminations

26.4.1 Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to subclause 26.2.1, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the Union to which they belong.

26.4.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subclause 26.4.1 and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.

26.4.3 For the purpose of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the Union to which they belong all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.



26.5 Termination of Employment - Notice for Changes in Production, Programme, Organisation or Structure

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from production, program, organisation or structure, in accordance with subclause 26.2.1.

26.5.1 In order to terminate the employment of an employee, the employer shall give to the employee the following notice:

Period of Continuous Service	Period of Notice
Less than one year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

26.5.2 In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional week's notice.

26.5.3 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

26.6 Notice for Technological Change

This subclause sets out the notice provisions to be applied to termination by the employer for reasons arising from technology in accordance with subclause 26.2.1 of this award:

26.6.1 In order to terminate the employment of an employee, the employer shall give to the employee three months' notice of termination.

26.6.2 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment shall be terminated by part of the period of notice specified and part payment in lieu thereof.

26.6.3 The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.

26.7 Time Off During the Notice Period

26.7.1 During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purpose of seeking other employment.

26.7.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent.

26.8 Employee Leaving During the Notice Period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this Clause to which the employee would have been entitled had the employee remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

## 26.9 Statement of Employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

## 26.10 Notice to Centrelink

Where a decision has been made to terminate employees, the employer shall notify Centrelink thereof as soon as possible, giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

## 26.11 Centrelink Employment Separation Certificate

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an Employment Separation Certificate in the form required by Centrelink.

## 26.12 Transfer to Lower-Paid Duties

Where an employee is transferred to lower-paid duties for reasons set out in subclause 26.2, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary-time rate of pay and the new ordinary-time rates for the number of weeks of notice still owing.

## 26.13 Severance Pay

26.13.1 Where an employee is to be terminated pursuant to subclause 26.5, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the employee the following severance pay in respect of a continuous period of service.

If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Under 45 years of age entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

26.13.2 Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	Under 45 years of age entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

26.13.3 "Week's pay" means - the all-purpose rate for the employee concerned at the date of termination and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances paid pursuant to this award.

#### 26.14 Incapacity to Pay

Subject to an application by the employer and further order of the Industrial Relations Commission of New South Wales, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 26.13 above.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect of paying the amount of severance pay in subclause 26.13 of this Clause will have on the employer.

#### 26.15 Alternative Employment

Subject to an application by the employer and further order of the Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 26.13 above if the employer obtains acceptable alternative employment for an employee.

### **27. Supported Wage**

#### 27.1 Definitions

27.1.1 "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity with the Supported Wage System.

27.1.2 "Assessment Instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

27.1.3 "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act* 1991, as amended from time to time or any successor to that scheme.

27.1.4 "Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "Supported Wage System: Guidelines and Assessment Process.

27.1.5 "Commonwealth Government Authority" means the Commonwealth Government Department whose responsibility includes the administration of the Supported Wage System.

#### 27.2 Application

27.2.1 This clause applies only to employees who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged, because of the effects of a disability on the employees productive capacity and who meet the impairment criteria for the receipt of a Disability Support Pension.

27.2.2 This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of Workers' Compensation legislation.

27.2.3 This clause does not apply to employers in respect of the employers facility, programme, undertaking service or the like which receives funding under the *Disability Services Act* 1993 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a Disability Support Pension, except

with respect to an organisation which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

### 27.3 Wages

27.3.1 Following the trial period prescribed in clause 27.4.5, employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by the relevant parent award for the class of work which the person is performing according to the following schedule:

Assessed Capacity Rate	% of Relevant Parent Award
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

Notation: Where a person's assessed capacity is 10% the person shall receive a high degree of assistance and support.

27.3.2 Notwithstanding anything otherwise contained in this award, the weekly ordinary time rate of pay for employees employed under the terms of this clause shall not be less than the amounts as are fixed from time to time by a competent Commonwealth Government Authority for the purposes of the Supported Wage System.

