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AMBULANCE SERVICE OF NEW SOUTH WALES ADMINISTRATIVE AND CLERICAL EMPLOYEES (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(No. IRC 832 of 2012)

Before Commissioner Ritchie

6 August 2012

AWARD

1. Arrangement

This Award is arranged in the following manner:

PART A

Clause No.	Subject Matter
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4.	Employees' Duties
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PART B

MONETARY RATES

40. Classification Structure
41. Climatic and Isolation Allowance

2. Objectives of the Award

- (a) The Parties agree to work co-operatively and positively to facilitate implementation of the programs and initiatives set out below:
 - (i) service delivery reform and change and associated workforce reform, within the Ambulance Service of New South Wales;
 - (ii) better management of overtime and sick leave; and
 - (iii) to achieve a targeted reduction in the number and average cost of workers compensation claims and in sick leave and work cooperatively to improve return to work programs and the rate of successful return of injured employees to work
- (b) The Parties are committed to the satisfactory and timely resolution of any differences or disagreements and agree that all disputes arising between the parties will be dealt with in accordance with clause 31, Issues Resolution, of this Award. The Parties acknowledge their wider social obligations and will consider their actions in this context.

3. Definitions

‘Ministry’ means the NSW Ministry of Health.

‘The Service’ means the Ambulance Service of New South Wales.

‘Administrative and Clerical Employee’ means an employee of the Service who is employed pursuant to this Award.

‘Employee’ means an Administrative & Clerical employee of the Service who is employed pursuant to this Award.

‘Day Worker’ means an employee who works ordinary hours from Monday to Friday inclusive and who commences work on such days between 6.00 a.m. and at or before 10.00 a.m. inclusive.

‘Permanent Part-Time Employee’ means a person appointed in accordance with clause 18 (a) of this Award.

‘Shift Worker’ means an employee who is not a day worker as defined.

‘Union’ means the New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union.

‘Accustomed Place of Work’ means the location where an employee is regularly required to commence duty by the Service.

4. Employees' Duties

- (a) The Service may direct an employee to carry out such duties as are reasonable, and within the limits of the employees' skills, competence and training consistent with the employees' classification provided that such duties are not designed to promote de-skilling.
- (b) The Service 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 in the use of such tools and equipment.
- (c) Any direction issued by the Service pursuant to sub-clauses (a) or (b) of this clause shall be consistent with the Service's responsibilities to provide a safe and healthy working environment.
- (d) The application of sub-clause (a) of this clause shall be undertaken in a fair, reasonable and sensible manner.

5. Work Arrangements

- (a)
 - (i) It is the view of the Service that a position description and a performance appraisal system should be developed for each of the classifications set out in clause 40, Classification Structure, of this Award.
 - (ii) The Service will consult with the Union regarding the effect that position descriptions and the performance appraisal system will have on employees who are members of the Union.
- (b) Work will be performed by the most efficient means. To achieve this end the Service will deploy skills based on operational needs.
- (c) The parties agree that there will be no forced transfers as a result of the implementation of sub-clause (b) of this clause.
- (d) Any proposal that will significantly affect employees who are members of the Union covered by this Award will be the subject of genuine consultation between the parties.
- (e) Any dispute arising from the operation of this sub-clause will be dealt with in accordance with clause 31, Issues Resolution, of this Award.

6. Wages

- (a) Employees shall not be paid less than the minimum wages for their classification as set out in clause 40, Classification Structure, of this Award.
- (b) The Service may, at its discretion, pay an employee any amount over and above the minimum wages as it sees fit.

7. Hours of Duty

- (a) The ordinary hours of work for day workers, exclusive of meal times, shall be 152 hours per 28 calendar days to be worked Monday to Friday inclusive and should commence between the hours of 6.00am and 10.00am.
- (b) 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.
- (c) 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.

- (d) The hours of work prescribed in sub-clauses (a) and (b) shall, where possible, be arranged in such a manner that in each cycle of 28 days each employee shall work his or her ordinary hours of work on not more than nineteen days in the cycle.
- (e) The employees' allocated day off duty, arising out of sub-clause (d) shall be determined by mutual agreement between the employee and the Service having regard to the needs of the Service.
- (f) Where there is agreement between an employer and an employee, an employee's allocated day off duty prescribed by sub-clause (d) of this clause may be accumulated and be taken at a time mutually agreed upon between the employer and the employee, provided that the maximum number of allocated days off duty which may accumulate under this sub-clause shall be three. Any allocated day off duty accumulated but not taken at the date of termination, shall be paid out at ordinary rates applicable at date of termination as part of the usual termination entitlement.
- (g) Employees in a work unit or location may agree that the ordinary hours of duty will be worked over nine days in a fourteen day cycle (a nine day fortnight). Agreement by the Service to this nine day fortnight working arrangement, in each case, shall be dependent upon the operational requirements of the Service.
- (h) Where agreement cannot be reached, to work a nine day fortnight in accordance with sub-clause (g) in any area or location, the employee or employees concerned, or the Union may raise the issue with the appropriate manager, that is the General Manager, Corporate Services or the General Manager, Operations. They shall review the decision and, if it is considered appropriate to meet the operational requirements of the Service, may approve a nine day fortnight.
- (i) Where an employee's allocated days off duty falls on a public holiday as prescribed by clause 21, of this Award, the next working day shall be taken in lieu thereof.
- (j) All time worked between the normal starting and normal ceasing time each day shall be at ordinary rates of pay.
- (k) A period of twenty minutes shall be allowed to employees for a work break and such period shall be included in the ordinary hours of work.
- (l)
 - (i) Time not exceeding one hour and not less than thirty minutes shall be allowed for a meal break, provided that where an employee is called upon to work for any portion of his or her meal break such time shall count as part of his or her ordinary working time.
 - (ii) The provision of paragraph (j) of this sub-clause shall not apply to employees employed in one of the Services Operations Centres who work their ordinary roster of hours on a straight shift basis (i.e. a shift that does not include a meal break).
- (m) Where practicable, employees shall not be required to work more than five (5) hours without a work/meal break.

8. Roster of Hours

- (a) The ordinary hours of duty prescribed by clause 7, Hours of Duty, of this Award, shall be worked according to rosters which shall be exhibited at least fourteen (14) days before the commencement date of the roster and shall show the hours of duty for the agreed roster period or twenty eight (28) days whichever is the greater.
- (b) There shall be a minimum break of eight (8) hours between rostered shifts except in case of an emergency or agreement between the Service and the employee.
- (c) The roster of an employee may be altered by the Service at any time during the agreed roster period upon the provision of at least seven (7) days notice or less than seven (7) days in the event of an emergency eg. Sick leave, Family and Community Service Leave etc.

- (d) A day off duty shall be twenty-four (24) hours.
- (e) Where an employee is rostered to an allocated day off that day is to be shown on the roster.
- (f) The rosters of employees shall provide for an equitable distribution of Saturday and Sunday work between employees working the same agreed roster.
- (g) The provisions of this clause do not apply to Day Workers.
- (h) Any dispute arising from the operation of this clause shall be dealt with in accordance with clause 31, Issues Resolution, of this Award.

9. Overtime

- (a) Employees are expected to work reasonable overtime in accordance with Clause 35, Reasonable Hours of this Award.
- (b) All time worked by employees outside the ordinary hours in accordance with clause 7, Hours of Duty, of this Award, shall be paid for at the rate of time and one half for the first two hours each day and thereafter at the rate of double time, provided however, that all overtime worked on a Sunday shall be paid for at the rate of double time and all overtime worked on public holidays shall be paid for at the rate of double time and one-half.
- (c) An employee who is required to work overtime in excess of two hours shall, at the option of the Service, be supplied with a meal or shall be paid an amount as varied from time to time by the Service unless he or she has been notified on his or her previous shift or duty that he or she would be required to work overtime.
- (d) Employees recalled to work overtime after leaving the Service's premises, shall be paid for a minimum of two hours work at the appropriate rate for each time he or she is so recalled; provided that, except in unforeseen circumstances arising, an employee shall not be required to work the full minimum number of hours prescribed above if the job he or she was recalled to perform is completed within a shorter period.
- (e) The employer must have processes in place for the formal release of employees from recall duty.
- (f) Employees who are not formally released and who are recalled again during the two hour minimum payment period are not entitled to any additional payment until the expiration of the two hour period.
- (g) 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 two hour minimum payment period, shall be entitled to another two hour minimum payment.
- (h) Employees required to work overtime after leaving the employer's premises to provide a technology support resolution 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.
- (i) When overtime work 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.
- (j) An employee who works so much overtime:
 - (i) between the termination of his or her ordinary work on any day or shift and the commencement of his or her ordinary work on the next day or shift that he or she has not had at least eight consecutive hours off duty between these times; or
 - (ii) on a Saturday, a Sunday and a public holiday, not being ordinary working days, or on a rostered day off without having had eight consecutive hours off duty in the twenty-four hours preceding his or her ordinary commencing time on his or her next day or shift:

shall, subject to this sub-clause, be released after completion of such overtime until he or 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 the Service such an employee resumes or continues to work without having had such eight consecutive hours off duty he or she shall be paid at double rates until he or she is released from duty for such period that he or she then shall be entitled to be absent until he or she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (k) 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.
- (l) All overtime worked by shift workers on Saturdays, Sundays and Public Holidays shall be paid for at the appropriate overtime rate prescribed in sub-clause (a) of this clause, such overtime to be cumulative upon the ordinary time penalties applicable to such days of work.
- (m) The Conditions of Employment relating to Overtime for employees covered by this Award are to be determined by reference to the "New South Wales Ambulance Service Administrative and Clerical Agreement, 1988" and the "Ambulance Service of New South Wales Administration and Staff Clerical Enterprise Agreement, 1994" and all variations thereof. This provision only applies to those employees covered by this Award who were employees of the Service immediately prior to 1 July 1998.

10. Time Off in Lieu of Overtime

- (a) The parties agree that any employee who is required to work overtime outside normal rostered hours may be compensated by way of time off in lieu of overtime.
- (b) This agreement is subject to the following provisos:
 - (i) Time off in lieu must be taken within three months of it being accrued at ordinary rates;
 - (ii) The option of taking time off in lieu is subject to the active agreement of the Service management, so that it is conceivable that employees in one unit or location within the Service may be permitted to take time off in lieu but employees working in other locations and settings within the Service may not;
 - (iii) Employees cannot be compelled to take time off in lieu of overtime; and
 - (iv) Records of time off in lieu owing to employees and taken by employees must be maintained.
- (c) Where an employee is unable to take time off in lieu of overtime within three months of it being accrued the time so accrued shall be paid out at the overtime rate applicable at the time of payment.

11. Accrual of Additional Days Off (ADOS)

- (a) The parties agree that employees should have the capacity to accumulate up to three (3) days additional days off duty (ADOs) as measured at any one point in time, which accrue in accordance with clause 7, Hours of Duty of this Award. This limit on the accumulation right means that any employee who has a current accumulation of three ADOs must take the fourth ADO occurring to him or her when it falls due in accordance with the roster.
- (b) This agreement is subject to the following provisos:
 - (i) Employees cannot be compelled to accumulate their ADOs. It is merely an option available to employees.
 - (ii) This option of accumulation of ADOs is subject always to the active agreement of the Service management, so that it is conceivable that employees in one unit or location within the Service

may be permitted to accumulate ADOs but employees working in other locations and settings within the Service may not.

- (iii) The accumulation of ADOs should be considered in those units, departments or other discrete service areas where the service needs during periods when employees are utilising their accumulated ADOs.
 - (iv) Any ADOs accumulated but not taken as at the date of termination shall be paid out.
 - (v) The accumulation of ADOS should not apply to employees who have elected to work a nine day fortnight in accordance with subclause (f) of clause 7, Hours of Duty.
- (c) Further to the above, the parties agree that ADOs, whether accrued in accordance with clause 7, Hours of Duty, of this Award, or subclause (i) above, can be taken at a mutually convenient time to the Service and the employee.

12. Penalty Rates for Shift Work and Weekend Work

- (a) Shift workers working afternoon or night shift shall be paid the following percentage in addition to the ordinary rate for such shift:
- Afternoon shift -
- Commencing at 10 a.m. and before 1 p.m. - 10 per cent
- Commencing at 1 p.m. and before 4 p.m. - 12.5 per cent
- Night shift -
- Commencing at 4 p.m. and before 4 a.m. - 15 per cent
- Commencing at 4 a.m. and before 6 a.m. - 10 per cent
- (b) Employees whose ordinary working hours include work on a Saturday and/or Sunday, shall be paid for ordinary working hours worked between midnight on Friday and midnight on Saturday at the rate of time and one half and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three quarters. These extra rates shall be in substitution for an not cumulative upon the shift premiums prescribed in sub-clause (a) of this clause.

13. Promotion and Vacancies

- (a) Advertisement of vacant promotional positions shall be notified throughout the Service by regular Vacancy Circulars clearly displayed on Notice Boards at all Ambulance Stations and Ambulance Workplaces.
- (b) Promotion shall be on the basis of merit.
- (c) The vacancy shall be filled from applications received provided that the Service can re-advertise the position if necessary.

14. Appointment of Officers

- (a) All employees shall be appointed on probation for a period of six months from the date of their appointment or re-appointment to the Service.
- (b) An employee engaged under this Award shall be engaged as a Full Time employee, a Permanent Part Time employee and/or a Temporary employee.

- (c) Every employee will be provided with a Position Description commensurate with his or her position which he or she will be required to sign.

15. Termination of Employment

- (a) Employment shall be terminated by one (1) week notice in writing by either party or by the giving or forfeiting, as the case may be, of one (1) week's wages in lieu of notice.
- (b) The provisions of subclause (a) of this clause does not limit the Service's right to terminate an employee's employment without notice or payment in lieu of notice in the event of misconduct of the employee.
- (c)
 - (i) Employees with a credit of hours accrued towards an allocated day/s off duty shall be paid for such accrual upon termination.
 - (ii) Employees with a credit of hours accrued as a result of working a roster in accordance with subclause (a) of clause 7, Hours of Duty, of this Award, shall be paid such accrual upon termination.
 - (iii) Employees with a debit of hours accrued as a result of working a roster in accordance with subclause (a) of clause 7, Hours of Duty, of this Award, shall reimburse the Service for such accrual upon termination.
 - (iv) Employees with a credit of hours accrued as a result of optioning for time off in lieu of overtime in accordance with sub-clause (a) of clause 10, Time Off in Lieu of Overtime, of this Award shall be paid for such accrual upon termination at the appropriate overtime rate based on the rate of pay applying at the time of termination.
- (d) The Service shall, upon request by the employee, give the employee a signed statement outlining the period of employment.

16. Travelling Time and Expenses

- (a)
 - (i) Where an employee is directed to report for duty to a place of work other than the employees accustomed place of work, the employee shall travel to and from the alternative place of work in the Service's time for those periods in excess of time normally taken to travel to and from the employees accustomed place of work.
 - (ii) 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 by the Service.
 - (iii) Where the employee is required to report to an alternative place of work and has the prior approval of the Service to travel by his or 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 the specified journey rate as prescribed from time to time by the Ministry.
- (b)
 - (i) Where the Service has determined that an employee should report to a new accustomed place of work on a permanent basis, the decision must be discussed with the affected employee(s) and their representative prior to notice of changed accustomed place of work being given.

- (ii) The Service shall give the employee reasonable notice of the requirement to report to a new accustomed place of work. For the purposes of this sub-clause "reasonable notice" shall be 28 days prior to the date the employee is first required to report to the new accustomed place of work.
- (iii) Where the accustomed place of work is changed on a permanent basis by the Service, the employee shall report to the new accustomed place of work on the date.

17. Relieving Other Members of Staff

- (a) Subject to the provision of subclause (b) of this clause, 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 duties and assumes the responsibilities of the higher classification as required by the employer, shall be entitled to receive, for the period of relief, the minimum pay of such higher classification.
- (b) The payment shall be made on the following basis:
 - (i) Be paid at least the rate which would be applicable if 100% of such duties were performed on a permanent basis. Where relief is performed in a position at less than 100% the employee shall be paid a proportion equivalent to that lesser amount of relief, i.e. where 25% of the work of the position relieved is carried out, the relieving allowance shall be 25% of the difference between the rates applicable to the position.
 - (ii) Higher duties allowance shall only be paid when the employee has been directed by the Service to relieve in such position.
- (c) This clause shall not apply when an employee in a higher classification is absent by reason of his or her allocated day or days off duty.

18. Flexible Work Practices

- (a) Permanent part-time employee
 - (i) A permanent part-time employee means an employee who is permanently appointed by the Service to work a specified number of hours to a maximum of thirty-two (32) hours per week except in emergency or urgent circumstances.
 - (ii) Permanent part-time employees shall be paid an hourly rate calculated on the basis of one thirty-eighth of the rate prescribed in clause 40, Classification Structures, of this Award a minimum payment of two (2) hours for each start.
 - (iii) Other than as set out in this clause, a permanent part-time employee is entitled to the terms of employment set out in this Award, calculated on a pro-rata basis, in the same proportion as the part-time hours bear to the full-time ordinary hours.
 - (iv) Employees engaged under this clause shall not be entitled to allocated days off.
 - (v) All time worked by permanent part-time employees in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift in the unit or section concerned shall be paid for at the rate of time and one-half.
 - (vi) Time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on that shift 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) Notwithstanding the provisions of this clause, the Service and the Union may agree in writing, to observe other conditions in order to meet special cases.

(b) Temporary employee

- (i) A temporary employee is one engaged for a set period not exceeding thirteen (13) weeks, provided that fixed term contracts of employment, whether for periods greater or lesser than thirteen (13) weeks, must not be offered in preference to ongoing contracts unless they are necessary to meet the genuine requirements of the Service, which may include but not be limited to parental leave, limited term funding arrangements, long term leave relief, forthcoming service reductions, and anticipated peak demand times.
- (ii) A temporary employee shall be paid in addition to all rates and allowances to which the said employee is entitled under this Award, an allowance equal to 10 per centum of the rates prescribed for his or her classification by clause 40, Classification Structures, of this Award, provided that this sub-clause shall cease to apply upon:
 - (a) the said period of engagement being extended after the said period of thirteen (13) weeks;
 - (b) the employer and the employee agreeing during the said period of thirteen (13) weeks, that the employee shall be employed on a permanent part-time or full-time basis.
- (iii) For entitlement for payment in respect of annual leave, see Annual Holidays Act 1944.

(c) Shift Changes

- (i) Where the Service's prior consent is given to swap a shift, the employee working the shift shall record the working of that shift on his or her time sheet with payment made accordingly.
- (ii) When the shift is swapped back it shall be for the same duration as the shifts previously swapped so as to ensure each employee maintains a thirty eight (38) hours per week average.
- (iii) Where a shift is to be paid back it shall be done in the current agreed roster period or, where this is not practical, within the following agreed roster period, or in a future roster period approved by the Service.

(d) 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 six 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 six 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 or 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) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
 - (1) 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.
 - (2) 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 *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

(d) 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.

- (e) 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.

19. Annual Leave

- (a) As per the *Annual Holidays Act, 1944*, as amended from time to time.
- (b) In addition to the leave provided for by subclause (a) of this clause, seven-day shift workers, (that is, shift workers who are rostered to work regularly on Sundays and Public Holidays), shall be allowed one week's leave; provided that if during the year of employment an employee has served for only portion of it as a seven-day shift worker the additional leave shall be one day for every thirty-six ordinary shifts worked as a seven-day shift worker. In this subclause, reference to one week and one day shall include holidays and non-working days.
- (c) Except as otherwise provided in this sub-clause, the entitlement to the additional one week's leave shall be treated for all purposes (including termination), as an entitlement under the *Annual Holidays Act, 1944*.
- (d) The Service agrees subject to at least twenty-eight (28) days prior written authorisation by the employee, to pay employees Annual Leave entitlements on a fortnightly basis which coincides with the normal fortnightly pay period.

20. Annual Leave Loading

- (a) In this clause the *Annual Holidays Act, 1944*, is referred to as "The Act".
- (b) Before an employee is given and takes his or her annual holidays or, where by agreement between the Service and employee the annual holidays is given and taken in more than one separate period, then before each of such separate periods, the Service shall pay the employee a loading determined in accordance with this clause. (Note: the obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance - see subclause (f)).
- (c)
- (i) The annual leave loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under the Act and this Award.
- (ii) The Service agrees subject to at least twenty-eight (28) days prior written authorisation by the employee, to pay employees Annual Leave Loading entitlements on a fortnightly basis which coincides with the normal fortnightly pay period.
- (d) The loading is to be calculated in relation to any period of annual holiday to which the employee becomes entitled under the Act and this Award, or, where such a holiday is given and taken in separate periods, then in relation to each separate period. (Note: See sub-clause (f) as to holidays taken wholly or partly in advance).
- (e) The loading is the amount payable for the period or the separate period, as the case may be, stated in sub-clause (f) at the rate of seventeen and one half percent of the appropriate ordinary weekly rate of pay prescribed by this Award for the classification in which the employee was employed immediately before commencing his or her annual holiday, but shall not include any allowances, penalty rates, shift allowances, overtime or any other payments prescribed by this Award.
- (f) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when he or she would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with subclause (e) of this clause applying the Award rates of wages payable on that day. This sub-clause applies where an annual holiday has been taken wholly or partly in advance.
- (g)
- (i) Where an employee terminates his or her service or where and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday for which he or she became entitled, he or she shall be paid a loading calculated in accordance with sub-clause (d) for the period not taken.
- (ii) Where the employment of an employee is terminated by his or her Service for a cause other than misconduct, he or she shall be paid a loading calculated in accordance with sub-clause (d) for the period not taken where at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which he or she became entitled.
- (iii) Where the employment of an employee is terminated by his or her Service for other than misconduct, he or she shall be paid a loading calculated at seventeen and one half percent of all payment due to him or her under the *Annual Holidays Act, 1944*, where at the time of termination the employee has not become entitled to an annual holiday.

21. Public Holidays

- (a)
- (i) Public holidays shall be allowed to employees on full pay. Where an employee is required to and does work on any of the holidays set out in this subclause, whether for a full shift for not, the employee shall be paid one and one half day's pay in addition to the weekly rate, such payment to be in lieu of weekend or shift allowances which would otherwise be payable had the day not been a public holiday.
 - (ii) For the purposes of this clause the following shall be deemed Public Holidays, viz.: 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 day duly proclaimed and observed as a public holiday for the State shall be holidays for the purpose of this Award.
 - (iii) Shift workers rostered off duty on a public holiday shall:
 - (a) be paid one day's pay in addition to the weekly rate; or if the employee so elects,
 - (b) have one day added to his or her period of annual leave.
 - (iv) The election referred to in paragraph (iii) of this sub-clause is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during the currency of that year of employment.
- (b)
- (i) In addition to those public holidays specified in subclause (a)(ii) of this clause, employees shall be entitled to an extra public holiday each year. Such public holiday will occur on a date which is agreed upon between the Union and the Service and shall be regarded for all purposes of this clause, as any other public holiday.
 - (ii) The foregoing will not apply in areas where, in each year, a day in addition to the ten named public holidays specified in subclause (a)(ii) is proclaimed and observed as a public holiday for the area, and will not apply to those areas where, in each year, at least two half days, in addition to the ten named public holidays specified in sub-clause (a)(ii), are proclaimed and observed as half public holidays.
 - (iii) Provided further, that in areas where each year, only one half day, in addition to the ten named public holidays specified in sub-clause (a)(ii) is proclaimed and observed as a half day 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 sub-clause apply, will be observed.
- (c) Special holidays proclaimed for any city or town are to be granted or equivalent payment made in lieu thereof to employees, either day workers or shift workers, employed in such towns or cities. Equivalent payment means double time and one half.

Where a shift workers rostered day off falls due on such day, he or she shall be paid, in addition to their appropriate rate of pay, an extra day or half-days pay at ordinary rates whichever is applicable.

22. Family and Community Services Leave and Personal/Carers' Leave

Family and Community Services (FACS) Leave and Personal/Carer's Leave are separate, stand alone entitlements.

A. FACS Leave

(a) FACS Leave - General

(i) 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.

(ii) A manager 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).

(iii) FACS leave replaces compassionate leave.

(iv) An employee is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the Chief Executive Officer or authorised delegate 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.

(b) FACS Leave - entitlement

(i) 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.

(ii) For the purposes of calculating entitlements under (b)(i)(1) and (2) above, a working day for employees working 38 hours per week shall be deemed to consist of 8 hours. For shift

workers 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 take FACS leave for a full 10 hour shift, the employee would be debited 10 hours of FACS leave.

Example B: 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.

- (iii) 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 eg 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.

- (c) 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 (a) (i) of Part A of this clause.

- (d) Use of other leave entitlements

A manager 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

- (a) 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:

- (i) a spouse of the employee; or
- (ii) 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
- (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 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.

(b) Use of sick leave to care for the person concerned - entitlement

- (i) 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 (a) of Part B of this clause.

- (ii) Other than an 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.

- (iii) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (ii) 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.

- (iv) A manager 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 (iii) above.

- (v) 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.

- (vi) 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.

- (vii) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.

- (viii) 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.

- (ix) In normal circumstances, the employee must not take leave under this part where another person has taken leave to care for the same person.

(c) Use of other leave entitlements

An employee may elect, with the consent of the employer, to take:

- (i) 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.
 - (ii) long service leave; or
 - (iii) leave without pay for the purpose of providing care and support to the person concerned as defined in subclause (a) of Part B of this clause.
- (d) Time off in lieu of payment of overtime
- (i) 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
 - (ii) 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.
 - (iii) If, having elected to take time as leave in accordance with (d)(i) 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.
 - (iv) Where no election is made in accordance with paragraph (d)(i) above, the employee shall be paid overtime rates in accordance with the provisions of clause 9, Overtime.
- (e) Use of make-up time
- (i) 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 7 and 8 of this Award, at the ordinary rate of pay.
 - (ii) 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.

23. Maternity, Adoption and Parental Leave

This clause is to be read in conjunction with the Service's Standard Operating Policy 2007-026 or subsequent replacement Standard Operating Policies as issued by the Service.

A. Maternity Leave

(a) Eligibility for Paid Maternity Leave

(i) Full time employees

Female employees who prior to the expected date of birth, have completed at least forty (40) weeks continuous service (of not less than 31.25 hours per week) are eligible for paid maternity leave.

(ii) Permanent part-time employees

Permanent part-time employees are employees engaged on a permanent part-time basis as defined by their Award. Female employees employed on this basis are entitled to pro-rata paid maternity leave after forty (40) weeks continuous service.

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

- (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
- (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

(b) Entitlements to Paid Maternity Leave

(i) Eligible employees are entitled to fourteen (14) weeks at the ordinary rate of pay from the date maternity leave commences. This leave may commence up to fourteen (14) weeks prior to the expected date of birth.

(ii) 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 (28) 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.

(iii) Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

(c) Entitlements to Unpaid Maternity Leave

(i) An employee entitled to paid maternity leave is entitled to a further period of unpaid maternity leave of not more than twelve (12) months from the actual date of birth. The leave therefore does not extend beyond the child's first birthday.

(ii) Full time or permanent part time female employees who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.

(d) Applications for Maternity Leave

(i) An employee who intends to proceed on maternity leave should formally notify their manager (in writing) of such intention as early as possible however, not less than eight (8) weeks prior to the commencement of leave. This notice must include a statement of:

- (1) The intention to proceed on maternity leave;
- (2) The expected date of birth certified by a medical practitioner;

- (3) The period of leave to be taken;
- (4) The date on which maternity leave is to commence;
- (5) A Statutory Declaration stating any period of parental leave sought or taken by the employee's spouse. This declaration must also state that the applicant is the child's primary caregiver for the period of leave sought.
- (6) The entitlement to maternity leave is reduced by any period of parental leave taken by the employee's spouse. Apart from parental leave of one (1) week at the time of birth, maternity leave is not to be taken concurrently with parental leave except as otherwise provided at subclause (a)(i) of Part D of this clause.

(e) Applications for Further Maternity Leave

- (i) 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.
- (ii) An employee who commences a subsequent period of maternity leave while on unpaid maternity leave under subclause (c)(i) of Part A of this clause or subclause (a)(ii) of Part D of this clause is entitled to be paid at their normal rate (ie the rate at which they were paid before proceeding on maternity leave).
- (iii) 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 (a)(iii) of Part D of this clause is entitled to be paid at their substantive full time rate for the subsequent period of maternity leave.
- (iv) 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 (a)(iii) 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.

(f) Variations of Maternity Leave

After commencing maternity leave, an employee may vary the period of her maternity leave -

- (i) once without the consent of the Service, but with a minimum of fourteen (14) days notice in writing; and
- (ii) otherwise with the consent of the Service, with a minimum of fourteen (14) days notice in writing.

However, more advanced notice is encouraged, especially for uniformed staff because of roster arrangements.

(g) 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.

- (h) Effect of Maternity Leave on Accrual of Leave, Increments, etc
- (i) Unpaid maternity leave does not count as service for the purposes of accruing sick leave (unless the period of unpaid leave is less than one month, although it is unlikely that unpaid maternity leave would be for such a lesser period), annual leave (unless the period of unpaid maternity leave is less than 28 calendar days) or long service leave (unless the employee has completed ten years service and the period of unpaid maternity leave is less than six months).
 - (ii) Unpaid maternity leave is not to be counted as service for determining incremental progression. 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. Notwithstanding the foregoing, increments based on age must be paid on attainment of the appropriate age.
 - (iii) During a period of unpaid maternity leave the employee will not be required to meet the employer's superannuation liability. The employee will, however, be required to make any necessary arrangements for their own contributions.
 - (iv) When the employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual 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.
 - (v) Except in the case of employees who have completed ten (10) 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 (10) years service, the period of maternity leave without pay shall count as service provided such leave does not exceed six (6) months.
 - (vi) Where public holidays occur during the period of paid maternity leave, payment is at the rate of maternity leave received, ie. 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.
- (i) Illness Associated with Pregnancy
- (i) 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 any sick leave without pay.
 - (ii) Where an employee is entitled to paid maternity leave but, because of illness or injury, is on workers' compensation, sick, annual, long service leave, or sick leave without pay prior to the birth, such leave will cease nine (9) weeks prior to the expected date of birth. The employee will then commence on maternity leave with the normal provisions applying.
- (j) Effect of Premature Birth on Payment of Maternity Leave
- An employee who gives birth prematurely prior to proceeding on maternity leave, shall be treated as being on maternity leave from the date she enters on leave to give birth to the child.
- (k) 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 or maternity leave, subject to production of a medical certificate. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.

(l) Miscarriage

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

(m) Fitness to Continue Working During Pregnancy and Alternative Work

(i) Whilst an employee may commence maternity leave up to fourteen (14) weeks, prior to the expected date of birth, this is not compulsory. However, if an employee decides to continue working prior to taking maternity leave, she must be able to satisfactorily perform her normal duties.

(ii) Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obligated, as far as practicable, to provide alternative employment in some other position that she is able to satisfactorily perform, until maternity leave commences. 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.

(n) Right to Return to Previous Position

(i) An employee who returns to work after maternity leave has a right to return to her former position.

(ii) 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 and/or qualified.

(o) Portability of Service for Paid Maternity Leave

When determining an employee's eligibility for paid maternity leave, continuous service with an organisation that is part of the public sector service as defined in the *Public Sector Employment and Management Act 2002* will be recognised, provided that:

service was on a full time or permanent part time (as specified) basis;

cessation of service with the former employer was not by reason of dismissal on any ground, except retrenchment or reduction of work;

the employee commences duty with the new employer on the next working day after ceasing employment with the former employer. (There may be a break in service of up to 2 months before commencing duty with the new employer, provided that the new position was secured before ceasing duty with the former 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.)

Portability of service for paid maternity leave involves the recognition of service in public sector organisations 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.

B. Adoption Leave

(a) Eligibility for Adoption Leave

(i) 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 entitled to unpaid adoption leave.

- (ii) Employees who are adopting a child and are to be the primary care giver of the child are entitled to paid adoption leave as follows:

Full time employees

Employees who, prior to the date of taking custody of the child, have completed 40 weeks continuous service (of not less than 31.25 hours per week) are eligible for paid adoption leave.

Permanent part-time employees

Permanent part-time employees are employees engaged in a permanent part-time basis as defined by their Award. These employees are entitled to pro-rata paid adoption leave after forty (40) weeks continuous service.

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

- (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
- (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

(b) Entitlements

(i) Paid Adoption Leave

Eligible employees are entitled to fourteen (14) weeks at the ordinary rate of pay. This leave may commence from 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 (28) 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.

(ii) 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.

(c) Applications for Adoption Leave

- (i) 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, normally 8 weeks prior. This will allow arrangements associated with the adoption leave to be made.
- (ii) A statement must also be provided from the adoption agency or appropriate body/government authority confirming that the applicant/ employee is to have custody and the expected date of placement of the child.

(d) Applications for Further Adoption Leave

Same provisions as maternity leave.

(e) Variations of Adoption Leave

Same provisions as maternity leave.

(f) Staffing Provisions

Same provisions as maternity leave.

(g) Effect of Adoption Leave on Accrual of Leave, Increments, etc

Same provisions as maternity leave.

(h) Right to Return to Previous Position

Same provisions as maternity leave.

(i) Portability of Service for Paid Adoption Leave

Same provisions as maternity leave.

C. Parental Leave

(a) Eligibility for Parental Leave

(i) Full time employees

Employees who, prior to the expected date of birth or to the date of taking custody of the child, have completed 40 weeks continuous service (of not less than 31.25 hours per week) are eligible for parental leave.

(ii) Permanent part-time employees

Permanent part-time employees are employees engaged in a permanent part-time basis as defined by their Award. These employees are entitled to pro-rata paid parental leave after forty (40) weeks continuous service.

(iii) An employee who has once met conditions for parental leave will not be required to again work the forty (40) weeks continuous service in order to qualify for a further period of parental leave, unless:

- (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or

- (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

(b) 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:

- (i) 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).
- (ii) 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.
- (iii) a further unbroken period of unpaid parental leave not exceeding 52 weeks when added to short parental leave in order to be the primary caregiver of the child (extended parental leave).
- (iv) 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 otherwise provided at subclause (a)(i) of Part D of this clause.

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

(c) Applications for Parental Leave

- (i) 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.
- (ii) The employee should give written notice of the intention to take the leave, at least four weeks before proceeding on leave, and should detail the dates on which they propose to start and end the period of leave. 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.
- (iii) 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.
- (iv) In the case of extended parental leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:

if applicable, the period of any maternity leave sought or taken by his spouse, and

that they are seeking the period of extended parental leave to become the primary caregiver of the child.

- (d) Variations of Parental Leave
Same provisions as maternity leave.
 - (e) Staffing Provisions
Same provisions as maternity leave.
 - (f) Effect of Parental Leave on Accrual of Leave, Increments, etc.
Same provisions as maternity leave.
 - (g) Right to Return to Previous Position
Same provisions as maternity leave.
 - (h) Portability of Service for Paid Parental Leave
Same provisions as maternity leave.
- D. Right To Request
- (a) An employee entitled to maternity, adoption or parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) 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.
 - (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) The employee's request and the employer's decision made under subclauses (a)(ii) and (iii) of this Part must be recorded in writing.
 - (d) Where an employee wishes to make a request under subclause (a)(iii) of this Part:
 - (i) the employee is to make an application for leave without pay to reduce their full time weekly hours of work;
 - (ii) 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
 - (iii) salary and other conditions of employment are to be adjusted on a basis proportionate to the employee's full time hours, that is for long service leave the period of service is to be converted to the full time equivalent and accredited accordingly.

E. Communication During Leave

- (a) 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:
 - (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 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 the 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 the leave to be taken, 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 subclause (a) of this Part.

24. Study Leave

Employees shall be granted Study Leave on such terms and conditions prescribed by the Services Standard Operating Policy 2007-077 as amended by the Service from time to time.

25. Trade Union Leave

Employees shall be granted Trade Union Leave on such terms and conditions prescribed by the Ministry's Policy Directive PD2006_097 as amended from time to time.

26. Long Service Leave

- a. Employees shall be granted long service leave on such terms and conditions as may be applicable from time to time to employees employed under the provisions of the Public Sector Employment and Management Act 2002, and the regulations made thereunder. This includes the taking of long service leave on half pay.
- b. Where an employee has accrued a right to an allocated day of 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.

27. Sick Leave

- (a) Full-time employees shall, subject to the production of a medical certificate or other evidence satisfactory to the Service (which may include a statutory declaration) be entitled to sick leave as follows:
 - (i) For service prior to 1 July 1985, five (5) days sick leave during the first year of service and eight (8) days' sick leave for the second and subsequent years of service, and
 - (ii) For service from 1 July 1985, ten (10) days sick leave during each year of service, provided that any employee employed prior to 1 July 1985 shall not be entitled to accrue sick leave at the rate referred to in this paragraph until the employee's first anniversary date on or after 1 July 1985.
 - (iii) All sick leave referred to in this sub-clause shall be granted on full pay.

- (iv) Each day of sick leave shall be equal to the number of hours an employee works in a normal rostered shift. This sub-clause shall only apply to Operations Centre Communications Assistants.
- (b) An employee shall notify the Service, where practicable, of his or her inability to attend for duty at least four (4) hours but in any case no less than one (1) hour before the commencement time of duty and inform the Service as far as possible the estimated duration of same.
- (c) The payment for any absence on sick leave in accordance with this clause during the first three months of employment of an employee may be withheld by the Service until the employee completes such three months of employment at which time the payment shall be made.
- (d) An employee shall not be entitled to sick leave on full pay for any period in respect of which such employee is entitled to workers' compensation; provided, however, that the Service shall pay to an employee who has sick leave entitlement under this clause, the difference between the amount received as workers' compensation, and full pay. If the Service pays such difference, the employee's sick leave entitlement under this clause shall be proportionately reduced for each week during which such difference is paid.
- (e) If the full period of sick leave is not taken in any year, the whole or any untaken portion shall be cumulative from year to year.
- (f) Permanent part-time employees shall, subject to the provisions of this clause, be entitled to proportionate amount of sick leave. The amount of sick leave to which a permanent part-time employee is entitled in any year shall bear the same ratio to sick leave prescribed during that year of service for full-time employees; as permanent part-time employee's normal ordinary hours of work for a week during such year would be borne to full-time employee's normal weekly hours of work.
- (g) Service before the date of this Award shall be counted for the purpose of assessing the annual sick leave entitlement but accumulated leave at the credit of the employee at the commencement of this Award will not be increased or reduced by the operation of this clause.
- (h) If an agreed holiday occurs during an employee's absence on sick leave then such agreed holiday shall not be counted as sick leave.

28. Climatic and Isolation Allowance

- (a) Subject to sub-clause (b) of this clause, employees attached to Ambulance Workplaces situated upon or to the West of a line drawn as herein specified, shall be paid the allowance specified in clause 41, Climatic and Isolation Allowance, of this Award in addition to the salary to which they are otherwise entitled. The line shall be drawn as follows, viz:

Commencing at Tocumwal and thence to the following town in the order stated, namely - Lockhart, Narrandera, Leeton, Peak Hill, Gilgandra, Dunedoo, Coolah, Boggabri, Inverell and Bonshaw.
- (b) Employees attached to Ambulance Workplaces situated upon or to the West of a line drawn as herein specified shall be paid an allowance specified in clause 41, Climatic and Isolation Allowance, of this Award, in addition to the salary to which they are otherwise entitled. The line shall be drawn as follows, viz:

Commencing at a point on the right bank of the Murray River opposite Swan Hill (Victoria) and thence to the following town in the order stated, namely - Hay, Hillston, Nyngan, Walgett, Collarenebri and Mungindi.
- (c) The allowances prescribed by this clause are not cumulative.
- (d) Except for the computation of overtime the allowances prescribed by this clause shall be regarded as part of the salary for the purposes of this Award.
- (e) This allowance was increased by 3% as of 1 January 2002.

29. Benefits Not to be Withdrawn

Except in so far as altered expressly or by necessary implication, nothing in this Award shall, in itself, be deemed or be construed to reduce the wages of any employee at the date of the commencement of this Award.

30. Payment and Particulars of Wages

- (a) Wages shall be paid fortnightly by electronic transfer.
- (b) On each pay day, employees shall be furnished with a statement showing the gross amount of ordinary wages and overtime together with separate details of all deductions.
- (c) Overtime and penalty rates shall be paid within one week from the pay day succeeding the day or days on which such overtime or penalty rates were worked.
- (d) 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 Service due to the isolation of a workplace. Salaries shall be deposited by the Service in sufficient time to ensure that wages are available for withdrawal no later than pay day provided that this requirement shall not apply where employees nominate accounts of non-bank financial institutions which lack the technological or other facilities to process salary deposits within twenty four (24) hours of the Service making their deposits with such financial institutions but in such cases the Service shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.
- (e) Underpayment and overpayment of salaries - the following process will apply once the issue of underpayment or overpayment is substantiated.
 - (i) 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.
 - (ii) 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 (ii)(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 (ii)(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.