27.3.3 The weekly wage shall be the rate of pay for all purposes.

### 27.4 Employment Conditions

27.4.1 For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

27.4.1.1 The employer and the union to which the employee belongs, in consultation with the employee or, if desired by any of these:

27.4.1.2 The employer, the employee and an accredited Assessor.

#### 27.4.2 Lodgement of Assessment Instrument

27.4.2.1 All assessment instruments under the conditions of this award, including the appropriate percentage of the award rate to be paid to the employee, shall be lodged by the employer with the Registry of the Industrial Relations Commission of New South Wales.

27.4.2.2 All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where the union is not a party to the assessment, it shall be referred by the Registry to the union by certified mail and shall take effect unless an objection is notified to the Registry within ten working days.

27.4.3 Review of Assessment

The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

27.4.4 Workplace Adjustment

An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other employees in the area.

27.4.5 Trial Period

27.4.5.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provision of this award for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

27.4.5.2 During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

27.4.5.3 Work trials should include induction or training as appropriate to the job being trialled.

27.4.5.4 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under clause 27.4.

## 28. Traineeships

### 28.1 Applications

This clause applies only to persons employed in a traineeship which has been registered with the Relevant NSW Training Authority

### 28.2 Definitions

28.2.1 A "traineeship" is a program of training comprising structured training with an employer, and it will include training conducted by a Registered Training Organisation that has been approved by the Vocational Education Training Accreditation Board. For the purposes of the traineeship, structured training shall mean formal instruction and closely supervised practice directly related to that instruction that is undertaken according to the provisions of the training agreement.

28.2.2 A "training agreement" means an agreement between an employer and a trainee for registered training and employment which is approved by the Relevant NSW Training Authority.

28.2.3 A "trainee" is an employee undertaking a traineeship who is bound by a training agreement.

28.2.4 "Relevant NSW Training Authority" means the Department of Education and Training or its successor organisation.

### 28.3 Training Conditions

A trainee undertaking a traineeship shall be engaged as a full-time employee for a traineeship of a nominal period of one year or as approved by the Relevant NSW Training Authority, provided that the trainee shall be subject to a satisfactory probation period of up to one month.

### 28.4 All Trainees

28.4.1 The time spent off the job at training shall be allowed without loss of continuity of employment.

28.4.2 Where employment of a trainee by an employer is continued after completion of the traineeship period, the traineeship period shall be counted as service for all award and statutory entitlements where consistent with relevant legislation.

28.4.3 For the purposes of the *Long Service Leave Act 1955*, where an employee has entered into a contract of employment with an employer within a 12 month period after the completion of the traineeship with the employer, the period of the employee's traineeship with the employer shall be taken into account for the purposes of ascertaining the period of service of the employee with that employer under that contract of employment.

28.4.4 Preference in continuation of employment shall be given to trainees, where possible, should vacancies occur at the conclusion of the training period.

28.4.5 The provisions of the *Workplace Injury Management and Workers Compensation Act 1998*, and the *Work Health and Safety Act 2011*, shall apply to trainees.

28.4.6 It is acknowledged by the parties to this award that the purpose of the relevant traineeships is to create education and career opportunities for persons who would otherwise be unemployed, and to that extent the traineeship systems will not be utilised by employers as a means of displacing existing regular employees, whether full-time, part-time or casual.

28.4.7 The employer shall ensure that the trainee is permitted to attend prescribed off the-job training and is provided with on-the-job training approved by the Relevant State Training Authority.

28.4.8 The union shall be afforded reasonable access to trainees and the trainees records, consistent with the *Industrial Relations Act 1996*.

### 28.5 Wages

28.5.1 The weekly wage payable to Trainees shall be calculated by multiplying the hourly rate applicable to the trainee by 38, less the average weekly training time to be spent in structured training.

28.5.2 Junior hourly rates shall be calculated in accordance with Clause 13 - Juniors. The rate for employees 21 years of age and over shall be calculated at the rate for a Grade 2 employee.