31. Issues Resolution

- (a) The parties must:
- (i) use their best endeavours to co-operate in order to avoid grievances and disputes arising between the parties or between the Service and individual employees; and
 - (ii) abide by the procedures set out in this clause to resolve any issue which might arise; and
 - (iii) place emphasis on negotiating a settlement of any issue at the earliest possible stage in the process.
- (b) In this clause "issue" means any question, issue, grievance, dispute or difficulty which might arise between the parties about:
- (i) the interpretation, application or operation of this Award; or
 - (ii) any allegation of discrimination in employment within the meaning of the *Anti Discrimination Act 1977* which is not covered by established policies and procedures applicable to the Service, regardless of whether the issue relates to an individual employee or to a group of employees.
- (c) Any issue, and in the case of a grievance or dispute any remedy sought, must be discussed in the first instance by the employee(s) (or the Union on behalf of the employee(s) if the employee(s) so request) and the immediate supervisor of the employee(s).
- (d) If the issue is not resolved within a reasonable time it must be referred by the employee(s) immediate supervisor to his or her supervisor (or his or her nominee) and may be referred by the employee(s) to the Union Organiser for the Service. Discussions at this level must take place and be concluded within two working days
- (e) If the issue remains unresolved, it may be referred by any of the parties to more senior officials of the Union who must then confer with the Chief Executive Officer (and/or his or her nominee(s)) of the Service. The conclusions reached by those representatives must be reported to the parties within two working days of referral or such extended periods may be agreed.
- (f) If these procedures are exhausted without the issue being resolved, or if any of the time limits set out in those procedures are not met, either party may seek to have the matter mediated by an agreed third party, or the matter may be referred, in accordance with the provisions of the *Industrial Relations Act 1996*, to the Industrial Relations Commission for its assistance in resolving the issue.
- (g) The parties agree that during these procedures normal work will continue and there will be no stoppages of work, lockouts, or any other bans or limitations on the performance of work.
- (h) Throughout all the stages of these procedures adequate records must be kept of all discussions.
- (i) These procedures are to be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.

32. Union Subscriptions

The Service agrees, subject to prior written authorisation by the employee, to deduct Union Subscriptions from the pay of the authorising employee.

33. Union Noticeboards

Each Workplace shall permit a notice board of reasonable dimensions to be erected in a prominent position upon which the Union representatives shall be permitted to post Union notices.

34. Anti-Discrimination

- (a) 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.
- (b) It follows that in fulfilling their obligations under the issues 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, has a direct or in direct discriminatory effect.
- (c) 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.
- (d) Nothing in this clause is to be taken to affect:
 - (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (ii) offering or providing junior rates of pay to persons under 21 years of age;
 - (iii) any act or practice of a body established to propagate religion which is exempted under section 56 (d) of the *Anti-Discrimination Act 1977*;
 - (iv) a party to this Award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

35. Reasonable Hours

- (i) Subject to sub-clause (ii) an employer 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.
- (iii) For the purposes of subclause (ii) what is reasonable or other wise 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.

36. Salary Sacrifice to Superannuation

- (i) Notwithstanding the salaries prescribed in Clause 6, Wages, 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 37, 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 wages 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 (vi) above, the employer will continue to base contributions to that fund on the salary payable under Clause 6, Wages, 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.

37. Salary Packaging

1. 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 Services Salary Packaging Policy and Procedure Manual, 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 4 below.

2. 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 6, Wages and which shall include 'approved employment benefits' which refer to fringe benefit savings, administration costs, and the value of packaged benefits.
3. 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.
4. 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.
5. 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.
6. 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 Salary Packaging Policy and Procedure Manual.

7. 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.
8. 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.
9. The employer and the employee shall comply with the procedures set out in the NSW Health Services Salary Packaging Policy and Procedure Manual as amended from time to time.

38. No Extra Claims

- (a) The parties agree that, during the term of this Award, there will be no extra wage claims, claims for improved conditions of employment or demands made with respect to the employees covered by the Award and, further that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the Industrial Relations Commission or any other industrial tribunal.
- (b) 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 provisions in this Award.

39. Area, Incidence and Duration

- (a) This Award shall take effect on and from 1 July 2012 and shall remain in force thereafter for a period of one year.
- (b) This Award replaces and rescinds the Ambulance Service of New South Wales Administrative and Clerical Employees (State) Award published 30 December 2011 (371 I.G. 1457) and all variations thereof.

PART B

40. Classification Structure

Each date referred to in the table is a reference to the first full pay period to commence on or after that date.

Ambulance Service of New South Wales Administrative and Clerical Employees (State) Award	
Classification	01/07/2012 (2.5%) p.w
Administrative Assistants - Junior	
At 16 Years	\$592.50
At 17 Years	\$618.80
Administrative Assistant - Grade 1	
1st Year	\$663.60
2nd Year	\$678.00
3rd Year	\$695.30
4th Year	\$725.70
5th Year	\$751.30
Administrative Assistant - Grade 2	
1st Year	\$778.50
2nd Year	\$796.70
3rd Year	\$809.60
4th Year	\$828.20

Administrative Assistant - Grade 3	
1st Year	\$843.60
2nd Year	\$865.80
3rd Year	\$902.40
4th Year	\$922.10
Administrative Assistant - Grade 4	
1st Year	\$942.70
2nd Year	\$962.60
3rd Year	\$983.10
4th Year	\$1,003.60
Pay Clerks - Grade 3/4	
1st Year	\$965.90
2nd Year	\$1,049.80
Pay Clerk - Senior	
1st Year & Thereafter	\$1,106.60
Senior Administrative Assistant - Grade 1	
1st Year	\$1,023.10
2nd Year	\$1,048.00
Senior Administrative Assistant - Grade 2	
1st Year	\$1,079.80
2nd Year	\$1,106.60
Senior Administrative Assistant - Grade 3	
1st Year	\$1,143.30
2nd Year	\$1,171.70
Administrative Officer - Grade 1	
1st Year	\$1,215.00
2nd Year	\$1,248.00
Administrative Officer - Grade 2	
1st Year	\$1,268.50
2nd Year	\$1,302.20
Administrative Officer - Grade 3	
1st Year	\$1,344.20
2nd Year	\$1,385.50
Senior Administrative Officer - Grade 1	
1st Year	\$1,440.90
2nd Year	\$1,482.90
Senior Administrative Officer - Grade 2	
1st Year	\$1,529.10
2nd Year	\$1,575.30
Computer Operator - Grade 1	
1st Year	\$795.60
2nd Year	\$816.00
3rd Year	\$847.50
4th Year	\$868.80
Computer Operator - Grade 2	
1st Year	\$875.60
2nd Year	\$929.80
3rd Year	\$962.00
Computer Programmer	
1st Year	\$1,141.00
2nd Year	\$1,212.60
3rd Year	\$1,340.70
4th Year	\$1,438.30

Operations Centre Communications Assistants	
Trainee	\$929.80
1st Year	\$990.70
2nd Year	\$1,012.50
3rd Year	\$1,033.60
4th Year	\$1,055.60
Operations Centre Assistant Supervisor	
1st Year	\$1,004.90
2nd Year	\$1,026.20
3rd Year	\$1,047.80
4th Year	\$1,069.40
Operations Centre Senior Supervisor	
1st Year	\$1,090.40
2nd Year	\$1,117.30

41. Climatic and Isolation Allowance

Climatic and Isolation Allowance		
The rates in table below are effective from the first pay period commencing on or after the date shown		
Clause	Description	Rate per week \$
28 (a)	Climatic and Isolation Allowance	4.50
28 (b)	Climatic and Isolation Allowance	9.00

D.W. RITCHIE, Commissioner

Printed by the authority of the Industrial Registrar.

**CARE WORKER EMPLOYEES - DEPARTMENT OF FAMILY AND
COMMUNITY SERVICES - AGEING DISABILITY AND HOME CARE
(STATE) AWARD 2012**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Ageing, Disability and Home Care.

(No. IRC 924 of 2012)

Before The Honourable Mr Justice Staff

4 September 2012

AWARD

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23.	Time and Wages

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2. Title

This Award shall be known as the, Care Worker Employees - Department of Family and Community Services - Ageing Disability and Home Care (State) Award 2012.

3. Application

This Award was negotiated between the Director Public Employment, Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services and United Voice - NSW Branch.

4. Area, Incidence and Duration

This Award shall apply to persons employed in the classifications contained in Part I, Monetary Rates - Table 1 Salaries

This award rescinds and replaces the Care Worker Employees - Department of Family and Community Services - Ageing Disability and Home Care (State) Award published 18 November 2011 (371 I.G. 898), and all variation thereof

This award is to become operative from the first full pay period to commence on or after 1 September 2012 and will expire on 31 August 2013.

5. Future Awards

The parties agree that they will commence negotiations for the next Award to achieve improved performance of Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services not less than six (6) months prior to the Agreement expiring.

5A. No Extra Claims

The parties agree that, during the term of this Award, there will be no extra wage claims, claims for improved conditions of employment or demands made with respect to the employees covered by the Award and further, that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the Industrial Relations Commission or any other industrial tribunal.

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

6. Definitions

"Award" - means the Care Worker Employees - Family and Community Services - Ageing Disability and Home Care (State) Award 2012.

"Casual employee" - means an employee engaged by the hour and paid as such and who works less than 20 hours per fortnight. Where a casual employee works above 20 hours per fortnight it is to be for temporary and relief purposes only.

"Competency Assessor" - An employee called upon by the employer to undertake the role of a Workplace Competency Assessor and any other role associated with the Care Workers Professional Development Program.

"Domestic Assistance Duties" - refers to assistance with domestic chores, including assistance with cleaning, dishwashing, clothes washing and ironing, shopping and bill paying and meal preparation where this is one component of the overall occasion of service.

"Employer" - means the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services .

"Employee" - means a person employed by the Home Care Service Division within the scope of this Award.

"Engagement" - means time on the job with the client(s), joined by the time taken to travel between clients, meal breaks, crib breaks and rest periods. Typically, this will be a series of tasks one after another.

"Family" - includes traditional family relationships, non traditional relationships and culturally based equivalents.

"Fixed Term Contract" - means an employee who has been employed specifically for a fixed term of employment.

"Full-time Employee" - means any employee who is regularly rostered to work between 70-76 hours per fortnight.

"Overnight Care" - means care to clients overnight where the employee receives reasonable rest periods during the night.

"Part-time Employee" - means any employee who is regularly rostered to work less than 70 hours per fortnight but no less than 30 hours or more per fortnight. Provided that the minimum part-time hours shall be no less than 20 hours per fortnight during the transition arrangements period of this Award or where such employees meet the criteria identified at clause 7(i) of the Memorandum of Understanding between the LHMU and DADHC dated 27 May 2009.

"Permanent Relief Care Worker - means a Care Worker employee specifically employed to undertake relief task resulting from planned and unplanned Care Worker leave. Relief Care Workers are appointed as such and provide the full range of Home Care services to clients.

"Presenter" - means an employee designated by the Branch to prepare and present Branch based training programs to groups of employee's as distinct from one on one "on the job" training.

"Service" - means the Home Care Service of New South Wales.

"Task" - means the smallest discrete unit of an engagement. Examples of tasks may include; an incident of travel time, a specific client service, or a meal break. A client receiving 2 hours of service, 1 hour of housework and 1 hour of personal care, as 2 tasks - one for each service type.

"The parties" - means the Union and the Department.

"Union" - means United Voice - NSW Branch. (UV).

7. Grievance/Dispute Settling Procedures

- i. All grievances and disputes relating to the provisions of this award shall initially be dealt with as close to the source as possible, with graduate steps for further attempts at resolution at higher levels of authority within the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services, if required.
- ii. An employee is required to notify in writing their immediate supervisor, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- iii. 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 employee to advise their immediate supervisor, the notification may occur to the next appropriate level of management, including where required, to the Director General, Department of Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services or delegate.

- iv. The immediate supervisor, 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.
- v. If the matter remains unresolved with the immediate supervisor, the employee 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. This sequence of reference to successive levels of management may be pursued by the staff member until the matter is referred to the Area or Regional Manager.
- vi. The Area or Regional Manager may refer the matter to the Regional Director for consideration.
- vii. If the matter remains unresolved, the Area or Regional Manager shall provide a written response to the employee 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.
- viii. An employee, at any stage, may request to be represented by their union.
- ix. Notwithstanding the above, either party may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures. The decision of the New South Wales Industrial Relations Commission must be accepted by the parties, subject to any appeal availability.
- x. Whilst the procedures outlined in the subclauses (i) to (ix) 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 occupational health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any employee or member of the public.

8. Consultation

If, during the course of this Award, the employer requires employees covered by this Award to undertake tasks outside the parameters normally and reasonably prescribed by the Department of Ageing, Disability and Home Care, the parties shall meet to negotiate appropriate rates of pay and conditions. Whilst those negotiations proceed, on a without prejudice basis, employees will be paid for such tasks at Higher Duties - Care Worker Grade 4 pursuant to clause 16 of this agreement.

Trial/Implementation of non-paper based time and attendance system

- (i) The parties to this award agree to consult on future technologies for electronic time and attendance capture and/or any other non-paper based time and attendance system proposed to be utilised for the purpose of recording attendance of Care Workers at the clients' residence.
- (ii) Trials/implementation of non-paper based time and attendance systems will be conducted subject to the following:

A Joint Implementation Committee, comprising of but not limited to representatives of each of the parties to this Award will be established. The purpose of the Joint Implementation Committee is to examine the possibilities of a non-paper based time and attendance system through various trials and pilot projects where the technology/systems can be assessed for suitability. The consultation working party will ensure the trial(s) is (are) conducted with as little disruption to normal work as possible, and that no employee is disadvantaged as a result of the trial. The Joint Implementation Committee will also ensure that each affected employee receives proper training in the use of the proposed time and attendance technology.

For the purposes of any trial (s) clause 22C of this Award shall be disregarded. Employees in Branches not participating in the trial (s) will continue to be subject to clause 22C.

All Care Workers in a Branch participating in a trial (s) of a non-paper based time and attendance systems are required to fully participate in that trial.

- (iii) At the conclusion of the trial(s) the Joint Implementation Committee shall meet and assess the effectiveness of the time and attendance system(s) and shall report on any difficulties encountered during the trial(s) and/or any proposals for improvements to the system(s).
- (iv) Following the trial(s) Home Care may implement the non-paper based time and attendance technology agreed to best suit the operation of Home Care. If such a decision is taken the technology will be implemented throughout Home Care's state-wide Branch network.
- (v) Where agreement cannot be reached on implementation, the assistance of the NSW Industrial Relation Commission may be sought by either party.

PART B

EMPLOYMENT CONDITIONS

9. Contract of Employment

A. Employment Conditions

- i. An employee may be engaged as a full-time, part-time, casual or fixed term contract employee. An employee shall be notified in writing at the point of hire of their employment status, grade/classification and level of contract hours.
- ii. Employees other than casuals shall be rostered for 2 weekly periods and their employment shall be terminated by 2 weeks notice on either side to be given at any time during the week or by the payment or forfeiture, as the case may be, of the difference between the notice given and 2 week's wages in lieu thereof.
- iii. Notwithstanding the provisions of this clause the employer or its representative shall have the right to terminate an employee at any time for refusal of duty, malingering, inefficiency, neglect of duty or misconduct and shall be liable only for payment up to the time of dismissal.
- iv. On the termination of employment the employer shall, at the request of the employee, give to such employee a statement signed by the employer stating the period of employment, the class of work employed upon and when the employment terminated.
- v. Where due notice of termination of employment has been given, all monies which are due shall be paid to the employee concerned no later than three (3) working days following date of termination. Monies shall be paid into the former employees wages account.

B. Full-time employment

- i. A full-time employee shall be an employee who is employed to work a minimum of 70 hours per fortnight and a maximum of 76 hours per fortnight.
- ii. Full-time employees shall be entitled to Annual Leave, Long Service Leave, Public Holidays, Sick Leave and like conditions of this Award on a full time basis of 76 hours per fortnight.

C. Part-time employment

- i. A part-time employee shall receive the appropriate hourly rate of pay prescribed in Part I. Monetary Rates - Table 1 Salaries, of this Award, calculated to the nearest whole cent, any amount less than a half cent in the result to be disregarded.

- ii. Part-time employees shall be entitled to Annual Leave, Long Service Leave, Public Holidays and like conditions of this Award on a pro-rata basis. Sick Leave shall be based on the upper level of contract hours as prescribed in per Clause 34 - Sick Leave, of this award.
- iii. Part-time employees shall be offered all additional hours of work, in accordance with Clause 13 - Distribution of Hours, wherever practicable to do so before new employees are employed so that part-time employees may obtain increased regular hours (and where practicable to create full-time positions as per Clause 9 - Contract of Employment), of this Award.

D. Uncontracted employees

Contract hours shall not apply to permanent employees who were employed before the 1992 Award became operative and whose ordinary hours are less than 20 hours per fortnight. Such employees shall remain as part-time employees. Employees who are not covered by contract hours shall be offered additional work, wherever practicable, in order to increase their working hours to such a degree that they shall be covered by contract hours.

E. Casual employment

- i. Employees who work less than 20 hours per fortnight shall be employed as casuals and therefore shall not receive contract hours.
- ii. A casual employee is employed and paid by the hour and shall receive the hourly rate of pay prescribed in Part I. Monetary Rates - Table 1 Salaries, of this Award, plus a casual loading of 20% of the appropriate hourly rate of pay for all duty performed. This amount shall be the ordinary rate of pay for casual employees and is inclusive of compensation for Annual Leave, Sick Leave and Public Holidays. The ordinary hourly rate for casuals shall attract the appropriate loadings or penalties as outlined in this Award.
- iii. The hourly rate of pay prescribed in paragraph (ii) hereof shall be calculated to the nearest whole cent, any amount less than a half cent in the result to be disregarded.
- iv. Casual employees shall receive a minimum payment of one (1) hour for each engagement subject to the provisions outlined in Clause 12 - Hours of Work, of this Award.
- v. The employment of a casual employee may be terminated by one hour's notice.

F. Probationary Period

The employment of permanent employees without previous service employed subsequent to certification of this Award shall be subject to a probationary period of up to three months. During the first four weeks of employment such employees may be terminated with one day's notice. Provided that the employer and employee may agree in writing to reduce or exclude altogether the probationary period.

No probationary period shall apply to employees transferring from one grade to another, save for the balance of any probationary period arising from the initial engagement and which remains in force at the time of transfer between grades.

The probationary period is subject to the procedures contained in PART C, 10 "Probationary requirements for new employees" of the Home Care Service Personnel Policies and Procedures.

10. Conversion to Permanent Employment

1. This clause only applies to a regular casual employee:

- (i) A "regular casual employee" means a casual employee who is employed by the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least six (6) months.

2. A regular casual employee who has been engaged by the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services for at least six (6) months, may elect (subject to the provisions of this clause) to have his or her contract of employment converted to permanent employment.
 - (i) The employee will be converted to a contract band in accordance with clause 11 of this Award.
 - (ii) The appropriate contract band will be determined by taking an average of the hours worked by the employee over the preceding six (6) months less 15% and employment will be offered within the corresponding band e.g. a casual employee averages 42 hours over twelve months, less 15% equals average of 35.7 hours. Therefore the employee must be offered a 30-hour contract.
 - (iii) Nothing in this clause prevents the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services from offering a contract at a higher level than that arrived at by following the process specified in sub-clause 10(2)(ii).
 - (iv) Nothing in this clause requires the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services to offer permanent employment to an employee who, after following the process specified in sub-clause 10(12)(ii), averages less than 30 hours a fortnight.
3. Where a regular casual employee seeks to convert to permanent employment, the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services may consent to or refuse the election, but only on reasonable grounds. In considering a request, the Home Care Service may have regard to any of the following factors:
 - (i) Initial employment through some form of merit selection
 - (ii) the size and needs of the Branch in which the employee works;
 - (iii) the nature of the work the employee has been doing;
 - (iv) the qualifications, skills, and training of the employee;
 - (v) the employee's personal circumstances, including any family responsibilities;
 - (vi) ongoing availability of work
 - (vii) satisfactory performance and conduct record
 - (viii) any other relevant matter.
4. Where it is agreed that a regular casual employee will have his or her employment converted to permanent employment as provided for in this clause, the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services and the employee must discuss and agree upon to which contract band the employee will convert. Consistent with the process outlined at 10(2)(ii), 10(2)(iii).
5. The date from which the conversion will take effect is the commencement of the next pay cycle following such agreement being reached unless otherwise agreed.
6. An employee must not be engaged and/or re-engaged (which includes a refusal to re-engage) to avoid any obligation under this Award. Unless at the employees request or as a result of their individual circumstances
7. Nothing in this clause obliges a regular casual employee to request conversion to permanent employment, nor permits the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services to require a casual employee to so convert.

8. Nothing in this clause requires the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services to convert the employment of a regular casual employee to permanent employment if the employee has not worked for six (6) months or more for the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services.
9. Nothing in the clause requires the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services to increase the hours of a regular casual employee seeking conversion to permanent employment. The allocation of work must be in accordance with Clause 13 of this Award-Distribution of Hours.
10. Any dispute about a refusal of an application to convert a contract of employment or about the matters referred to in sub-paragraph 10(3) must be dealt with in accordance with the provisions of clause 7 - Grievance/Dispute Settling Procedure.

11. Contract Hours

(i) Contract Bands

Employees, other than casuals, shall be given contract hours on a fortnightly basis.

The following table sets out the levels of contract hours:

Column 1 Contract hours	Column 2 Actual hours worked
30	30 - 39
50	50 - 59
70	70 - 76 (Full time)

Contract hours, as specified in column 1, shall be based on the Monday to Friday hours of work for Monday to Friday employees and Saturday to Friday hours for Saturday to Friday employees.

Contract hours specify the minimum hours the employee must work and the minimum payments that an employee shall receive.

An employee on contract hours, as specified in Column 1, must accept work up to and including the corresponding range of hours in Column 2 where this request is reasonable and within the employee's agreed availability. An employee may accept additional hours above the corresponding range by the agreement of both parties.

Employees who are unable to be offered at least their contract hours in work shall be paid the difference between the work that has been offered and their minimum level of contract hours.

Employees may progress from one level of contract hours to another on the basis of a 12 monthly review with the following hours required to have been worked on average per fortnight over the preceding 12 months to move onto that contract band. This review will occur in August 2009, August 2010 and August 2011. Should evidence be available to demonstrate successful transition to the identified establishment model, the August 2011 review will not be required. That is merit based selection to identified vacancies has been suitably achieved.

Contract Band	Averaged fortnightly hours over preceding 12 Months
30	36
50	59
70	74

(ii) Progression in Contract Level

Employees may progress from one contract level to another by way of internal expressions of interest, in which merit based selection principles shall apply. Vacant positions will only be advertised externally in the event positions cannot be filled internally.

(iii) Reduction of Contract Hours

An employee may request a reduction in contract level. The branch will only comply with this request after receiving such request from the employee in writing.

(iv) Transition to 30, 50 and 70 Contract levels.

On certification of this Award current employees on contract bands of 20, 40 and 60 may elect to increase their existing contract level to the next available contract level or remain on their existing contract level during implementation of this provision. The implementation period will conclude at 1 September 2010.

12. Hours of Work

A. Ordinary Hours

i. The ordinary hours of work shall be up to and including 76 hours per fortnight Saturday to Friday. All hours worked on weekends and outside 6.00 am to 6.30 pm Monday to Friday shall attract the appropriate penalties as per Clause 24 - Penalty Rates for Ordinary Time and Weekends.

ii. Subject to Clause 24 - Penalty Rates, of this award the ordinary hours of work exclusive of meal times shall not exceed 8 hours per day or 76 hours per fortnight, Saturday to Friday.

B. Minimum Start

Employees (including casuals) shall receive a minimum payment of two (2) hours for each engagement. Provided that in the case of Personal Care services, Respite Care services to Personal Care clients (and service where there is a genuine inability to roster for two (2) hour minimum start) the minimum start shall be one (1) hour.

C. Breaks between shifts

Employees shall be rostered in such a way that they receive at least 8 consecutive hours break within any 24 hour period. Should an employee not receive such a break then the employee shall receive overtime rates for all time actually worked during subsequent work days until such time as an 8 hour break is received. This clause shall operate subject to availability nomination as per sub-clause L of this clause

D. Travel Time

All travel time between clients during an engagement shall be regarded as time worked for all purposes of the Award.

E. Rest Period

Rest periods shall be allowed where necessary in accordance with current practice. The intervals shall not exceed ten (10) minutes and shall be part of the time worked without deduction in pay.

F. Meal Break

- i. A meal break of not less than thirty (30) minutes or more than sixty (60) minutes shall be allowed for employees who work continuously for five (5) or more hours during their ordinary hours of work.
- ii. No employee shall be required to work more than five (5) hours continuously without a meal break (or a crib break) after commencing their daily work.
- iii. Where the nature of the work does not allow for the taking of a meal break a paid twenty (20) minute crib break shall be taken.

G. Notification of hours

As far as possible the employer shall fix the time of duty in a flexible way to meet the needs of the client and the employee.

H. Rosters

All employees shall receive a roster setting out the following fortnights work, where appropriate. Such rosters shall be based upon agreed availabilities between the employee and the Branch.

I. Client Details

Employees must receive appropriate instruction or training before attending a new client, or being required to deliver a new service or skill.

In addition, employees shall be provided with relevant client details in writing to enable them to undertake the duties as directed (including relief clients).

Where written procedures are unable to be provided due to short notice, verbal instructions are acceptable but must be confirmed in writing.

J. Days off per fortnight

All employees shall be rostered in such a way that they receive at least one (1) day off per week. If there is agreement between the employee and the Branch this may be taken as two (2) days off per fortnight.

K. Availability for fortnightly roster

Employee's are not on call, unless as designated so by the Branch in accordance with the on call provisions contained in Clause 19 - On Call, of this award.

Availability must be agreed between the employee and their supervisor in a fair and reasonable manner with the needs of both parties being considered. The agreed availability is then recorded in an availability register (See Appendix A).

L. Availability Conditions

Employees shall make themselves available in accordance with the following table. That is they must select the minimum number of availability time/periods in accordance with the employee's current contract level. Employees, increasing in contract level or new employees engaged on a contract of 50 hours per fortnight or more must be available for work on a Saturday to Friday basis in accordance with the table below. Provided that the entitlement of existing permanent employees employed as at the date of certification of this Award to increase contract bands without being required to nominate availability during a weekend period will not be affected in those circumstances where a contract may have been increased under the LHMU and Home Care Service of NSW (Field Staff) Enterprise Agreement 1999.

Note: A maximum of two (2) six hour time periods can be utilised for each 24 hour period.

Employees retain the option within their availability of whether they receive an 8 consecutive hour break or a 10 consecutive hour break within any 24 hour period.

Contract Level	Minimum number of Availability Time Periods	Weekend Availability for Saturday - Friday employee's
30	8 x 6hrs	
50	12 x 6hrs	1 in 4
70-76	16 x 6hrs	2 in 4

Availability must be agreed, within the service hours available in the Branch, between the employee and the employer prior to the availability being accepted and activated.

Availability, once agreed, will remain in place for a period of 3 months and may only be altered during this period in extra-ordinary circumstances. Following the expiry of the three month period either party may initiate discussion on changes to the agreed availability and nominated break between shifts.

The employer shall not require an employee to work ordinary hours outside their agreed availability.

In the event of a dispute between an employee and the employer regarding availability, clause 7 - Grievance/Dispute Settling Procedures of this Award shall apply.

(i) Transition to Availability provisions

Availability provisions in place at the commencement of this Award with regard to all availability will remain active for a period of approximately eighteen months from certification of this Award to facilitate a transition period (i.e. until 1 September 2010).

Employees who elect to remain on contract levels of 20, 40 and 60 for the implementation period as prescribed by Clause 11 (iv) Contract Hours will be required to provide availability consistent with the Care Worker Employees - Department of Ageing, Disability and Home Care (State) Award 2006.

M. Refusing Work

Employees will only be able to refuse work where either:

- * it is outside their agreed availability
- * they are rostered beyond their maximum contract range
- * fair and reasonable notice has not been given
- * there are extenuating circumstances

13. Distribution of Hours

Home Care will distribute hours of work to Care Worker teams established in geographically based areas within the Branch. Each team will consist of a number of Care Workers of different grades and contract levels which most effectively meet the client work load.

For the purposes of this clause "geographically based teams" shall mean the area within which the clients of a particular team are located.

All members of a team shall recognise the right of all team members to an equitable distribution of work in accordance with agreed skills, contract levels, grade and availability. Team members will act constructively, exercise tolerance and acknowledge the views of other team members, and utilise the Care Worker Self Rostering Checklist when seeking additional work or changes to existing work.

Where work arising from planned leave, unplanned leave or other additional work cannot be undertaken by the relief Care Worker it must first be offered to permanent employees (within the Team) considering the following::

- i. Staff who have fallen below contact hours
- ii. Staff who have lost clients recently for reasons such as death, hospitalisation or through legitimate clients self determination
- iii. Staff who have notified the branch that they want more work, the work is available and is within their agreed availability

Service Co-ordinator must consider the following issues in determining the distribution of work:

- i Identify those staff who possess the necessary skills as determined by the Service Co-ordinator;
 - ii. All Occupational Health and Safety implications of the service to be provided have been considered;
 - iii. The cost effectiveness of providing the service has been considered
- iv. The client's choice of employee has been considered and where that preference is for a legitimate reason. Any dispute as what constitutes a legitimate reason shall be dealt with pursuant to clause 7 Grievance/dispute settling procedure.

Permanent employees within the team shall have first opportunity to perform any additional work before casuals and contractors, subject to availability, appropriate training and the work being performed at ordinary time rates of pay. If work is allocated to a casual employee in the first instance, it must then be advertised at the first opportunity to permanent employees within the team where the work exists. Where the appropriate team cannot do the work, neighbouring teams will be offered the work, where cost effective, prior to the work being offered to other providers.

Note: Any work unable to be undertaken by the team remains the responsibility of the Service Coordinator for rostering purposes.

14. Self Rostering

1. Self Rostering is the practice of providing opportunity for Care Workers to re-roster services to better suit the changing requirements of either their clients or themselves.
2. Self Rostering is only to be undertaken by a Care Worker in such a way that the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services incurs no additional costs in relation to payment of hours, overtime and penalties for time worked arising from changes to the original roster.

For the purposes of the above, additional cost shall not be taken to include the travel allowance as provided for in this Award.

3. When a Care Worker or client wishes to change the date and/or time of service, then both the Care Worker and client may negotiate the change between themselves to reach a desired solution that is agreeable to both parties (see Appendix E Guidelines to use when Initiating Changes to Client Service).
4. Self Rostering is not to be utilised in substitution for normal leave provisions i.e. sick and/or annual leave.
5. One Off Short Term Changes

Care Workers are authorised to make one-off short term changes to their roster without notifying their service co-ordinator or the branch provided there are no award implications (see Appendix D, Care Worker Self Rostering Checklist) or increased costs associated with the change.

6. Changes made to rosters are to be recorded on either the back or front of the Care Worker timesheet for the fortnight in which the change occurred. Full details including client's name, number, day/date and time the service was provided and any kilometres incurred must be recorded.
7. Where either the client or Care Worker wishes to change the date and/or the time of a rostered service, and agreement cannot be reached between the parties, the service co-ordinator must be contacted to arrange a satisfactory alternative solution.
8. Permanent Changes:

If either the care Worker or the client wish to make a permanent change to a client's date and/or time of service they may negotiate this however, permanent changes must be discussed with, and agreed to, by the Service Co-ordinator prior to final confirmation of the change with the client.

15. Gradings and Advancements

Upon being employed by the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services employees shall be graded and/or advanced into one of the following grades based on the Guidelines as per Appendix F.

A. Care Worker Grade 1

Employees engaged at this level shall be employed as Grade 1 employees and shall be required to perform Grade 1 duties only. Optional training shall be provided to employees at this level to equip employees to apply for Grade 2 positions. Employees may enhance their knowledge, skills and experience through opportunities to multi-skill.

Grade 1 employees shall work on weekdays only and will not be required to work on public holidays.

B. Care Worker Grade 2

An employee at this level shall be able to work without direct supervision and shall be competent in carrying out simple Personal Care, Housekeeping and Repetitive Upkeep tasks, where these duties have a slight to moderate impact on the work/worker from client behaviours or household environment. Optional training shall be provided to employees at this level to equip employees to apply for Grade 3 positions.

C. Care Worker Grade 3

An employee who has completed the training in Grade 2 or who demonstrates they meet the requirements of Grade 2 and have the skills to complete more complex tasks, may apply for positions at Grade 3.

Positions in this Grade shall be advertised within a Home Care Branch or geographical area and shall be filled internally. Grade 3 positions shall only be filled externally if the position cannot be filled internally.

Employees at this level will perform the duties of a Grade 2 employee and perform complex work where there is a moderate to pronounced impact on the work/Worker from client behaviours and/or the household environment. Grade 3 employees will be involved in on the job training of employees where required.

D. Home Aides and Handypersons

Home Aides are staff who were employed prior to June 1992 and were unable or unwilling to be graded upon implementation of the 1992 Field Staff Award. Home Aides are not covered by contract hours. Home Aides cannot be employed after June 1992.

Handypersons are staff who were employed prior to June 1992 as Handypersons and were unable or unwilling to do the full range of duties required to be graded.

Handypersons who are employed post June 1992 can only be employed to specifically undertake Handypersons duties only and must be given contract hours.

Notwithstanding the above, should a dispute arise as to the nature of work that has been allocated to an employee, the parties in the first instance shall rely upon Clause 7 - Grievance/Dispute Settling Procedures, of this Award to resolve the matter.

E. Permanent Relief Care Worker

Permanent Relief Care Workers are employed specifically to undertake relief work resulting from both planned and unplanned leave within the branch. The relief Care Worker shall be employed on a permanent basis consistent with the grading levels and work requirements provided in this Award, which enables the employee to be adequately skilled and available to undertake the required relief work as determined by the branch.

Relief Care Workers shall be offered employment at a contract level and Grade consistent with the needs of the branch. Availability requirements of clause 12 shall apply in full to Permanent Relief Care Workers.

Relief Care Workers are appointed as such and provide the full range of Home Care services to clients as required by the Branch.

Nothing in this Award shall prohibit Relief Care Workers from expressions of interest in other roles within Home Care as vacancies arise.

Permanent Relief Care Workers will only be requested to perform service where the employee has sufficient skills to perform the required tasks/duties.

16. Higher Duties/Multi-Skilling

A. Purpose

The purpose of this Clause is twofold. Not only will it enhance the skills of Grade 1 and Grade 2 employees by providing the opportunity to multi-skill, it is also recognised that it will share the load of Grade 2 and complex Grade 3 work amongst all employees that will contribute towards safer rostering practices.

The parties agree that the following is a policy that will contribute towards the development of long term arrangements to address issues such as the mix of work and self rostering.

The parties will continue to promote opportunities for employees who wish to increase their contract hours.

B. Multi-skilling

- i. Grade 1 employees may perform Grade 2 work where the Grade 2 work does not exceed 50% of the Grade 1 employee's minimum level of contract hours.
- ii. Grade 2 employees may perform Grade 3 work where the Grade 3 work does not exceed 50% of the Grade 2 employee's minimum level of contract hours.
- iii. Grade 1 employees who undertake more than 50% of their minimum level of contract hours performing Grade 2 work in the fortnightly period shall be paid at the Grade 2 rate for all hours worked in the fortnightly pay period.

Grade 2 employees who undertake more than 50% of their minimum level of contract hours performing Grade 3 work in the fortnightly period shall be paid at the Grade 3 rate for all hours worked in the fortnightly pay period.

Permanent minimum level of contract hours	50% of Contract Hours
30	15
50	25
70	35

- iv. Higher duties work will only be performed where the employee has the skills to perform the duties.
- v. Grade 1 employees retain the option to accept or reject Grade 2 work.
- vi. Grade 2 employees retain the option to accept or reject Grade 3 work.
- vii. Where Grade 3 hours are worked by Grade 2 employees, the Grade 3 work will be included for the purposes of reviewing contract hours.
 - (a) Should the employee choose to no longer perform permanent Grade 3 work, Home Care will review the contract level to determine if it can be maintained with only Grade 2 work.
 - (b) Where the contract cannot be maintained, the contract will return to the original contract level.
- viii. A request by a Grade 1 employee to perform Grade 2 work will only be considered in writing from the employee to the employer. Refer Appendix B - Higher Duties/Multi-skilling Agreement, of this Award.
- ix. A request by a Grade 2 employee to perform Grade 3 work will only be considered in writing from the employee to the employer. Refer Appendix B - Higher Duties/Multi-skilling Agreement, of this Award.

C. Travel time

- i. Where an employee is performing work which is paid at a higher rate, they shall be paid the time taken to travel to the job and from the job at their classification rate.
- ii. Where the higher duties jobs are linked together by the time taken to travel between clients then the time taken to travel between the clients shall be paid at the higher rate of pay.
- iii. It is not intended to roster employees with gaps between clients to avoid payment under ii. above.

D. Higher duties

Subject to subclause B(vii) of this clause, an employee called upon by the employer to perform work of a grade paid at a higher rate shall be paid at the higher rate for the actual time spent performing the duties. Higher duties work will only be performed where the employee has sufficient skills to perform the duties.

- (i) Payment for Leave whilst performing higher duties
 - (1) Where an employee proceeds on leave; and
 - (a) the employee is employed in a Grade 1 or Grade 2 position; and
 - (b) the employee is currently called upon to perform higher duties as a Grade 2 or Grade 3; and

- (c) has been called upon to perform higher duties for a continuous period of twelve months or more in a Grade 2 or Grade 3 position;

the employee will be paid leave at the applicable higher duty rate.

- (2) Continuous service prior to the making of this Award will be taken into account in calculating leave

- (ii) Higher duties - Administrative tasks

An employee called upon to act in positions within the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services, other than those under this Award, shall be paid the appropriate hourly rate applicable to that position. Where such rates are lower than the employee's ordinary rate of pay, the ordinary rate of pay will be paid.

- (iii) Care Worker Grade 4

An employee at this level may perform one or more of the following tasks:

- (a) Presenter, preparing and presenting training programs to groups of employee's.
- (b) Workplace Competency Assessor, undertaking the tasks required of the Care Workers' Professional Development Program.

E. Promotion to Grade 3 positions

- i. Grade 2 employees who are performing regular Grade 3 work shall be deemed competent to undertake such work on a permanent basis and such experience will be taken into consideration in the selection process to vacant Grade 3 positions.
- ii. Where the contract hours of the vacant Grade 3 position is less than those currently worked by the Grade 2 applicant, the Grade 3 contract hours being offered by the Branch may be increased upon request from the employee by a maximum of (1) one contract level only.

17. Motor Vehicle Insurance

All employees (including casuals) will be required to obtain and provide proof of third party property motor vehicle insurance as a condition of their employment.

Third party property motor vehicle insurance will be checked annually, at the same time vehicle registration and drivers' licences are checked.

Employee's have a duty to notify Home Care if they are unable to maintain their motor vehicle insurance, vehicle registration or driver's licence, during the course of their employment.

18. Fixed Term Contracts

The purpose of implementing an additional classification for employee's to be employed on a fixed term contract basis has been established for limited use in the following specific circumstances.

Short term non-recurrent funded services;

Genuine situations of isolation where no other staff are available to provide services;

Relief situations where existing care Workers cannot carry out the work, i.e.: maternity leave

An employee can only be employed on a fixed term contract basis where it is consistent with the above circumstances.

The parties shall monitor the use of fixed term contracts every six months to ensure usage remains consistent with the above criteria.

All fixed term contracts must operate for a minimum of six (6) months and a maximum of twelve (12) months. Provided that, in special circumstances, with the agreement of the union, a fixed term contract can operate for 3 months.

Fixed term contract employees will only be employed where the agreed contract as outlined in Appendix C - Offer of Fixed Term Contract has been adhered to.

Branches shall notify the head office of the union in writing of an intention to enter into a fixed term contract a minimum of 4 weeks prior to the commencement of such contract. Provided that less than four weeks notification may be given in circumstances where the requirement for a fixed term contract becomes known to a branch at shorter notice, in which instance the branch will notify the union as soon as possible after it becomes aware of such requirement. The union may contact the Branch concerned directly in relation to such fixed term contract. Any disputes as to the existence and/or operation of such contract shall be dealt with pursuant to the provisions of Clause 7 Grievance procedure of this Award.

19. On Call

Employees who agree to be on call shall be paid 15% of the Grade 3 ordinary hourly rate whilst on call. Payment for time actually worked shall attract the appropriate loadings specified in Clause 24 - Penalty Rates, 25 - Overtime, or 26 - Public Holidays, of this Award. The on call arrangements operate outside normal office hours and weekends when the Branch office is closed. No employee will be required to be on call to perform grade 4 duties.

20. Client Cancellation

- i. Where an employee is given notice before 5pm the day before the rostered service was to take place that a client shall not be requiring service then no payment shall be made to the employee, except as provided for in Clause 26 - Public Holidays, of this Award.
- ii. Where an employee is given notice after 5pm the day before the rostered service or where an employee arrives at the client's home and the client is not there:

- (a) The Branch will, as soon as possible following receipt of advice of a cancelled shift, follow the protocol steps set out below to ensure every opportunity to replace work lost through cancellations is taken to replace that cancelled work with another job of the same or greater duration.

Step 1 - The Branch will examine all non-allocated work, including work to be or being performed by contractors within a team and neighbouring teams to identify any work which might be utilised as a replacement for cancelled work.

Step 2 - The Branch will examine all work being performed by casual employees within a team and neighbouring teams to identify any work which might be utilised as a replacement for cancelled work.

Step 3 - The Branch will examine all work being performed as overtime within a team and neighbouring teams to identify any work which might be utilised as a replacement for cancelled work.

Step 4 - The Branch shall, in identifying work as set out in steps 1, 2 and 3, recognise temporarily amended availability in respect to an affected employee who has advised availability outside the nominal availability previously advised in accordance with clause 12 of this agreement for the purpose of obtaining work to replace cancelled shifts.

Step 5 - The Branch shall offer any work identified within steps 1, 2 and 3 to an affected employee.

Work within neighbouring teams need not be examined where it is impracticable to offer that work to the affected employee due to inordinate travel requirements.

- (b) Where the Branch is unable to find replacement work during the same pay period then the employee shall be paid for the cancelled task up to a maximum of 1 hour.
 - (c) Where an employee fails to notify the Branch of a client cancellation or where an employee refuses appropriate replacement work, the employee will not be paid for the cancelled task.
- iii. Additional work which had been advised to an employee prior to a cancellation shall not in any circumstances be regarded as a replacement for work subsequently cancelled.

21. Termination Change and Redundancy Provisions

A. Introduction of Change

(a) Employer's duty to notify

- i. Where an employer has made a definite decision to introduce major changes in 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 proposed changes and the Union.
- ii. "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 the Agreement makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

(b) Employer's duty to discuss change

- i. The employer shall discuss with the employees affected and the Union, the introduction of the changes referred to in paragraph A (a) hereof, the effects the changes are likely to have on employees, 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.
- ii. 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 paragraph A (a) hereof.
- iii. For the purposes of such discussion, the employer shall provide in writing to the employees concerned and the Union 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 be inimical to the employer's interests.

B. Inability to meet contract hours

(a) Where a Branch cannot maintain Care Worker's contract hours the following process will apply:

- i. identify any hours which may be available through staff turnover, prior to employment of new staff;
- ii. review and distribute where appropriate to the contracted employee's work hours currently being undertaken by casuals;

- iii. hours should be distributed where appropriate from other staff who have work over and above their existing contract levels;
 - iv. investigate the option of suitable transfers to other locations;
 - v. affected staff should be given priority where appropriate for any additional hours available through new referrals.
- (b) A decision will need to be made as to whether to pursue a reduction in contract hours and/or redundancy. At this point the Manager will be required to notify the Regional/Area Manager and the Union before the following steps are taken:
- i. the Branch will initially consult with employee's to determine if any employee's are prepared to accept a reduction in contract hours;
 - ii. if no employee's are willing to reduce their contract hours, the Manager will make a recommendation to the Regional/Area Manager as to which employee's they have identified for a reduction in contract hours;
 - iii. the decision to reduce contract hours shall be fair and objective taking into consideration the skills, classification, service and history of work performance of the affected employee(s);
 - iv. where a reduction has occurred, the affected employee(s) will be offered any appropriate available work. If this results in the employee's hours increasing to the next level the employee's original contract level should be re-instated as a priority;
 - v. if reductions in contracts are not deemed a suitable option the Manager will make a recommendation to the Regional/Area Manager to offer a voluntary redundancy;
 - vi. if the necessary reduction is greater than 1 contract level, an offer of voluntary redundancy will be made.

C. Redundancy and retrenchment

Discussions before terminations

- i. Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to continue, and that decision may lead to termination of employment, or the employer has made a definite decision not to maintain the contract hours of an employee the employer shall hold discussions with the employees directly affected and with the Union.
- ii. These discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of subparagraph (A (a) (i) hereof and shall cover, in addition, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.
- iii. For the purposes of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and their Union, 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 Workers 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 be inimical to the employer's interests.

D. Definition of Redundancy And Retrenchment

- i. "Redundancy" refers to a position that is identified as surplus to the organisation's requirements or the employer decides not to maintain an employee's Contract Hours and the position is abolished. The person holding that position becomes excess staff. For the purpose of this clause a position refers to the contract hours given to an employee.
- ii. "Retrenchment" refers to the termination of excess staff.
- iii. The following procedure and/or payments shall be made for retrenched employees subject to changes from time to time to approved general New South Wales Public Sector provisions.
 - (1) Four weeks' notice or pay in lieu of notice; five weeks notice for those employee's forty five (45) years of age or over and who have more than 5 years service. PLUS
 - (2) Severance pay at the rate of 3 weeks per year of continuous service to a maximum of 39 weeks. PLUS
 - (3) The benefit allowable to the employee as a contributor to the State Authorities Superannuation Scheme or First State Super. PLUS
 - (4) Pro rata annual leave loading in respect of leave accrued at date of termination.
- iv. The voluntary redundancy package, in addition to the retrenchment package is available to employee's who accept the package within fourteen (14) days and the employee terminates employment within the time nominated by the employer. The voluntary redundancy package includes:
 - 2 weeks pay for less than 1 years service
 - 4 weeks pay for 1 to 2 years of service
 - 6 weeks pay for 2 to 3 years of service
 - 8 weeks pay for 3 years of service or more
- v. Persons exuded from the provisions of this clause shall be:
 - i. Employees engaged on a short term and/or casual basis.
 - ii. Employees on Workers' compensation or those awaiting determination of claims against the employer (on the basis that compensation for the termination may arise from that source).
 - iii. Employees subject to termination on the grounds of misconduct or unsatisfactory service.

PART C**REMUNERATION****22. Payment of Wages and Payslips**

- A. All wages shall be paid fortnightly in the employer's time not later than the close of business Thursday in each pay week. The pay period shall end at mid-night Friday on the previous week.

Where wages are not available by close of business on the Thursday of each pay week the following arrangements will apply:

- i. Where an individual employee's total wages have not been received by close of business the Thursday of the pay week, the employee will be offered the following choices:
 - (a) payment to be corrected no later than the Friday of the pay week using an "ad hoc" payment. This means a centrally organised adjustment paid directly into the employee's nominated account or;
 - (b) a "cash advance" for the difference between the total net wages that should have been paid and that amount paid no later than Friday of the pay week
 - ii. Where a whole Branch of the Service is unable to pay their employees wages, due to technical problems by close of business on Thursday of the pay week, the Emergency Pay Procedures will be initiated.
 - (a) Emergency pay procedures require the employer to pay employees 100% of their previous ordinary pay period earnings.
 - (b) Where employees are overpaid, the Service will deduct the overpayment from the employees next pay period(s).

To proceed with (b) above, the Service will be required to notify the employee in writing that an overpayment has occurred, stating the amount of overpayment and confirm that the overpayment will be deducted in their next fortnight's pay period(s).
 - (c) Where employees are underpaid, under the Emergency Pay Procedures, all monies owed will be processed through an "ad hoc" payment and made available no later than close of business on the Friday of the pay period.

The Service will be required to notify the employee in writing that an underpayment has occurred, the amount of the underpayment, and confirm that the underpayment will be made available in an "ad hoc" payment.
 - iii. Should a malfunction occur which prohibits the Service being able to pay employee's across the State their wages by Thursday of the pay week, the Service will initiate an Emergency Pay Procedure where all employee's will receive 100% of their previous fortnight's ordinary pay period earnings no later than Thursday of the pay period.
 - (a) Conditions as outlined in (ii) (b), (c) will also apply to (iii) above.
- B. Employees shall have their wages paid into one account with a bank or other financial institution in New South Wales that has access to electronic funds transfer. Wages shall be deposited in sufficient time to ensure that wages are available for withdrawal by employees by the close of business Thursday in each pay week.
 - C. The employer shall supply to each employee a time sheet that shall be written up and signed by the employee, from day to day in ink, showing the name and address of the employee and the hours worked by the employee.
 - D. Before or at the time of payment of wages each employee shall be issued with a pay slip showing the date of payment, period covered by such payment, separate identification of payments at each grade, travel allowance and overtime and contributions made as superannuation. In addition thereto, the payslip shall also show accrued entitlements, excluding sick leave, and express those entitlements in year to date figures.

23. Time and Wages

The following procedure is to be used when rostering tasks and travel time for employees and will be used when determining payment of wages.

- i. That all tasks (including travel time) will be rostered in blocks of time to the nearest five (5) minutes.
- ii. Should the task time and/or travel time increase or decrease then, for the purpose of payment of wages, the rostered time may need to change.
- iii. The following situations are to be adopted in these instances:
 - (a) when the engagement is exceeded by fifteen (15) minutes or more and the Service Coordinator agrees that the extra time is warranted or has been agreed to, then the engagement will be paid to the nearest five (5) minutes
 - (b) when the engagement is less than the time rostered by fifteen (15) minutes then the engagement will be paid to the actual time rounded to the nearest 5 minutes
 - (c) the rounding up or down will be as follows:

1 or 2 minutes - round down

3 or 4 minutes - round up
 - (d) if the engagement does not increase or decrease by more than fifteen (15) minutes either way the employee will be paid for the actual rostered time
 - (e) where the actual time is consistently different after the completion of the service, the Service Coordinator will be required to re-assess the service situation to determine if the rostered time should be altered permanently.

24. Penalty Rates for Ordinary Time and Weekend Work

A. Monday to Friday

Employee's who work outside the spread of hours of 6.00 am to 6.30 pm Monday to Friday shall be paid a loading of 25% for the actual time worked outside the spread of hours.

B. Weekend work

An employee who works during the weekend shall be paid time and a half for all work performed on Saturday and double time for all work performed on Sunday.

25. Overtime

A staff member may be directed by the Department to work overtime, provided it is reasonable for the staff member to be required to do so. A staff member may refuse to work overtime in circumstances where the working of such overtime would result in the staff member working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account;

- (i) the staff member's prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements;
- (ii) any risk to staff members health and safety;
- (iii) the urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
- (iv) the notice (if any) given by the Department regarding the working of the overtime, and by the staff member of their intention to refuse overtime; or any other relevant matter.

A. Rates of pay

For all work directed to be done beyond eight (8) hours per day or seventy six (76) hours per fortnight the rate of pay shall be time and a half for the first two (2) hours and double time thereafter, such double time to continue until the completion of the overtime work. In computing overtime each day's work shall stand alone.

Return to work after overtime

When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least eight (8) consecutive hours off duty between the work of successive days.

An employee (other than a casual employee or employee engaged on Overnight Care) who works so much overtime between the termination of such employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that he or she has not at least eight (8) consecutive hours off duty between those times shall, subject to this sub-clause, be released after completion of such overtime until he or she has had eight (8) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If, on the instructions of the employer, such an employee resumes or continues work without having had such eight (8) consecutive hours off duty he or she shall be paid at double time until released from duty for such period and shall then be entitled to be absent until he or she has had eight (8) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

Provided that an employee may, pursuant to clause 14L of this Award, elect to substitute a ten (10) hour break for the eight (8) hour break referred to in this subclause. An employee electing to substitute a ten hour break may not alter that election within a three month period following the election, except where there are extenuating circumstances and the employer agrees to such alteration.

B. Meal break before Overtime

Where the period of overtime is more than one and a half (1½) hours an employee before starting overtime after working ordinary hours shall be allowed a meal break of thirty (30) minutes that shall be paid for at the appropriate ordinary rate.

An employer and employee may agree to any variation of this provision to meet the circumstances of the work in hand provided that the employer shall not be required to make any payment for any time allowed in excess of thirty (30) minutes.

C. Crib time

An employee working overtime shall be allowed a crib break of thirty (30) minutes without deduction of pay after each four (4) hours of overtime worked if the employee continues work after such crib time.

D. Working during meals

An employee called upon to work during a recognised meal period as prescribed in Clause 12 - Hours of Work, of this Award, shall be paid overtime rates for all time so worked and such overtime shall continue to be paid until a meal break is allowed.

E. Meal money

An employee required to work overtime for more than two (2) hours without being notified on the previous day or earlier that she or he will be so required to work shall be paid an allowance for the purchase of a meal. Provided that the amount paid shall be equal to an amount determined by the Public Employment Office and published in the NSW Public Service Notices from time to Time.

26. Public Holidays

- A. The days on which the following holidays are observed shall be holidays under this Award: 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; and the picnic day of the Union which shall be held on the first Monday in August each year or another day to be taken which is mutually acceptable to the employer and employee and must be taken by 31 December each year.
- B. Payment for public holidays
- i. Employees other than casuals shall be entitled to the above holidays without loss of pay. Where an employee would normally expect to work on such Public Holiday(s) and the client cancels the service either in the current or previous pay period where the Public Holiday(s) falls, then the employee shall be paid for that cancelled task at ordinary time.
 - ii. Employees directed to work shall be paid at the rate of double time and one half. Where an employee only works a proportion of their rostered hours, they shall be paid at double time and one half for those hours worked and ordinary time for the remaining rostered hours.
 - 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 his or her working hours fall on the holiday, in which case all time worked shall be regarded as holiday work. Provided that 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 work commenced.
- C. Where in the State an additional holiday is proclaimed or gazetted by the authority of the Commonwealth Government or of the State Government and such proclaimed or gazetted holiday is to be observed generally by persons throughout the State, other than by those covered by Federal Agreements, or when such a proclaimed or gazetted day is, by any required judicial or administrative order, to be so observed, then such day shall be deemed to be a holiday for the purposes of the Agreement, for employees covered by this Agreement who are employed in the State in respect of which the holiday has been proclaimed or ordered as required.
- D. For the purposes of this Agreement:
- i. Where Christmas Day falls on a Saturday or on a Sunday, the following Monday and Tuesday shall be observed as Christmas Day and Boxing Day respectively.
 - ii. Where Boxing Day falls on a Saturday the following Monday shall be observed as Boxing Day.
 - iii. Where New Year's Day falls on a Saturday or on a Sunday, the following Monday shall be observed as New Year's Day.
 - iv. Where Anzac Day falls on a Saturday or on a Sunday the following Monday shall be observed as Anzac Day and the said Saturday and/or Sunday shall be deemed not to be holidays.
 - v. The Union picnic day shall be the first Monday in August each year or another day to be taken which is mutually acceptable to the employer and employee and must be taken by 31 December each year.
 - vi. By agreement between an employer and the Union delegates other days will be substituted for the said days or any of them.

27. Additional Payments and Allowances

A. Overnight Care

An employee, other than a Live-in Housekeeper, shall be paid at the rate shown as Overnight Care within clause 9 of this Award for each overnight care engagement which requires them to stay overnight at a client's home for up to a maximum of 12 hours.

Employees who work an engagement of overnight care shall attract leave entitlements such as annual leave, long service leave, Worker's compensation and contract hours at the rate of 4 hours per overnight care engagement.

The terms and conditions contained in this sub-clause shall be in substitution for and not cumulative upon the following clauses of the Award.

Clause Number	Subject
12 27B to G excepting 27Fiv	Hours of work Additional payments and allowances
24	Penalty rates for ordinary time
25	Overtime
26	Public holidays

Employee's Right of Refusal

All employees will have the right to refuse to undertake overnight care tasks. Additionally employees will be required to register their availability should they be interested in undertaking overnight care duties.

B. Offensive Cleaning

Employees who clean premises which are in a grossly offensive condition shall be paid double time for the duration of such work. Offensive cleaning refers to any one of the following activities:

The cleaning of bed linen severely soiled by faeces or other bodily fluids;

the cleaning of households severely contaminated by human or animal excrement;

other cleaning activities assessed by Home Care to be beyond the normal limits of regular domestic assistance.

In the event of a dispute between an employee and the employer as to whether a premises is in a grossly offensive condition Clause 7 - Grievance/Dispute Settling Procedures, of this Agreement shall apply.

Notwithstanding anything contained in this sub-clause, employee's have the right to refuse to undertake service classified as offensive cleaning, provided that the reasons are connected with the nature of the service and does not impact on other services provided such as personal care.

Offensive cleaning is payable to all grades provided the criteria set out above is met. Employees are not excluded from payment of offensive cleaning allowance simply by virtue of being engaged to perform personal care duties.

C. Inclement weather

An employee shall not be required to work under conditions brought about by inclement weather.

D. Travel allowance

- i. Where an employee is required to use their vehicle on official business in work time he or she shall be paid at the rate of 70.7 cents per kilometre. This rate will increase at the same relative percentage rate as increases applying to the Crown Employees (Public Service Conditions of Employment 2009) Award, an award of the New South Wales Industrial Relations Commission, or any successor to that award. Except as provided in paragraph (iii) hereof this payment shall exclude all travel from the employee's home to the first place of work and from the last place of work.
- ii. Where an employee is required to use public transport for travel on official business such employee is to be reimbursed actual expenses incurred for such travel. Except as provided in paragraph (iii) hereof no reimbursement shall take place from the employee's home to the first place of work and from the last place of work.
- iii. The Travel allowance shall be paid as per paragraphs (i) and (ii) hereof travel to the first client and home from the last client of the engagement where the total hours worked in the day are two hours or less.
- iv. Where an employee is rostered at the convenience of the employer with a break between clients, the employee shall be paid the Travel Allowance for the distance to travel home and from home to the next client.
- v. No payment shall be made under this sub-clause unless the employer is satisfied that the employee has incurred expenditure for such travel.

E. Excess Travel Payments

There shall be an excess travel payment

1. The excess travel payment is to be paid as follows:

Where the distance between a Home Care Worker's residence and their first engagement, or the Care Worker's last engagement and their home, is greater than 20kms, then an excess travel payment shall apply for the excess kilometres above 20kms.

The excess travel payment is to be paid at the rate of the kilometre allowance as provided for in this Award.

2. The following conditions apply in conjunction with this provision:
 - (a) Excess travel time shall not be included for the purposes of the calculation of the following:
 - (i) work time
 - (ii) contract hours
 - (iii) leave eg: annual, long service or sick etc.
 - (b) The excess travel payment is paid at ordinary rates and penalties do not apply.
 - (c) Excess travel shall not be available where travel to and from a first and last engagement respectively is less than 20kms from the Home Care Branch Office.

3. Travel to the Branch or office or other location on Home Care business
 - (a) Staff who are directed to attend training, supervision, meetings or other Home Care business and who travel in excess of 20kms either way to the office or other location from their residence shall be entitled to the excess travel payment.
 - (b) Payment is not available under this provision for any leg of travel to and from a client.
 4. For the purpose of this Clause, Excess Travel Payments will not be payable where an employee relocates their residence subsequent to being employed by the Branch.
- F. Equipment and expenses
- i. Where equipment, materials and tools are supplied by the client, the employer shall ensure that they are of reasonable quantity, quality and safety standards.
 - ii. Provided that where an employee provides his or her own equipment, materials and tools an allowance shown as tool allowance shall be paid by the employer. At the commencement of this agreement that amount was \$2.37 per hour. This rate will increase at the same relative percentage rate as increases applying to the Crown Employees (Public Service Conditions of Employment 2009) Award, an award of the New South Wales Industrial Relations Commission, or any successor to that award
 - iii. Employees required to provide consumables for use in their work shall be reimbursed the cost thereof.
 - iv. Employees who are required in the course of their employment make local, STD or mobile telephone calls associated with rostering changes not occurring in the client's home, and who incur a cost shall be reimbursed the costs of such calls. The employer may require production of evidence (i.e.: telephone account) supporting such claim.

Where calls are made from a pre-paid mobile telephone and an account is not available, the employer may require a statutory declaration supporting such claims, which will be reimbursed to a level no less than that commensurate with the general level of such calls made within that Branch.
 - v. No payment shall be made under this clause unless the employer is satisfied that the employee has incurred such expenditure.

G. Temporary Work Location

Employee's who are required to perform duties at a temporary work location necessitating an overnight stay shall be eligible to be paid an amount equivalent to the actual necessary cost of accommodation and meals (excluding morning and afternoon tea). This amount shall be paid prior to departure for the temporary work location.

28. Payment for Paperwork

All paperwork required by the office shall be completed in work time.

Where time sheets cannot be submitted during normal work time, employees should be paid the travelling allowance for all additional kilometres travelled between the last client of the day and home via the Branch.

Branches should establish drop off points, strategically placed, to enable employees the opportunity to deliver their completed time sheets to the Branch.

Branches shall also establish with employee's the most efficient method for delivery of their time sheets. For example the provision of pre-paid envelopes to the employee, the faxing of time sheets or other methods considered appropriate can be negotiated.

29. Work Clothes

On request, the employer shall supply free of charge three sets of suitable work clothes to full-time and 50 hour contract employees and two sets of suitable work clothes to 30 hour contract and casual employees of a type agreed from time to time.

Work clothes shall be replaced by the employer on the basis of fair wear and tear.

Employees shall be provided with protective footwear and hats where the work the employee is performing requires this. Where the employer can not provide the protective footwear, employees shall be reimbursed the cost of the protective footwear on the production of receipts. Replacement shall be on the basis of fair wear and tear having regard to the hours worked.

Work clothes shall remain the property of the employer at all times and any employee applying for a new issue of any work clothes supplied by the employer who fails to return the last clothing issued to him or her shall not be entitled to a new issue without payment therefore. Should an employee on leaving the service fail to return any work clothes which are the property of the employer, the employer may deduct from the employee's final wage the value of the articles.

30. Superannuation

- i. The subject of superannuation contributions is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

Notwithstanding (i) above, the following provisions shall also apply.

- ii. Definitions

"The Fund" for the purpose of this clause shall mean the:

- (a) State Authorities Superannuation Scheme (SASS)
- (b) First State Super

- iii. "Ordinary Time Earnings" for the purpose of this Clause shall be accordance with SASS and FSS guidelines and as amended from time to time.
- iv. The Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services shall provide each employee who is not a member of the Fund with a membership application form upon commencement of this clause and thereafter upon commencement of employment.
- v. Each employee shall be required to complete the membership application and the employer shall forward the completed application to the Fund by the end of the calendar month of commencement of this clause or commencement of employment.
- vi. Each employee shall be eligible to join the Fund upon commencement of employment.
- vii. Each employee shall be eligible to receive contributions from the date of eligibility, notwithstanding the date the membership application.
- viii. The Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services shall contribute to the Fund in respect of each employee such contributions as required to comply with the *Superannuation Guarantee (Administration) Act 1992* and *Superannuation Guarantee Charge Act 1992* as amended from time to time.

- ix. The Fund and the amount of contributions paid shall be included in pay advice notices provided by the employer to each employee.
- x. Each employee shall be eligible to salary sacrifice up to a maximum of 30% of their income as a pre-tax contribution into First State Superannuation Scheme.

31. Occupational Health and Safety

United Voice - NSW Branch and the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services are committed to working together to improve the Department's occupational health and safety performance. This will be accomplished by continuing to support the systematic approach to implementing strategies which aim specifically at reducing the level of injuries to employees.

Integral to this approach is an emphasis on:

promotion of the occupational health and safety vision

risk management that identifies/assesses critical risk areas

prevention achieved through hazard identification

active injury management that recognises importance of an early return to work

The following initiatives identified in the SafeCare Plan will continue:

- i. Branch Occupational Health and Safety (OHS) Improvement Groups maintained and supported will enable employees to contribute to the improvement of the Branch's OHS performance. Branch Managers will establish and maintain the groups through an election process based on expressions of interest. The OHS Branch Committee Representative and the Union Delegate should also be invited to attend these group meetings to discuss OHS issues.
- ii. Home Care encourages union participation where appropriate at the Area level Occupational Health and Safety Strategic Committee meetings and in implementing safe work practices.
- iii. Home Care requests union representation at the State Occupational Health and Safety Strategic Committee which meets quarterly to review progress of the SafeCare plan, identify and promote Best Practice and set policies affecting OHS in Home Care.
- iv. Home Care and the Union will continue ongoing research relating to risk experience associated with hours of work, training and incidence of injury and service type. Both parties are open to consider the implications of the research and the effect these may have on current work practices and Award/Agreement conditions of employment.
- v. All new employees shall receive appropriate occupational health and safety training prior to providing service to any client.
- vi. Employees shall complete training in manual handling prior to providing personal care to clients which involve lifting or transferring clients.
- vii. Employee's shall continue to further refine risk identification beyond the initial assessment performed by the Service Coordinator from an occupational health and safety point of view utilising the Workplace Review Form within the first 2 weeks of working with a new client. Hazard identification will be carried out by employees on a regular basis following the initial review.
- viii. Employees will continue to be encouraged to submit Hazard Reports. These reports will be dealt with promptly and the employee who initiated the report will "sign off" only when the hazard has been resolved.

(a) Occupational Health and Safety

(i) For the purposes of this subclause, the following definitions shall apply:

(1) 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.

(2) 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 *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

(b) 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.

(c) 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.

32. Workers Compensation and Make-Up Pay

The circumstances under which an employee shall qualify for accident make-up pay shall be as prescribed hereunder:

An employer shall pay an employee accident make-up pay where the employee receives an injury for which weekly payment of compensation is payable by or on behalf of the employer pursuant to the provisions of the *Workers' Compensation Act 1987* (NSW).

Accident make-up pay means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the *Workers' Compensation Act 1987* (NSW) and the employee's ordinary rate of pay.

An employer shall pay, or cause to be paid, accident make-up pay during the incapacity of the employee within the meaning of the said Act until such incapacity ceases or until the expiration of a period of 26 weeks from the date of injury, whichever event shall first occur.

The liability of the employer to pay accident make-up pay in accordance with this clause shall arise as at the date of the injury or accident in respect of which compensation is payable under the Act, and the termination of the employee's employment for any reason during the period of any incapacity shall in no way affect the liability of the employer to pay accident make up payment as provided in this clause.

In the event that the employee receives a lump sum in redemption of weekly payments under the Act, the liability of the employer to pay accident make-up pay as herein provided shall cease from the date of such redemption.

PART D

LEAVE PROVISIONS

33. Annual Leave

A. Period of leave

(i) A period of 28 consecutive days' leave shall be allowed annually to an employee, other than a casual, after twelve (12) months' continuous service (less the period of Annual Leave).

(ii)

(a) Employees who regularly perform work on Sundays and who during the qualifying period have worked a minimum of 50% of ordinary hours on Mondays through Fridays, shall accrue additional annual leave as per the following table:

Number of Sundays worked as in 34A(ii) (b) and/or (c)	Additional days annual leave
11 to 17	1
18 to 24	2
25 to 31	3
32 +	4

(b) Additional annual leave shall be calculated annually by reference to the number of Sundays on which work is performed up to and including during the final pay period of the financial year (1 July to 30 June) and shall be credited to employee's annual leave accruals in the second pay period of the new financial year.

Additional annual leave is not available in respect to part years of employment.

- (c) At the sole discretion of the employee and upon request, the employer shall pay as wages to the employee all or any additional annual leave accrued pursuant to this sub-clause in lieu of granting such additional annual leave.

B. Annual leave exclusive of public holidays

Subject to this subclause the Annual Leave prescribed by this clause shall be exclusive of any of the holidays prescribed by clause 26 - Public Holidays, of this Award and if any such holiday falls within an employee's period of Annual Leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to the period of Annual Leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

C. Broken leave

Annual Leave shall be given and taken in a continuous period, or only if the employee and the employer so agree, in two (2) or more separate periods.

D. Calculation of continuous service

For the purpose of this clause service shall be deemed to be continuous notwithstanding:

- i. Any interruption or determination of the employment by the employer if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence.
- ii. Any absence from work on account of personal sickness or accident or on account of leave lawfully granted by the employer; or
- iii. Any absence with reasonable cause proof whereof shall be upon the employee.

In cases of personal sickness or accident or absence with reasonable cause the employee to become entitled to the benefit of this sub-clause shall inform the employer, in writing or by telephone, if practicable, within 24 hours of the commencement of such absence, of the inability to attend for duty and as far as practicable the nature of the illness, injury or cause and the estimated duration of his or her absence. A notification given by an employee pursuant to Clause 34 - Sick Leave, of this Award shall be accepted as a notification under this subclause.

Any absence from work by reason of any cause not being a cause specified in this sub-clause shall not be deemed to break the continuity of service for the purposes of this clause unless the employer during the absence or within fourteen (14) days of the termination of the absence notifies the employee in writing the such absence will be regarded as having broken the continuity of service.

In cases of individual absenteeism such notice shall be given in writing to the employee concerned, but in the cases of concerted or collective absenteeism, notice may be given to employees by the posting up of a notification in the office, in the manner in which general notifications to employees are usually made in that office and by posting to the Union whose members have participated in such concerted or collective absenteeism a copy of it not later than the day it is posted up in the office.

A notice to an individual employee may be given by delivering it to such employee personally or by posting it to his or her last recorded address, in which case it shall be deemed to have reached the employee in due course of post.

In calculating the period of twelve (12) months' continuous service any such absence as aforesaid shall not, except to the extent of not more than fourteen (14) days in a twelve (12) monthly

period in the case of sickness or accident, be taken into account in calculating the period of twelve (12) months' continuous service.

E. Calculation of service

Service before the date of this Award shall be taken into consideration for the purpose of calculating Annual Leave, but an employee shall not be entitled to leave if payment in lieu has been allowed. The period of Annual Leave to be allowed under this sub-clause shall be calculated to the nearest day any broken part of a day in the result not exceeding half a day to be disregarded.

Where the employer is a successor or assignee or "transmitter" of a business if an employee was in the employment of the employer's predecessor at the time when it became such employer, successor or assignee or transmitter, the service with the predecessor shall for the purpose of this clause be deemed to be in the service of the employer.

F. Calculation of month

For the purpose of this clause a month shall be reckoned as commencing with the beginning of the first day of employment or period of employment in question and as ending at the beginning of the day which in the latest month in question has the same date number as that which the commencing day had in its month and if there be no such day in such subsequent month shall be reckoned as ending at the end of such subsequent month.

G. Leave to be taken

The annual leave provided for by this clause shall be allowed and shall be taken and, except as provided by Clause 33 A. (ii) Annual Leave, of this award thereof, accepted in lieu of annual leave.

H. Time of taking leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding six (6) months from the date when the right to annual leave accrued and after not less than four (4) weeks' notice to the employee.

I. Leave allowed before due date

The employer may allow annual leave to an employee before the right thereto has accrued due but where leave is taken in such a case a further period of annual leave shall not commence to accrue until after the expiration of the twelve (12) months in respect of which annual leave had been taken before it accrued.

Where leave has been granted to an employee pursuant to this sub-clause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the twelve (12) months' continuous service in respect of which the leave was granted and the amount paid by the employee for the annual leave or part so taken in advance exceeds the amount which the employer is required to pay to the employee under Clause 33 Annual leave loading hereof, the employer shall not be liable to make any payment to the employee under Clause 33, Annual leave loading hereof, and shall be entitled to deduct the amount of excess from any remuneration payable to the employee upon the termination of employment.

J. Payment for period of leave

Each employee before going on leave shall be paid the amount of wage that she or he would have been received in respect of the ordinary time which the employee would have worked had he or she not been on leave during the relevant periods.

Ordinary pay means remuneration for the normal weekly number of hours of work calculated at the ordinary time rate of pay (or ordinary pay) does not include the calculation of shift allowances, overtime and weekend penalties relating the ordinary time.

Where the normal weekly number of hours is not fixed, the normal weekly number of hours of work is the average weekly number of hours worked during the period of 12 months preceding the annual leave.

For the purposes of this sub-clause wages shall be at the rate prescribed by Part H. Monetary Rates - Table 1 Salaries, of this Award for the occupation in which the employee was ordinarily employed immediately prior to the commencement of the leave or the termination of the employment, as the case may be.

K. Proportionate leave on dismissal

If after one (1) month's continuous service in any qualifying twelve (12) monthly period an employee lawfully leaves his or her employment or the employment is terminated by the employer through no fault of the employee, the employee shall be paid at his or her ordinary rate of wage for 1/12 of a week at the same rate in respect of each completed week of continuous service, the service being service in respect of which leave has not been granted hereunder.

L. Annual leave loading

- i. In addition to payment of wages due under Clause 33 J above hereof an employee before going on annual leave shall receive a loading of 17½ per cent of the appropriate ordinary rate of wages prescribed under Table 1 - Salaries.
- ii. Annual leave loading shall not apply to pro-rata leave on termination.

M. Annual leave - notice period

Payment for periods of leave shall be paid to employees in their normal fortnightly manner, providing that payment shall be made to an employee before going on leave in the following circumstances:

- i. Payment is requested by the employee at least four (4) weeks prior to commencing leave;
- ii. where the period of leave is two (2) weeks or more.

34. Sick Leave

- A. An employee, other than a casual employee, who is unable to attend for duty during his or her working hours by reason of personal illness or incapacity not due to his or her own serious or wilful misconduct, shall be entitled to be paid at the ordinary time rates of pay for the time of such non-attendance subject to the following conditions and limitations:
- B. Sick leave shall apply to hours worked on the weekend where the employee is a Saturday to Friday employee. Employees employed on a Monday to Friday basis are not entitled to payment of sick leave for weekends.
- C. Employee's shall not be entitled to paid leave of absence for any period in respect of which he or she is entitled to payment under the Workers' Compensation Act, 1987 (NSW). Absences due to accidents for which Workers' compensation is paid or payable shall be counted as continuous employment for the purposes of this clause.
- D. Employee's shall, as soon as practicable and in any case within 24 hours of the commencement of such absence, inform the employer of his or her inability to attend for duty and, as far as possible, state the nature of the injury or illness and the estimated duration of the absence. The employer shall be solely responsible for rostering changes to facilitate continuing service to clients in the event of sick leave being taken at short notice. Where sick leave is taken for extended periods and/or is known to the team prior to being taken, it may be rostered to other Care Workers in accordance with clause 13, Distribution of Hours of this Award.
- E. All periods of sickness shall be certified to by a registered medical practitioner provided however, that the employer may dispense with the requirements of a medical certificate where the absence does not

exceed three (3) consecutive days or where, in the employer's opinion the circumstances are such as not to warrant such requirements.

F. Sick Leave shall be granted provided that:

- i. During each of the first three (3) months' employment one day only of sick leave shall be available each month to be granted to an employee. A day shall represent the rostered hours of the employee.
- ii. On the first day of the fourth month of employment the balance of sick leave granted under subparagraph (iii) of this sub-clause shall be credited to the employee.
- iii. The pro rata part-time entitlement is based on an employee's contract hours as follows:

Contract Hours	Yearly Sick Leave Entitlement in Hours
30	39
50	59
70	76

- iv. Part-time staff who do not have contract hours shall be entitled to the following:
 - (a) Staff who regularly work 10 hours and less per fortnight are entitled to 10 hours sick leave per year.
 - (b) Staff who regularly work more than 10 hours but less than 20 hours per fortnight are entitled to 20 hours sick leave per year.
- v. Sick leave shall accumulate from year to year and may be taken by an employee in addition to the sick leave entitlement available in any one year.
- vi. Employees who elect to remain on contract levels of 20, 40 and 60 for the implementation period as prescribed by Clause 11 (iv) Contract Hours will be provided sick leave entitlements consistent with the Care Worker Employees - Department of Ageing, Disability and Home Care (State) Award 2006, until 1 September 2010.

35. Personal Carers Leave

A. Use of Annual Leave

- (i) 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.
- (ii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least ten consecutive days are taken.

B. Use of Sick Leave

- i. An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this sub-clause, their sick leave entitlement (as outlined in Clause 34) for absences to provide care and support for such persons when they are ill.
- ii. The employee shall, if required, establish 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 sub-clause is subject to:
 1. the employee being responsible for the care of the person concerned; and

2. the person concerned being either:
 - (a) a member of the employee's immediate family; or
 - (b) a member of the employee's household.
3. the term "immediate family" includes;
- iv. a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means 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; and
- v. a child or an adult child (including an adopted child, a step or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.
- vi. 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 their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it 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.

C. Personal Carers Entitlement for Casual employees

- (i) Subject to the evidentiary and notice requirements in subclause 1(ii) and subclause 1(iv) 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 1.1.3(ii) 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.
- (ii) 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.
- (iii) 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.

D. Use of Domestic Leave

An employee (other than a casual) shall be entitled to 3 days paid leave at the ordinary rate of pay for each completed year of service, accumulating to a maximum of 5 days. A day shall be the hours that would have been worked and shall be counted as a day of domestic leave. Domestic leave will have no operation whilst an employee is on any other leave.

Where possible, employees shall give prior notice of absence stating the reason for taking leave, the name of the family member and the relationship to the employee where applicable and estimated length of absence. Employees shall notify by phone where they cannot give written notice.

Circumstances where Domestic Leave applies:

bereavement

family care in emergency circumstances

compassionate grounds - such as an illness of a family member

citizenship ceremonies

emergency or weather conditions, such as flood, fire, snow, etc where property is threatened an/or it prevents an employee from reporting for duty.

Circumstances where this leave does not apply:

attendance at court to answer criminal charges

to cover absences due to social activities or requirements

moving residence

E. Bereavement entitlements for Casual employees

- (i) Subject to the evidentiary and notice requirements in subclause (1) (ii) and (iv), 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 1 (iii) of clause 35 Personal/Carers Leave.
- (ii) 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
- (iii) 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.

F. 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 to a family member who is ill. The Home Care Service undertakes to look favourably upon applications for unpaid leave during periods of family need.

G. Annual leave

Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods not exceeding five days in any calendar year at a time or times agreed between them.

H. Maximum number of days

The maximum amount of sick leave, leave without pay or domestic leave which may be taken in any one year shall be five days.

I. Grievance process

In the event of any dispute arising in connection with any part of this clause, such a dispute shall be processed in accordance with the dispute settling provisions of this Award.

36. Parental Leave

A. Nature of Leave

The provision of this clause applies to full-time and part-time employees, but does not apply to casual employees.

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child. Paternity and adoption leave are unpaid.

B. Definitions

"child" means a child of the employee under the age of one year except for adoption of a child where child means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

"continuous service" means service under an unbroken contract of employment and includes:

- i. any period of leave taken in accordance with this clause;
- ii. any period of part-time employment worked in accordance with this clause or;
- iii. any period of leave or absence authorised by the employer or by the Agreement.

"female employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.

"former position" means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this sub-clause whichever occurs first or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

"male employee" means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.

"primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

"relative adoption" occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

"spouse" for the purpose of maternity and paternity leave includes a de facto or former spouse.

"spouse" for the purpose of adoption leave includes a de facto spouse but does not include a former spouse.

C. Basic entitlement

After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

Parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

- i. for maternity and paternity leave, an unbroken period of one week at the time of the birth of the child;
- ii. for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

D. Maternity leave

- i. An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

- (a) at least 10 weeks prior to the date of confinement a medical certificate from a registered medical practitioner stating that the employee is pregnant and their expected date of confinement.
 - (b) At least 4 weeks prior to the employee commencing maternity leave, the employee is required to advise the employer the proposed date to commence maternity leave. The period of leave to be taken is a minimum of 6 weeks compulsory leave.
 - (c) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six week immediately prior to her presumed date of confinement.
- ii. When the employee gives notice under (D), (i), (a), the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
 - iii. An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
 - iv. Unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.
 - v. Where an employee not then on maternity leave suffers an illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under sub-clause 37.
 - vi. Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to return to her normal duties of work.
 - vii. Where the pregnancy of an employee terminates after 28 weeks and the employee has not commenced maternity leave, the employee may take unpaid special maternity leave of such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may be entitled to paid sick leave in lieu of, or in addition to, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause 36 C.
 - viii. Where leave is granted under subclause 36C, during the period of leave an employee may return to work at any time, to the position which she held immediately before proceeding on such leave, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.
 - ix. Where the pregnancy of an employee terminates before 28 weeks, other than by the birth of a living child and the employee has not commenced maternity leave, the maternity leave will be cancelled and the employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

Payment for maternity leave

An employee who is eligible for Maternity Leave shall be paid for 9 weeks full pay from the date of commencing maternity leave.

Payment in advance

A woman may elect to be paid in advance but not in a lump sum. Payment in advance is to be made on a regular fortnightly basis.

E. Paternity leave

- i. An employee will provide to the employer at least ten weeks notice prior to each proposed period of paternity leave, with:
 - (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
 - (b) written notification of the dates on which he proposes to start and finish the period of paternity leave; and
 - (c) a statutory declaration stating:
 - i. he will take that period of paternity leave to become the primary care-giver of a child;
 - ii. particulars of any period of maternity leave sought or taken by his spouse; and
 - iii. that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.
 - iv. The employee will not be in breach of subclause 36 (E), (i), if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances. The employee shall immediately notify the employer of any change in the information provided to the employer pursuant to subclause 36 (E) (a), (b) & (c).
 - v. Cancellation of paternity leave

Paternity leave applied for but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

F. Adoption leave

An employee, upon production to the employer of the documentation required shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- i. An unbroken period of up to three weeks at the time of the placement of the child's;
- ii. An unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:
 - (a) Any period of leave taken pursuant to sub-clause 36 H hereof and;
 - (b) The aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.

The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may

commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

- i. the employee is seeking adoption leave to become the primary care-giver of the child;
- ii. particulars of any period of adoption leave sought or taken by the employee's spouse; and
- iii. that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

An employee seeking to adopt a child is entitled to take unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employer is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such paid leave instead.

G. Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion.

Any such change to be notified at least four weeks prior to the commencement of the changed arrangements except in the case of maternity leave where the period of maternity leave may be lengthened or shortened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened or shortened.

The period may be further lengthened or shortened by agreement between the employer and the employee.

H. Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which they have accrued, such as annual leave or long service leave, subject to the total amount of leave not exceeding 52 weeks.

I. Transfer to a safe job

- i. Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

- ii. If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

J. Returning to work after a period of parental leave

- i. An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.
- ii. An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to sub-clause 36 I i. hereof, the employee will be entitled to return to the position they held immediately before such transfer.
- iii. Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

K. Replacement employees

- i. A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.
- ii. A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

L. Effect of parental leave on employment

Absences in relation to parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service.

M. Termination of employment

An employee on Parental leave may terminate their employment at any time during the period of leave by notice given in accordance with this Agreement.

An employer shall not terminate the employment of an employee on the ground of their pregnancy or of their absence on Parental leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

N. Part-time work

With the agreement of the employer:

- i. A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- ii. A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
- iii. A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- iv. In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

O. Return to former position

- i. An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one the right to return to his or her former position.
- ii. Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

P. Effect of part-time employment on continuous service

Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.

Pro rata entitlements

Subject to the provisions of this sub-clause part-time employment shall be in accordance with the provisions of this Award which shall apply on a pro rata basis.