28.5.3 The average weekly training time to be spent in structured training shall be calculated by averaging the total number of hours that the trainee, during each year of employment, spends in structured training over the total number of weeks in that year of employment under the traineeship.

## **29. Grievance Handling and Disputes Procedure**

- 29.1 Procedures Relating to Grievances of Individual Employees:-
- 29.1.1 The employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
  - 29.1.2 A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - 29.1.3 Reasonable time limits must be allowed for discussion and resolution at higher levels of authority.
  - 29.1.4 At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
  - 29.1.5 While a procedure is being followed normal work must continue.
- 29.2 Procedures Relating to Disputes etc. Between Employers and their Employees.
- 29.2.1 A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - 29.2.2 Reasonable time limits must be allowed for discussion at each level of authority.
  - 29.2.3 While a procedure is being followed, normal work must continue.
- 29.3 The employer may be represented by an industrial organisation of employers and the employees may be represented by an industrial organisation of employees for the purposes of each procedure.

## **30. Exhibition of Award in Workplace**

A copy of this award must be exhibited in a conspicuous place at the restaurant.

## **31. Employee Representative and Union Business**

Where there is no union delegate on site, the employer will recognise any person appointed by a majority of employees as an employee representative. The employer will not recognise more than one employee representative for less than 50 persons who are employed by the employer at any one time. The employer will provide a notice board in a staff area for the employee representative (who may be a union delegate) to place notices, including union notices, provided that the notices do not contain defamatory or offensive material.

## **32. Anti-Discrimination**

- 32.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 32.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.

- 32.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 32.4 Nothing in this clause shall be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 32.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

### **33. Area, Incidence and Duration**

- 33.1 This award rescinds and replaces:
- 33.1.1 the Restaurant, &c., Employees' (State) Award published 15 January 2016 (378 I.G. 1620) and all variations thereof.
  - 33.1.2 Restaurant, &c., Employees' Retail Shops (State) Wages Adjustment Award published 28 February 1997 (296 I.G. 1039)
  - 33.1.3 the Restaurant Industry (State) Traineeship Award published 2 December 1994 (282 IG 938)
  - 33.1.4 Restaurant, &c., Employees' Retail Shops Redundancy and Technological Change (State) Award published 9 February 1996 (290 I.G. 620).
- 33.2 The award applies to all employees who perform work described in the classification structure in this award in restaurants as defined throughout New South Wales and to the employers of those persons but not in the County of Yancowinna. The award does not apply to restaurants forming part of motels or licensed clubs, or conducted within a retail store, to canteens covered by the Canteen Workers (State) Award employees of the Broken Hill Proprietary Company Limited or to persons employed in hospitals or public charitable institutions.
- 33.3 This award takes effect from the beginning of the first pay period to commence on or after 1 May 1997 and shall remain in force for a period of six months.
- 33.4 This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Restaurants, &c., Employees (State) Award published 15 January 2016 (378 I.G. 1620), as varied.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 13 February 2019.

This award remains in force until varied or rescinded, the period for which it was made having already expired.



**PART B**  
**MONETARY RATES**

**Table 1 - Wages**

Classification	SWC 2017 2.5% \$	SWC 2018 2.5% \$
Grade 1	701.60	719.10
Grade 2	723.90	742.00
Grade 3	757.90	776.80
Grade 4	782.50	802.10
Grade 5	828.00	848.70
Grade 6	881.40	903.40
Grade 7	909.60	932.30

The rates of pay in this award include the adjustments payable under the State Wage Case 2018. These adjustments may be offset against:

- (a) any equivalent over award payments, and/or
- (b) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.