Q. Transitional arrangements - annual leave

- i. An employee working part-time under this sub-clause shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this Award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this sub-clause.
- ii. a full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this sub-clause, in such periods and manner as specified in this Award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
- iii. provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

R. Transitional Arrangements - Sick Leave

An employee working part-time under this clause shall have sick leave entitlements which have accrued under this Agreement (including any entitlement accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

S. Part-Time work agreement

Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:

- i. that the employee may work part-time;
- ii. upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
- iii. upon the classification applying to the work to be performed; and
- iv. upon the period of part-time employment.

The terms of this Agreement may be varied by consent.

The terms of this Agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

The terms of this Agreement shall apply to the part-time employment.

T. Termination of employment

The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this Agreement but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.

Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

U. Extension of Hours of Work

An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty.

V. Nature of part-time work

The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this Agreement.

W. Inconsistent agreement provisions

An employee may work part-time under this clause notwithstanding any other provision of this Agreement which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- i. limiting the number of employees who may work part-time;
- ii. establishing quotas as to the ratio of part-time to full-time employees;
- iii. prescribing a minimum or maximum number of hours a part-time employee may work; or
- iv. requiring consultation with, consent of or monitoring by a union; and such provisions do not apply to part-time work under this clause.

X. Replacement employees

- i. A replacement employee is an employee specifically engaged as a result of an employee working part-time under this subclause.
- ii. A replacement employee may be employed part-time to the part-time employment of a replacement employee.
- iii. Before an employer engages a replacement employee under this sub-clause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- iv. Unbroken service as a replacement employee shall be treated as continuous service.

- v. Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

Other Parent Leave

- A. An employee, other than a casual employee, who has completed 12 months' continuous service with the employer prior to the commencement of 'other parent' leave, shall be entitled to unpaid 'other parent' leave under the following conditions:

- (i) Up to a maximum of eight week's simultaneous unpaid leave;
- (ii) A further continuous period of unpaid leave to become the primary care giver for a period not exceeding 12 months less any leave already taken by the staff member as provided for in paragraph (i) of this subclause.
- (iii) Provided that an employee shall:
 - (a) give 10 weeks' notice of his or her intention to take 'other parent' leave;
 - (b) make a statutory declaration:

that he or she is applying for leave to become the primary caregiver;

detailing maternity or adoption leave sought or taken by his or her spouse;

that he or she will take another job or in any other way contravene his or her contract of employment while on 'other parent' leave,

B. Right to request

- (i) An employee entitled to either maternity, adoption or 'other parent' leave, other than a casual employee, may request the employer to allow the employee:
 - (a) to extend the period of unpaid maternity, adoption or 'other parent' leave for a further continuous period of leave not exceeding 12 months;
 - (b) to return from a period of maternity, adoption or 'other parent' 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.

C. Communication during maternity, adoption or 'other parent' leave

- (i) Where an employee is on maternity, adoption or 'other parent' 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 maternity, adoption or other parent 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 maternity, adoption or 'other parent' 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 maternity, adoption or 'other parent' 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 change of address or other contact details which might affect the employer's capacity to comply with paragraph (i).

D. Casual Employees

- (i) 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.

37. Other Leave

(1) Jury Service

An employee (other than a casual employee) required to attend for jury service during his or her ordinary working hours shall be reimbursed an amount equal to the difference between the amount paid in respect of the attendance for such jury service and the amount of wage the employee would have received in respect of the ordinary time which would have been worked had the employee not be on jury service.

(2) Study Leave

- (i) Study leave shall be paid leave subject to the terms and conditions set out below:
 - (a) Study Leave applies to all permanent employees including those employed on a part-time basis.
 - (b) The course of study must be work related.
 - (c) Decisions regarding the approval or otherwise for study leave shall not be the subject of an appeal to any service tribunal or any other industrial and/or lawful tribunal, commission or court.
 - (d) Study Leave shall be granted and taken at the convenience of the Home Care Service. Such convenience shall take into consideration such factors as the necessity of an employee to be at work on specific days or times, availability of relief staff and service requirements concerning training or other requirements.
- (ii) Study Leave shall be granted subject to the following criteria and conditions:
 - (a) Study Leave is granted on the basis of half an hour of leave for each hour of face-to-face lectures, or equivalent, up to a maximum of four hours.
 - (b) Such Leave shall be cumulative and may be taken as examination leave or for field work purposes following approval.
 - (c) Study Leave shall not accumulate from year to year. Each academic year shall stand alone.

- (d) No travel time or travel allowance is payable.
- (e) All payment for Study Leave shall be at the ordinary rate of pay.

(3) RELIGIOUS LEAVE

The Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services may grant leave for essential religious or cultural obligations. Management will be sensitive in accommodating the needs of staff to access their leave entitlements and flexible work hours for the purposes of observing religious duties.

Permanent employees of:

- (a) Any religious faith who seeks leave for the purpose of observing essential religious obligations of that faith; or
- (b) Any ethnic or cultural background who seeks leave for the purpose of observing any essential cultural obligations

may be granted access to recreation or long service leave to credit or leave without pay to do so, so long as adequate notice is given by the employee and it is operationally convenient for the employee to be released from duty.

In determining what is an essential religious or cultural obligation the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services will be guided by the Days of religious Significance for Multicultural NSW as distributed by the Community Relations Commission of NSW.

(4) MILITARY LEAVE

Permanent employees who are volunteer part-time members of the Australian Defence Forces may be granted military leave, subject to Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services convenience.

Such leave maybe granted on full pay for permanent rostered hours, during ordinary working hours, for absences required for compulsory annual training or attendance at training, education, instruction or compulsory parades and may include the minimum time spent in travelling to attend the aforementioned items provided no payment has been received from the defence forces

The leave entitlement is:

Up to 24 working days per year to members of the Naval and Military Reserves; and

Up to 28 working days per year to members of the Air Force Reserves.

The military leave year is from 1 July of one year to 30 June of the next year.

Any further leave required in excess of the maximum may be charged against recreation or extended leave credits or taken as leave without pay.

Employees may be granted special purpose leave of up to one day to attend medical examinations and tests required for acceptance as volunteer part-time members of the Australian Defence Forces.

PART E

TRAINING

38. Training Program

A Training Committee shall be established consisting of equal numbers of employer and Union representatives.

The role of the Training Committee will be to advise on the development of a training program consistent with:

- i. the skill needs identified in the new classification structure;
- ii. the size, structure and nature of the operations of the Home Care Service;
- iii. the establishment of skill related career paths and promotion opportunities;
- iv. the introduction of properly accredited training;

Such training shall be undertaken by employees in the employer's time and training resource materials will be paid for by the employer.

Access to training should be on:

- i. an equitable basis
- ii. with the training requirements of the Branch in mind
- iii. within current Branch budgets

Employees should be consulted about available training and processes should be put into place to select the participants for training.

39. Regular Staff Meetings

Branches shall provide regular support and supervision both on an individual and a group basis, as appropriate

The Union Organiser shall be informed by the Branch Manager of formal group sessions relating to industrial changes, in order to respond to questions from employees.

The Union Organiser may also be informed of other appropriate group employee's sessions to facilitate access to staff. Should the Union Organiser attend after such sessions, notification will be required to the Branch Manager prior to the session taking place. This will enable Service Coordinators to re-roster services if required.

The Branch Manager will in turn notify employees that the Union Organiser will be attending after the session.

Time spent with Union Organisers will not be paid, unless otherwise notified by Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services,, and attendance is voluntary for both members and non members.

40. English Tuition Training

The employer shall grant employees of non English speaking background who are unable to adequately communicate in the English language, time off without loss of pay during normal working hours to attend English language asses conducted by the employer or any other recognised statutory authority (including the Adult Migrant Education Service).

The development of this Training will be referred to the Training Committee as per Clause 38, Training Program, of this Award.

41. Trade Union Training

Employees nominated by the Union to attend during ordinary working hours a course organised and conducted by the Union, or a training provider nominated by the Union, shall do so without loss of ordinary pay, subject to the following:

- i. That the employer receive not less than four (4) weeks written notice of nomination from the Union, setting out the time, dates, content and venues of the course.
- ii. That not more than one (1) person at a time from any one Branch are nominated with no individual receiving payment for more than 40 hours training per year.
- iii. That a maximum of 800 hours per financial year, non cumulative, is available for trade union training for each year.
- iv. That the employer is satisfied that the course is of such a nature as to be calculated to assist in reducing labour disputes and in advancing industrial relations in the industry.

PART F

LIVE-IN HOUSEKEEPER

42. Live-in Housekeeper

A. Terms and conditions

The terms and conditions contained in the clause shall be in substitution for and not cumulative upon the following clauses of the Agreement.

Clause Number	Subject
27	Additional payment and allowances
12	Hours of Work
24	Penalty Rates for ordinary time and Weekends
25	Overtime
26	Public Holidays

For the purposes of this clause, such substitution shall only apply while the employee is working as a Live-in Housekeeper.

- i. In respect of persons not permanently appointed as Live-in Housekeepers, in so far as clause 33 - Annual Leave and Clause 34 - Sick Leave, of this Agreement are concerned, hours worked under this clause shall be limited to eight (8) hours of every 24 for calculation purposes.
- ii. Live-in Housekeeper shall mean an employee of the Home Care Service of New South Wales, who provides one of or a combination of Oncology, Home Aide, Handy person and Personal Care duties, and would normally live at the client's premises for a period in excess of 24 hours.

B. Weekly rate

- i. The total weekly remuneration for a Live-in Housekeeper shall be calculated as follows:
- ii. Weekly Rate for Grade 3 + Special Loading + All Incidents Loading = Total Weekly Rate.
- iii. The Special Loading is calculated by obtaining 3.5% of the Grade 3 weekly rate. The special loading is in recognition of all factors, including but not limited to, the special pressures, responsibilities and climate inherent in the work of a Live-in Housekeeper.

- iv. The All Incidents Loading is calculated by obtaining 50% of the sum of the Grade 3 weekly rate plus the Special Loading. The All Incidents Loading of 50% take into account all incidents of employment inherent in the work and conditions of employment of Live-in Housekeepers, including but not limited to, the requirement to reside at the client's home and to perform work, and be available for the performance of work at all such times of the day and night as the job and the client's needs may require.

C. Daily rate

- i. The daily rate for a live-in housekeeper shall be calculated as follows:

ii.

$$\frac{\text{Weekly rate for live-in housekeeper}}{5} + 25\% = \text{daily rate}$$

- iii. For the purpose of this sub-clause a day shall be defined as a period of 24 consecutive hours.
- iv. The minimum payment for work performed under this sub-clause shall be one day (24 hours) at the daily rate
- v. Work performed under this sub-clause shall be for relief and temporary purposes only.
- vi. An employee who works under this clause as a relief Live-in Housekeeper shall be entitled to a minimum (8) eight hours off duty between the termination of the Live-in Housekeeper engagement and the commencement of any subsequent engagement under this Award, other than Live-in Housekeeper.
- vii. An employee who is not required to work their normal rostered work as a result of being on an (8) eight hour break will not be entitled to payment for that rostered work.
- viii. An employee who is required to work without an eight (8) hour break off duty shall be entitled to be paid overtime rates as prescribed in Clause 25 (A) of this award.

D. Time off

- i. After each five (5) consecutive days of duty a Live-in Housekeeper shall be entitled to two (2) consecutive days off. Provided that:
- (a) Such days may accumulate to a limit of six (6) and in any case must be taken at the conclusion of such service.
- (b) Where it is mutually agreed between the employer and the employee that under special circumstances the days of duty should continue, such days may accumulate to a limit of eight (8) to be taken at the conclusion of such service.

Provided that the Live-in Housekeeper shall continue to receive their normal weekly wage pursuant to Clause 22 Payment of Wages, of this Agreement during such days off.

- ii. A Live-in Housekeeper will accrue one paid rostered day off per four (4) completed weeks of work (i.e. after each nineteen (19) working days). Such days off may accumulate only to a maximum of three (3).

E. Travel

Before proceeding to an assignment the employee shall determine the most appropriate mode of travel to and from the assignment. Such travel cost shall be calculated and paid as such, whether or not the employee uses the mode of travel. However, in isolated establishments discussion will take place between the employer and employee in relation to the use of the employee's motor vehicle.

Where motor vehicle is the most appropriate mode of travel, kilometre allowance in accordance with the provisions of Clause 27 - Additional Payments and Allowances, of this Agreement shall apply.

F. Commencement and cessation

Designated commencement of work insofar as place, date and time are concerned shall be calculated by the employer. Designated cessation of work insofar as place, date and time are concerned shall be calculated by the employer. Provided that time spent travelling shall be regarded as time worked.

G. Reimbursement of meals

In the event of whether all or some of breakfast, lunch and dinner not being provided the employer shall reimburse such reasonable amounts for same, upon proof of expenditure.

H. Annual leave

Subject to Clause 33 - Annual Leave and Clause 42 - Live in Housekeeper, of this Agreement hereof, a full-time Live-in housekeeper employed and paid as such shall accrue an additional week's leave for every twelve (12) months of continuous service on a pro-rata basis

PART G

EMPLOYEE REPRESENTATION

43. Assistance With the Dispute Settling Process

A. ASSISTANCE IN GRIEVANCE AND DISPUTE SETTLEMENT

The Branch Secretary of United Voice - NSW Branch or any person authorised in writing by the Union, shall have the right to enter the Branch office during its hours of operations for the purpose of assisting with the grievance and dispute settling procedures under this Award, in accordance with the provisions of the New South Wales Industrial Relations Act.

B. ASSISTANCE IN OBSERVANCE OF THE AWARD

For the purposes of assisting employees with their rights and obligations under this Award, an employee may be appointed a Union Delegate in the Branch in which he or she is employed and shall, upon notification thereof to the employer, be recognised as the accredited representative of United Voice - NSW Branch. He or she shall be allowed the necessary opportunity during office hours to speak with other employees, and the employer, and to assist in ensuring that all parties understand their rights and obligations under this agreement. As part of this role, the following shall in apply in relation to the union delegate.

- (i) The employer shall, subject to approval by the Branch Manager, allow the delegate reasonable access to office equipment such as photocopiers, facsimile machines and computer terminals pursuant to their assistance role, provided that such access is not disruptive to normal office procedures. The Branch Manager shall not unreasonably withhold approval.
- (ii) A current copy of the Award shall be permanently placed on or near such notice-board, and a copy given to each employee upon request.
- (iii) The Branch Manager shall advise the local union delegate in writing of the time, date and location of any induction course for new employees under this agreement. Such notice is to be given a minimum of seven days prior to that induction course occurring, or as soon as possible where such induction course is arranged to occur at shorter notice.
- (iv) The local union delegate, and/or an officer of the union, shall be allowed a maximum of 15 minutes to address new employees at such course in relation to the role of the union, and to offer union membership to any attendees.

- (v) Each branch shall take steps to facilitate re-rostering of delegates to ensure attendance by the delegate is practicable, and take steps to ensure that, where possible, the total number of hours worked by such delegate in that pay period are not decreased as a result of such attendance.

C. INSPECTION OF TIME AND WAGES RECORD

The time and wages record shall be open for inspection to a duly accredited Union official during the usual office hours at the employer's office or other convenient place.

A duly accredited official of the Union, making an inspection of time and/or wages records shall be entitled to take a copy or copies of entries made in those records relating to a suspected breach of the Award.

Provided that an inspection shall not be demanded unless an authorised official of the Union suspects that a breach of this Award has been committed.

44. Time and Wages Record

- A. The employer shall keep a record from which can be readily ascertained the name; the grade/classification; the hours worked each day; the rate of wages and the amount of wages paid for each employee.
- B. Notwithstanding anything elsewhere contained in this Award the employer may select and utilise, for time-keeping purposes, any fraction or decimal proportion of an hour (not exceeding quarter of an hour) and may apply such proportion in the calculation of the working time of employees who report for duty after their appointed starting times, or cease duty before their appointed finishing times. An employer who adopts a proportion for the aforesaid purpose shall apply the same proportion for the calculation of overtime.
- C. An employer shall retain time and wages records going back a period of seven years.

PART H

ANTI-DISCRIMINATION

45. Anti-Discrimination

- (i) It is the intention of the parties bound by this award to seek to achieve the objective 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 grievance 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 provisions 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."

PART I

MONETARY RATES

Table 1 - Salaries

Classification	Basis	Rate per hour 1st Full pay on or after 1 Sept 2011 (2.5% Increase)	Rate per week (38 Hours) 1st Full pay on or after 1 Sept 2011 (2.5% Increase)	Rate per hour 1st Full pay on or after 1 Sept 2012 (2.5% Increase)	Rate per week 1st Full pay on or after 1 Sept 2012 (2.5% Increase)
Home Aide/	Permanent	\$19.50	\$740.83	\$19.99	\$759.35
Home Aide/	Casual	\$23.39		\$23.97	
Grade 1	Permanent	\$19.25	\$731.48	\$19.73	\$749.77
Grade 1	Casual	\$23.10		\$23.68	
Grade 2	Permanent	\$20.21	\$768.09	\$20.72	\$787.29
Grade 2	Casual	\$24.26		\$24.87	
Grade 3	Permanent	\$21.85	\$830.41	\$22.40	\$851.17
Grade 3	Casual	\$26.22		\$26.88	
		Weekly Rate (38 hours per week)	Daily rate	Weekly Rate (38 hours per week)	Daily rate
Live in Housekeeper	Permanent	\$1,289.22	\$322.30	\$1,321.45	\$330.36
Live in Housekeeper	Casual	\$1547.07	\$386.76	\$1,585.75	\$396.43

Table 2 - Other Rates and Allowances

Description	FFPP 1 Sept 11 \$	FFPP 1 Sept 12 \$
Overnight Care	\$131.34 per task	\$134.62 per task
Presenter - Gd 4	\$23.35	\$23.93
Competency Assessor - Gd 4	\$23.35	\$23.93
Equipment Allowance	\$2.31	\$2.37
Tea Money	\$10.37	\$10.63
Travel Allowance	70.7 cents per kilometre	70.7 cents per kilometre

CARE WORKER AVAILABILITY REGISTER FORM

As outlined in Clause 12 of the Care Worker Award employees must make themselves available for work for a minimum number of availability time periods in accordance with their current contract level. The table below specifies the minimum number of availability time periods for each contract level.

Contract Level	Minimum number of Availability Time Periods	Weekend Availability for Saturday - Friday Care Workers
30	8 x 6hrs	Nil
50	12 x 6hrs	1 in 4
70	16 x 6hrs	2 in 4

You must select the times and days that you will be available in line with these minimum requirements. Please note that you may provide a greater number of availability time periods if you choose to make yourself available for additional work.

The time periods should not overlap and any proposed availability must be agreed, (within the service hours available in the branch), between the employee and the employer prior to the availability being accepted by your supervisor.

A maximum of two (2) six hour time periods can be selected in each 24 hour period.

Time periods nominated of greater than six hours but less than twelve hours will be regarded as one time period only.

Monday to Friday contracted employees can restrict their time period selections to Monday to Friday only.

You must have a break between shifts of at least 8 hours or choose a break of 10 hours

Availability nomination									
Current contract level (circle one)				30 hours		50 hours		70 hours	
Minimum break between shifts (circle one)				8 hours			10 hours		
Desired contract level (circle one)				30 hours		50 hours		70 hours	
Availability Time Period									
Day of the Week	Week 1				Week 2				
	Start	Finish	Start	Finish	Start	Finish	Start	Finish	
Saturday									
Sunday									
Monday									
Tuesday									
Wednesday									
Thursday									
Friday									

Optional:

YES / NO, I would like to be considered for Overnight Care work.

YES / NO, I would like to be considered for Live-In Housekeeper work.

I, (Print full name) agree to the above minimum number of availability time periods as required by Clause 12 Hours of Work.

Signature: _____ Date: ____/____/____

Supervisor Signature: _____ Date: ____/____/____

APPENDIX B

HIGHER DUTIES/MULTI-SKILLING AGREEMENT

TO: (Employee’s Name)

FROM: (Branch Mgrs Name)

As per Clause 17 of the Care Worker Employees - Department of Family and Community Services- Ageing Disability and Home Care (State) Award 2011I offer you the opportunity to undertake permanent Grade 3 work up to 50% of your current contract level.

Current contract level: 50% of minimum contract level

As a result of accepting this offer the following conditions will apply:

- (i) Working Grade 3 hours up to 50% of your contract level may necessitate an increase in contract hours. Should you no longer choose to undertake Grade 3 work, Home Care will, wherever possible, endeavour to maintain your current contract level.
- (ii) However, as per your request the removal of Grade 3 hours may require the Care Worker Employees - Department of Family and Community Services- Ageing Disability and Home Care not being able to maintain your current contract level with Grade 2 work. Home Care reserves the right to return you to the contract level you were on prior to accepting the additional Grade 3 work and will notify you prior to your decision becoming effective.

Branch Mgr (Signature) Date:/...../.....

I understand the terms and conditions of Clause 17 regarding my contract hours and accept the above offer.

Employee (Signature) Date:/...../.....

REQUEST TO WITHDRAW FROM UNDERTAKING GRADE 3 WORK

I wish to notify you that effective from pay period ending/...../..... that I no longer wish to undertake Grade 3 work as previously offered. I understand that as a result of this decision my contract hours may be reviewed back to the original contract level.

Employee (Signature) Date:/...../.....

OFFICE USE ONLY

(Delete whichever is not applicable)

- 1. Employee returned to original contract level
- 2. Employee able to be maintained on current contract level

Signature: Date:/...../.....

Position held:

APPENDIX C**OFFER OF A FIXED TERM CONTRACT**

Employees Name:

Employees Address: Post Code:

Dear

You have recently been successful in obtaining the position of Care Worker Grade Your conditions of employment are as follows:

1. Your conditions of employment will generally be those specified in Care Worker Employees - Department of Family and Community Services- Ageing Disability and Home Care (State) Award 2011. Any variation from these conditions will be specified in this contract.
2. You will be employed for a fixed term. Your employment will commence from/...../..... and will cease on/...../.....
3. The minimum number of hours you will be required to work will be per fortnight.
4. Should the client no longer require services provided by the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services, then you will be provided with four weeks notice of termination or four weeks payment in lieu of such notice. Such payment would not be made where services are being terminated on the grounds of misconduct or unsatisfactory service.
5. Employee's will be required to provide the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services with a least 2 week's notice of intention to terminate the contract.
6. Service provision guidelines allows the client to have the final say as to the person who provides such services required by them. For this reason, the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services would consider you to be on trial for a period of four (4) weeks to assess the compatibility with the client seeking the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services If during the four (4) week period the client does not wish to continue the service then your employment would cease from the close of business upon receipt of that advice or upon the employment of a suitable replacement which ever is more appropriate.

Should the client for whatever reason decide to seek the provision of services from the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services but ask that another employee provide such services after the trial period, the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services will provide the following:

- (i) Four (4) weeks payment in lieu of notice. Such payment would not be made where services are being terminated on the grounds of misconduct or unsatisfactory service causing the client to seek services to be provided by another employee of the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services 7. Due to the nature of your employment being specific to the needs of a particular client(s), should that client(s) not require the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services for a specific period of time, which will be in excess of a week, your employment with the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services will be suspended until the client requires the service to re-commence.

Such suspension of services will be without pay. Examples of a situation where the client may not require the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services for a given period may be when they do into a period of hospitalisation or

respite care, proceed on holidays or may have a family member staying with them that will provide the services normally provided by Home Care.

8. The provisions of Clause 21 of the above mentioned Award are not applicable to your employment.

Branch Mgr (Signature): Date:/...../.....

ACCEPTANCE

I, fully understand and accept the conditions and terms as set out in the above contract. I accept employment with the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services in the terms of the contract.

Employee (Signature): Date:/...../.....

APPENDIX D

CARE WORKER SELF ROSTERING CHECKLIST

Before agreeing to accept new work or changing the day and/or time of service you currently provide, you must consider the following.

	Quality Conditions	
1.	Is the client happy with the changes being negotiated.	YES or no
2.	Is the change consistent with the CARES principles.	YES or no
3.	Will the change being negotiated maintain either your health and safety, or the health and safety of your client.	YES or no
Award Conditions		
4.	Will you be taking a break after 5 hours work including travel time (meal, crib or break of engagement).	YES or no
5.	Will you be working 8 hours or less in the day.	YES or no
6.	Will you be working 76 hours or less in the fortnight.	YES or no
7.	Will the change mean you have not taken an 8 consecutive hour break within the current 24 hour period.	YES or no
8.	Will the change mean that you remain working within your agreed availability.	YES or no
Cost Care Conditions		
9.	Will the change maintain your contract hours for the affected fortnight.	YES or no
10.	Will the change avoid a minimum start.	YES or no
11.	Will the change avoid a break of engagement (break at the Department of Ageing, Disability and Home Care's convenience).	YES or no
12.	Will the change attract a similar penalty rate.	YES or no

13.	Will you be working within your geographical area.	YES or no
14.	For Grade 2 staff only Will you be accepting Grade 3 work in the fortnight that is less than 50% of your minimum level of contract hours.	YES or no

To nominate for new work offered or make temporary changes to your current roster, your answers MUST be all YES.

If you answer NO to any of the questions above please seek advice from your Service Coordinator.

If you require more work, either on a temporary or permanent basis, you should discuss your request with your Service Coordinator so that they are aware of your needs.

APPENDIX E

Guidelines to use when Initiating Changes to Client Service.

The following guidelines have been developed to assist Care Workers when determining the appropriateness of self-rostering. These guidelines should be used in conjunction with the Role of Care Workers (see WPI 3) and Care Workers Self-Rostering Checklist. Advice should be sought from the Service Coordinator where doubts arise.

1. Care Workers and clients may approach one another directly to request a change of time and or day in the following instances:
 - where the request would result in more efficient and safer rostering;
 - where the request would result in work being carried out more evenly over the span of the day; and
 - the change genuinely better suits both the client and the Care Worker.
2. Clients seeking to change the time and or date of a future service may do so directly with the Care Worker at the time of the current service. If the request occurs any other time it should be raised with the Service Coordinator who will negotiate the change with the Care Worker.
3. In all situations where the Care Worker or the client seek to re-roster a service to another time and/or date then both the client and the Care Worker have the right to refuse the request.
4. Should either the client or the Care Worker be unwilling to make the change, the request should not be pursued or held against either party.
5. In the situation where the client or Care Worker is unable to comply with the request, the request should be referred to the Service Coordinator immediately for action.
6. If the Care Worker is unable to comply with the client's request for an alternative time/date then the request should be forwarded to the Service Coordinator for re-rostering to alternative staff.

APPENDIX F**GUIDELINES FOR GRADING CARE WORK****TABLE OF CONTENTS****TITLE**

Introduction

Definitions

Grading Care Work

Other Assistance

SCHEDULES

Schedule A - Grading Personal Care Tasks - Examples

Schedule B - Grading - Other Assistance - Examples

Schedule C - Interpersonal Skills

INTRODUCTION

Grading Care Work within the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services

When determining the grade of tasks which a the Ageing, Disability and Home Care (ADHC) within the Department of Family and Community Services, Care Workers will perform in a household, the Supervisor will need to establish:

the tasks which are to be performed - personal care, housework, repetitive upkeep, respite care;

the likely impact on the Worker, or the work to be performed from, any household factors, -including behaviour, exhibited by the client or another household member.

The information necessary for grading, will be collected through:

the assessment/reassessment process;

support/supervision sessions with Care Workers.

DEFINITIONS

Grade 3 care work consists of:

Grade 3 Personal Care tasks

Grade 2 Personal Care, Housekeeping, Repetitive Upkeep and Respite Care.

Complex work where there is a moderate to pronounced impact on the work/Worker from client behaviours or household environment. Home Aides will need to possess a higher level of skill than that required within Grade 2 work.

All live-in Housekeeping

Grade 2 care work consists of:

Grade 2 Personal Care tasks

Housekeeping, Repetitive Upkeep and Respite Care where there is a slight to moderate impact on the work/Worker from client behaviours or household environment

Grade 1 work consists of:

Domestic assistance

- Including but not limited to, domestic chores, ironing, cleaning, dishwashing, etc

Shopping and bill paying

Meal preparation

GRADING CARE WORK

First Step

If Personal Care tasks are to be performed, refer to the already graded lists to identify whether the work is Grade 3 or Grade 2.

Grade 3 - Personal Care work requires a Grade 3 Worker:

Personal Care Grade 3 task

Home Care Worker Grade 3

Grade 2 - Personal Care work requires a Grade 2 or Grade 3 Worker.

Personal Care Grade 2

Home Care Worker Grade 2 or Grade 3.

Second Step

When Grade 2 Personal Care or other assistance is being provided, it is necessary to consider the impact of household factors such as client behaviours in order to grade the work.

The more pronounced the impact the higher the level of interpersonal skills required of the Worker.

Moderate to pronounced impact would require a Worker with advanced interpersonal skills - Grade 3

Slight to moderate impact would require a Worker with basic interpersonal skills - Grade 2 or Grade 3

When there is moderate impact the work may be Graded by deciding whether it would be necessary to replace an existing Grade 2 Worker with a Grade 3 Worker who has advanced interpersonal skills.

OTHER ASSISTANCE

Pronounced impact from client behaviours/other household factors.	Grade 3 Work. Home Care Worker Grade 3	Advanced Interpersonal Skills
Moderate Impact	Grade 2 Work	Basic Interpersonal Skills

Slight Impact	Home Care Worker Grade 2 or Grade 3	Basic Interpersonal Skills
---------------	-------------------------------------	----------------------------

Personal Care

All personal care tasks have been graded either as Grade 3 or Grade 2.

The criteria used for grading personal care tasks, is detailed below.

Level of assistance needed (Grade 2 tasks involve some assistance to the clients, Grade 3 tasks involve a high degree or total assistance)

Who is responsible (is the client/carer responsible or is the care Worker responsible)

Bodily intrusion

The above criteria apply to Personal Care only, not other assistance provided in the household.

Showering/ Bathing	<ul style="list-style-type: none"> * Showering/Bathing adults and children with severely limited/uncontrollable body movements * Total bed bath/sponge where there is severely limited/uncontrollable body movements or serious comfort/health consideration 	<ul style="list-style-type: none"> * Assisting client to shower/bath self or totally showering/bathing client except where client has severely limited/uncontrollable body movements * Assisting with mobility or transferring to and from shower/bath except with clients who have severely limited/uncontrollable body movements * Assisting or transferring client to commode chair except where client has severely limited/uncontrollable body movements * Supervising children's bath * Bathing a baby * Total bed bath/sponge - exceptions Grade 3
Toileting	<ul style="list-style-type: none"> * Assisting in placement, removal, emptying, care and cleaning of sheaths and leg baths * Assisting with indwelling catheterisation by changing collection bag and cleaning around the insertion site 	<ul style="list-style-type: none"> * Helping people to the toilet * Assisting people to use the toilet by loosening clothing * Assisting client to change own incontinence and sanitary pads
	<ul style="list-style-type: none"> * Changing or assisting with urinary diversion - colostomy and drainage bags * All bowel management except changing babies nappies and toileting children * Continual caring of someone with bowel 	<ul style="list-style-type: none"> * Changing clients urinary incontinence pads * Assisting clients with bottles * Assisting self-catheterisation by holding mirror or positioning legs except where

	<p>incontinence including washing person</p> <ul style="list-style-type: none"> * Changing bowel incontinence pads * Responsibility for sterilising glass catheters for people using intermittent catheters 	<p>there is severely limited/uncontrollable body movements</p> <ul style="list-style-type: none"> * Changing babies nappies, toileting children
Menstrual Care	<ul style="list-style-type: none"> * Changing tampons and sanitary pads 	<ul style="list-style-type: none"> * Assisting with menstrual care
Skin Care	<ul style="list-style-type: none"> * Changing dressings on pressure areas, ulcers, burns, wounds, cuts and grazes only in circumstances outlined in Service Policy Manual * Application of treatment creams to genital Area 	<ul style="list-style-type: none"> * All skin care, eg: application of cream, rubbing pressure areas with lotions etc except where dressings are involved
Nasal Care	<ul style="list-style-type: none"> *Cleaning noses 	
Grooming	<ul style="list-style-type: none"> *All dressing/undressing where there are severely limited/uncontrollable body movements 	<ul style="list-style-type: none"> * All hair care * Limited care of nails as details in Service Policy Manual * Shaving: Where there are uncontrollable body movements use electric razors only. (All other shaving - electric razors recommended). * All dressing/undressing or assistance with dressing/undressing except where there is severely limited/uncontrollable body movements
Oral Hygiene		<ul style="list-style-type: none"> * Assisting client with their own care of teeth or dentures * Care of teeth and dentures for the client by using tooth brush/tooth paste/oral solutions only
Oral Medication		<ul style="list-style-type: none"> * Assisting client with or administering liquid medicines, pills, powders, nose and eye drops according to Service Policy Manual.
Medication	<ul style="list-style-type: none"> * Suppositories * Giving insulin injections in circumstances outlined in Service Policy Manual. 	
Transferrin/ Mobility	<ul style="list-style-type: none"> * Assisting clients to turn/sit where clients can offer limited/no assistance with weight bearing 	<ul style="list-style-type: none"> * Transferring client in and out of bed/chair/ car and assisting with mobility - exceptions see Grade 3
	<ul style="list-style-type: none"> * Using mechanical aids to lift and transfer clients <p>Assisting client with transfers/mobility where:</p> <ul style="list-style-type: none"> * client can offer limited/no assistance 	<ul style="list-style-type: none"> * Assisting clients to turn or sit up - exceptions see Grade 3

	with weight bearing * particularly careful handling is required because of the client's health/disability	
	* some lifting or physically awkward movement is involved for staff in the transfer/mobility of clients	
Fitting of Aids/ Appliances		* Such as splints and callipers
Therapy	* Assisting with therapy in any of the following circumstances: - high degree of assistance is involved - Care Workers have total responsibility because client is unable to take responsibility for the therapy and carer/therapist is not on site - Specialised training/knowledge is required	* Assisting with therapy in any of the following circumstances: - low level of assistance is involved - carer/therapist is on site or client is able to take responsibility for the therapy or carer/therapy is on site - simple instructions required rather than specialised training/knowledge
Assisting with Eating	* Assisting with eating where a risk of choking, vomiting or other eating difficulty is involved	* Assisting where there are no eating difficulties

OTHER ASSISTANCE (Not Grade 3 Personal Care Tasks)

When determining the grading for tasks other than Grade 3 Personal Care -Housework, Repetitive Upkeep and Respite Care - the Branch Manager or their delegate will need to consider the following:

What is the likely impact on the Worker, or the work to be performed from any household factor - including behaviours exhibited by the client or another household member.

Is the impact likely to be slight, moderate or pronounced because of some difficulty with client behaviour or household environment.

Examples of household factors which will often but not always have a significant impact on the work/Worker:

restless, wandering behaviour;

verbal abuse, aggression;

hearing or speech impairment which seriously affects communication;

extreme stress present due to household member with acute/terminal illness loss/bereavement;

households where children have been notified to DOCS as At Risk;

households where adults are at risk of abuse;

domestic violence;

where there is a severe allergy which requires additional care with the tasks;

The more pronounced the impact of household factors on care work, the higher the level of interpersonal skills required of the worker.

Moderate to pronounced impact would require a Worker with advanced interpersonal skills - Grade 3

Slight to moderate impact would require a Worker with basic interpersonal skills - Grade 2 or Grade 3

For examples of interpersonal skills see Schedule C.

For examples of grading other Assistance see Schedule B.

SCHEDULE A

GRADING PERSONAL CARE TASKS

Examples of Grading Personal Care with respect to the following criteria:

Level of assistance needed (Grade 2 tasks involve some assistance to the clients, Grade 3 tasks involve a high degree or total assistance)

Who is responsible (is the client/carer responsible or is the care Worker responsible)

Bodily intrusion

Example - Grade 3 Personal Care

Providing total bowel care for a severely disabled client while their carer leaves for a break. Analysis of the task according to the factors above:

Total assistance

Care Worker totally responsible while carer is away

Bodily intrusion

Example - Grade 2 Personal Care

Assisting client to wash and dry their own hair. Analysis of the task according to the factors above:

Some assistance

Client is responsible

No bodily intrusion

SCHEDULE B

GRADING OTHER ASSISTANCE

Examples of Grading other assistance with respect to the following criteria:

Slight, moderate or pronounced impact on work/Worker

Level of interpersonal skills required by Worker

Examples - Grade 3

- A. Providing housekeeping assistance to a disabled client who displays aggressive behaviour and who is often verbally abusive. This behaviour results from a brain injury.

The likely impact on the work or Worker is moderate to pronounced, depending on the frequency of the aggressive behaviour and the presence of other adults in the household.

Worker will need advanced level of interpersonal skills to be able to perform the tasks, for example: assertiveness skills to deal with the aggression and abuse - knowledge of the client's condition and understanding of the effect on the client's behaviour - negotiating skills to request assistance or change arrangements, if necessary.

- B. Assisting disabled adult female to shower, wash her hair and dress. Severe arthritis impairs the client's ability to assist. The Worker cooks tea for the client in the evening, the client can feed herself. However, the client often experiences severe depression which results in her becoming withdrawn and passive.

The impact of the client's condition on the work or Worker is likely to be moderate to pronounced as the work may take longer to perform and be more difficult for the Worker because of the client's passivity and depression.

Worker will need advanced level of interpersonal skills to be able to direct the client or to carry out tasks on own initiative at times when the client is depressed - to be sensitive to the client's behaviour and have advanced listening skills and empathy with the client.

Examples - Grade 2

- A. Providing activities for a blind adolescent girl as part of respite care. The worker will be following a plan which the carer has previously discussed and outlined. The carer is away from the home for the duration of the respite assistance.

The client's behaviour would have a slight to moderate impact on the work or Worker. The worker would need a basic level of interpersonal skills.

- B. Providing housekeeping assistance to an elderly woman who has severe asthma and heart problems. The impact on the work or worker is slight to moderate, depending on the client's health stability. The worker would need basic interpersonal skills, eg. ability to respond in a crisis.

SCHEDULE C

INTERPERSONAL SKILLS

Basic Interpersonal Skills - Care Worker Grade 2

The following list consists of examples of interpersonal skills which a Care Worker Grade 2 is expected to have acquired to a basic level.

Listening skills

Empathy

Ability to respond appropriately in crisis situations

Ability to take appropriate action

Knowledge of disabilities

Understanding of client behaviour

Flexibility

Sensitivity and tolerance

Assertiveness

Awareness of communication difficulties

Ability to give clear and simple information

Ability to elicit clear directions from client/carer

Ability to use different communication methods, eg. communication board

Self-awareness

Genuineness/respect for client

Acceptance of client condition/lifestyle

Maintaining objectivity

Advanced Interpersonal Skills - Care Worker Grade 3

The following list consists of examples of interpersonal skills which Grade 3 Workers are expected to have acquired to an advanced level.

Empathy

Ability to direct client or carry out plan/action on own initiative

Ability to respond appropriately in crisis situations

Ability to take appropriate action

Knowledge of disabilities

Understanding of client behaviours

Flexibility

Sensitivity and tolerance

Assertiveness

Awareness of communication difficulties

Ability to give clear and simple information

Ability to elicit clear directions from client

Ability to clarify communication

Ability to use different communication methods, eg. communication board

Listening skills, includes active listening and listening to non-verbal behaviour

Self-awareness

Genuineness/respect for client

Acceptance of client condition/lifestyle

Ability to negotiate with household about the tasks performed

Maintaining objectivity

C.G. STAFF *J*

Printed by the authority of the Industrial Registrar.

**CROWN EMPLOYEES (DEPARTMENT OF ATTORNEY GENERAL
AND JUSTICE (JUVENILE JUSTICE) - 38 HOUR WEEK
OPERATIONAL STAFF 2012) REVIEWED AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Department of Attorney General and Justice.

(No. IRC 980 of 2012)

Before Commissioner Tabbaa

21 September 2012

AWARD

1. Arrangement

PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Title and Scope
3.	Definitions
4.	Rates of Pay and Allowances
5.	Hours
6.	Hours, Working Arrangements, Leave, Meal Breaks and Overtime - Operational Staff Member (Non-Metropolitan Centres - Detainee Movements and Transport), Operational Staff Member (Court Logistics).
7.	All Incidents Allowance
8.	Shift Workers - Loadings, Penalties, Leave, Rosters and Overtime
9.	Casual Employment
10.	Higher Duties
11.	Settlement of Disputes
12.	Dignity and Respect in the Workplace
13.	Uniforms and Protective Clothing
14.	Right of Entry to Association Officials
15.	Area, Incidence and Duration

PART B

MONETARY RATES

2. Title and Scope

- 2.1 This Award shall be known as the Crown Employees (Department of Attorney General & Justice (Juvenile Justice) - 38 Hour Week Operational Staff 2012) Award. This Award covers Operational Staff of the Department as defined in Clause 3 of this Award who are employed under the provisions of the Act.
- 2.2 All other relevant conditions of employment not specified in this Award shall be provided in accordance with the Crown Employees (Public Service Conditions of Employment) Award 2009 and the Public Service of New South Wales Government Personnel Handbook where applicable.

3. Definitions

"Act" means the *Public Sector Employment and Management Act 2002* as amended.

"Allocated Youth Officer Handcuff Allowance" means the allowance, as set out in Table 2(b) of Part B of this Award, as payment for carrying handcuffs and has approval for authorising the use of handcuffs in emergency situations only, as set out in the position description of Youth Officer.

"Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

"Casual Employee" means any employee engaged in terms of Chapter 2, Part 2.6 Casual Employees, of the Act and any guidelines issued thereof or as amended from time to time.

"Centre" means a Detention Centre as defined by the *Children (Detention Centres) Act 1987*.

"Court Logistics" means the positions located in the Court Logistics, Classifications and Security Intelligence Branch of the Department.

"Day Worker" means an Operational Staff member, other than a Shift Worker, who works ordinary hours of thirty eight (38) hours per week Monday to Friday inclusive and who commences work on such days at or after 6 am and before 10 am otherwise than as part of a shift system with an allocated day off ie 19 days in each 4 week period.

"Department" means the New South Wales Department of Attorney General & Justice (Juvenile Justice).

"Detainee" means a person as defined by the *Children (Detention Centres) Act 1987*.

"Expense Related Payments" means payments in the nature of re-imbusement for reasonable expenses incurred in the performance of official duties and subject to a formal case-by-case claims approval process.

"Non-Metropolitan Centre" means, for the purpose of Clause 6.1 of this Award, the Acmena, Frank Baxter, Orana and Riverina Juvenile Justice centres.

"Operational Staff" means, for the purposes of this Award, the following positions:

- Centre Manager;
- Assistant Manager;
- Assistant Manager Client Services;
- Unit Manager;
- Shift Supervisor/Assistant Unit Manager;
- Youth Officer, Centre;
- Youth Officer, Non Court Based, Court Logistics;
- Youth Officer, Court Based, Court Logistics;
- Court Supervisor, Court Logistics;
- Logistics Officer, Court Logistics;
- Drug Detection Security and Intelligence Officer;
- Vocational Instructor;
- Vocational Instructor (Cook Supervisor)
- Kitchen Support Officer;

"Shift Worker" means an Operational Staff member who works ordinary rostered hours up to 19 days in a 28 day period, as set out in Clause 5 of this Award.

4. Rates of Pay and Allowances

4.1 The minimum rates of pay and allowances to be paid to Operational Staff are set out in Tables 1 and 2 of Part B of this Award.

- 4.2 A chokage Allowance shall be paid at the rate as set out in item 1 of Table 2(a) of Part B to Vocational Instructors who are required to assist in clearing sewerage chokages and are required to assist in opening up any soil pipe, waste pipe, drain pipe or pump containing sewerage or who are required to work in a septic tank in operation.
- 4.3 A trade allowance shall be paid at the rate as set out in item 3 of Table 2(a) of Part B to Vocational Instructors who hold a trade qualification relevant to the Vocational Instructor's vocational employment classification, in addition to the rates prescribed.

5. Hours

5.1

(a) Ordinary Hours

- (i) The ordinary hours of work for Shift Workers shall not exceed 152 hours per twenty eight (28) calendar days or an average of 38 hours per week in each roster cycle. Each Shift Worker shall be free from duty for not less than eight (8) full days and an allocated rostered day off in each cycle.
- (ii) The hours of work prescribed in paragraph (a)(i) of this sub-clause shall be arranged to allow variable working hours in each roster cycle of twenty eight (28) days to ensure that each Shift Worker shall work his/her other ordinary hours of work on not more than nineteen (19) days in the cycle.

(b) Rostered Day Off Duty

- (i) Time for a rostered day off duty accrues at 0.4 of an hour for each eight hour day or shift.
- (ii) All paid ordinary working time and paid leave count towards accrual of time for the rostered day off duty.
- (iii) An Operational Staff rostered day off duty prescribed in paragraph (a)(ii) of this sub-clause shall be determined by having regard to the operational needs of the Centre. Where practicable the rostered day off duty shall be consecutive with the days off prescribed in paragraph (a)(i) of this sub-clause.
- (iv) Should the operational needs of the Centre require the rostered day off duty to be 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.
- (v) Where an Operational Staff member has accumulated sufficient time to take his/her rostered day off duty prior to entering on annual leave, it shall be allowed to the Operational Staff on the first working day immediately following the period of leave.
- (vi) Where an Operational Staff member has not accumulated sufficient time for a rostered day off duty prior to entering on annual leave, time in credit shall count towards taking the next rostered day off duty falling in roster sequence after the Operational Staff member's return to duty.
- (vii) An Operational Staff member shall be entitled to the next rostered day off duty after returning from a period of worker's compensation leave or extended leave.
- (viii) A rostered day off duty is not re-credited if the Operational Staff member is ill or incapacitated on a rostered day off duty. However sick leave shall not be debited.
- (ix) Upon termination of employment, the Operational Staff member shall be paid for any untaken rostered time off.

- (x) Permanent part-time Operational Staff members, due to the terms of engagement, are paid for all time worked as there is no accrual of time for rostered days off duty.
- (xi) In the case of an Operational Staff member in receipt of an All Incidents Allowance prescribed in Clause 7 of this Award, should the operational needs of a Centre require the rostered day off duty to be changed, another day shall be substituted in the current cycle. Should this not be practicable, rostered days off duty may be accrued to a maximum of five (5) days in any calendar year and be taken in a less active period.

5.2 Meal Breaks

- (a) Meal breaks must be given to and taken by Operational Staff members. No Operational Staff shall be required to work continuously for more than five (5) hours without a meal break of no less than thirty (30) minutes. However where a Operational Staff member is called upon to work for any portion of a rostered unpaid meal break, such time shall be paid for at overtime rates.
- (b) The time taken for an Operational Staff member required by the Department to take a meal or meals with a detainee or detainees shall be considered as ordinary hours of work. All time in such circumstances shall be paid at the applicable rate of the shift and the Department shall provide a meal to the Operational Staff member free of charge, the meal to be of the same or no less than the quality of that provided to the detainee or detainees. In such circumstances the provision of paragraph (a) of this sub-clause shall not apply.
- (c) The provisions of paragraph (b) of this sub-clause shall only apply if an Operational Staff member or a group of Operational Staff take the meal or meals at the allocated meal time for the detainee or detainees and such Operational Staff or group of Operational Staff are physically located with the detainee or detainees and are engaged in the supervision of the detainee or detainees while taking their meal or meals.

6. Hours, Working Arrangements, Leave, Meal Breaks and Overtime - Operational Staff Member (Non-Metropolitan Centres - Detainee Movements and Transport), Operational Staff Member (Court Logistics)

6.1 Operational Staff Member (Non-Metropolitan Centres, Detainee Movements and Transport)

Notwithstanding Clause 5 (except clause 5.1(b)) and Clause 8 (excluding 8.1-8.5) of this Award, if it is deemed necessary for operational reasons to undertake detainee movements or transport relating to a non-metropolitan centre, the following provisions will apply:

- (a) Ordinary Hours
 - (i) The ordinary hours of work for the relevant Operational Staff member shall be thirty-eight (38) hours per week Monday to Friday inclusive between the hours of 6:00 a.m. and 10:00 p.m. with an allocated day off i.e. nineteen (19) days in each four (4) week period.
- (b) Working Arrangements
 - (i) The ordinary daily working hours for each Operational Staff member shall be displayed as a proposed working arrangement in a place conveniently accessible to staff members. The working arrangement will cover a minimum period of seven (7) days and will be displayed at least fourteen (14) days prior to the commencement date of the first working day of the proposed working arrangement.
 - (ii) A working arrangement may be altered at any time to enable service to be delivered where another staff member is absent from duty on account of illness, in an emergency or due to unforeseen circumstances.
 - (iii) Operational staff members will be required to work variable start times depending upon operational requirements.

- (c) Annual Leave
 - (i) At the rate of twenty (20) working days per year.
- (d) Public Holidays
 - (i) All gazetted Public Holidays shall be taken as they fall.
- (e) Meal Breaks
 - (i) Meal breaks must be given to and taken by the relevant Operational Staff. No Operational Staff member shall be required to work continuously for more than five (5) hours without a meal break of no less than thirty (30) minutes. However, where an Operational Staff member is called upon to work for any portion of an unpaid meal break, such time shall be paid for at overtime rates.
 - (ii) In circumstances where the Department is unable to supply a meal, an Operational Staff member shall be compensated for any actual expenses properly and reasonably incurred for meals purchased for a detainee in custody under their supervision, and for the Operational Staff member.
 - (iii) An amount equivalent to the rate for lunch or dinner money for overtime under the Crown Employees (Public Service Conditions of Employment) Award 2009 shall be paid to those employees who are unable to take a meal break for operational reasons after three (3) to five (5) hours from the start time. This arrangement shall be paid in lieu of overtime and will only occur in emergency or extreme circumstances, as the Department is obliged to provide appropriate breaks in accordance with Occupational Health and Safety requirements.
- (f) Other duties

When there are no detainee movements or transport, the Operational Staff members, under the arrangements set out in this Clause, are to perform other mainstream Centre duties (such as working on the unit floor) as directed by the Department.
- (g) Overtime
 - (i) An Operational Staff Member may be directed by the Department to work overtime, provided it is reasonable for the staff member to be required to do so. An Operational Staff member may refuse to work overtime in circumstances where the working of such overtime would result in the staff member working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
 - (1) The Operational Staff member's prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements;
 - (2) Any risk to the Operational Staff Member's health and safety;
 - (3) The urgency of the work required to be performed during overtime, the impact on the operational commitments of the Department and the effect on client services;
 - (4) The notice, if any, given regarding the working of the overtime, and the Operational Staff member's intention to refuse overtime; or
 - (5) Any other relevant matter.
 - (ii) Payment for overtime shall be made only where the Operational Staff member works approved overtime.

- (iii) Overtime shall be paid at the following rates:
 - (1) Weekdays (Monday to Friday inclusive) - At the rate of time and one-half for the first two (2) hours and at the rate of double time thereafter for all directed overtime worked outside the Operational Staff member's ordinary hours of duty.
 - (2) Saturday - At the rate of time and one-half for the first two (2) hours and at the rate of double time thereafter.
 - (3) Sundays - All overtime at the rate of double time.
 - (4) Public Holidays - All overtime at the rate of double time and one-half.
- (iv) An Operational Staff member who works overtime on a Saturday, Sunday or Public Holiday shall be paid a minimum payment as for three (3) hours work at the appropriate rate.
- (h) Rest periods
 - (i) An Operational Staff member who works overtime shall be entitled to be absent until eight (8) consecutive hours have elapsed.
 - (ii) Where an Operational Staff member, at the direction of the supervisor, resumes or continues work without having had eight (8) consecutive hours off duty then such Operational Staff member shall be paid at the appropriate overtime rate until released from duty. The Operational Staff member shall then be entitled to eight (8) consecutive hours off duty and shall be paid for the ordinary working time occurring during the absence.

6.2 Hours, Working Arrangements, Leave, Meal Breaks and Overtime - Operational Staff Members (Court Logistics)

- (a) Logistics Officer, Court Logistics
 - (i) Ordinary hours
 - (1) The ordinary hours of work for each Logistics Officer shall be thirty-eight (38) hours per week Monday to Friday inclusive between the hours of 7:00 a.m. and 9:00 p.m. with an allocated day off. i.e. nineteen (19) days in each four (4) week period.
 - (ii) Working arrangements
 - (1) The ordinary daily working hours for each Logistics Officer shall be displayed as a proposed working arrangement in a place conveniently accessible to staff members. The working arrangement will cover a minimum period of seven (7) days and will be displayed at least fourteen (14) days prior to the commencement date of the first working day of the proposed working arrangement.
 - (2) A working arrangement may be altered at any time to enable service to be delivered where another staff member is absent from duty on account of illness, in an emergency or due to unforeseen circumstances.
 - (3) Logistics Officers will be required to work variable start times depending upon operational requirements.
 - (4) If a variable start time commences at or after 10:00 a.m. and before 1:00 p.m., or at or after 1:00 p.m. and before 4:00 p.m. a loading of 10% and 12.5% shall apply respectively.

- (iii) Annual leave
 - (1) At the rate of twenty (20) working days per year.
- (iv) Public Holidays
 - (1) All gazetted Public Holidays shall be taken as they fall.
- (v) Meal Breaks
 - (1) Meal breaks must be given to and taken by the relevant Logistics Officer. No Logistics Officer shall be required to work continuously for more than five (5) hours without a meal break of no less than thirty (30) minutes. However, where a Logistics Officer is called upon to work for any portion of an unpaid meal break, such time shall be paid for at overtime rates.
 - (2) An amount equivalent to the rate for lunch or dinner money for overtime under the Crown Employees (Public Service Conditions of Employment) Award 2009 shall be paid to those employees who are unable to take a meal break for operational reasons after three (3) to five (5) hours from the start time. This arrangement shall be paid in lieu of overtime and will only occur in emergency or extreme circumstances, as the Department is obliged to provide appropriate breaks in accordance with Occupational Health and Safety requirements.
- (vi) Overtime
 - (1) A Logistics Officer may be directed by the Department to work overtime, provided it is reasonable for the Logistics Officer to be required to do so. A Logistics Officer may refuse to work overtime in circumstances where the working of such overtime would result in the Logistics Officer working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
 - a. The Logistics Officer's prior commitments outside the workplace, particularly the Logistics Officer's family and carer responsibilities, community obligations or study arrangements;
 - b. Any risk to the Logistic Officer's health and safety;
 - c. A working arrangement may be altered at any time to enable service to be delivered where another Logistics Officer is absent from duty on account of illness, in an emergency or due to unforeseen circumstances;
 - d. The urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
 - e. The notice, if any, given regarding the working of the overtime, and the Logistics Officer's intention to refuse overtime; and/or
 - f. Any other relevant matter.
 - (2) Payment for overtime shall be made only where the Logistics Officer works approved overtime.
 - (3) Overtime shall be paid at the following rates:
 - a. Weekdays (Monday to Friday inclusive) - At the rate of time and one-half for the first two hours and at the rate of double time thereafter for all

- directed overtime worked outside the Logistics Officer's ordinary hours of duty, if working standard hours, or outside the bandwidth.
- b. Saturday - At the rate of time and one-half for the first two hours and at the rate of double time thereafter.
 - c. Sundays - All overtime at the rate of double time.
 - d. Public Holidays - All overtime at the rate of double time and one-half.
- (4) A Logistics Officer who works overtime on a Saturday, Sunday or Public Holiday shall be paid a minimum payment as for three (3) hours work at the appropriate rate.
- (vii) Rest periods
- (1) A Logistics Officer who works overtime shall be entitled to be absent until eight (8) consecutive hours have elapsed.
 - (2) Where a Logistics Officer, at the direction of the supervisor, resumes or continues work without having had eight (8) consecutive hours off duty then such Logistics Officer shall be paid at the appropriate overtime rate until released from duty. The Logistics Officer shall then be entitled to eight (8) consecutive hours off duty and shall be paid for the ordinary working time occurring during the absence.
- (b) Court Supervisor, Court Logistics
- (i) Ordinary hours
 - (1) The ordinary hours of work for each Court Supervisor shall be thirty-eight (38) hours per week Monday to Friday inclusive between the hours of 7:00 a.m. and 6:00 p.m. with an allocated day off. i.e. nineteen (19) days in each four (4) week period.
 - (ii) Working arrangements
 - (1) The ordinary daily working hours for each Court Supervisor shall be displayed as a proposed working arrangement in a place conveniently accessible to staff members. The working arrangement will cover a minimum period of seven (7) days and will be displayed at least fourteen (14) days prior to the commencement date of the first working day of the proposed working arrangement.
 - (2) A working arrangement may be altered at any time to enable service to be delivered where another staff member is absent from duty on account of illness, in an emergency or due to unforeseen circumstances.
 - (3) Court Supervisors will be required to work variable start times depending upon operational requirements.
 - (iii) Annual leave
 - (1) At the rate of twenty (20) working days per year.
 - (iv) Public Holidays
 - (1) All gazetted Public Holidays shall be taken as they fall.

(v) Meal Breaks

- (1) Meal breaks must be given to and taken by the relevant Court Supervisor. No Court Supervisor shall be required to work continuously for more than five (5) hours without a meal break of no less than thirty (30) minutes. However, where a Court Supervisor is called upon to work for any portion of an unpaid meal break, such time shall be paid for at overtime rates.
- (2) In circumstances where the Department is unable to supply a meal, a Court Supervisor shall be compensated for any actual expenses properly and reasonably incurred for meals purchased for a detainee in custody under their supervision, and for the Court Supervisor.
- (3) An amount equivalent to the rate for lunch or dinner money for overtime under the Crown Employees (Public Service Conditions of Employment) Award 2009 shall be paid to those employees who are unable to take a meal break for operational reasons after three (3) to five (5) hours from the start time. This arrangement shall be paid in lieu of overtime and will only occur in emergency or extreme circumstances, as the Department is obliged to provide appropriate breaks in accordance with Occupational Health and Safety requirements.

(vi) Overtime

- (1) A Court Supervisor may be directed by the Department to work overtime, provided it is reasonable for the Court Supervisor to be required to do so. A Court Supervisor may refuse to work overtime in circumstances where the working of such overtime would result in the Court Supervisor working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
 - a. The Court Supervisor's prior commitments outside the workplace, particularly the Court Supervisor's family and carer responsibilities, community obligations or study arrangements;
 - b. Any risk to the Court Supervisor's health and safety;
 - c. A working arrangement may be altered at any time to enable service to be delivered where another Court Supervisor is absent from duty on account of illness, in an emergency or due to unforeseen circumstances;
 - d. The urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
 - e. The notice, if any, given regarding the working of the overtime, and the Court Supervisor's intention to refuse overtime; and/or
 - f. Any other relevant matter.
- (2) Payment for overtime shall be made only where the Court Supervisor works approved overtime.
- (3) Overtime shall be paid at the following rates:
 - a. Weekdays (Monday to Friday inclusive) - At the rate of time and one-half for the first two hours and at the rate of double time thereafter for all directed overtime worked outside the Court Supervisor's ordinary hours of duty, if working standard hours, or outside the bandwidth.

- b. Saturday - At the rate of time and one-half for the first two hours and at the rate of double time thereafter.
 - c. Sundays - All overtime at the rate of double time.
 - d. Public Holidays - All overtime at the rate of double time and one-half.
- (4) A Court Supervisor who works overtime on a Saturday, Sunday or Public Holiday shall be paid a minimum payment as for three (3) hours work at the appropriate rate.
- (vii) Rest periods
- (1) A Court Supervisor who works overtime shall be entitled to be absent until eight (8) consecutive hours have elapsed.
 - (2) Where a Court Supervisor, at the direction of the supervisor, resumes or continues work without having had eight (8) consecutive hours off duty then such Court Supervisor shall be paid at the appropriate overtime rate until released from duty. The Court Supervisor shall then be entitled to eight (8) consecutive hours off duty and shall be paid for the ordinary working time occurring during the absence.
- (c) Youth Officers (Court Based), Court Logistics
- (i) Ordinary hours
 - (1) The ordinary hours of work for each Youth Officer shall be thirty-eight (38) hours per week Monday to Friday inclusive between the hours of 7:00 a.m. and 6:00 p.m. with an allocated day off. i.e. nineteen (19) days in each four (4) week period.
 - (ii) Working arrangements
 - (1) The ordinary daily working hours for each Youth Officer shall be displayed as a proposed working arrangement in a place conveniently accessible to Youth Officers. The working arrangement will cover a minimum period of seven (7) days and will be displayed at least fourteen (14) days prior to the commencement date of the first working day of the proposed working arrangement.
 - (2) A working arrangement may be altered at any time to enable service to be delivered where another staff member is absent from duty on account of illness, in an emergency or due to unforeseen circumstances.
 - (3) Youth Officers will be required to work variable start times depending upon operational requirements.
 - (iii) Annual leave
 - (1) At the rate of twenty (20) working days per year.
 - (iv) Public Holidays
 - (1) All gazetted Public Holidays shall be taken as they fall.
 - (v) Meal Breaks
 - (1) Meal breaks must be given to and taken by the relevant Youth Officer. No Youth Officer shall be required to work continuously for more than five (5) hours without a meal break of no less than thirty (30) minutes. However, where a Youth Officer

is called upon to work for any portion of an unpaid meal break, such time shall be paid for at overtime rates.

- (2) In circumstances where the Department is unable to supply a meal, a Youth Officer shall be compensated for any actual expenses properly and reasonably incurred for meals purchased for a detainee in custody under their supervision, and for the Youth Officer.
- (3) An amount equivalent to the rate for lunch or dinner money for overtime under the Crown Employees (Public Service Conditions of Employment) Award 2009 shall be paid to those employees who are unable to take a meal break for operational reasons after three (3) to five (5) hours from the start time. This arrangement shall be paid in lieu of overtime and will only occur in emergency or extreme circumstances, as the Department is obliged to provide appropriate breaks in accordance with Occupational Health and Safety requirements.

(vi) Overtime

- (1) A Youth Officer may be directed by the Department to work overtime, provided it is reasonable for the Youth Officer to be required to do so. A Youth Officer may refuse to work overtime in circumstances where the working of such overtime would result in the Youth Officer working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
 - a. The Youth Officer's prior commitments outside the workplace, particularly the Youth Officer's family and carer responsibilities, community obligations or study arrangements;
 - b. Any risk to the Youth Officer's health and safety;
 - c. A working arrangement may be altered at any time to enable service to be delivered where another Youth Officer is absent from duty on account of illness, in an emergency or due to unforeseen circumstances;
 - d. The urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
 - e. The notice, if any, given regarding the working of the overtime, and the Youth Officer's intention to refuse overtime; and/or
 - f. Any other relevant matter.
- (2) Payment for overtime shall be made only where the Youth Officer works approved overtime.
- (3) Overtime shall be paid at the following rates:
 - a. Weekdays (Monday to Friday inclusive) - At the rate of time and one-half for the first two hours and at the rate of double time thereafter for all directed overtime worked outside the Youth Officer's ordinary hours of duty, if working standard hours, or outside the bandwidth.
 - b. Saturday - At the rate of time and one-half for the first two hours and at the rate of double time thereafter.
 - c. Sundays - All overtime at the rate of double time.
 - d. Public Holidays - All overtime at the rate of double time and one-half.

- (4) A Youth Officer who works overtime on a Saturday, Sunday or Public Holiday shall be paid a minimum payment as for three (3) hours work at the appropriate rate.
- (vii) Rest periods
- (1) A Youth Officer who works overtime shall be entitled to be absent until eight (8) consecutive hours have elapsed.
 - (2) Where a Youth Officer, at the direction of the supervisor, resumes or continues work without having had eight (8) consecutive hours off duty then such Youth Officer shall be paid at the appropriate overtime rate until released from duty. The Youth Officer shall then be entitled to eight (8) consecutive hours off duty and shall be paid for the ordinary working time occurring during the absence.
- (d) Youth Officers (Non-Court Based), Court Logistics
- (i) Ordinary hours
 - (1) The ordinary hours of work for each Youth Officer shall be thirty-eight (38) hours per week Monday to Friday inclusive with variable start times, with an allocated day off. i.e. nineteen (19) days in each four (4) week period.
 - (ii) Working arrangements
 - (1) The ordinary daily working hours for each Youth Officer shall be displayed as a proposed working arrangement in a place conveniently accessible to Youth Officers. The working arrangement will cover a minimum period of seven (7) days and will be displayed at least fourteen (14) days prior to the commencement date of the first working day of the proposed working arrangement.
 - (2) A working arrangement may be altered at any time to enable service to be delivered where another staff member is absent from duty on account of illness, in an emergency or due to unforeseen circumstances.
 - (3) Youth Officers will be required to work variable start times depending upon operational requirements.
 - (iii) Annual leave
 - (1) At the rate of twenty (20) working days per year.
 - (iv) Public Holidays
 - (1) All gazetted Public Holidays shall be taken as they fall.
 - (v) Meal Breaks
 - (1) Meal breaks must be given to and taken by the relevant Youth Officer. No Youth Officer shall be required to work continuously for more than five (5) hours without a meal break of no less than thirty (30) minutes. However, where a Youth Officer is called upon to work for any portion of an unpaid meal break, such time shall be paid for at overtime rates.
 - (2) In circumstances where the Department is unable to supply a meal, a Youth Officer shall be compensated for any actual expenses properly and reasonably incurred for meals purchased for a detainee in custody under their supervision, and for the Youth Officer.

- (3) An amount equivalent to the rate for lunch or dinner money for overtime under the Crown Employees (Public Service Conditions of Employment) Award 2009 shall be paid to those employees who are unable to take a meal break for operational reasons after three (3) to five (5) hours from the start time. This arrangement shall be paid in lieu of overtime and will only occur in emergency or extreme circumstances, as the Department is obliged to provide appropriate breaks in accordance with Occupational Health and Safety requirements.

(vi) Overtime

- (1) A Youth Officer may be directed by the Department to work overtime, provided it is reasonable for the Youth Officer to be required to do so. A Youth Officer may refuse to work overtime in circumstances where the working of such overtime would result in the Youth Officer working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
 - a. The Youth Officer's prior commitments outside the workplace, particularly the Youth Officer's family and carer responsibilities, community obligations or study arrangements;
 - b. Any risk to the Youth Officer's health and safety;
 - c. A working arrangement may be altered at any time to enable service to be delivered where another Youth Officer is absent from duty on account of illness, in an emergency or due to unforeseen circumstances;
 - d. The urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
 - e. The notice, if any, given regarding the working of the overtime, and the Youth Officer's intention to refuse overtime; and/or
 - f. Any other relevant matter.
- (2) Payment for overtime shall be made only where the Youth Officer works approved overtime.
- (3) Overtime shall be paid at the following rates:
 - a. Weekdays (Monday to Friday inclusive) - At the rate of time and one-half for the first two hours and at the rate of double time thereafter for all directed overtime worked outside the Youth Officer's ordinary hours of duty, if working standard hours, or outside the bandwidth.
 - b. Saturday - At the rate of time and one-half for the first two hours and at the rate of double time thereafter.
 - c. Sundays - All overtime at the rate of double time.
 - d. Public Holidays - All overtime at the rate of double time and one-half.
- (4) A Youth Officer who works overtime on a Saturday, Sunday or Public Holiday shall be paid a minimum payment as for three (3) hours work at the appropriate rate.

(vii) Rest periods

- (1) A Youth Officer who works overtime shall be entitled to be absent until eight (8) consecutive hours have elapsed.
- (2) Where a Youth Officer, at the direction of the supervisor, resumes or continues work without having had eight (8) consecutive hours off duty then such Youth Officer shall be paid at the appropriate overtime rate until released from duty. The Youth Officer shall then be entitled to eight (8) consecutive hours off duty and shall be paid for the ordinary working time occurring during the absence.

(viii) Loadings

- (1) A Youth Officer shall be paid for work performed during the ordinary hours plus the following loadings depending on the commencing times for each day's ordinary hours.

Day	At or after 6 am and before 10 am	Nil
Afternoon	At or after 10 am and before 1 pm	10%
Afternoon	At or after 1 pm and before 4 pm	12.5%
Night	At or after 4pm and before 4 am	15%
Night	At or after 4 am and before 6 am	10%

- (2) The loadings above shall only apply to ordinary time worked from Monday to Friday.

7. All Incidents Allowance

7.1 An All Incidents Allowance of 22% of base salary shall be payable to Operational Staff classified at Items (iv) - (viii) in Part B of this Award in addition to the salary prescribed in such Table as compensation for all time worked in excess of ordinary hours and other work related allowances including payments in lieu of overtime, on call, shift penalties, travel time and annual leave loading but does not include compensation for expense related payments. However the Department has the discretion to approve that work outside normal rostered hours attract the provisions of Clause 8.13 - Overtime.

7.2 The allowance shall be regarded as salary for all leave and superannuation purposes.

8. Shift Workers - Loadings, Penalties, Leave, Rosters and Overtime

8.1 Monday to Friday - Shift Loadings

- (a) A Shift Worker employed on a shift shall be paid, for work performed during the ordinary hours of any such shift, ordinary rates plus the following shift loadings depending on the commencing times of such shifts:

Day	At or after 6 am and before 10 am	Nil
Afternoon	At or after 10 am and before 1 pm	10%
Afternoon	At or after 1 pm and before 4 pm	12.5%
Night	At or after 4 pm and before 4 am	15%
Night	At or after 4 am and before 6 am	10%

- (b) The loadings specified in this sub-clause shall only apply to shifts worked from Monday to Friday.

8.2 Weekends and Public Holidays - Penalties

- (a) For the purpose of this sub-clause any shift, of which 50% or more is worked on a Saturday, Sunday or Public Holiday shall be deemed to have been worked on a Saturday, Sunday or Public Holiday and shall be paid as such.

8.3 Saturday Shifts - Penalties

- (a) Shift Workers working on an ordinary rostered shift between midnight on Friday and midnight on Saturday which is not a Public Holiday, shall be paid for such shifts at ordinary time and one half.

8.4 Sunday Shifts - Penalties

- (a) Shift Workers working on an ordinary rostered shift between midnight on Saturday and midnight on Sunday which is not a Public Holiday, shall be paid for such shifts at ordinary time and three quarters.

8.5 Public Holidays - Penalties

- (a) When rostered on a Public Holiday and work is performed, additional payment will be made at the rate of half time.
- (b) When rostered off on a Public Holiday, no additional compensation or payment will be made.
- (c) Where a gazetted Public Holiday falls on a Sunday, Shift Workers rostered to work on that day shall be paid ordinary time and an additional payment at the rate of three quarter time.
- (d) A Shift Worker is entitled to receive compensation for regularly working Sundays and Public Holidays as specified in clause 8.6 of this Award.

8.6 Additional Payments

- (a) Additional payments will be made on the following basis:

Number of ordinary shifts worked on Sundays and/or Public Holidays during a qualifying period of twelve months from 1 December one year to 30 November the next year.	Additional Payment
4 - 10	1/5th of one week's ordinary salary
11 - 17	2/5ths of one week's ordinary salary
18 - 24	3/5ths of one week's ordinary salary
25 - 31	4/5ths of one week's ordinary salary
32 or more	One week's ordinary salary

- (a) The additional payment shall be made after 1 December in each year for the preceding twelve (12) months.
- (b) Where the Shift Worker retires or the employment of a Shift Worker is terminated by the employer, any payment that has accrued from the preceding 1 December until the last date of service shall be paid to the Shift Worker.
- (c) Payment shall be made at the rate applicable as at 1 December each year, or at the salary rate applicable at the date of retirement or termination.
- (d) All Incidents Allowance as detailed in clause 7.1 of this Award applies to this payment,

8.7 Recreation Leave

- (a) Shift Workers shall be entitled to recreation leave at the rate of six (6) weeks per year (thirty (30) working days) inclusive of payment for any Public Holiday/s falling within the leave period.
- (b) Additional recreation leave at the rate of five (5) days per year, will accrue to a Shift Worker, employed under this Award and the Act, who is stationed indefinitely in a remote area of the State being the Western and Central Division of the State described as such in the Second Schedule to the Crown Lands Consolidated Act (NSW) 1913 before its repeal.
- (c) Shift Workers entitled to additional recreation leave under this Clause can elect, at any time, to cash out that additional recreation leave.
- (d) Shift Workers on recreation leave are eligible to receive the more favourable of:
 - (i) the shift premiums and penalty rates, or any other allowances paid on a regular basis in lieu thereof, which they would have received had they not been on recreation leave; or
 - (ii) 17½% annual leave loading.

8.8 Annual Leave Loading

- (a) With the exception of those Shift Workers in receipt of the All Incidents Allowance prescribed in Clause 7 of this Award, Shift Workers are entitled to the payment of an annual leave loading of 17.5% on the monetary value of four weeks recreation leave accrued in a leave year.
- (b) For the purposes of the calculation of the annual leave loading, the leave year shall commence on 1 December each year and shall end on 30 November of the following year.
- (c) If located in an area of the State of New South Wales which attracts a higher rate of annual leave accrual, under Clause 8.7(b) of this Award, the annual leave loading shall be paid on a maximum of four weeks leave.
- (d) The annual leave loading payable shall not exceed the amount which would have been payable to a Shift Worker in receipt of salary equivalent to the maximum salary for Grade 12 Clerk.

8.9 Rosters

- (a) The ordinary hours of work for each Shift Worker shall be displayed on a roster in a place conveniently accessible to Shift Workers. The roster will cover a minimum period of twenty eight (28) days, where practical, and shall be displayed at least fourteen (14) days prior to the commencing date of the first working period in any roster.
- (b) A roster may be altered at any time to enable the service of a Centre to be delivered where another officer is absent from duty on account of illness, in an emergency or due to unforeseen circumstances. Where any such alteration involves a Shift Worker working on a day that would have been his or her day off such time worked shall be paid for at overtime rates as specified in Clause 89 of the Crown Employees (Public Service Conditions of Employment) Award (NSW) 2009.
- (c) Each roster shall indicate the starting and finishing time of each shift and include rostered days off. Where current or proposed shift arrangements are incompatible with the Shift Worker's family, religious or community responsibilities, every effort to negotiate alternative arrangements with the Shift Worker shall be made by the Department Head or delegate.

8.10 Notice of Change of Shift

- (a) A Shift Worker who is required to change from one shift to another shift shall, where practicable, be given forty eight (48) hours notice of the proposed change.

8.11 Breaks between Shifts

- (a) There shall be a minimum break of eight (8) consecutive hours between ordinary rostered shifts.
- (b) If a Shift Worker resumes or continues to work without having had eight (8) consecutive hours off duty, the Shift Worker shall be paid overtime in accordance with Clause 89, Overtime Worked by Shift Workers of the Crown Employees (Public Service Conditions of Employment) Award (NSW) 2009 until released from duty for eight (8) consecutive hours. The Shift Worker will then be entitled to be off duty for at least eight (8) consecutive hours without loss of pay for ordinary working time which falls during such absence.
- (c) Time spent off duty may be calculated by determining the amount of time elapsed after:
 - (i) The completion of an ordinary rostered shift; or
 - (ii) The completion of authorised overtime; or
 - (iii) The completion of additional travelling time, if travelling on duty, but shall not include time spent travelling to and from the workplace.

8.12 Daylight Saving

- (a) In all cases where a Shift Worker works during the period of changeover to and from daylight saving time, the Shift Worker shall be paid the normal rate of pay for the shift.

8.13 Overtime

- (a) A Shift Worker may be directed by the Department Head to work overtime, provided it is reasonable for the Shift Worker to be required to do so. A Shift Worker may refuse to work overtime in circumstances where the working of such overtime would result in the Shift Worker working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
 - (i) The Shift Worker's prior commitments outside the workplace, particular the Shift Worker's family and carer responsibilities, community obligations or study arrangements;
 - (ii) Any risk to the Shift Worker's health and safety;
 - (iii) The urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
 - (iv) The notice, if any, given regarding the working of the overtime, and the Shift Worker's intention to refuse overtime; or
 - (v) Any other relevant matter.
- (b) Overtime shall be paid to Shift Workers under the following conditions:
 - (i) The rates specified are in substitution for and not cumulative upon the rates payable for work performed on Monday to Friday, Saturday, Sunday or Public Holidays.
 - (ii) For the purposes of assessing overtime, each day shall stand alone. Where any one (1) period of overtime is continuous and extends beyond midnight, all overtime hours in this period shall be regarded as if it had occurred within the one (1) day.
 - (iii) Overtime shall be paid for hours worked in excess of the ordinary hours of work, as defined in Clause 5 of this Award. Entitlements under this clause are restricted by the provisions of Clause 7 of this Award.

- (c) Overtime shall be paid to Shift Workers at the following rates:
 - (i) Weekdays (Monday to Friday inclusive) - At the rate of time and one-half for the first two hours and at the rate of double time thereafter for all directed overtime worked outside the Shift Worker's ordinary hours of duty.
 - (ii) Saturday - At the rate of time and one-half for the first two hours and at the rate of double time thereafter.
 - (iii) Sundays - All overtime at the rate of double time.
 - (iv) Public Holidays - All overtime at the rate of double time and one half.

9. Casual Employment

- 9.1 A casual employee is one engaged on an hourly basis.
- 9.2 A casual employee may only be engaged for short-term periods where there is the need to supplement the workforce arising from fluctuations in the needs of the Centre.
- 9.3 A casual employee shall be paid on an hourly basis based on the appropriate rate, prescribed in Table 1 of Part B of this Award, plus 15% thereof with a minimum payment of four (4) hours for each engagement. This loaded rate of pay is in lieu of all leave entitlements, other than recreation and extended leave.
- 9.4 A casual employee shall be entitled to the shift loadings, prescribed in clause 8.1 of this Award, where a shift commences prior to 6 am or finishes subsequent to 6 pm.
- 9.5 For weekend and Public Holiday work, casual employee shall, in lieu of all other penalty rates and the 15% casual loading, receive the following rates:
 - (a) Time and one half for work between midnight Friday and midnight Saturday;
 - (b) Time and three quarters for work between midnight Saturday and midnight Sunday; and
 - (c) Double time and one half for work on a Public Holiday.

For the purpose of this clause, any shift of which 50% or more is worked on a Saturday, Sunday or Public Holiday shall be deemed to have been worked wholly on a Saturday, Sunday or Public Holiday and shall be paid as such.
- 9.6 On termination a casual employee shall be paid 1/12th of ordinary earnings in lieu of recreation leave.
- 9.7 A casual employee's employment may be terminated for any reason by the giving of one (1) hour's notice by either party.
- 9.8 Casuals shall also receive the following leave entitlements in accordance with the Crown Employees (Public Service Conditions of Employment) Award 2009:
 - (a) Unpaid parental leave in accordance with Clause 12.5.4;
 - (b) Personal Carer's entitlement in accordance with Clause 12.6; and
 - (c) Bereavement entitlement in accordance with Clause 12.7.

10. Higher Duties

- 10.1 Operational Staff called upon by the Department to perform work of a classification or position paid at a higher rate, shall be paid that higher rate on the completion of a minimum of one eight (8) hour shift, or equivalent working day.
- 10.2 Relieving for part of a shift in a higher position shall not attract monetary payment but shall be compensated through the acquisition of skills and experience gained by this opportunity.
- 10.3 The provisions of this clause apply only where an employee relieves in another position covered by this Award.

11. Settlement of Disputes

11.1 Procedures relating to individual employees

- (a) Individual employees may raise matters pertaining to this Award and other conditions of employment matters with the Centre Manager, Manager, Supervisor or other authorised departmental representative as the case may be, providing that the following conditions are observed:
 - (i) The employee shall notify the Centre Manager, Manager, Supervisor or other authorised departmental representative in writing, as to the substance of any matter and request a meeting with the Centre Manager, Manager, Supervisor or other authorised departmental representative for discussions in order to settle the matter. The employee may have another employee or an Association delegate present during these discussions.
 - (ii) If no remedy to the employee's matter is found, then the employee shall seek further discussions and attempt to resolve the matter at a higher level of authority, where appropriate.
 - (iii) Reasonable time limits must be allowed for discussions at each level of authority.
 - (iv) At the conclusion of the discussions, the departmental representative must provide a response to the employee if the matter has not been resolved and include reasons for not implementing any proposed remedy. At this stage if the employee's concerns still exist, the provisions of Clause 11.3(e) of this Award shall be invoked.

11.2 Settlement of Disputes

- (a) All questions, disputes or difficulties relating to the provisions of this award or any other condition of employment 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 Department, if required.
- (b) The staff member is required to notify in writing their immediate supervisor or manager, as to the substance of the question, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- (c) Where the question, dispute or difficulty 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 supervisor or manager the notification may occur to the next appropriate level of management. including where required, to the Department Head or delegate.
- (d) The immediate supervisor or manager, or other appropriate officer, shall convene a meeting in order to resolve the question, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to attention.

- (e) If the question, dispute or difficulty remains unresolved with the immediate supervisor or 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.
- (f) The Department may refer the matter to the Director General Director of Premier and Cabinet (DGDPC) for consideration.
- (g) If the matter remains unresolved, the Department shall provide a written response to the employee and any other party involved in the question, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- (h) A staff member, at any stage, may request to be represented by the Association.
- (i) The staff member or the Association on their behalf or the Department may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- (j) The staff member, Association, Department and DGDPC shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- (k) Whilst the procedures outlined in this clause are being followed, normal work undertaken prior to notification of the question, dispute or difficulty shall continue unless otherwise agreed between the parties, or, in the case involving occupational 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.

12. Dignity and Respect in the Workplace

- 12.1 The Dignity and Respect Policy, Guidelines and Grievance Procedure of the Department shall apply to all staff covered by this Award.
- 12.2 The Dignity and Respect Grievance Procedure must be used when there is a work related grievance as defined in the Dignity and Respect Policy, Guidelines and Grievance Procedure, so that the grievance can be resolved as quickly and as close to the source of the problem as possible.
- 12.3 To put it beyond doubt, if there is a question, dispute or difficulty in relation to the interpretation, application or operation of this or any other applicable award or condition of employment, the dispute resolution procedure contained in Clause 11 of this Award must be followed.

13. Uniforms and Protective Clothing

- 13.1 Sufficient and serviceable uniforms or overalls shall be supplied, free of cost, to each Operational Staff Member required to wear them, provided that any shift employee to whom a new uniform or part of a uniform has been supplied by the Department who without good reason, fails to return the corresponding article last supplied, shall not be entitled to have such article replaced without payment therefore at a reasonable price.
- 13.2 An employee, on leaving the service of the Department, shall return any uniform or part thereof supplied by the Department which is still in use by that employee immediately or prior to leaving.
- 13.3 If the uniform of an employee is not laundered at the expense of the Department an allowance, as set out in Item 2 of Table 2(a), of Part B of this Award, shall be paid to such employee.
- 13.4 Each employee whose duties require them to work in the rain shall be supplied with suitable protective clothing upon request.

- 13.5 Each employee whose duties require them to work in a hazardous situation with or near machinery shall be supplied with appropriate protective clothing and equipment.

14. Right of Entry to Association Officials

- 14.1 Entry of Association Officials onto Departmental premises shall be in accordance with the *Industrial Relations Act* (NSW) 1996.

15. Area, Incidence and Duration

- 15.1 The Award shall apply to Operational Staff in the Agency as defined in Clause 3 of this Award who are employed under the provisions of the Act.
- 15.2 This award rescinds and replaces the Crown Employees (Department Of Attorney General And Justice (Juvenile Justice) - 38 Hour Week Operational Staff 2012) Reviewed Award published 17 August 2012 (374 I.G. 1), to take effect from 13 April 2012.