**Table 2 - Other Rates and Allowances**

Item No.	Clause No.	Brief Description	SWC 2017 2.5%	SWC 2018 2.5%
1	7.1	Meal Allowance	14.50	14.90
2	14.2	Apprentice's Tool Allowance	0.90	0.92
3	23.1	Laundry Allowance: - special clothing requiring ironing	4.20 per day to a maximum of 12.70	4.30 per day to a maximum of 13.00
		- special clothing not requiring ironing	2.40 per day to a maximum of 7.20	2.50 per day to a maximum of 7.40

The rates at Table 1 and Table 2 shall take effect from the first full pay period to commence on or after 16 December 2018.

P. M. KITE, *Chief Commissioner*

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**CROWN EMPLOYEES (SCHOOL ADMINISTRATIVE AND SUPPORT  
STAFF, GENERAL ASSISTANTS IN SCHOOLS) STANDDOWN  
AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(Case No. 40705 of 2019)

Before Chief Commissioner Kite

25 September 2019

**ORDER OF RESCISSION**

The Industrial Relations Commission of New South Wales orders that the Crown Employees (School Administrative and Support Staff, General Assistants in Schools) Standdown Award published 21 October 2016 (380 I.G. 1417) as varied, be rescinded on and from 25 September 2019.

P. M. KITE, *Chief Commissioner*

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# INDUSTRIAL GAZETTE

## VOLUME 386

### INDEX

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#### Key to Abbreviations Used:

<i>(ACC)</i>	—	Award of Commissioner/Committee.
<i>(AIC)</i>	—	Award of Industrial Commission.
<i>(AIRC)</i>	—	Award of Industrial Relations Commission.
<i>(AR)</i>	—	Award Reprint (Consolidation).
<i>(ART)</i>	—	Award of Retail Trade Industrial Tribunal.
<i>(CD)</i>	—	Contract Determination.
<i>(CORR)</i>	—	Correction.
<i>(ERR)</i>	—	Erratum.
<i>(OIC)</i>	—	Order of Industrial Commission.
<i>(OIRC)</i>	—	Order of Industrial Relations Commission.
<i>(RIRC)</i>	—	Award Review by Industrial Relations Commission
<i>(ROIRC)</i>	—	Order following Review by the Industrial Relations Commission
<i>(RVIRC)</i>	—	Variation following Review by Industrial Relations Commission
<i>(VCC)</i>	—	Variation by Commissioner/Committee.
<i>(VCD)</i>	—	Variation of Contract Determination.
<i>(VIC)</i>	—	Variation by Industrial Commission.
<i>(VIR)</i>	—	Variation by the Industrial Registrar
<i>(VIRC)</i>	—	Variation by Industrial Relations Commission.
<i>(VSW)</i>	—	Variation following State Wage Case.