PART B

MONETARY RATES

Table 1 - Rates of Pay and Qualifications for positions covered by this Award

- (i) Unqualified Youth Officer

Level	Year	A & C Grade Equivalent	Effective Date FPP 1/07/2011 \$	Minimum Qualifications for Appointment under section 17 or 19 of the Act
1	-	GS Year 10	50,620	

- (ii) Youth Officer

Level	Year	A & C Grade Equivalent	Effective Date FPP 01/07/2011 \$	Minimum Qualifications for Appointment under section 17 or 19 of the Act
2	1	Min 1	53,407	6 Units of Certificate IV in Youth Work or Youth Justice and/or equivalent related discipline * plus relevant experience
	2	Max 1	54,977	
	3	Min 2	56,509	
3	1	Max 2	58,060	Certificate IV in Youth Work or Youth Justice and/or equivalent related discipline * plus relevant experience

Youth Officers who, as a consequence of the making of this award, and who have only completed Certificate III in Juvenile Justice shall be allowed to progress to Level 2 year 3 by meeting the requirements of incremental progression without first obtaining 6 units of Certificate IV in Youth Work or Youth Justice.

Annual increments shall occur on the anniversary of the completion of Certificate III or 6 units of competence in Certificate IV in Youth Work or Youth Justice subject to satisfactory performance.

(iii) Shift Supervisor/Assistant Unit Manager

Level	Year	A & C Grade Equivalent	Effective Date FPP 01/07/2011 \$	Minimum Qualifications for Appointment under section 17 or 19 of the Act
4	1	Min 4	63,425	Certificate IV in Youth Work or Youth Justice and/or equivalent related discipline *
	2	Max 4	65,376	
	3	Min 5	70,480	
	4	Max 5	72,702	

(iv) Unit Manager

Level	Year	A & C Grade Equivalent	Effective Date FPP 01/07/2011 \$	Minimum Qualifications for Appointment under section 17 or 19 of the Act
5	1	Min 6	75,552	Certificate IV in Youth Work or Youth Justice and/or equivalent related discipline * and Certificate IV in Frontline Management and/or equivalent related discipline *
	2	Max 6	77,767	
	3	Min 7	80,096	
	4	Max 7	82,491	

(v) Assistant Manager

Level	Year	A & C Grade Equivalent	Effective Date FPP 01/07/2011 \$	Minimum Qualifications for Appointment under section 17 or 19 of the Act
6	1	Min 8	85,928	Completion of Diploma and/or Degree in a relevant discipline as set out in relevant Assistant Manager Position Description
	2	Max 8	88,660	
	3	Min 9	91,303	
	4	Max 9	93,870	

(vi) Centre Manager - Level 7

Level	Year	A & C Grade Equivalent	Effective Date FPP 01/07/2011 \$	Minimum Qualifications for Appointment under section 17 or 19 of the Act
7	1	Min 10	97,702	Diploma and/or Degree in a relevant discipline *
	2	Max 10	100,613	

(vii) Centre Manager - Level 8

Level	Year	A & C Grade Equivalent	Effective Date FPP 01/07/2011 \$	Minimum Qualifications for Appointment under section 17 or 19 of the Act
8	1	Min 11	105,602	Diploma and/or Degree in a relevant discipline *
	2	Max 11	110,079	

(viii) Centre Manager - Level 9

Level	Year	A & C Grade Equivalent	Effective Date FPP 01/07/2011	Minimum Qualifications for Appointment under section 17 or 19 of the Act
9	1	Min 12	116,974	Diploma and/or Degree in a relevant discipline*
	2	Max 12	122,128	

A Centre Manager shall not have their level reduced by the making of this award.

(ix) Kitchen Support Officer

Level	Year	Salary FPP 01/07/2011 \$	Qualification and Experience
1	1	41,771	Relevant experience
	2	43,539	

(x) Vocational Instructor (Trade, Maintenance, Grounds)

Level	Year	Salary FPP 01/07/2011 \$	Qualification and Experience
1	1	50,620	Relevant experience
2	1	53,407	Relevant Trade Certificate and Train Small Groups qualification or equivalent plus relevant experience.
	2	54,977	
	3	56,509	
	4	58,060	

(xi) Vocational Instructor (Cook)

Level	Year	Salary FPP 01/07/2011 \$	Qualification and Experience
1	1	50,620	Relevant experience
	2	53,407	
2	1	53,407	Relevant TAFE Certificate or TAFE Certificate in Hospitality(Commercial Cookery or Catering Operations) or equivalent and Train Small Groups qualification or equivalent plus relevant experience
	2	54,977	
	3	56,509	
	4	58,060	

(xii) Vocational Instructor (Cook Supervisor)

Salary FPP 01/07/2011 \$	Qualification and Experience
60,369	TAFE Certificate II in Hospitality (Kitchen Operations) or equivalent, formerly called Certificate II in Commercial Cookery, and Train Small Groups or equivalent.

(xiii) Logistics Officer

Level	Year	Salary FPP 01/07/2011 \$	Qualification and Experience
4	1	70,480	Certificate IV in Youth or Youth Justice and/or equivalent related discipline *
4	2	72,702	
5	3	75,552	
5	4	77,767	

(xiv) Court Supervisor

Level	Year	A & C Grade Equivalent	Effective Date FPP 01/07/2011 \$	Minimum Qualifications for Appointment under section 17 or 19 of the Act
4	1	Min 4	63,425	Certificate IV in Youth Work or Youth Justice and/or equivalent related discipline *
	2	Max 4	65,376	
	3	Min 5	70,480	
	4	Max 5	72,702	

(xv) Drug Detection Security and Intelligence Officer

Level	Year	A & C Grade Equivalent	Effective Date FPP 01/07/2011 \$	Minimum Qualifications for Appointment under section 17 or 19 of the Act
2	1	Min 1	53,407	6 Units of Certificate IV in Youth Work or Youth Justice and/or equivalent related discipline *
	2	Max 1	54,977	
	3	Min 2	56,509	
3	1	Max 2	58,060	Certificate IV in Youth Work or Youth Justice and/or equivalent related discipline *

* Related and relevant disciplines are to be determined by the Department

PART B**MONETARY RATES****Table 2 - Allowances and Additional Responsibilities Allowance**

(a) Allowances

Item	Allowance	Salary FPP 01/07/2011 \$
1	Chokage Allowance	4.28 per day
2	Uniform Allowance	4.44 per week
3	Trade Allowance	1,620.00 per annum

(b) "Allocated Youth Officer Handcuff Allowance"

Allowance	Salary FPP 01/07/2011 \$
Allocated Youth Officer Handcuff Allowance	1.15 per hour

I. TABBAA, Commissioner

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (FIRE AND RESCUE NSW FIREFIGHTING STAFF DEATH AND DISABILITY) AWARD 2012

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Fire Brigade Employees Union, Industrial Organisation of Employees.

(No. IRC 440 of 2012)

Before The Honourable Mr Justice Haylen

13 September 2012

AWARD

PART A - INTRODUCTION, INTENTIONS AND COMMITMENTS, INDEX AND DEFINITIONS

Clause 1. Introduction, Intentions and Commitments

- 1.1 This Award shall be known as the "Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2012".
- 1.2 The intentions and commitments of this Award are to:
 - 1.2.1 Provide benefits in the event that an on duty or off duty injury results in the death or total and permanent incapacity or partial and permanent incapacity of a firefighter.
 - 1.2.2 Provide rehabilitation and retraining in the event that on duty or off duty injury results in a firefighter suffering partial and permanent incapacity.
 - 1.2.3 Develop and implement an agreed health and fitness programme for firefighters.
- 1.3 This Award shall be in four parts as follows:

Part A - Introduction, Intentions and Commitments, Index and Definitions

Part B - Arrangements for firefighters entitled to the death and disability benefits prescribed by this Award.

Part C - Health and Fitness Programme

Part D - Disputes, Anti-discrimination, Leave Reserved and Area, Incidence and Duration.

Clause 2. Index

- Clause 1. Introduction, Intentions and Commitments
- Clause 2. Index
- Clause 3. Definitions
- Clause 4. Death and Disability Superannuation Fund
- Clause 5. Contributions to the Death and Disability Superannuation Fund
- Clause 6. Other Benefits Applicable to Firefighters
- Clause 7. Permanent Firefighters - Pensions for "On Duty" Death and Total and Permanent Incapacity
- Clause 8. Permanent Firefighters - Lump Sum Payments for "Off Duty" Death and Total and Permanent Incapacity

- Clause 9. Rehabilitation and Retraining and Lump Sum Payments for Permanent Firefighters who suffer Partial and Permanent Incapacity
- Clause 10. Retained Firefighters - Pensions for "On Duty" Death and Total and Permanent Incapacity
- Clause 11. Retained Firefighters -Lump Sum Payments for "Off Duty" Death and Total and Permanent Incapacity
- Clause 12. Lump Sum Payments for Retained Firefighters who suffer Partial and Permanent Incapacity
- Clause 13. Assessment of Entitlement to Benefits
- Clause 14. Health and Fitness
- Clause 15. Grievance Mechanism
- Clause 16. Anti-Discrimination
- Clause 17. Leave Reserved
- Clause 18. Area, Incidence, Duration and Parties Bound

Annexure A - Partial and Permanent Incapacity Benefits Payment Scale

Clause 3. Definitions

"Actual retained earnings" means the average annual remuneration received by a retained firefighter calculated over either the preceding twelve months or five years, whichever is the greater, provided that any periods of special leave without pay, unpaid leave and/or suspension shall not be taken into account when calculating the periods of twelve months and five years.

"Actuary" means an actuary appointed by the Trustee of the Death and Disability Superannuation Fund.

"Compulsory employer contributions" has the same meaning as it has in section 12(1) of the *First State Superannuation Act 1992*.

"Death and Disability Superannuation Fund" means the superannuation fund established in accordance with Part B of this Award.

"Electricity industry superannuation scheme" ("EISS") has the same meaning as it has in the *Superannuation Administration Act 1996*.

"FBEU" means the Fire Brigade Employees' Union of New South Wales.

"FRNSW" means Fire and Rescue New South Wales, established as a Department of the Government under the *Fire Brigades Act 1989* and a Division of the Department of Attorney General and Justice under the *Public Sector Employment and Management Act 2002*.

"Firefighter" means either a permanent firefighter or a retained firefighter as defined in this clause.

"First State Superannuation Scheme" ("FSS") means the superannuation scheme established under the *First State Superannuation Act 1992*.

"Full pay" means the permanent firefighter's remuneration at the date of his/her injury, including any rostered shift or weekly allowance that he/she was receiving at the date of his/her injury, or such higher remuneration to which the firefighter becomes entitled pursuant to that Award. Provided that where a permanent firefighter is at the date of his/her injury on any form of leave, his/her initial full pay shall be the remuneration (subject to the exclusions referred to within this definition) that would otherwise have been paid to the firefighter had he/she not been on such leave.

"Judges Pension Scheme" ("JPS") means the superannuation scheme established under the *Judges' Pensions Act 1953*.

"Local government superannuation scheme" ("LGSS") has the same meaning as it has in the *Superannuation Administration Act 1996*.

"On duty injury" means personal injury arising out of or in the course of employment as a firefighter and includes a disease which is contracted by a firefighter in the course of his/her employment as a firefighter and to which the employment was a contributing factor, and the aggravation, acceleration, exacerbation or deterioration of any disease, where his/her employment as a firefighter was a contributing factor to the aggravation, acceleration, exacerbation or deterioration but does not include a personal injury or disease arising out of or in the course of journeying to or from work subject to the proviso that a retained firefighter responding to an incident shall be considered to be on duty from the time of call.

"Off duty injury" means any personal injury or disease which is not an on duty injury.

"Parliamentary Contributory Superannuation Fund" ("PCSF") means the fund referred to in section 5 of the *Parliamentary Contributory Superannuation Act 1971*.

"Partial and permanent incapacity" means that a firefighter is no longer fit to carry out the full range of his/her pre-injury duties with FRNSW.

"PBRI" means the Police Blue Ribbon Insurance arrangements established under the Police Amendment (Death and Disability) Regulation 2011.

"Permanent firefighter" has the same meaning as 'employee' under the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011.

"Police Superannuation Scheme" ("PSS") means the superannuation scheme established under the *Police Regulation (Superannuation) Act 1906*.

"Retained firefighter" has the same meaning as 'employee' under the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2011.

"Retained firefighter's deemed salary" means the hourly rate of pay of a retained Captain multiplied by a factor of 2088.

"Retained firefighter's primary employment" means employment with an employer other than FRNSW. In order for a retained firefighter's employment with an employer other than FRNSW to be eligible as primary employment for the purposes of payment of benefits pursuant to subclause 12.4 of this Award, the primary employment must be held as at the date of the on duty injury, and must be permanent employment of an average of at least 30 hours per week.

"Salary" means, in the case of a permanent firefighter holding the rank of Recruit Firefighter, Firefighter Level 1, Firefighter Level 2, Qualified Firefighter, Senior Firefighter, Leading Firefighter, Station Officer Level 1, Station Officer Level 2 or Inspector, the firefighter's "Total Weekly Rate" as set out at Table 1 of Part D of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011 multiplied by 52.1785 and, in the case of a permanent firefighter holding the rank of Superintendent or Chief Superintendent, the per annum amount set out at Table 1 of Part D of that Award provided that for the purposes of this Award, the salary of an employee holding an Operational Support position shall be that applicable to the employee's substantive operational rank.

"Spouse" means a person who falls within the definition of "spouse" or "de facto partner" in the *Superannuation Act 1916*.

"Total and permanent incapacity" means that the firefighter is unlikely, by reason of ill-health (whether physical or mental) to ever again engage in gainful employment for which the firefighter is reasonably qualified by education, training or experience.

"State Authorities Non-contributory Superannuation Scheme" ("SANCS") means the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987*.

"State Authorities Superannuation Scheme" ("SASS") means the superannuation scheme established under the *State Authorities Superannuation Act 1987*.

"State Superannuation Scheme" ("SSS") means the superannuation scheme established under the *Superannuation Act 1916*.

PART B

ARRANGEMENTS FOR FIREFIGHTERS ENTITLED TO THE DEATH AND DISABILITY BENEFITS PRESCRIBED BY THIS AWARD

Clause 4. Death and Disability Superannuation Fund

- 4.1 The NSW Fire Brigades will establish, with the agreement of the FBEU, a Death and Disability Superannuation Fund to pay the benefits prescribed by Clauses 7 and 10 of this Award. The Fund shall operate in accordance with relevant Commonwealth legislation and the terms of the trust deed by which it is created.
- 4.2 The terms of the trust deed by which the Death and Disability Superannuation Fund is created shall provide that the Trustee of the Death and Disability Superannuation Fund is required to reduce the benefits otherwise payable from the said fund so as to offset:
- 4.2.1 tax liabilities in the same circumstances and on the same bases as prescribed in section 61RA of the *Superannuation Act 1916*;
- 4.2.2 any benefits prescribed by this Award that have previously been paid from the Death and Disability Superannuation Fund or by FRNSW pursuant to this Award.

Clause 5. Contributions to the Death and Disability Superannuation Fund

- 5.1 Permanent firefighters who are covered by FSS or who have elected under section 10 of the *First State Superannuation Act 1992* to make other arrangements shall contribute 1.5 per cent of their salary to the Death and Disability Superannuation Fund.
- 5.2 Permanent firefighters who are contributors to SASS but who do not contribute to SASS for additional benefit cover shall contribute 1.5 per cent of their salary to the Death and Disability Superannuation Fund.
- 5.3 Permanent firefighters who are contributors to SASS and who contribute for additional benefit cover and who elect to relinquish that cover shall contribute 1.5 per cent of their salary to the Death and Disability Superannuation Fund.
- 5.4 Permanent firefighters who:
- 5.4.1 are contributors to SASS; and
- 5.4.2 contribute to SASS for additional benefit cover; and
- 5.4.3 elect not to relinquish that additional benefit cover,
- may elect to contribute 0.5 per cent of their salary to the Death and Disability Superannuation Fund in order to be entitled to receive the payments prescribed by this Award at subclauses 7.2 and 8.3 in relation to death or total and permanent incapacity and at Clause 9 in relation to partial and permanent incapacity only.
- 5.5 Permanent firefighters who:
- 5.5.1 are contributors to SASS; and
- 5.5.2 contribute to SASS for additional benefit cover; and

- 5.5.3 elect not to relinquish that additional benefit cover,
- may elect to not be covered by this Award. Such firefighters shall not be eligible to receive a pension or lump sum payment prescribed by this Award.
- 5.6 The contributions prescribed by this Award in relation to permanent firefighters who are contributors to SASS are additional to the contributions that they are required to make under the *State Authorities Superannuation Act 1987*.
- 5.7 Notwithstanding the provisions of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011 and the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2011, a firefighter who is required or elects to make contributions pursuant to this clause will do so by sacrificing an amount of unearned salary equivalent to the firefighter's contribution pursuant to this clause, unless they elect to contribute from their post-tax salary. Such salary sacrifice shall not be taken into account for the purpose of calculating the remuneration that the firefighter would have received in the event that no salary sacrifice had been applicable.
- 5.8 A permanent firefighter who is a contributor to SASS and who contributes for additional benefit cover shall within three months of commencing employment make an election on a "once only" basis, whether they wish to retain or relinquish that additional benefit cover.
- 5.9 Subject to subclause 5.10, FRNSW shall contribute \$18.82 per fortnight to the Death and Disability Superannuation Fund in respect of each retained firefighter.
- 5.10 FRNSW shall contribute \$6.27 per fortnight to the Death and Disability Superannuation Fund in respect of each retained firefighter who, by virtue of their primary employment, is already a member of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF, PBRI or who is a LGSS or EISS Division B "Retirement Scheme" member with additional benefit cover or who is a SASS member with additional benefit cover.
- 5.11 FRNSW shall contribute to the Death and Disability Superannuation Fund such sum as may be necessary to meet any shortfall between the Fund's reserves and that sum that it needs in order to pay the superannuation pensions and superannuation lump sum benefits prescribed by this Part.
- 5.12 A firefighter on any form of leave without pay shall continue to be covered by this Award and shall be required to make the contributions that he/she would otherwise have made had he/she not been on leave without pay.
- 5.13 FRNSW shall deduct the contributions that firefighters are required or elect to make pursuant to this clause from their salaries and forward such contributions to the Death and Disability Superannuation Fund.

Clause 6. Other Benefits Applicable to Firefighters

With the exception of the offsets prescribed by this Award, the benefits conferred upon firefighters by this Award shall be in addition to those benefits otherwise payable under the FSS Scheme, the SASS scheme and/or the *Workers Compensation Act 1987* and *Workplace Injury Management and Workers Compensation Act 1998*, as varied from time to time.

Clause 7. Permanent Firefighters - Pensions for "on Duty" Death and Total and Permanent Incapacity

- 7.1 In the case of those permanent firefighters who contribute to the Death and Disability Superannuation Fund in accordance with subclauses 5.1, 5.2 or 5.3 of this Award, a pension in accordance with this subclause shall be payable from that Fund in the event that an on duty injury results in a permanent firefighter's death or a permanent firefighter suffering total and permanent incapacity.
- 7.2 In the event that an on duty injury results in the death or total and permanent incapacity of a permanent firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant

to subclause 5.4, a lump sum payment of \$15,000 shall be paid from that Fund to the permanent firefighter or his/her estate.

7.3

7.3.1 A permanent firefighter who becomes totally and permanently incapacitated shall be paid a fortnightly pension calculated in accordance with subclause 7.3.2.

7.3.2 Pension = $\{S/260 + (9 \times N)\} \times \5.50

Where

S means the permanent firefighter's salary on his/her last day of service with FRNSW

N is the number derived from the calculation of a/b where:

a is the last published Consumer Price Index (All Groups) for Sydney; and

b is:

(a) the number 56.45; or

(b) if the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, the number used in SSS.

Where the result of the calculation $\{S/260 + (9 \times N)\}$ is not a whole number the result is to be rounded up to the next whole number.

7.3.3 The fortnightly pension payable to the spouse of a permanent firefighter who, whilst still employed, dies as a consequence of an on-duty injury shall be two-thirds of the fortnightly pension that would have been payable to the permanent firefighter as calculated in accordance with subclause 7.3.2 above.

7.3.4 The fortnightly pension payable to the spouse of a former permanent firefighter who dies while receiving a pension under this Award shall be two-thirds of that former permanent firefighter's pension at the time of death.

7.3.5 Children's pensions are payable on the same basis as in SSS.

7.3.6 Pensions may be commuted on the same basis as applicable to SSS pensions.

7.3.7 The provisions of the other subclauses of this clause shall not apply in the event that an on duty injury results in the death of a permanent firefighter who does not have a spouse at the time of his or her death. In such cases, the permanent firefighter's death shall, for the purposes of this Award, be treated as if it was the result of an off duty injury and a lump sum payment shall be paid from the Death and Disability Superannuation Fund in accordance with subclause 8.2 of this Award, provided that if the age of the permanent firefighter at the time of his/her death was 65 years or more, then the benefit shall be a lump sum payment equivalent to the permanent firefighter's salary.

7.3.8 A minimum guaranteed lump sum benefit is payable in the same circumstances as prescribed in section 31A of the *Superannuation Act* 1916, but the "minimum benefit" as defined in section 31A(7) will not apply and for the purposes of this Award the minimum benefit shall be the amount of the offset as calculated under the Award.

7.3.9 The value of a primary or reversionary pension is subject to reduction as determined by the actuary where the relevant offset amount prescribed by subclause 7.4 is not paid into the Death and Disability Superannuation Fund.

7.3.10 To avoid doubt, the pensions payable under this clause shall be paid for the life of the pensioner and indexed on the same basis as SSS pensions.

7.4 In the case of pensions payable under subclause 7.3, the following offsets shall be applicable:

7.4.1 For non-SASS members, the offset shall be an amount that the actuary calculates as representing the compulsory employer contributions made by the NSW Fire Brigades in respect of the permanent firefighter plus interest on that amount.

7.4.2 For SASS members, the offset equals the total of the SASS employer-financed benefit and the SANCS benefit.

Clause 8. Permanent Firefighters - Lump Sum Payments for "Off Duty" Death and Total and Permanent Incapacity

8.1 The lump sum payments prescribed by this clause are payable from the Death and Disability Superannuation Fund.

8.2 In the event that an off duty injury results in the death or total and permanent incapacity of a permanent firefighter who contributes to the Death and Disability Superannuation Fund in accordance with subclauses 5.1, 5.2 or 5.3 of this Award, a lump sum payment in accordance with the scale set out in subclause 8.4 of this Award shall be paid to the permanent firefighter or his/her estate.

8.3 In the event that an off duty injury results in the death or total and permanent incapacity of a permanent firefighter of less than 65 years of age for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 5.4, a lump sum payment of \$15,000 shall be paid to the permanent firefighter or his/her estate.

8.4 For the purposes of this subclause, a permanent firefighter's age shall be his/her age at the time of his/her death or at the date that he/she ceases to be employed by the NSW Fire Brigades or at such earlier date as may be determined by the Trustee of the Death and Disability Superannuation Fund.

AGE	LUMP SUM
Less than 61 years of age	\$350,000
At age 61 to less than 62 years of age	\$280,000
At age 62 to less than 63 years of age	\$210,000
At age 63 to less than 64 years of age	\$140,000
At age 64 to less than 65 years of age	\$70,000

Clause 9. Rehabilitation and Retraining and Lump Sum Payments for Permanent Firefighters Who Suffer Partial and Permanent Incapacity

9.1 The lump sum payments prescribed by this clause are payable by way of compensation for loss of earning capacity caused by the partial and permanent incapacity by FRNSW.

9.2 A permanent firefighter who suffers partial and permanent incapacity as the result of an on duty injury shall receive extensive rehabilitation/retraining for up to two years, leading to redeployment to alternative duties. If redeployment within FRNSW is not possible, the employment of the firefighter may be terminated and, in such circumstances, the firefighter shall receive a lump sum payment in accordance with Annexure A to this Award.

9.3 A permanent firefighter who suffers partial and permanent incapacity as the result of an off duty injury shall receive extensive rehabilitation/retraining for up to two years, leading to redeployment to alternative duties. Such a firefighter shall not be entitled to any benefit conferred by the provisions of the *Workers Compensation Act 1987* or the Workplace Injury Management and *Workers Compensation Act 1998* unless that benefit is conferred upon the firefighter by such statutes. If redeployment within FRNSW is not possible, the employment of the firefighter may be terminated. If such termination occurs prior to the expiry of the two years of rehabilitation/retraining, the firefighter shall be paid a lump sum

payment equivalent to the unexpired portion of the two years full pay or full pay to age 60 (whichever is the lesser).

- 9.4 The objective of the rehabilitation/retraining programme, which is to be on full pay, is to place every permanent firefighter who suffers partial and permanent incapacity in a suitable position within FRNSW. All reasonable efforts will be made by FRNSW to ensure that a permanent firefighter who suffers partial and permanent incapacity is so placed, including by identifying potential employment opportunities as soon as practicable and directing the rehabilitation/retraining programme to that end, and in consultation with the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed).
- 9.5 Where FRNSW believes that, notwithstanding every reasonable effort to the contrary, a suitable position may not be found for a permanent firefighter who, by reason of his or her partial and permanent incapacity, is undergoing the rehabilitation/retraining programme, the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) shall be informed at the earliest possible opportunity.
- 9.6 An incapacitated firefighter's employment will not be terminated because of the lack of a suitable position within FRNSW without the firefighter's consent. In the event that the firefighter does not consent, an adequate opportunity will be given to the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) to consider FRNSW's opinion that no suitable position is available and to put that opinion into dispute in accordance with the dispute resolution clause in this Award.
- 9.7 The parties agree that it is anticipated that the rehabilitation/retraining programme and forward planning associated with the programme will minimise the likelihood that any incapacitated firefighter will be terminated because at the end of the rehabilitation/retraining programme, a suitable position is not available.

Clause 10. Retained Firefighters - Pensions for "on Duty" Death and Total and Permanent Incapacity

- 10.1 Retained firefighters who, by virtue of their primary employment, are already members of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF (or such other public sector defined benefit schemes as agreed between the parties), PBRI or who are LGSS or EISS Division B "Retirement Scheme" members with additional benefit cover or who are SASS members with additional benefit cover shall not be entitled to the benefits set out at subclause 10.3. A lump sum payment of \$15,000 shall be paid to such retained firefighters or their estate in the event that an on duty injury results in their death or their suffering total and permanent incapacity.
- 10.2 In the case of retained firefighters who contribute to the Death and Disability Superannuation Fund (other than those referred to in subclause 10.1) a pension in accordance with this subclause shall be payable from that Fund in the event that an on duty injury results in their death or their suffering total and permanent incapacity.

10.3

10.3.1 A retained firefighter who becomes totally and permanently incapacitated shall be paid a fortnightly pension calculated in accordance with subclause 10.3.2.

10.3.2 Pension = $\{S/260 + (9 \times N)\} \times \5.50

Where

S means the retained firefighter's deemed salary on his/her last day of service with FRNSW

N is the number derived from the calculation of a/b where:

a is the last published Consumer Price Index (All Groups) for Sydney; and

- b is:
- (a) the number 56.45; or
 - (b) if the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, the number used in SSS.

Where the result of the calculation $\{S/260 + (9 \times N)\}$ is not a whole number the result is to be rounded up to the next whole number.

- 10.3.3 The fortnightly pension payable to the spouse of a retained firefighter who, whilst still employed, dies as a consequence of an on-duty injury shall be two-thirds of the fortnightly pension that would have been payable to the retained firefighter as calculated in accordance with subclause 10.3.2 above.
- 10.3.4 The fortnightly pension payable to the spouse of a former retained firefighter who dies while receiving a pension under this Award shall be two-thirds of that former retained firefighter's pension at the time of death.
- 10.3.5 Children's pensions are payable on the same basis as in SSS.
- 10.3.6 Pensions may be commuted on the same basis as applicable to SSS pensions.
- 10.3.7 The provisions of the other subclauses of this clause shall not apply in the event that an on duty injury results in the death of a retained firefighter who does not have a spouse at the time of his or her death. In such cases, the retained firefighter's death shall, for the purposes of this Award, be treated as if it was the result of an off duty injury and a lump sum payment shall be paid from the Death and Disability Superannuation Fund in accordance with subclause 11.2 of this Award, provided that if the age of the retained firefighter at the time of his/her death was 65 years or more, then the benefit shall be a lump sum payment equivalent to the retained firefighter's deemed salary.
- 10.3.8 A minimum guaranteed lump sum benefit is payable in the same circumstances as prescribed in section 31A of the *Superannuation Act 1916*, but the "minimum benefit" as defined in section 31A(7) will not apply and for the purposes of this Award the minimum benefit shall be the amount of the offset as calculated under the Award.
- 10.3.9 The value of a primary or reversionary pension is subject to reduction as determined by the actuary where the relevant offset amount prescribed by subclause 10.4 is not paid into the Death and Disability Superannuation Fund.
- 10.3.10 To avoid doubt, the pensions payable under this clause shall be paid for the life of the pensioner and indexed on the same basis as SSS pensions.
- 10.4 In the case of pensions payable under subclause 10.3, the offset shall be an amount that the actuary calculates as representing the compulsory employer contributions made by FRNSW in respect of the retained firefighter plus interest on that amount.

Clause 11. Retained Firefighters - Lump Sum Payments for "Off Duty" Death and Total and Permanent Incapacity

- 11.1 The lump sum payments prescribed by this clause are payable from the Death and Disability Superannuation Fund.
- 11.2 Subject to subclause 11.4, in the event that an off duty injury results in the death or total and permanent incapacity of a retained firefighter, a lump sum payment in accordance with the scale set out in subclause 11.3 shall be paid to the retained firefighter or his/her estate.

- 11.3 For the purposes of this subclause, a retained firefighter's age shall be his/her age at the time of his/her death or at the date that he/she ceases to be employed by FRNSW or at such earlier date as may be determined by the Trustee of the Death and Disability Superannuation Fund.

AGE	LUMP SUM
Less than 61 years of age	\$350,000
At age 61 to less than 62 years of age	\$280,000
At age 62 to less than 63 years of age	\$210,000
At age 63 to less than 64 years of age	\$140,000
At age 64 to less than 65 years of age	\$70,000

- 11.4 Retained firefighters who, by virtue of their primary employment, are already members of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF (or such other public sector defined benefit schemes as agreed between the parties), PBRI or who are LGSS or EISS Division B "Retirement Scheme" members with additional benefit coveror who are SASS members with additional benefit cover \$15,000 shall be paid to such retained firefighters or their estate in the event that an off duty injury results in their death or their suffering total and permanent incapacity.

Clause 12. Lump Sum Payments for Retained Firefighters Who Suffer Partial and Permanent Incapacity

- 12.1 The lump sum payments prescribed by this clause are payable by FRNSW.
- 12.2 FRNSW may terminate the employment of a retained firefighter who suffers partial and permanent incapacity. An adequate opportunity will be given to the retained firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) to consider FRNSW's intention to terminate the employment of a retained firefighter.
- 12.3 In the event that the employment of a retained firefighter is terminated because the firefighter suffers partial and permanent incapacity, the firefighter shall be paid a lump sum payment, by way of compensation for loss of earning capacity caused by the partial and permanent incapacity, in accordance with this clause.
- 12.4 A retained firefighter whose employment is terminated because the retained firefighter suffers partial and permanent incapacity as the result of an on duty injury shall be paid a lump sum payment in accordance with Annexure A to this Award with salary to be determined as follows:
- 12.4.1 where there is a loss of FRNSW employment only - on the basis of the retained firefighter's actual retained earnings;
- 12.4.2 where there is a loss of FRNSW employment and the retained firefighter's primary employment - on the basis of the retained firefighter's deemed salary on the date that he/she ceases to be employed by FRNSW.
- 12.5 A retained firefighter whose employment is terminated because the retained firefighter suffers partial and permanent incapacity as the result of an off duty injury shall be paid a lump sum payment equivalent to two years of the retained firefighter's actual retained earnings, or actual retained earnings to age 60 (whichever is the lesser).

Clause 13. Assessment of Entitlement to Benefits

- 13.1 Entitlement to the benefits to be provided by FRNSW pursuant to this Award shall be assessed through a mechanism to be agreed between the parties. The mechanism shall provide that any dispute as to the entitlement of a firefighter may be referred to the Industrial Relations Commission of New South Wales for final determination.
- 13.2 Entitlement to receive a pension or lump sum benefit from the Death and Disability Superannuation Fund shall be assessed in accordance with relevant Commonwealth legislation and the terms of the trust deed by which the Fund is created.

- 13.3 To avoid doubt, a firefighter can receive either a total and permanent incapacity benefit, or a partial and permanent incapacity benefit, but not both.
- 13.4 Subject to subclause 13.2, any dispute as to the entitlement to receive a pension or lump sum payment from the Death and Disability Superannuation Fund or any other dispute arising under or regarding the application of this Award may be referred to the Industrial Relations Commission of New South Wales for final determination.

PART C

HEALTH AND FITNESS PROGRAMME

Clause 14. Health and Fitness

- 14.1 The parties agree and accept the need for a compulsory health and fitness programme that is underpinned by practical support, education and assistance programs provided by FRNSW.
- 14.2 The parties agree to develop and implement a health and fitness programme in circumstances in which a member of the Industrial Relations Commission will oversight their progress and set appropriate time frames, subject to the proviso that the parties specifically agree to the inclusion of a sub-clause in the following terms:
- "A firefighter who fails to meet the prescribed health and fitness standards will be given an appropriate period of time, as determined on medical advice, to achieve the level of health and fitness required. Subsequently, a firefighter who fails the medical reassessment or who is deemed on medical advice not capable of regaining or maintaining an acceptable level of fitness will be rehabilitated to another position in accordance with FRNSW policy."
- 14.3 Negotiations will also commence on a proposed return to work policy, which shall include agreed alternative duties provisions. The content of any FRNSW policy in this regard will form part of health and fitness negotiations.
- 14.4 Health and fitness standards will be subject to negotiation and agreement, but shall apply to all firefighters with no distinction based upon rank.

PART D

GRIEVANCE MECHANISM, ANTI-DISCRIMINATION AND AREA. INCIDENCE, DURATION AND PARTIES BOUND

Clause 15. Grievance Mechanism

If an issue gives rise to a dispute it shall be dealt with in accordance with the Dispute Avoidance Procedures in Clause 35 of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011.

Clause 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 clause 15 of 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 an application to vary any provision of this Award, which by its terms or operation, has 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 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*; and/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 legislation referred to in this clause.

Clause 17. Leave Reserved

Leave is reserved to the parties generally to apply as they may be advised in respect of:

- 17.1 any adjustment under Commonwealth legislation governing superannuation which alters preservation rights at age 60 or in the event that any legislative change necessary for the implementation of this Award does not occur;
- 17.2 the definition of "actual retained earnings" at Clause 3; and
- 17.3 Clause 9 - Rehabilitation and Retraining and Lump Sum Payments for Permanent Firefighters who suffer Partial and Permanent Incapacity.

Clause 18. Area, Incidence, Duration and Parties Bound

- 18.1 This Award shall apply to all permanent firefighters and retained firefighters, as defined in Clause 3, Definitions, who are employed by FRNSW.
- 18.2 This Award shall rescind and replace the Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Award 2009 published 26 June 2009 (368 IG 364).
- 18.3 This Award shall be binding upon the FBEU and FRNSW.
- 18.4 This Award shall take effect on and from 22 March 2012 and shall remain in force until 21 March 2014.

ANNEXURE A

PARTIAL AND PERMANENT INCAPACITY BENEFITS PAYMENT SCALE

Age at termination	Benefit as multiple of salary
20	8.33
21	8.22
22	8.11
23	7.99
24	7.87
25	7.75
26	7.62
27	7.49
28	7.35
29	7.21
30	7.07
31	6.92
32	6.76
33	6.61
34	6.44
35	6.28

36	6.11
37	5.93
38	5.75
39	5.56
40	5.36
41	5.16
42	4.96
43	4.75
44	4.53
45	4.30
46	4.07
47	3.83
48	3.59
49	3.34
50	3.08
51	2.81
52	2.53
53	2.25
54	1.95
55	1.65
56	1.34
57	1.02
58	0.69
59	0.35
60	0.00

**AGREED MECHANISM FOR ASSESSMENT OF ENTITLEMENT TO BENEFITS
PROVIDED BY FRNSW PURSUANT TO SUBCLAUSE 13.1**

1. This mechanism will not apply, and a firefighter may not therefore be considered partially and permanently incapacitated, whilst ever a firefighter has a workers compensation claim in dispute. Conversely, this mechanism will apply in all other instances listed at point 2.
2. The procedures set out at points 3 to 6 inclusive will apply if:
 - (a) FRNSW has reason to believe that:
 - (i) a firefighter may be unfit for duty, permanently or otherwise, and that firefighter disagrees; or
 - (ii) it may be necessary to impose certain medical/physical conditions or restrictions on a firefighter, permanently or otherwise, and that firefighter disagrees with the need for some or all such conditions or restrictions; or
 - (b) A firefighter has reason, supported by medical information, to believe that:
 - (i) the firefighter may be unfit for duty, permanently or otherwise, and FRNSW disagrees; or
 - (ii) it may be necessary to impose certain medical/physical conditions or restrictions on the firefighter, permanently or otherwise, and FRNSW disagrees with the need for some or all such conditions or restrictions; or
 - (c) A firefighter has already been assessed as defined at points 7(b), 7(c) or 7(d) and subsequently obtains more contemporary information which suggests that they may be fit or that their requirements or restrictions should be changed, and FRNSW disagrees.
3. If the medical assessment is initiated by FRNSW at point 2(a) then FRNSW will advise the firefighter in writing of their need to undergo an immediate health assessment by a medical practitioner nominated by FRNSW, and its reason(s) for such referral.

4. If FRNSW believes at any point in time that a firefighter's condition is such that by remaining on-duty he/she may endanger themselves, their colleagues or the public, FRNSW will, having regard to the firefighter's circumstances, either assign appropriate alternative duties for the firefighter or direct the firefighter on leave pending the determination of their condition in accordance with this mechanism. A firefighter who is stood down from their ordinary duties in accordance with this point will continue to receive "full pay", as defined by the Award, until such date as the Industrial Relations Commission determines that the firefighter has failed to cooperate with the reasonable directions of FRNSW under this Clause, or the assessing medical practitioner reports pursuant to point 6 below.
5. Whether the medical assessment is initiated by FRNSW at point 2(a) or a firefighter at point 2(b), FRNSW will arrange for a reasonable appointment for the firefighter as soon as possible, if not with FRNSW's preferred medical practitioner then with some other suitable medical practitioner, and will notify both the firefighter and the assessing medical practitioner in writing setting out:
 - (a) the time, date and location of the appointment;
 - (b) the inherent requirements of the firefighter's ordinary duties and the firefighter's typical work environment(s);
 - (c) the health-related issue(s), if any, which FRNSW believes may be affecting work performance;
 - (d) the manner in which it is believed work performance has been/is being and/or maybe affected, including evidence where available;
 - (e) any specific question(s) from FRNSW. It will not be sufficient to simply request an assessment of a firefighter's "fitness to continue" or assume such question(s) would be inferred by the assessing medical practitioner from the general background information provided; and
 - (f) a summary of all relevant documents in checklist format.
6. The assessing medical practitioner should take into account any and all relevant material supplied by FRNSW, the firefighter and/or the firefighter's own medical practitioner(s). FRNSW will ensure that any material provided to the assessing medical practitioner will at the same time also be provided to the firefighter and/or the medical practitioner(s) nominated by the firefighter.
7. The assessing medical practitioner's report, which will be in writing and provided to both FRNSW and the firefighter, should conclude that the firefighter is, in that medical practitioner's opinion, either:
 - (a) fit to perform the firefighter's ordinary duties without any requirements or restrictions; or
 - (b) fit to perform the firefighter's ordinary duties with specified requirements or restrictions; or
 - (c) temporarily unfit to perform the firefighter's ordinary duties but fit to perform alternative duties, either with or without specified requirements or restrictions; or
 - (d) temporarily unfit to perform any FRNSW duties; or
 - (e) permanently unfit to perform the firefighter's ordinary duties.
8. FRNSW will write to the firefighter within 7 days of receipt of the assessing medical practitioner's report stating that it has either:
 - (a) wholly accepted the medical practitioner's report; or
 - (b) partially accepted the medical practitioner's report, together with the reason(s) for its non-acceptance of the relevant part(s); or
 - (c) accepted none of the medical practitioner's report and its reasons for same.

9. A firefighter may request that FRNSW review its determination at point 8 by way of report to the Commissioner. The Commissioner will consider all previous reports and documentation relating to the matter, together with any additional information which the firefighter may supply, and will within 14 days supply the firefighter concerned with a written and final FRNSW determination of the matter.
10. If the firefighter does not agree with the Commissioner's determination at point 9 then the matter may be referred to the Industrial Relations Commission for final determination.
11. A firefighter who is found to be temporarily unfit as per points 7(c) or 7(d) will be given the appropriate period of time, as advised by the assessing medical practitioner, necessary for the firefighter to return to their ordinary duties.
12. A firefighter who fails to return to their ordinary duties within the appropriate period of time, or within six months from the date they last performed their ordinary duties (which ever occurs first) will be referred for medical re-assessment.
13. The determination as to whether a firefighter's permanent incapacity is the result of an on duty injury or an off duty injury will be made by Suncorp as soon as possible following confirmation of the firefighter's permanent incapacity or, in the event that Suncorp is no longer able or willing to do so, by some other suitably qualified independent assess or agreed between the parties, provided that any dispute as to the appointment of an independent assessor or the entitlement of a firefighter suffering partial and permanent incapacity may be referred to the Industrial Relations Commission for final determination.
14. FRNSW will bear the cost of any assessment conducted by a medical practitioner pursuant to points 5, 6 and 7, and of any independent assessment conducted at point 13.
15. To avoid doubt, the provision within subclauses 9.4, 9.5, 9.6 and 12.2 of the Award where by the FBEU is to be informed "unless the firefighter expressly declines to agree to the FBEU being informed" is intended to allow the firefighter to seek the FBEU's advice before authorising or agreeing to any course of action or signing any document associated with those subclauses and unless the firefighter does expressly decline to agree to the FBEU being informed then FRNSW will neither expect nor allow a firefighter to authorise or agree to any course of action nor sign any document associated with those subclauses until such time as the FBEU has been notified in writing and been given adequate opportunity to confer with the firefighter.
16. A firefighter who fails to comply with a reasonable direction to attend and participate in a medical assessment under this mechanism may be subject to disciplinary action.
17. A firefighter who has been confirmed as suffering partial and permanent incapacity may at any time elect to be assessed by the Death and Disability Superannuation Fund for total and permanent incapacity, in which case FRNSW will make all reasonable efforts to assist the Fund in concluding such assessment as soon as practicable.
18. The employment of a firefighter who is confirmed as suffering partial and permanent incapacity will be terminated in accordance with subclause 9.6 of the Award or otherwise upon such firefighter's consent or request.

19. For the purpose of this mechanism, "ordinary duties" means the full range of work that was usually performed by the firefighter immediately prior to suffering the condition, illness or injury that caused them to cease to perform, in whole or in part, such work.

W. R. HAYLEN *J.*

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CROWN EMPLOYEES (HEALTH CARE COMPLAINTS COMMISSION, MEDICAL ADVISERS) AWARD 2012

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Australian Salaried Medical Officers' Federation (New South Wales), Industrial Organisation of Employees.

(No. IRC 1016 of 2012)

Before The Honourable Justice Haylen

2 October 2012

AWARD

Arrangement

PART A

Clause No.	Subject Matter
1.	Title
2.	Parties
3.	Definitions
4.	Salaries and Progression
5.	Salary Packaging Arrangements, including Salary Sacrifice to Superannuation
6.	Employment Arrangements
7.	Leave Arrangements
8.	Personal/Carer's Leave
9.	Deduction of Union Membership Fees
10.	Grievance and Dispute Resolution Procedures
11.	Anti-Discrimination
12.	No Further Claims
13.	Area, Incidence and Duration

PART B

MONETARY RATES

Table 1 - Salaries

PART A

1. Title

This Award shall be known as the Crown Employees (Health Care Complaints Commission, Medical Advisers) Award 2012.

2. Parties

This award is made between the Director of Public Employment, the Health Care Complaints Commission and the Australian Salaried Medical Officers' Federation (New South Wales).

3. Definitions

"Award" means the Crown Employees (Health Care Complaints Commission, Medical Advisers) Award 2012.

"Department Head" means the Commissioner of the Office of the Health Care Complaints Commission (HCCC).

"Director of Public Employment" or "DPE" means the office established under Chapter 6 of the *Public Sector Employment and Management Act 2002*.

"Federation" or "union" means the Australian Salaried Medical Officers' Federation (New South Wales).

"Medical Adviser" means and includes all persons employed as a Medical Adviser by the HCCC whether employed on a full time or part time basis.

"Agency" or "Department" means the Office of the Health Care Complaints Commission (HCCC).

4. Salaries and Progression

- 4.1 Hourly rates of pay for Medical Advisers employed by HCCC are as provided in Table 1 - Salaries, of Part B, Monetary Rates.
- 4.2 The hourly rate is payable for all time worked in accordance with clause 6.
- 4.3 Payment of Overtime - additional compensation for overtime and on-call or recall duty is not payable under this Award.
- 4.4 Progression to a higher level is subject to 12 months satisfactory conduct, performance and attendance and the approval of the Commissioner.

5. Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation

- 5.1 The entitlement to salary package in accordance with this clause is available to:
 - (a) permanent full-time and part-time employees;
 - (b) temporary employees, subject to the Department or agency's convenience; and
 - (c) casual employees, subject to the Department or agency's convenience, and limited to salary sacrifice to superannuation in accordance with subclause 5.7
- 5.2 For the purposes of this clause:
 - (a) "salary" means the salary or rate of pay prescribed for the employee's classification by clause 4, Salaries and Progression, and outlined in Part B of this Award, and any other payment that can be salary packaged in accordance with Australian taxation law.
 - (b) "post compulsory deduction salary" means the amount of salary available to be packaged after payroll deductions required by legislation or order have been taken into account. Such payroll deductions may include, but are not limited to, taxes, compulsory superannuation payments, HECS payments, child support payments, and judgement debtor/garnishee orders.
- 5.3 By mutual agreement with the DPE, an employee may elect to package a part or all of their post compulsory deduction salary in order to obtain:
 - (a) a benefit or benefits selected from those approved by the DPE; and
 - (b) an amount equal to the difference between the employee's salary, and the amount specified by the DPE for the benefit provided to or in respect of the employee in accordance with such agreement.
- 5.4 An election to salary package must be made prior to the commencement of the period of service to which the earnings relate.

- 5.5 The agreement shall be known as a Salary Packaging Agreement.
- 5.6 Except in accordance with subclause 5.7, a Salary Packaging Agreement shall be recorded in writing and shall be for a period of time as mutually agreed between the employee and the Agency at the time of signing the Salary Packaging Agreement.
- 5.7 Where an employee makes an election to sacrifice a part or all of their post compulsory deduction salary as additional employer superannuation contributions, the employee may elect to have the amount sacrificed:
- (a) paid into the superannuation fund established under the *First State Superannuation Act 1992*; or
 - (b) where the employer is making compulsory employer superannuation contributions to another complying superannuation fund, paid into the same complying fund; or
 - (c) subject to the Department or agency's agreement, paid into another complying superannuation fund.
- 5.8 Where the employee makes an election to salary sacrifice, the employer shall pay the amount of post compulsory deduction salary, the subject of election, to the relevant superannuation fund.
- 5.9 Where the employee makes an election to salary package and where the employee is a member of a superannuation scheme established under the:
- (a) *Police Regulation (Superannuation) Act 1906*;
 - (b) *Superannuation Act 1916*;
 - (c) *State Authorities Superannuation Act 1987*; or
 - (d) *State Authorities Non-contributory Superannuation Act 1987*,
- the employee's Department or agency must ensure that the employee's superable salary for the purposes of the above Acts, as notified to the SAS Trustee Corporation, is calculated as if the Salary Packaging Agreement had not been entered into.
- 5.10 Where the employee makes an election to salary package, and where the employee is a member of a superannuation fund other than a fund established under legislation listed in subclause 5.9 of this clause, the employee's Department or agency must continue to base contributions to that fund on the salary payable as if the Salary Packaging Agreement had not been entered into. This clause applies even though the superannuation contributions made by the Department or agency may be in excess of superannuation guarantee requirements after the salary packaging is implemented.
- 5.11 Where the employee makes an election to salary package:
- (a) subject to Australian taxation law, the amount of salary packaged will reduce the salary subject to appropriate PAYG taxation deductions by the amount packaged; and
 - (b) any allowance, penalty rate, payment for unused leave entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an employee is entitled under this Award or any applicable Award, Act or statute which is expressed to be determined by reference to the employee's rate of pay, shall be calculated by reference to the rate of pay which would have applied to the employee under clause 4, Salaries and Progression, or Part B of this Award if the Salary Packaging Agreement had not been entered into.
- 5.12 The DPE may vary the range and type of benefits available from time to time following discussion with the Federation. Such variations shall apply to any existing or future Salary Packaging Agreement from the date of such variation.

- 5.13 The DPE will determine from time to time the value of the benefits provided following discussion with the Federation. Such variations shall apply to any existing or future Salary Packaging Agreement from the date of such variation. In this circumstance, the employee may elect to terminate the Salary Packaging Agreement.

6. Employment Arrangements

- 6.1 A standard day is 7 hours per day.
- 6.2 Generally Medical Advisers may work their agreed hours between the hours of 7.00 am and 6.00 pm Monday to Friday. In exceptions, work may be performed outside these hours, but will be remunerated at the hourly rate.
- 6.3 Medical Advisers, in agreement with the Commissioner, may nominate the commencing and concluding times of their agreed hours.
- 6.4 A lunch break of at least 30 minutes must be taken after 5 hours continuous work.
- 6.5 Part-time Work - The provision for part-time work as prescribed by the Agency's Flexible Work Practices Policy will apply to Medical Advisers employed under this award.
- 6.6 Private Practice - Medical Advisers may engage in private practice outside their agreed working hours. For Medical Advisers working full time hours, private practice is to be considered as second or other employment and the employees are to obtain permission from their employer pursuant to section 59 of the Public Sector Employment and Management Act 2002.
- 6.7 In accordance with the HCCC's Code of Conduct, there shall be no conflict or incompatibility between personal interests and the impartial fulfilment of public or professional duty. Any private work with or for any person or body with an interest in a proposed or current contract with the HCCC must be disclosed to the Commissioner.

7. Leave Arrangements

The leave provisions of the Crown Employees (Public Service Conditions of Employment) Award 2009, as amended from time to time, apply to Medical Advisers covered by this award.

- 7.1 Medical Advisers will be paid for public holidays or leave taken on days specified as their agreed day of work or a day when they are requested to work.
- 7.2 Part-time Medical Advisers accrue recreation leave on a pro rata basis.
- 7.3 A loading of 1/12th of the hourly rate will apply to payment for additional hours worked in excess of the normal weekly agreed hours.

8. Personal/Carer's Leave

The provisions of the Crown Employees (Public Service Conditions of Employment) Award 2009, as amended from time to time, shall apply.

9. Deduction of Union Membership Fees

- 9.1 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.
- 9.2 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.

- 9.3 Subject to 9.1 and 9.2 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 in writing to make such deductions.
- 9.4 Monies so deducted from the employee's 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.
- 9.5 Unless other arrangements are agreed to by the employer and the union, all union membership fees shall be deducted on a fortnightly basis.
- 9.6 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.

10. Grievance and Dispute Resolution

- 10.1 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.
- 10.2 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.
- 10.3 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 Medical Adviser 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.
- 10.4 The immediate manager 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 their attention.
- 10.5 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.
- 10.6 The Department Head may refer the matter to the DPE for consideration.
- 10.7 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.
- 10.8 A staff member, at any stage, may request to be represented by their union.
- 10.9 Any of the parties may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- 10.10 The staff member, union, department and DPE shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- 10.11 Whilst the procedures outlined in clauses 10.1 to 10.10 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 occupational 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.

11. Anti Discrimination

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 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 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."

12. No Further Claims

- 12.1 During the term of this award, there will be no extra wage claims, claims for improved conditions of employment or demands made with respect to the employees covered by the award and, further, that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the Industrial Relations Commission or any other industrial tribunal.
- 12.2 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.

13. Area, Incidence and Duration

- 13.1 This award shall apply to all classifications contained herein.
- 13.2 The employees covered by this award are employed in terms of the *Public Sector Employment & Management Act 2002*, and to the extent that this award is silent, will be covered by the provisions of that Act and associated Regulations and the Crown Employees (Public Service Conditions of Employment) Award 2009 as varied.

- 13.3 This award rescinds and replaces the Crown Employees (Health Care Complaints Commission, Medical Advisers) Award 2011 published 18 November 2011 (371 I.G. 967), as varied.
- 13.4 This Award will take effect from 1 October 2012. The Award will remain in force for the period to 30 September 2013 or until varied or rescinded in accordance with the provisions of *Industrial Relations Act* 1996.

PART B

MONETARY RATES

Table 1 - Salaries

Medical Adviser	1 October 2012 2.5%
Level 1	110.92
Level 2	119.12
Level 3	127.33

W. R. HAYLEN *J*

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(1179)

SERIAL C8023

**CROWN EMPLOYEES (OFFICE OF ENVIRONMENT AND
HERITAGE AND THE OFFICE OF ENVIRONMENT PROTECTION
AUTHORITY) GENERAL AWARD**

CORRECTION

A. The Award of 4 May 2012, Serial C7790, published 10 August 2012 (373 I.G. 1905), is corrected as follows:

1. Delete the award in its entirety and substitute the following:

(1179)

SERIAL C7790

**CROWN EMPLOYEES (OFFICE OF ENVIRONMENT AND
HERITAGE AND THE OFFICE OF ENVIRONMENT PROTECTION
AUTHORITY) GENERAL AWARD**

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(No. IRC 208 of 2012)

Before The Honourable Mr Justice Staff

4 May 2012

REVIEWED AWARD

1. Arrangement

PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Memorandum of Understanding
4.	Parties
5.	Salaries
6.	Salary System
7.	Qualifications
8.	On Call Allowance for Public Affairs Officers and Information Management & Communications Technology (IM&CT) Officers
9.	Working Hours including Flexible Working Hours
10.	Overtime
11.	Excess Travelling Time
12.	Irregular Shift Work
13.	Annual Leave Loading
14.	Families and Field Work
15.	After Hours Incident Service (AHIS)
16.	Out of Hours Disturbance
17.	Declared Incidents
18.	Study Assistance
19.	Salary Packaging Arrangements, including Salary Sacrifice to Superannuation
20.	No Extra Claims

21. Union Delegates Rights and Obligations
22. Industrial Grievance Procedure
23. Anti-Discrimination
24. Deduction of Union Membership Fees
25. Area, Incidence and Duration

PART B

MONETARY RATES

Schedule 1 - Salaries

PART C

Memorandum of Understanding

PART A

2. Definitions

"Award" means any Award made under the *Industrial Relations Act 1996*.

"Chairperson of the Authority" means the Chairperson of and for the Office of Environment Protection Authority.

"Chief Executive" means the Chief Executive of and for the Office of Environment and Heritage.

"Class" means a Class listed in subclause 6.8, of clause 6, Salary System of this Award.

"Declared incident" means an unscheduled activity in the Parks and Wildlife Group (PWG) of OEH such as wildfire suppression, wildlife rescue, flood and storm relief, search and rescue, cetacean stranding, accident and substance spill attendance, or as otherwise approved by the Chief Executive or their delegate (N.B. Does not include hazard reductions in PWG).

"Delegate" means an officer who has been delegated certain powers by the Chief Executive or the Chairperson where appropriate pursuant to s.15 of the *Public Sector Employment and Management Act 2002*.

"Determination" means any Determination made by the Director-General of the Department of Premier and Cabinet pursuant to the provisions of Section 130 of the *Public Sector Employment and Management Act 2002*.

"DGDPC" means the Director-General, Department of Premier and Cabinet, as established under the *Public Sector Employment and Management Act 2002*.

"Employer for Industrial Purposes" means the Director-General, Department of Premier and Cabinet.

"Employer for all purposes other than Industrial" means, for the Office of Environment and Heritage, the Chief Executive and for the Office of the Environment Protection Authority, the Chairperson.

"EO" means Environment Officer.

"EPA" means the Office of the Environment Protection Authority (EPA).

"Grievance" is any workplace problem that is a concern, complaint or allegation raised internally by an officer against another officer and requires resolution.

"Industrial Agreement" means an Industrial Agreement under the Industrial Arbitration Act 1940 that is continued in force by the provisions of the Industrial Relations Act 1996.

"Memorandum of Understanding" means the document signed by the parties to this Award on 10 August 2006.

"OEH" means the Office of Environment and Heritage (OEH).

"Officer" means, having regard to the Public Sector Employment and Management (Office of the Environment Protection Authority) Order 2012 or any replacement order, an employee of the Office of Environment and Heritage or the Office of the Environment Protection Authority including those employed on a temporary basis but does not include those employed under individual contracts through employment agencies; officers employed pursuant to the provisions of the Crown Employees (Senior Officer Salaries 2007) Award, or those employed in the Senior Executive or Chief Executive Services, or those persons employed and paid as casuals.

"Organisation" means the Office of Environment and Heritage and the Office of the Environment Protection Authority (Organisation).

"Organisation Head" means the Chief Executive of the Office of Environment and Heritage or the Chairperson of the Office of the Environment Protection Authority.

"PWG" means the Parks and Wildlife Group of the Office of Environment and Heritage.

"Public Sector Agreement" means any Agreement made pursuant to the provisions of section 131 of the *Public Sector Employment and Management Act 2002*.

"Reporting Officer" means an officer who has direct supervisory responsibility for an officer, for performance management and reporting purposes.

"Salary Point" means a salary nominated within a Class.

"Salary Scale" means the whole set of salaries payable under this Award.

"Subject Officer" means an officer who reports to a Reporting Officer for performance management and reporting purposes.

"Union" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, or the Association of Professional Engineers, Scientists and Managers Australia (NSW Branch), having regard to their respective coverage.

3. Memorandum of Understanding

The Memorandum of Understanding at Part C was signed by the parties to this award on 10 August 2006 and should, where appropriate be read in conjunction with this award.

4. Parties

4.1 The Parties to this Award are:

- (i) Director-General, Department of Premier and Cabinet for the Office of Environment and Heritage (OEH) and the Office of the Environment Protection Authority (EPA);
- (ii) Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales;
- (iii) Association of Professional Engineers, Scientists and Managers, Australia (NSW Branch).

4.2 In this Award "the Association" or "the Union" means:

- (i) The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales; and
- (ii) The Association of Professional Engineers, Scientists and Managers Australia (New South Wales Branch) in respect of:

- (a) Professional Engineers as defined in the rules of the Association of Professional Engineers, Scientists and Managers Australia (New South Wales Branch) which, without limiting that category includes:
 - (i) Persons employed in the classification of Engineer;
 - (ii) Persons performing professional engineering work; and
- (b) Existing members of the Association of Professional Engineers, Scientists and Managers Australia (New South Wales Branch) to the extent that they do not come within subparagraph 4.2(ii)(a).

5. Salaries

- 5.1 The salaries and allowances contained in Part B, Monetary Rates, Schedule 1 of this award will be adjusted to reflect any variation to Salaries and Allowances in the Crown Employees (Public Sector - Salaries 2008) Award or any successor instrument to that award.

6. Salary System

- 6.1 The rates of pay for officers of the OEH and EPA will be in accordance with the rates contained in Schedule 1, subject to any agreed Salary and Benefit Packaging arrangement.
- 6.2 Each officer covered by the award will be classified as an Environment Officer and paid within the salary classes as set out in Schedule 1, subject to any agreed Salary and Benefit Packaging arrangement.
- 6.3 The level of appointment to a salary point within a Class will be determined by the Organisation Head or delegate, following assessment of an applicant's past work experience in a related field and/or relevant skill levels and/or educational qualifications. Where an officer is promoted to a higher Class, they will move to the minimum salary point of the higher Class, or at least one salary point above their current substantive salary, whichever is the higher.
- 6.4 Officers who possess the Higher School Certificate or equivalent will be appointed to no less than the 2nd salary point of Class 1 as set out in Schedule 1 subject to any agreed Salary and Benefit Packaging arrangement.
- 6.5 Any officer aged 21 years or over will be appointed to no less than the salary prescribed for Class 1 salary point 4 as set out in Schedule 1 subject to any agreed Salary and Benefit Packaging arrangement.
- 6.6 Movement from one salary point to another within a Class will be subject to the Organisation's Staff Appraisal and Performance Related Pay provisions or any subsequent Performance Management System as agreed to by the parties.
- 6.7 Movement from Class to Class will be by way of appointment to a vacancy except in the circumstances described in paragraph 6.8.7 below.
- 6.8 Environment Officer 2-7 Classification Scale
- 6.8.1 From the date of the making of this Award positions classified as EO 2-7 on the salary scale will be filled by new graduates, as part of the Graduate Recruitment Program and shall be paid in accordance with the salary scale in Table 1 below.
 - 6.8.2 From the date of the making of this Award Aboriginal Project Officers employed by the Office will be paid in accordance with the EO 2-7 salary scale.
 - 6.8.3 In limited circumstances the EO 2-7 classification may be applied for specialist positions where recruitment to such positions under a differing classification scale has proven to be unsuccessful.

6.8.4 The relevant salary points on the EO 2-7 are shown in Table 1 below.

Table 1

Point 1	Class 2	Salary point 3
Point 2	Class 3	Salary point 2
Point 3	Class 4	Salary point 2
Point 4	Class 5	Salary point 2
Point 5	Class 6	Salary point 2
Point 6	Class 7	Salary point 1
Point 7	Class 7	Salary point 2
Point 8	Class 7	Salary point 4

6.8.5 Officers with a recognised 3 year degree or qualifications deemed by the OEH or EPA as equivalent will be appointed to point 1 on the EO 2 -7 salary scale.

6.8.6 Officers with a recognised 4 year degree or higher or qualifications deemed by the OEH or EPA as equivalent will be appointed to point 2 on the EO 2-7 salary scale.

6.8.7 Officers on the above scale shall be eligible to progress beyond Class 6 Salary Point 2 subject to:

- (i) the availability of work at the higher level in the officer's discipline/s; and
- (ii) demonstrated ability and capacity to undertake more responsible work, as deemed appropriate by the OEH or EPA having regard to the officer's discipline/s.

6.8.8 For officers on the above scale, work will be redesigned from time to time, in accordance with the agreed process, to ensure that the work performed by the officer is commensurate with the Class that they currently occupy.

6.8.9 Progression beyond Class 7 salary point 4 will be by way of promotion to a vacant position.

7. Qualifications

7.1 The parties to this award have agreed that qualifications are not to be used as barriers to appointments or promotion, however, where appropriate (e.g. for technical, competency and legal requirements), position descriptions will include qualifications.

8. On Call Allowance for Public Affairs Officers and

Information Management & Communications Technology (IM&CT) Officers

- 8.1 A weekly allowance of \$185 per week (of 7 days) shall be paid to officers of the Public Affairs Branch or IM&CT Branch who are directed to be on call.
- 8.2 The payment shall cover all time outside the normal working hours that the officer is required to be available for contact and immediate response to a call.
- 8.3 Only in exceptional circumstances would the OEH or EPA require an officer to be on call for a period of less than 7 days. Where a period of on call is for less than 7 days, a pro-rata to a minimum of one day will apply for each day the officer is required to be on call. The daily allowance will equate to \$26.43 per day.
- 8.4 Where the call results in the officer returning to work or performing more than minor follow-up work (i.e. where two or more further calls are required and this takes more than 15 minutes), the officer shall be entitled to overtime for the actual time spent responding to the call or a minimum of 3 hours overtime, whichever is the greatest.
- 8.5 The allowance shall compensate the officer for minor follow up work that may result from the call.

- 8.6 Where an officer is required to return to work again after the initial call out, the officer shall be paid for the actual time spent attending the second and subsequent call outs.
- 8.7 Extension of this provision to other work areas, classifications or specific jobs will be done in consultation with the Union.

9. Working Hours Including Flexible Working Hours

- 9.1 So as to ensure consistent application of the new provisions across the Organisation the commencement date for the provisions set out in this clause of the award shall be as agreed between the parties.

9.2 Ordinary Working Hours

- 9.2.1 Full-time ordinary working hours shall be 35 hours per week, Monday to Friday.

9.3 Bandwidth

- (i) Bandwidth is the period during the day when staff may record time worked and accrue flextime.

9.3.1 Standard Bandwidth

- (i) The Standard Bandwidth is 10.5 hours commencing at 7:30 a.m. and ceasing at 6:00 p.m.
- (ii) The maximum number of hours that can be recorded as being worked under this bandwidth is 10 hours (10.5 hours less a 0.5 hour lunch break).
- (iii) This will be the bandwidth that an officer covered by this award operates under unless their bandwidth is varied as per paragraph 9.3.2 below.

9.3.2 Varied Bandwidth

- (i) The Standard Bandwidth starting and finishing times may only be varied in circumstances where prior approval has been granted for such a variation by the officer's supervisor or Reporting Officer. A variation may apply to a group of officers or an individual.

9.4 Coretime

- (i) Coretime is the specified period during the day when staff are required to be on duty, unless on authorised leave.

9.4.1 Standard Coretime

- (i) The Standard Coretime hours will be 10:00 a.m. to 3:00 p.m. The maximum (unpaid) meal break which can be taken by an officer during Standard Coretime is 2.5 hours (as per paragraph 9.5.1 below), such that the minimum an officer must work during Coretime, exclusive of a meal break, is 3.5 hours.

9.4.2 Varied Coretime

- (i) The Standard Coretime may only be varied in circumstances where prior approval has been granted for such a variation by the officer's supervisor or Reporting Officer. A variation may apply to a group of officers or an individual.

9.5 Meal Breaks

- 9.5.1 An officer on the Standard Bandwidth and Standard Coretime is entitled to take a meal break between the hours of 11:30 a.m. and 2:30 p.m. The minimum meal break is 30 minutes and the maximum is 2.5 hours.

9.5.2 An officer working a Variable Bandwidth and/or Coretime may take their meal break at a time agreed between the officer and their supervisor or Reporting Officer. The minimum meal break is 30 minutes and the maximum is 2.5 hours. An officer shall not be required to be on duty for more than 5 hours from the time of commencement without a meal break.

9.6 Accrual and the taking of flex leave

9.6.1 Officers are able to take 14 hours ie. two (2) flex leave days off in a settlement period, as long as they have accumulated enough hours to do so.

9.6.2 With prior management approval, officers may accumulate a credit balance of 14-35 hours to enable them to have up to 5 flex leave days in a settlement period, to be taken at a mutually convenient time.

9.6.3 Officers who continually fail to take annual leave as a result of taking extended periods of flex leave may be placed on standard hours by management following appropriate consultation until a reasonable leave balance is established in accordance with the award provisions.

9.6.4 Supervisors will have full and open 24 hour access to an officer's time sheet records and records pertaining to an officer's flex leave.

9.6.5 Officers may carry forward to the next settlement period, in accordance with paragraphs 9.6.1 and 9.6.2 above a credit balance of up to 35 hours or a debit balance of 10 hours.

9.6.6 Flex leave can be taken at either the beginning or end of a period of leave.

9.6.7 Flex leave can be taken as either 1/2 days or full days. Time outside the bandwidth will not accrue to flex time balance.

9.6.8 Officers must have prior approval before taking flex leave.

9.6.9 On cessation of duty Flex Credits will be dealt with in accordance with subclause 21(n) of the Crown Employees (Public Service Conditions of Employment) Award 2009 or any successor instrument to that Award.

10. Overtime

10.1 General overtime conditions of officers under this Award shall be regulated in accordance with the provisions contained within the Crown Employees (Public Service Conditions of Employment) Award 2009 or any successor instrument to that Award.

11. Excess Travelling Time

11.1 Time spent travelling within the time prescribed, as defined under clause 27 of the Crown Employees (Public Service Conditions of Employment) Award 2009 or any successor instrument to that Award:

(i) Before the agreed bandwidth commences, and up to 1 hour thereafter, and

(ii) From one hour prior to the end of the agreed bandwidth, shall be able to be claimed as 'Travelling time'.

11.2 Provided that travelling time shall not include any period of travel between 11:00 p.m. on any one day and the start of the officer's bandwidth on the following day where the officer has travelled overnight and sleeping facilities have been provided for the officer.

11.3 Where organisational requirements prevent an officer taking Time Off In Lieu for Excess Travelling Time under the Crown Employees (Public Service Conditions of Employment) Award 2009 or any successor instrument to that Award it will be paid out on application.

- 11.4 The accrued time in lieu maybe added to the officer's Accrued Flex hours under subclause 9.6 to be taken at a mutually convenient time but at all times the nature of the time being accrued i.e. time in lieu or flex time, must be clearly distinguished and recorded by the officer.

12. Irregular Shiftwork

- 12.1 From time to time the OEH or EPA may request an irregular or infrequent shift to be performed during the period Monday to Friday.
- 12.2 Where shift work is irregular or infrequent, the OEH or EPA shall pay a shift allowance of 30% on the normal daily rate.
- 12.3 No officer, unless it is part of that officer's normal duties, or by way of mutual agreement, shall be required to perform such a shift.
- 12.4 The requirement to work an irregular shift should not, of itself, reduce the need to work overtime on the day concerned. However, officers working an irregular shift will be paid overtime, or may opt to take time off in lieu at overtime rates for any time worked in excess of seven hours. Flex time credits cannot be accrued when working an irregular shift.
- 12.5 An officer shall be eligible for an irregular shift allowance if required to commence duty outside of the hours 5:30 a.m. to 10:00 a.m., and the officer is not eligible for a regular shift allowance.
- 12.6 After an officer has worked an irregular shift, the officer must take a break of 10 hours prior to recommencing work. However, if requested by the OEH or EPA because of special circumstances to recommence work without completing a 10 hour break, overtime shall be paid from the time work is recommenced until such a break is taken.

13. Annual Leave Loading

- 13.1 An officer who is eligible for leave loading may elect to:
- (i) be paid their leave loading when they take sufficient leave (i.e. Recreation leave and/or Extended leave together with Flex days and/or public holidays totalling 10 or more week days), or;
 - (ii) defer their payment until the end of the relevant leave year, i.e. 30 November.

Wherever possible, payment will be made on the first pay day after 30 November.

14. Families and Field Work

- 14.1 Officers covered by this Award from time to time will be required to undertake either field work or to work away from their normal headquarters.
- 14.2 Officers who wish to be accompanied by a family member on single day trips, must obtain approval from their supervisor or reporting officer prior to the trip for the purpose of insurance coverage.
- 14.3 Officers who wish to be accompanied by a family member on working trips of more than one day must obtain approval from their supervisor or reporting officer.

15. After Hours Incident Service (AHIS)

- 15.1 Arrangements

15.1.1 Suitably qualified and trained officers from the Organisation will be required to perform After Hours Incident Service duties. These duties are in addition to their ordinary weekly hours of work.

15.1.2 Details of the operational arrangements and conditions relating to the Organisation's After Hours Incident Services are set out in the relevant Procedure Guide as agreed to by the parties.

15.2 Payment

15.2.1 Payments to officers 'rostered on' the AHIS at the date of making this award will be:

\$352.56 per week allowance - the weekly allowance incorporates the components for "inconvenience" and six incoming calls after/before ordinary hours of work;

\$17.26 for each incoming call above 6 during a roster - Not limited

\$108.16 per public holiday falling on a weekday; in addition to weekly allowance

Non-rostered officers contacted for advice out of ordinary hours of work shall receive:

\$34.74 When contacted after/before ordinary hours of work (refer to subclause 9.2)

15.2.2 The parties acknowledge that the provisions in paragraph 15.2.1 compensate an officer for a reasonable amount of time and work in responding to calls after normal working hours. However, on some occasions responding to a call or calls may require time and work in excess of reasonable expectation, in which case the officer can apply to their Reporting Officer to claim overtime. Each claim will be considered on its merits and an application does not guarantee approval. Any overtime approved will be paid at a minimum of three (3) hours at overtime rates. Overtime under this clause may not be claimed in addition to being Called-Out (refer subclause 15.3) for the same period.

15.2.3 These allowances will be paid on the basis of claims made by the officer, and will not form part of an officer's substantive salary, and therefore do not affect the calculation of leave or superannuation.

15.3 Call-Out

15.3.1 An officer rostered on the AHIS and called out by a person/organisation so authorised by the OEH or EPA in order to investigate pollution complaints, surveillance of potential pollution sources, or in other emergency situations outside normal working hours, will be paid a minimum of three (3) hours at overtime rates.

15.3.2 This rate will also apply to subsequent calls, provided that these are attended to after the three (3) hours time frame set by the original call out has elapsed.

15.3.3 Where an officer is called out he/she is entitled to a ten hour rest break before recommencing duty. The ten hour rest period will commence from when the officer finished the last call relating to the call-out or returned home from attending an emergency situation.

15.3.4 Where an officer is directed by management to resume working before completing a ten hour break the officer will be paid at overtime rates for all hours worked, until a ten hour break is taken.

15.3.5 Overtime is not payable when an officer resumes working, of his/her own accord before completing a ten hour break

16. Out of Hours Disturbance- Supervising Officers

16.1 Supervising Officers who are not rostered on duty on the After Hours Incident Service will receive an allowance of \$34.74 if contacted for advice or assistance in relation to emergency complaints or pressing issues outside normal working hours. Such payment will only be made once in any twenty-four (24) hour period. This allowance is not payable when an officer is Called-Out as in subclause 15.3, when overtime rates will apply as contained in that clause.

- 16.2 The parties acknowledge that the provisions in subclause 16.1 compensate an officer for a reasonable amount of time and work in responding to calls after normal working hours. However, on some occasions responding to a call or calls may require time and work in excess of reasonable expectation, in which case the officer can apply to their Reporting Officer to claim overtime. Each claim will be considered on its merits and an application does not guarantee approval. Any overtime approved will be paid at a minimum of three (3) hours at overtime rates. Overtime under this clause may not be claimed in addition to Call-Out provisions (refer subclause 15.3) for the same period.

17. Declared Incidents

- 17.1 From time to time officers maybe called upon to assist in the OEH's response to a declared incident in the Parks and Wildlife Group.
- 17.2 A declared incident is not the same as an after hours incident as per clause 15 of this award. An incident is declared and approved by a PWG Regional Manager or other suitably authorised officer of the OEH and remains in place until such time as the declaration of the incident is lifted.
- 17.3 Officers with specific skills and expertise may, at the discretion of the Chief Executive or delegate, be temporarily assigned to work on a declared incident in the PWG.
- 17.4 Designated Incident Positions
- (i) Officers temporarily assigned to a designated incident position as contained in clause 29, table 4, in the PWG Award are entitled to receive the conditions and remunerations under the Incident Conditions provisions of the Crown Employees (Office of Environment and Heritage - Parks and Wildlife Group) Conditions of Employment Award, or any successor instrument to that Award.
- 17.5 Assignment to non-designated incident support roles
- 17.5.1 In special circumstances an officer may, at the discretion of the Chief Executive or their delegate, be assigned to specific support roles that are not a designated incident position as contained in subclause 17.4 but are associated with a declared incident.
- 17.5.2 Officers assigned to these roles shall be paid their normal salary rate for the ordinary hours worked with overtime rates payable beyond the officer's agreed bandwidth for the duration of the declared incident or until they return to normal duties.

18. Study Assistance

- 18.1 The Organisation will support officers gaining additional skills through formal study and who are progressing through their course in a consistent way based on the timeframe indicated by the providing institution. Where a subject is failed an intention to catch-up must be demonstrated.
- 18.2 Officers are entitled to apply for study time and study leave in accordance with the provision of the Personnel Handbook 1999 or subsequent revision.
- 18.3 The following costs associated with courses -
- (i) Higher Education Contribution Scheme Help fees; or
- (ii) TAFE compulsory fees; or
- (iii) Compulsory post-graduate fees; or
- (iv) Compulsory full fee paying course fees;
- will be reimbursed by the Organisation in accordance with the guidelines following.

- 18.4 The proportion of fees to be reimbursed where the officer's application for study assistance has been approved under these guidelines, and
- (i) is their first qualification as an officer of the Organisation will be: 100% to a maximum of \$4,000 per annum refunded where the resultant qualification is directly relevant to the Organisation's operations or needs and is approved as such by the relevant Organisation Head; or
 - (ii) is their second or successive qualification as an officer of the Organisation: 50% refunded to a maximum of \$2,000 per annum where the resultant qualification is directly relevant to the Organisation's operations or needs and is approved as such by the relevant Organisation Head.
- 18.5 Approval for assistance will be considered annually and refunds will be paid for a maximum of six annual approvals up to a total amount of \$24,000 in respect of paragraph 18.4(i) or \$12,000 in respect of paragraph 18.4(ii), where other requirements have been met as in subclause 18.7 below.
- 18.6 At the discretion of the Organisation Head and where the Organisation Head determines that it is in the interests of the Organisation, approval may be given for a maximum of eight annual approvals as set out in subclause 18.5 above.
- 18.7 To be eligible to receive a refund, an officer must:
- (i) have been employed in the Organisation prior to the final examination in the academic period under consideration and also be in employment on the date reimbursement is requested;
 - (ii) produce evidence of having successfully completed a full stage of an approved course (or the subjects enrolled in at the start of a semester/year); and
 - (iii) produce receipts substantiating payments made for compulsory fees or HECS fee incurred.
- 18.8 Officers who have received prior approval for study assistance for a particular course, or qualification under either the former PWG policies that existed prior to the implementation of this award, shall continue to receive their financial assistance in accordance with those policies and their current approval for that specific course or qualification. Any new application for another course of study will be dealt with under the provisions of this Award.
- 18.9 Where there is no break in the continuity of study and given successful completion of approved study under paragraph 18.4(i) any subsequent application for study assistance will be treated as a second application under paragraph 18.4 (ii).
- 18.10 From the 1st January 2008 officers who seek financial assistance for study, will be covered by the new provisions set out in the MOU.
- 18.11 The costs associated with courses as outlined in paragraphs 18.3(i)-(iv) above are based on current 2006 costs. The parties to this Award agree, where there is a significant increase in costs the parties shall seek to resolve any increase in the listed amounts in paragraphs 18.4(i) and 18.4(ii) above. Where no agreement is reached leave is reserved to seek the assistance of the Industrial Relations Commission.

19. Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation

- 19.1 The entitlement to salary package in accordance with this clause is available to:
- (i) permanent full-time and part-time officers;
 - (ii) temporary officers, subject to the Organisation's convenience; and
 - (iii) casual employees, subject to the Organisation's convenience, and limited to salary sacrifice to superannuation in accordance with subclause 19.7.

19.2 For the purposes of this clause:

"salary" means the salary or rate of pay prescribed for the officer's classification by subclause 6.8 or Part B Monetary Rates, Schedule 1 - Salaries, of this Award, and any other payment that can be salary packaged in accordance with Australian taxation law.

"post compulsory deduction salary" means the amount of salary available to be packaged after payroll deductions required by legislation or order have been taken into account. Such payroll deductions may include, but are not limited to, taxes, compulsory superannuation payments, HECS payments, child support payments, and judgement debtor/garnishee orders.

19.3 By mutual agreement with the Organisation Head, an officer may elect to package a part or all of their post compulsory deduction salary in order to obtain:

- (i) a benefit or benefits selected from those approved by the DGDPC; and
- (ii) an amount equal to the difference between the officer's salary, and the amount specified by the DGDPC for the benefit provided to or in respect of the officer in accordance with such agreement.

19.4 An election to salary package must be made prior to the commencement of the period of service to which the earnings relate.

19.5 The agreement shall be known as a Salary Packaging Agreement.

19.6 Except in accordance with subclause 19.7, a Salary Packaging Agreement shall be recorded in writing and shall be for a period of time as mutually agreed between the officer and the Organisation Head at the time of signing the Salary Packaging Agreement.

19.7 Where an officer makes an election to sacrifice a part or all of their post compulsory deduction salary as additional employer superannuation contributions, the officer may elect to have the amount sacrificed:

- (i) paid into the superannuation fund established under the First State Superannuation Act 1992; or
- (ii) where the Organisation is making compulsory employer superannuation contributions to another complying superannuation fund, paid into the same complying fund; or
- (iii) subject to the Organisation's agreement, paid into another complying superannuation fund.

19.8 Where the officer makes an election-to salary sacrifice, the Organisation shall pay the amount of post compulsory deduction salary, the subject of election, to the relevant superannuation fund.

19.9 Where the officer makes an election to salary package and where the officer is a member of a superannuation scheme established under the:

- (i) *Police Regulation (Superannuation) Act 1906*;
- (ii) *Superannuation Act 1916*;
- (iii) *State Authorities Superannuation Act 1987*; or
- (iv) *State Authorities Non-contributory Superannuation Act 1987*,

the Organisation must ensure that the employee's superable salary for the purposes of the above Acts, as notified to the SAS Trustee Corporation, is calculated as if the Salary Packaging Agreement had not been entered into.

19.10 Where the officer makes an election to salary package, and where the officer is a member of a superannuation fund other than a fund established under legislation listed in subclause 19.9 of this

clause, the Organisation must continue to base contributions to that fund on the salary payable as if the Salary Packaging Agreement had not been entered into. This clause applies even though the superannuation contributions made by the Organisation may be in excess of superannuation guarantee requirements after the salary packaging is implemented.

19.11 Where the officer makes an election to salary package:

- (i) subject to Australian Taxation law, the amount of salary packaged will reduce the salary subject to appropriate PAYG taxation deductions by the amount packaged; and
- (ii) any allowance, penalty rate, payment for unused leave entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an employee is entitled under this Award or any applicable Award, Act or statute which is expressed to be determined by reference to the employee's rate of pay, shall be calculated by reference to the rate of pay which would have applied to the employee under subclause 6.8 or Schedule 1, of this Award if the Salary Packaging Agreement had not been entered into.

19.12 The DGDPC may vary the range and type of benefits available from time to time following discussion with the Unions. Such variations shall apply to any existing or future Salary Packaging Agreement from date of such variation.

19.13 The DGDPC will determine from time to time the value of the benefits provided following discussion with the Unions. Such variations shall apply to any existing or future Salary Packaging Agreement from the date of such variation. In this circumstance, the employee may elect to terminate the Salary Packaging Agreement.

20. No Extra Claims

20.1 It is a term of this award that the unions will not pursue any additional claims or improvements to wages and/or conditions of employment during the term of the award.

21. Union Delegates Rights and Obligations

21.1 An officer elected as a Union representative will, upon written notification by the Union to the Organisation, be recognised as an accredited representative of that Union, and will be allowed all reasonable time during working hours to attend to Union business and to consult with management on matters affecting the officers they represent. Such consultations should be arranged for times that are convenient to both parties.