## CONTENTS

	Page
Awards and Determinations —	
Broken Hill City Council Consent Award 2018	RIRC 1
Crown Employees (Fire & Rescue NSW Tradespersons) Award 2019	AIRC 59
Crown Employees (Office of Environment and Heritage - National Parks and Wildlife Service) Conditions of Employment Award 2015	RIRC 90
Crown Employees (Transport Drivers, &c.) Award	RIRC 136
Farm Assistants (Department of Education and Communities) Wages and Conditions Award	RIRC 142
Health Employees' Medical Radiation Scientists (State) Award 2019	AIRC 155
Health Managers (State) Award 2019	AIRC 174
Local Government (Electricians) (State) Award	RIRC 184
Motels, Accommodation and Resorts, &c. (State) Award	RIRC 222
NSW Health Service Allied Health Assistants (State) Award 2019	AIRC 263
Nurses (Private Sector) Superannuation (State) Award	RIRC 269
Nursing Homes, &c., Nurses' (State) Award	RIRC 273
Public Hospitals (Medical Superintendents) Award 2019	AIRC 319
Public Hospitals Dental Assistants (State) Award 2019	AIRC 345
Shop Employees (State) Award	RIRC 349
Transport Industry - Quarried Materials, &c., Carriers Interim Contract Determination	VCD 396
Nurses' (Private Sector) Training Wage (State) Award	RVIRC 398
Transport Industry (State) Award	RVIRC 400
Crown Employees Conservation Field Staff Officers, (Department of Industry, Skills, and Regional Development and NSW Office of Environment and Heritage) Reviewed Award 2019	AIRC 408
Crown Employees (Public Sector - Salaries 2019) Award	AIRC 436
Miscellaneous Workers Home Care Industry (State) Award	RIRC 552
Crown Employees (NSW Department of Finance, Services and Innovation - Graphic Service Operators) Award	RIRC 588
Security Industry (State) Award	RIRC 620
Nurses (Private Sector) Redundancy (State) Award	RIRC 660
Crown Employees (Office of Sport - Centre Managers) Award	RIRC 666
Crown Employees (Office of Environment and Heritage and the Environment Protection Authority) General Award 2018	RIRC 674
Crown Employees (Department of Industry) Food Safety Officers Award	RIRC 698
Crown Employees (NSW Department of Justice) - Museum of Applied Arts and Sciences Electrical Preparators Award 2019	RIRC 706
Local Government (State) Award 2017	VIRC 712
Crown Employees (Department of Finance, Services and Innovation) Wages Staff Award 2019	AIRC 715
Crown Employees (Household Staff - Department of Education) Wages and Conditions Award 2019	AIRC 749
Crown Employees (New South Wales Department of Family and Community Services) Residential Centre Support Services Staff Award 2019	AIRC 770
Crown Employees (Office of Environment and Heritage - Royal Botanic Gardens and Domain Trust Building and Mechanical Trades Employees) Award 2019	AIRC 789
Crown Employees Wages Staff (Rates of Pay) Award 2019	AIRC 800
Crown Employees (Transport Drivers, &c.) Award 2019	AIRC 821
Skilled Trades Staff - Department of Family and Community Services - Ageing, Disability and Home Care (State) Award 2019	AIRC 827
Landcom Award 2019	AIRC 840

Riverina Water Council Enterprise Award 2019	AIRC	891
Crown Employees (Department of Industry), Conservation Field Officers Reviewed Award 2018	RIRC	948
Crown Employees (NSW (Department of Communities and Justice Youth Justice) - 38 Hour Week Operational Staff 2019) Reviewed Award	RIRC	976
Health, Fitness and Indoor Sports Centres (State) Award	RIRC	1000
Crown Employees (Public Sector - Salaries 2019) Award	VIRC	1037
Local Government (Electricians) (State) Award	VSW	1038
Crown Employees Conservation Field Staff Officers, (Department of Industry, Skills, and Regional Development and NSW Office of Environment and Heritage) Reviewed Award 2019	AIRC	1040
Crown Employees (NSW Department of Justice) - Museum of Applied Arts and Sciences Electrical Preparators Award 2019	AIRC	1068
Crown Employees (Security and General Services) Award 2019	AIRC	1074
Farm Assistants (Department of Education and Communities) Wages and Conditions Award 2019	AIRC	1096
Health Employees Dental Officers (State) Award 2019	AIRC	1109
Health Industry Status of Employment (State) Award 2019	AIRC	1116
Hospital Scientists (State) Award 2019	AIRC	1121
Public Hospital Medical Officers (State) Award 2019	AIRC	1165
Public Hospitals Library Staff (State) Award 2019	AIRC	1201
Public Hospitals Medical Record Librarians (State) Award 2019	AIRC	1206
Teachers' (NSW Health Early Childhood Service Centres) Salaries and Miscellaneous Conditions Award 2019	AIRC	1210
Crown Employees (General Assistants in Schools - Department of Education) Award	RIRC	1219
Restaurants, &c., Employees (State) Award	RIRC	1227
Obsolete Awards —		
Crown Employees (School Administrative and Support Staff, General Assistants in Schools) Standdown Award	ROIRC	1255
Award Reprints -		
City of Ryde (Christmas Leave) Award	AR	405
Enterprise Agreements Approved by the Industrial Relations Commission		406 714
Industrial Committees -		
Clothing Trades (State) Industrial Committee		407