21.2 Union delegates will inform their Reporting Officer of the need to absent themselves from their workplace, and will arrange a mutually acceptable time to attend to their Union duties.

21.3 Accredited union delegates should recognise the need to balance their absence from the job on Union business with the requirements for acceptable work performance.

21.4 The Organisation will provide access to the facilities and office equipment needed by union delegates to perform their Union function effectively, thus maximising the mutual advantages of a consultative approach.

22. Industrial Grievance Procedure

22.1 General

22.1.1 The aim of this procedure is to ensure that, during the life of this Award, industrial grievances, (including grievances within the meaning of the Anti-Discrimination Act 1977) or disputes are prevented or resolved as quickly as possible at the level they occur in the workplace.

22.1.2 The parties agree that whilst the procedures contained in this Clause are being followed, there is an expectation that normal work will continue.

22.1.3 In seeking a resolution to any industrial dispute or industrial grievance, the Organisation may be represented by an industrial organisation of employers, and the officers of the Organisation may be represented by an industrial organisation of employees.

22.1.4 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 officer to advise their immediate manager the notification may occur to the next appropriate level of management, including where required, to the Organisation Head or delegate.

22.2 Steps to Resolve Industrial Grievances or Disputes

When a dispute or grievance arises, or is considered likely to occur, the following steps are to be followed:

Step 1. The matter is discussed between the officer(s) and the Reporting Officer or other appropriate officer concerned and addressed within one week.

The officer(s) concerned may discuss the matter with the Union representative, if so desired.

Step 2. If, after a week since the matter was discussed with the Union representative and the Reporting Officer the matter remains unresolved, the officer(s) concerned may discuss the matter with the Union representative and the Branch Director. If the matter remains unresolved follow Step 3.

Step 3. If, after a week since the matter was discussed with the Union representative and the Branch Director, the matter is still unresolved, the officer(s) concerned may discuss the matter with the Branch Director, a representative of the Human Resources Branch and a Union representative and/or official.

Where it is agreed by the parties, and the matter is of an urgent nature, the officer may go to Step 3 immediately. In the event that the parties agree to go to Step 3 immediately, no more than a week should elapse since the matter was first raised until Step 4 is followed.

Step 4. The matter is discussed between senior representatives of the Organisation and the relevant Union. The parties agree to exhaust the process of conciliation before considering Step 5 below.

It is agreed that the parties will not deliberately frustrate or delay these procedures. All efforts are to be made to resolve the matter promptly. The conciliation process should take no longer than one month, unless the parties agree to a longer period.

Step 5. If no resolution is found, the matter may be referred to the Industrial Registrar in order for the Industrial Relations Commission or Industrial Court to exercise their functions under the Industrial Relations Act 1996.

23. Anti-Discrimination

23.1 It is the intention of the parties bound by this Award 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.

23.2 It follows that in fulfilling their obligations under the dispute resolution procedures prescribed in 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.

- 23.3 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.
- 23.4 Nothing in this clause is to be taken to affect:
- (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (ii) offering or providing junior rates of pay to persons under 21 years of age;
 - (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (iv) a party to this Award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 23.5 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.
- 23.6 Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- 23.7 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."

24. Deduction of Union Membership Fees

- 24.1 The unions party to this Award shall provide the Organisation with a schedule setting out union fortnightly membership fees payable by members of each union in accordance with each union's rules.
- 24.2 Each union shall advise the Organisation 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 Organisation at least one month in advance of the variation taking effect.
- 24.3 Subject to subclauses 24.1 and 24.2 above, the Organisation shall deduct union fortnightly membership fees from the pay of any officer who is a member of the Union in accordance with the union's rules, provided that the officer has authorised the Organisation to make such deductions.
- 24.4 Monies so deducted from the officer's pay shall be forwarded regularly to the respective union together with all necessary information to enable the union to reconcile and credit subscriptions to officers' union membership accounts.
- 24.5 Unless other arrangements are agreed by the Organisation and the respective unions, all union membership fees shall be deducted on a fortnightly basis.
- 24.6 Where an officer 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 officer to make a fresh authorisation in order for such deductions to continue.

25. Area, Incidence and Duration

- 25.1 This Award shall apply to officers and casual employees in the Office of Environment and Heritage and the Office of the Environment Protection Authority.

This Award will not apply to officers:

- (i) transferred to the Department under Administrative Order of 2 April 2007 and subsequent Orders which established the Department of Environment and Climate Change effective 27 April 2007; or
- (ii) employed in the Senior Executive Service (SES); or
- (iii) employed in the Parks and Wildlife Group of the OEH including officers whose current conditions and entitlements are determined by the Crown Employees (Office of Environment and Heritage - Parks and Wildlife Group) Field Officers and Skilled Trades Salaries and Conditions 2011 Award or any successor instrument to that Award and officers whose current conditions and entitlements are determined by the Flight Officers Enterprise Agreement 2011 or any successor instrument to that Agreement; and
- (iv) employed in the Botanic Gardens Trust.

25.2 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 IG 359) take effect on and from 4 May 2012.

25.3 Changes made to this award subsequent to it being published on 8 February 2008 have been incorporated into this award as part of the review.

The award remains in force until varied or rescinded, the period for which it was made having already expired.

25.4 Where this Award is silent provisions contained in the Crown Employees (Public Service Conditions of Employment) Award 2009, or any successor instrument to that Award apply to officers covered by this Award.

PART B

MONETARY RATES

SCHEDULE L - SALARIES

Environment Officers - Office of Environment and Heritage & Office of the Environment Protection Authority		
Classification	1.7.10 Per Annum 4% \$	1.7.11 Per Annum 2.5% \$
Class 1		
1	30,727	31,495
2	37,122	38,050
3	40,744	41,763
4	43,234	44,315
5	45,148	46,277
6	47,610	48,800
7	52,612	53,927
Class 2		
1	52,612	53,927
2	54,155	55,509
3	55,592	56,982
4	57,669	59,111
Class 3		
1	55,592	56,982
2	57,669	59,111

3	60,553	62,067
4	62,377	63,936
Class 4		
1	60,553	62,067
2	62,377	63,936
3	64,967	66,591
4	67,519	69,207
Class 5		
1	64,967	66,591
2	67,519	69,207
3	70,097	71,849
4	72,255	74,061
Class 6		
1	70,097	71,849
2	72,255	74,061
3	75,064	76,941
4	77,347	79,281
Class 7		
1	75,064	76,941
2	77,347	79,281
3	79,688	81,680
4	82,938	85,011
Class 8		
1	79,688	81,680
2	82,938	85,011
3	85,537	87,675
4	89,902	92,150
Class 9		
1	85,537	87,675
2	89,902	92,150
3	92,487	94,799
4	95,288	97,670
Class 10		
1	92,487	94,799
2	95,288	97,670
3	99,089	101,566
4	101,993	104,543
Class 11		
1	99,089	101,566
2	101,993	104,543
3	105,047	107,673
4	109,203	111,933
Class 12		
1	105,047	107,673
2	109,203	111,933
3	112,865	115,687
4	115,289	118,171
Class 13		
1	112,865	115,687
2	115,289	118,171
3	119,113	122,091
4	120,895	123,917
Class 14		
1	119,113	122,091
2	120,895	123,917
3	126,494	129,656

4	132,097	135,399
Class 15		
1	126,494	129,656
2	132,097	135,399
3	137,698	141,140
4	143,296	146,878
Other Rates and Allowances Brief Description		
AHIS weekly allowance: Inconvenience and 6 incoming calls after/before normal working hours	396.58	406.49
For each call above 6 incoming calls in an AHIS roster period; not limited	19.42	19.91
Extra per public holiday falling on a weekday	121.67	124.71
Out of hours disturbance (AHIS Supervising Officers)	39.08	40.06

PART C

MEMORANDUM OF UNDERSTANDING

PARTIES

The parties to this Memorandum of Understanding are:

The Director of Public Employment (Department of Environment and Conservation) ("the Department"); AND

The Public Service Association and Professional Officers' Association- Amalgamated Union of New South Wales; and

The Association of Professional Engineers, Scientists and Managers Australia (NSW Branch) ("the unions").

1. Introduction

1.1. This Memorandum of Understanding reflects the agreement reached between the department and the unions in respect of negotiations throughout 2004, 2005 and 2006 following the amalgamation of the former National Parks and Wildlife Service; the former Resources NSW; the Environment Protection Authority and the Royal Botanic Gardens and Domain Trust, into the Department of Environment and Climate Change.

1.2 This Memorandum will be implemented through two awards -

The Crown Employees (Department of Environment and Conservation) General - Conditions of Employment Award, and

The Crown Employees (Department of Environment and Conservation) Parks and Wildlife - Conditions of Employment Award.

Both the awards will be consent awards and will have a duration of 3 years commencing from the date the Awards are made by the Industrial Relations Commission of New South Wales.

- 1.3 The parties agree that the existing Botanic Gardens Awards will be retained with agreed changes implemented by way of a determination or determinations made pursuant to s.130 of the Public Employment and Management Act 2002.
- 1.4 The parties agree to lodge the consent award applications with the Industrial Relations Commission of New South Wales, no later than 1 November 2006.
- 1.5 The parties also agree that none of the conditions; allowances or any other monetary payments expressed in either of the new awards or this memorandum will come into effect until such time as the new awards have been made. All existing arrangements shall continue until such time as the new awards are operative
- 1.6 This Memorandum shall have a term commencing from the date the memorandum is signed by the parties until the expiry of the two awards.
- 1.7 The parties agree that this Memorandum shall also express the agreed position of the parties in respect of a number of issues that have been the subject of negotiation but have not been included in either of the awards.
- 1.8 The parties agree that both awards and any Botanic Gardens determinations made subject to this Memorandum will include a clause stating that, for the duration of the Awards, there shall be no further claims in respect of conditions of employment; the payment of new allowances or the quantum of existing allowances.
- 1.9 The parties agree that those matters not addressed in this Memorandum or attachments to this Memorandum shall remain as per the existing provisions of the current awards, save for those parts of the award that require amendment to correct dates; titles; spelling; grammar etc.

The parties agree that this Memorandum of Understanding may be relied upon by any party in respect of any proceeding before the Industrial Relations Commission of New South Wales.

2. Matters Agreed - Non-Award

- 2.1 Departmental Performance Management System: The parties agree that current performance management systems operating within the Department and known as SPEADS; PMD and CAPS shall be replaced with a single departmental wide performance management system. The parties further agree that until such time as the new system is operational, the current arrangements in situ for performance management shall continue.
- 2.2 Culture and Heritage Division: (a) The parties agree that those positions currently known as Aboriginal Project Officers 1-2 will transfer to the EPO 2-7 grade on the salary scale and Aboriginal Project Officers 3-4 will transfer to the EPO 9 grade on the salary scale. The date of transfer to the new salary scale shall be as at the date that the awards are made.
 - (a) The parties agree to develop progression criteria for the Aboriginal Project Officer positions after the signing of this memorandum of understanding and prior to the making of the award.
 - (b) The parties agree that Aboriginal Project/Research Officers who have already transitioned to the EPO salary scale shall have a period of 12 months after the date of the making of the award to submit an application for a progression. If such an application is successful, then progression shall take place and salaries shall be paid as a personal salary to the appropriate point on the Aboriginal Project/Research officer salary scale.
 - (c) The parties agree that all other staff currently employed within the Culture and Heritage Division will transfer to the closest salary point on the EPO salary scale that is equal to or less than their existing salary rate. The parties agree that where such a transfer would result in the employee being paid at a lower rate, the employee shall be paid a personal salary to the equivalent amount paid under the previous salary scale; such personal salary rate to continue until such time as the employee vacates the transferred position or receives an increment that would take them past

their previous personal salary. The parties further agree that there is no requirement or need for any of the positions affected by subclause (d) to undergo a job evaluation so as to facilitate the transfer to the new salary scale.

- (d) The parties agree that all staff transferred from the Culture and Heritage Division to the EPO salary scale who currently receive the remote area allowance as per the Crown Employees (NPWS) Conditions of Employment 2000 award (clause 5 (D)) shall be paid the difference in the amount paid pursuant to this award and the amount paid pursuant to the Crown Employees (Public Service Conditions of Employment) Award as a personal salary whilst they continue to occupy the same position.

2.3 Interim Award Arrangements: (a) the parties agree that the arrangement made between the parties following the amalgamation of the department (the interim award arrangement) shall cease upon the making of the new awards.

- (a) the parties further agree that all staff employed in Policy & Science Division (PSD); Environment Protection and Regulation Division (EPRD); Sustainability Programs Division (SPD), Corporate Services Division (CSD); Strategy Communication and Governance Division (SC&GD) pursuant to the Crown Employees (NPWS) Conditions of Employment 2000 Award will transfer to the closest salary point on the EPO salary scale that is equal to or less than their salary rate.
- (b) The parties agree that where such a transfer would result in the employee being paid at a lower rate, the employee shall be paid a personal salary to the equivalent amount paid under the previous salary scale; such personal salary rate to continue until such time as the employee vacates the position to which they were transferred or receives an increment that would take them past their previous personal salary.
- (c) The parties agree that in the case of two officers employed in the Threatened Fauna and Ecology Unit, the 517 allowance currently paid to these officers will cease but the equivalent amount will be paid by way of a salary adjustment which shall be regarded as a personal salary for as long as the officers concerned continue to occupy their current positions.
- (d) The parties agree that Project/Research Officers who have already transitioned to the EPO salary scale shall have a period of 12 months after the date of the making of the award to submit an application for progression. If such an application is successful, then progression will take place and salary shall be paid as a personal salary to the appropriate point on the PRO salary scale.

2.4 Review of Competency Standards for Rangers and Roles of Senior Rangers: (a) The parties agree that the Department shall undertake a

review of the operation of competency standards as currently applied in respect of rangers.

review of roles of Senior Rangers.

- (a) The parties agree that these reviews shall be commenced as soon as is practicable after the signing of this Memorandum of Understanding.

2.5 Review of Remote Areas Allowance : The parties agree to enter into discussions with a view to updating the Remote Area Allowances. The parties further agree such discussions would commence after the new award arrangements have been implemented but no later than 1 July 2007. The parties also agree that if the parties can reach agreement in respect of the remote areas allowance the relevant award will be varied by consent to reflect the agreed position.

3. Matters Agreed - for Inclusion in the Awards

3.1 Study Assistance: the parties agree that both the awards and the BGT determination shall incorporate the agreed position in respect of study assistance. The details of the agreed position are set out in Attachment 1 to this agreement.

- 3.2 Contact with Employees on Parental or Maternity Leave: the parties agree to insert within the Parks and Wildlife Division Award a clause containing the following words: "maintain contact with employees specifically in the context of workplace change, restructuring and office relocations and attendance at relevant training courses."
- 3.3 Families and Fieldwork: the parties agree that the provisions as set out in clause 36(i);(vi); and (vii) of the Crown Employees (National Parks and Wildlife) Conditions of Employment 2000 Award shall be included within both of the new awards.
- 3.4 Pattern of Hours Worked and Flexitime : (a) the parties agree that a new common provision setting out the pattern of hours and flexitime will be included in both new awards and BGT determination. The new provision shall adopt elements of the system currently in place for Parks and Wildlife Division staff and the system currently in place for EPO staff under the current EPA Award. The parties agree that the details of the provision to be included in the awards are as set out in Attachment 2 to this Memorandum of Understanding;
- (a) the parties further agree that in DEC (General) Award and in the BGT determination the new provisions shall reflect a Coretime of 10.00 to 15.00 and a Bandwidth of 10.5 hours commencing at 7.30 a.m. and ceasing at 6.00 p.m. The parties agree that core time and bandwidth may be varied only in circumstances where prior approval has been granted for such a variation;
- (b) the parties further agree that in PWD, consistent with clause 10 Hours of the NPWS Award, (vi) "A roster of hours and days must be set and agreed to in writing 2 weeks before the 4 week roster period starts" appropriate administrative arrangements will be put in place.
- 3.5 Incident Conditions : (a) the parties agree to include within the new The Crown Employees (Department of Environment and Conservation) General - Conditions of Employment Award a clause which will enable suitably qualified staff to be temporarily assigned to the following specific incident positions as currently defined in the Crown Employees (National Parks and Wildlife Service) Conditions of Employment 2000 Award.

Incident Controller

Logistics Officer

Planning Officer

Operations Officer

Divisional Commander

Sector Commander

Crew Leader

Crew Member

And/or to the following positions which the parties agree shall be added to the relevant clause of the Crown Employees (Department of Environment and Conservation) Parks and Wildlife - Conditions of Employment Award -

Deputy Incident Controller

Safety officer

Situation Officer

Situation Unit Leader

Resource Officer

Resources Unit Leader

Air Attack Supervisor

Air Operations Manager

Air Base Manager

Air Observer.

- (a) the parties further agree, that staff assigned to undertake such roles shall be paid the relevant wage/salary for the position for the period they occupy the position during the incident.
- (b) the parties agree that other staff covered by The Crown Employees (Department of Environment and Conservation) General - Conditions of Employment Award who are assigned to non-specific incident positions during a defined incident shall be paid their normal salary rate for ordinary hours worked with overtime payable for the time worked beyond the employee's agreed bandwidth
- (c) the parties agree that rates for current specific incident positions shall be adjusted to reflect increases under the Crown Employees (Public Service Salaries) Award since 1997.
- (d) the parties agree that all designated incident positions (current and additional) shall undergo an evaluation process as soon as is practicable after the commencement of the new award.

3.6 After Hours Incident Service: (a) the parties agree that The Crown Employees (Department of Environment and Conservation) General - Conditions of Employment Award shall incorporate the late call allowance into the weekly allowance that will result in the weekly allowance being \$339.00 per week with an additional amount of \$104.00 for each public holiday that falls on a weekday in a roster week;

- (a) the parties further agree that the out of hours disturbance allowance currently paid to supervising officers will be reviewed as part of the general review of the procedural guidelines governing the operation of the After Hours Incident Service;
- (b) the parties agree that these allowances will be adjusted in line with the Crown Employees (Public Sector Salaries 2004) Award or any successor instrument to this award.

3.7 Qualification Requirements: the parties agree to insert a clause within the Crown Employees (Department of Environment and Conservation) General - Conditions of Employment Award which states:

"The parties agree that qualifications are not to be used as barriers to appointment or promotion, however, where appropriate, eg, for technical competency and legal requirements; position descriptors will include qualifications."

ATTACHMENT 1

DEC General and DEC (PWD) & BGT Determination

Study Assistance

- (i) DEC will support employees gaining additional skills through formal study and who are progressing through their course in a consistent way based on the timeframe indicated by the providing institution. Where a subject is failed an intention to catch-up must be demonstrated.

- (ii) Employees are entitled to apply for study time and study leave in accordance with the provision of the Personnel Handbook 1999 or subsequent revision.
- (iii) The following costs associated with courses -
 - Higher Education Contribution Help scheme Fee; or
 - TAFE compulsory fees; or
 - Compulsory post-graduate fees; or
 - Compulsory full fee paying course fees

will be reimbursed by the Department in accordance with the guidelines following.

- (iv) The proportion of fees to be reimbursed where the employee's application for study assistance has been approved under these guidelines, and:
 - (a) is their first qualification as an employee of DEC: 100% to a maximum of \$4,000 per annum refunded where the resultant qualification is directly relevant to DEC operations or needs and is approved as such by the Director General; or
 - (b) is their second or successive qualification as an employee of DEC: 50% refunded to a maximum of \$2,000 per annum where the resultant qualification is directly relevant to DEC operations or needs and is approved as such by the Director General.
- (v) Approval for assistance will be considered annually and refunds will be paid for a maximum of six annual approvals up to a total amount of \$24,000 in respect of subclause (iv)(a) or \$12,000 in respect of sub-clause (iv)(b), where other requirements have been met as in subclause (viii) below.
- (vi) At the discretion of the Director General and where the Director General determines that it is in the interests of the Department, approval may be given for a maximum of eight annual approvals as set out in (v) above.
- (vii) To be eligible to receive a refund, an employee must:
 - (a) have been employed in the Department prior to the final examination in the academic period under consideration and also be in employment on the date reimbursement is requested;
 - (b) produce evidence of having successfully completed a full stage of an approved course (or the subjects enrolled in at the start of a semester/year); and
 - (c) produce receipts substantiating payments made for compulsory fees or HECS fee incurred.
- (viii) Staff members who received prior approval for study assistance:
 - (a) under this clause or similar clause/policy of a related entity, and
 - (b) commenced the approved course/subject under the award or policy at the time, and
 - (c) there is no break in the continuity of study and successful completion.

Will be regarded as under the award clause or policy until the completion of the approved course/study. Any subsequent application for study assistance will be treated as a second application under subclause (iv)(b) of this clause.

- (ix) The costs associated with courses as outlined in subclause (iii) above are based on current 2006 costs. The parties to this Award agree, where there is a significant increase in costs the parties shall seek to resolve any increase in the listed amounts in subclauses (iv) (a)(b) above. Where no agreement is reached leave is reserved to seek the assistance of the Industrial Relations Commission.

ATTACHMENT 2

DEC General as Part of Current EPA Flexitime Clause BGT Determination and DEC (PWD) Clause

Pattern of Hours

- (i) Pattern of hours is the way hours are worked each settlement period; ie, start/finish times and days of the week for 7-day roster workers.
- (ii) Patterns of hours can be either flexitime, where start/finish times are flexible within the bandwidth; or, determined where start/finish times are set.

A. Flexitime

- (i) Employees are able to take two (2) flexi days off in a settlement period, as long as they have accumulated enough hours to do so.
- (ii) With prior management approval, employees may accumulate a credit balance of 14-35 hours to enable them to have up to 5 flexi days in a settlement period, to be taken at a mutually convenient time.
- (iii) Employees who continually fail to take annual leave as a result of taking extended periods of flex leave may be placed on standard hours by management following appropriate consultation until a reasonable leave balance is established in accordance with the award provisions.
- (iv) Supervisors will have full and open 24 hour access to Employees' time sheet records and records pertaining to an employee flex leave.
- (v) Employees may carry forward to the next settlement period, in accordance with i) and ii) above a credit balance of up to 35 hours or a debit balance of 10 hours.
- (vi) Flex leave can be taken at either the beginning or end of a period of leave.
- (vii) Flexidays can be taken as either 1/2 days or full days. Time outside the bandwidth will not accrue to flexitime balance.
- (viii) Employees must have prior approval before taking flex leave.

- (ix) On cessation of duty Flexi Credits will be dealt with in accordance with Clause 20 (n) of the Crown Employees (Public Service Conditions of Employment) Award 2002 as varied.

. G. STAFF J.

G. M. GRIMSON *Industrial Registrar.*

Printed by the authority of the Industrial Registrar.

**CROWN EMPLOYEES (ROADS AND MARITIME SERVICE
DIVISION OF THE GOVERNMENT SERVICE OF NEW SOUTH
WALES - SALARIED STAFF) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 250 of 2012)

Before The Honourable Mr Justice Staff

27 September 2012

REVIEWED AWARD

PART A

Clause No.	Subject Matter
1.	Definitions
2.	Hours of Duty
2A.	Lactation Breaks
3.	Overtime
4.	Shift Work
5.	Increments
6.	Allowances
7.	Protective Clothing
8.	Conveyance
9.	Leave
10.	Additional Conditions for Motor Registry and Telephone Customer Service Centre Staff
11.	Additional Conditions for DRIVES Help Desk Staff
12.	Additional Conditions for Work Support Officers
13.	Grievance Resolution and Dispute Settlement
14.	Anti-Discrimination
15.	Public Holidays and Bank Holiday
16.	Appeals in Respect of Salary, Grade or Classification
17.	Deduction of Union Membership Fees
18.	Secure Employment
19.	Area, Incidence and Duration

PART B

Table A - Salaries

Table B - Rates - Allowances

Appendix A - Grievance Resolution Policy

1. Definitions

- (1) "Agency" or "RMS" shall mean the Roads and Maritime Service Division of the Government Service of New South Wales established under Chapter 1A of the *Public Sector Employment and Management Act 2002* (NSW).
- (2) "Employee" shall mean a person employed by the Agency under Section 4B(3) of the *Public Sector Employment and Management Act 2002* (NSW) and covered by this award.

- (3) "Association" shall mean the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.
- (4) "Domestic Violence" means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

2. Hours of Duty

This clause does not apply to employees who are subject to the following clauses:

Clause 10 - Additional Conditions for Motor Registry and Telephone Customer Service Centre Staff
Clause 11 - Additional Conditions for DRIVES Help Desk Staff
Clause 12 - Additional Conditions for Work Support Officers

- (1) The ordinary hours of duty to be observed shall be from 8.30am to 4.30pm on five days per week, Monday to Friday inclusive. The approved lunch break shall be taken between noon and 2.00pm daily.

Provided that:

- (a) By agreement with the Association in respect of employees the same number of hours daily may be worked at any time between 7.00am and 5.30pm.
 - (b) Employees, so directed, shall work the hours normally worked by employees on field works as provided for in subclause (5) of clause 3, Overtime.
 - (c) The hours of duty to be observed by employees engaged on shift work in Head Office shall be as prescribed in clause 4, Shift Work.
 - (d) Where it has been the practice to work a lesser number of hours by particular classifications of employees, that practice shall continue.
- (2) Where approval has been given for employees to observe flexible working hours, the "House Rules" promulgated by the Agency from time to time shall apply.

Generally, the hours of duty to be observed by employees are:

- (a) Bandwidth 7.30 am to 5.30 pm unless otherwise approved.
 - (b) Core time 9.30 am to 3.30 pm.
 - (c) Lunch break to be taken between noon and 2.00 pm.
 - (d) Contract hours in each four-week settlement period will be 140 hours.
- (3) The hours of duty to be observed by employees engaged on shift work shall be as prescribed in clause 4, Shift Work.
 - (4) Works Supervisors and Surveillance Officers who work on their normal accrued day off shall be entitled to claim overtime at Saturday rates (that is, time and one-half for the first two hours and double time rates thereafter) for the hours worked. In addition, Works Supervisors and Surveillance Officers shall be entitled to an alternative paid day off in the next four-week cycle. Provided that agreement is reached between the employee(s) concerned and local management, up to four ADOs may be accumulated in keeping with recent changes to award conditions concerning ADOs for wages employees generally.
 - (5)
 - (a) The ordinary working hours of Traffic Supervisors shall be 38 per week and shall be worked as a 20-day four-week cycle with 19 working days of eight hours each in accordance with rosters,

with 0.4 of one hour each day worked accruing as an entitlement to take, in each cycle, an accrued day off.

The accrued day off is to be subject to management prerogative to best suit the working needs of the organisation. Provided the accrued day off is to be taken between Monday and Friday (inclusive) during the day shift.

The ordinary working hours of employees shall not exceed eight per day to be worked in a maximum of ten shifts per fortnight; provided that not more than six consecutive shifts shall be worked in eight consecutive days. A shift may be worked on any day of the week, including Sunday, during any period of twenty-four hours. The times between which the ordinary hours may be worked may be altered by agreement between the Agency or its representative and the Association.

- (b) Where the agreed accrued day off prescribed by paragraph (a) of this subclause, falls on a public holiday the next working day on which the employee is normally rostered for duty shall be taken in lieu of the accrued day off unless an alternative day in that four-week cycle or the next four-week cycle is agreed between the Agency or its representative and the employee.
- (c)
 - (i) Each day of paid, sick or recreation leave taken and any public holidays occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes.
 - (ii) Where an employee is ill or incapacitated on the accrued day off, the employee shall not be entitled to payment of sick leave on that day nor shall the employee's sick leave entitlement be reduced as a result of such illness or incapacity.
- (d) An employee who has not worked, or is not regarded by reason of paragraph (c) of this subclause 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, on the accrued day off, or in the case of termination of employment, on termination.
- (e)
 - (i) The accrued day off prescribed in paragraphs (a) and (b) of this subclause shall be taken as a day off provided that the day may be worked where that is required by the Agency or its representative and circumstances, in which case in addition to accrued entitlements the employee shall be paid at the rate of time and one-half for the first two hours and double time thereafter: or
 - (ii) Where agreement is reached between the Agency or its representative and an employee, that employee may accumulate up to a maximum of four accrued days off before they are taken as days off and, when taken, those days shall be regarded as days worked for accrual purposes. When such agreement has been reached under the terms of this paragraph, an employee is not entitled to be paid at the rate as specified in subparagraph (i) of this paragraph.
 - (iii) Where an employee works on the accrued day off in accordance with subparagraph (i) of this paragraph, the employee may elect to have another day off in substitution therefore before the end of the succeeding work cycle, provided that such day off is subject to management prerogative to best suit the working needs of the organisation and that in such cases the accrued entitlements are transferred to the substituted day off.
- (f) The conditions contained in paragraphs (b) to (e) of this subclause shall also apply to shift workers by substituting the word "shift" for "day" in each case.

2A. Lactation Breaks

- 2A.1 A lactation break is provided to lactating mothers for the purposes of 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 in this Award.
- 2A.2 A full time staff member or a part time staff member working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- 2A.3 A part time staff member working 4 hours or less per day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- 2A.4 A flexible approach to the timing and general management of lactation breaks must be taken by the staff member 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 staff member.
- 2A.5 The RMS will 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, will be provided where practicable.
- 2A.6 Where it is not practicable to provide the appropriate space or facilities, discussions between the manager and the staff member will take place to attempt to identify reasonable alternative arrangements for the staff member's lactating needs.
- 2A.7 The manager and staff member may be guided by the following considerations in determining the reasonableness and practicality of any proposed alternate arrangement:
- (a) whether the employee is required to work at a site that is not operated or controlled by the RMS;
 - (b) whether the employee is regularly required to travel in the course of performing their duties;
 - (c) whether the employee performs field-based work where access to the facilities in subclause 2A.5 are not available or cannot reasonably be made available; and
 - (d) the effect that the arrangements will have on the employee's lactating needs.
- 2A.8 Employees experiencing difficulties in effecting the transition from home-based breast feeding to the workplace will have reasonable telephone access to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System. Access to the service.
- (a) shall be granted during paid time;
 - (b) is limited to a reasonable period of time (i.e. if the employee requires extended periods of consultation, the employee may utilise the provisions of clause 2A9), and
 - (c) must be at a time that is mutually convenient to both the employee and the RMS
- 2A9 Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breast feeding and the transition to the workplace may utilise sick leave in accordance with subclause 9K (Sick Leave) of this Award, or access the flexible working hours scheme provided in clause 2 (Hours of Duty) of this Award, where applicable.

3. Overtime

This clause applies to employees subject to the conditions contained in the following clauses:

Clause 10 - Additional Conditions for Motor Registry and Telephone Customer Service Centre Staff

Clause 11 - Additional Conditions for DRIVES Help Desk Staff

Clause 12 - Additional Conditions for Work Support Officers

(1)

- (a) Overtime shall mean all time worked before or after the hours of duty provided under subclause (1) of clause 2, Hours of Duty, whether worked by direction of the Agency or a responsible employee acting on behalf of the Agency in the performance of work which, from its character or from special circumstances, cannot be performed during the ordinary working hours of the office to which the employee is attached, or of the work on which they are engaged.

Provided that for employees observing flexible working hours, payment of overtime will be made only for approved work performed outside the bandwidth.

- (b) The Agency may require an employee to work reasonable overtime at overtime rates. An employee may refuse to work overtime in circumstances where the working of overtime would result in the employee working hours which are unreasonable. For the purposes of this paragraph what is unreasonable or otherwise will be determined having regard to:
- (i) any risk to the employee's health and safety;
 - (ii) the employee's personal circumstances including any family and carer responsibilities
 - (iii) the needs of the workplace or enterprise;
 - (iv) the notice (if any) given by the Agency regarding the working of overtime, and by the employee of their intention to refuse the working of overtime; or
 - (v) any other relevant matter.

(2) Except as provided in clause 4, Shift Work, payment for overtime to employees shall be made the following rates:

- (a) For all time worked before the usual commencing time and after the usual ceasing time, Monday to Friday, at the rate of time and one-half for the first two hours and double time thereafter until relieved from duty.
- (b) For all time worked on Saturdays, at the rate of time and one-half for the first two hours and double time thereafter.
- (c) For all time worked on Sundays, at double ordinary rates.
- (d) For all time worked on public holidays at the rate of double time and one-half.
- (e) An employee who works overtime on a Saturday, Sunday or public holiday shall be paid a minimum payment for three hours work at the appropriate overtime rates.
- (f) An employee who is called out for emergency duty other than on days provided in paragraph (e) of this subclause, shall be paid a minimum payment of three hours work at overtime rates, provided that the hours paid for do not overlap with the employee's normal hours of duty.

Provided that:

- (i) Overtime rates shall not be paid for periods of less than one quarter of an hour.
- (ii) Where a working period extends beyond 2.00pm on Saturdays, Sundays or public holidays, or for one and one-half hours after the regular finishing time on normal working days, at least 30

minutes shall be taken for meals. The meal break shall not be regarded as overtime and a meal allowance as provided in Part A, Meal Allowances of clause 6, Allowances, shall be paid.

(3) For the purpose of calculating the hourly rate, the following formula shall be used:

(a) Where the luncheon period has been regularly extended to one hour (i.e. 3/4 hour plus 15-minute concession):

$$\text{Annual Salary} \quad \times \quad \frac{7}{365.25} \quad \times \quad \frac{1}{35}$$

(b) Where the luncheon period has not been so extended:

$$\text{Annual Salary} \quad \times \quad \frac{7}{365.25} \quad \times \quad \frac{1}{36.25}$$

(4) An employee who works on a Saturday, Sunday or public holiday may, within two working days following so working, elect to take leave in lieu of payment for all or part of the employee's entitlement in respect of the time so worked, as calculated in accordance with subclause (2) of this clause.

Provided that:

(a) Leave in lieu of payment shall be taken at the convenience of the Agency.

(b) Such leave in lieu shall be taken in multiples of a quarter-day only.

(c) The maximum period of leave in lieu that may be allowed in respect of any one period of overtime worked shall be one day.

(d) Leave in lieu shall be taken within one month of the date of election, except in the case of leave in lieu in respect of work performed on a public holiday, in which case an employee may elect to have such leave in lieu added to annual leave credits.

(e) An employee shall be entitled to payment for the balance of any entitlements not taken as leave in lieu.

(5) Notwithstanding the provisions of this clause, the following employees shall not, without the special approval of the Agency, be paid for any overtime worked by them, viz.:

(a) Employees who are paid a special allowance in lieu of overtime.

(b) Administrative and clerical employees whose salary, and allowance in the nature of salary, exceed that of the top step of USS Grade 9.

(c) Employees engaged on field works who are directed to work 38 hours per week shall be paid a loading at the rate of 8.5 per cent of salary; provided that overtime shall be paid for time so worked in excess of 8 hours on any one day or 40 in any one week, or outside that spread of hours normally worked by employees on field works.

(d) The loading referred to in subclause (c) shall apply to all periods of paid leave and be taken into account in the calculation of annual leave loading and overtime payments.

The loading shall be taken into account in the calculation of the monetary value of long service leave on termination of service where an employee is in receipt of the loading on the day preceding termination.

(6) For the purpose of computing overtime payment to an employee whose starting and finishing times have been fixed at times other than 8.30 am and 4.30 pm respectively under an agreement made pursuant to clause 2, Hours of Duty, the times specified in subclause (2) shall be advanced or retarded, as the case

may be, by a period equivalent to the period by which the commencing time as fixed is earlier or later than 8.30 am.

- (7) Payment of overtime for shift work on field works shall be made at the following rates:
- (a) Subject to paragraph (b) of this subclause all time worked in excess of the hours worked daily or weekly by employees on field works working normal hours Monday to Friday, between midnight Sunday and midnight Saturday shall be paid for at the rate of time and one-half for the first two hours and double time thereafter based on the employee's ordinary rate of pay. For this purpose each period of overtime shall stand alone.
 - (b) An employee shall not be required to be on duty for more than 16 consecutive hours. After being on duty for 16 consecutive hours an employee shall take a rest break of at least four consecutive hours and where the employee is directed to resume without having had a rest break of eight consecutive hours payment shall be at the rate of double ordinary time until the employee is released from duty for eight consecutive hours. Any rostered working time occurring during such absence shall be paid for at the appropriate shift work rates.
 - (c) Any work carried out on Sundays shall be paid for at the rate of double time.
 - (d) Any work carried out on public holidays shall be paid for at the rate of double time and one-half.
 - (e) An employee who works overtime on Saturday or Sunday or on a public holiday shall be paid a minimum payment for three hours at the appropriate rates.
 - (f) Employees working overtime which extends beyond a period of one and one-half hours from the normal finishing time of a shift shall, at the conclusion of such period of one and one-half hours, be entitled to a meal break, and to the allowance for tea money prescribed in clause 8, Allowances. Meal breaks taken during any period of overtime which has been worked as an extension of an afternoon or night shift shall be of 30 minutes duration and shall be paid for as time worked.
 - (g) An employee required to work a shift on a day on which they have been rostered off shall be paid at overtime rates in accordance with paragraphs (a), (c) or (d) of this subclause.

Unless the employee concerned has been notified at least 24 hours in advance, one meal allowance shall be paid for during such shift at the rate prescribed for tea money in clause 6, Allowances.

4. Shift Work

This clause does not apply to employees who are subject to the following clauses of this award:

Clause 10, Additional Conditions for Motor Registry and Telephone Customer Service Centre Staff

Clause 11, Additional Conditions for DRIVES Help Desk Staff

Clause 12, Additional Conditions for Work Support Staff

This clause applies to employees subject to clause 13, Additional Conditions for Work Support Officers of this award.

A. Head Office

- (1) For the purpose of this clause:

"Day shifts" shall be those shifts worked between 7.00 am and 5.00 pm Monday to Friday.

"Afternoon shifts" shall be those shifts commencing at or after noon Monday to Friday.

"Night shifts" shall be those shifts finishing at or before 10.00 am Monday to Friday.

"Continuous work" means work carried out with consecutive shifts of employees throughout the twenty-four hours of each of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the Agency.

(2) Hours of Duty shall be as follows:

- (a) The ordinary working hours for day shifts shall not exceed those worked daily or weekly by other employees working normal hours Monday to Friday. The only break will be for lunch.

The lunch break shall be taken in the employee's time and shall not be regarded as working time.

- (b) The ordinary working hours for afternoon and night shifts shall not exceed those worked daily or weekly by other Head Office employees working normal hours Monday to Friday.

Meal breaks shall be of thirty minutes duration and shall be taken as part of the ordinary working hours, to be paid for at the appropriate shift rate.

- (c) No employee shall be required to work more than five consecutive hours without a meal break.

(3) Payment for Shift Work:

- (a) Payment for day shift shall be at ordinary rates of pay.
- (b) Payment for afternoon shift shall be at the employee's ordinary rate of pay plus 12½ per cent.
- (c) Payment for night shift shall be at the employee's ordinary rate of pay plus 15 per cent.
- (d) Payment for all ordinary time worked on a Saturday shall be at the rate of time and one-half of the employee's ordinary rate of pay.
- (e) Payment for all ordinary time worked on a Sunday shall be paid for at the rate of double time of the employee's ordinary rate of pay.

(4) Shift Rosters

- (a) Employees shall be rostered to work shifts on a rotating basis as required by the Agency provided that not more than five consecutive shifts shall be worked in seven consecutive days.
- (b) Wherever reasonably practicable notice shall be given of shifts to be worked at least seven days in advance. Rotating shifts shall rotate weekly commencing Monday. Where three shifts per day are being worked the order or rotation shall be from day shift to night shift, from night shift to afternoon shift and from afternoon shift to day shift.
- (c) An employee on rotating shifts shall not be rostered to work more than two weeks on afternoon shift and/or night shift in any period of three working weeks other than at their own request or by agreement between the employee concerned and the Agency. Should an employee be required to work afternoon and/or night shift for more than two consecutive working weeks (other than at their own request or by agreement between the employee concerned and the Agency) the employee shall be paid at the rate of time and one-half of the ordinary rate for all ordinary time worked on afternoon and/or night shift in excess of two consecutive weeks until the shifts are rotated.

(5) Payment of Overtime - Payment of overtime shall be made at the following rates:

- (a) Subject to paragraph (b) of this subclause, all time worked in excess of the hours worked daily or weekly by other Head Office staff working normal hours Monday to Friday, between midnight Sunday and midnight Saturday shall be paid for at the rate of time and one-half for the first two

hours and double time thereafter based on the employee's ordinary rate of pay. For this purpose each period of overtime shall stand alone.

- (b) An employee shall not be required to be on duty for more than 16 consecutive hours. After being on duty for 16 consecutive hours an employee shall take a rest break of at least four consecutive hours and where they are directed to resume without having had a rest break of eight consecutive hours they shall be paid at the rate of double ordinary time until released from duty for eight consecutive hours. Any rostered working time occurring during such absence shall be paid for at the appropriate shift work rates.
- (c) Any work carried out on Sundays shall be paid for at the rate of double time.
- (d) Any work carried out on public holidays shall be paid for at the rate of double time and one-half and for employees engaged on continuous work, any work carried out on public holidays shall be paid for at the rate of double time.
- (e) An employee who works overtime on Saturday or Sunday or on a public holiday shall be paid a minimum payment for three hours work at the appropriate rates.

Provided that:

- (i) Employees working overtime which extends beyond a period of one and one-half hours from the normal finishing time of a shift shall, at the conclusion of such period of one and one-half hours, be entitled to a meal break and to the allowance for tea money, prescribed in clause 2, Hours of Duty. Meal breaks taken during any period of overtime which has been worked as an extension of an afternoon or night shift shall be of 30 minutes duration and shall be paid for as time worked.
- (ii) An employee required to work a shift on a day on which they have been rostered off shall be paid at overtime rates in accordance with paragraphs (a), (c) or (d) of subclause (5).
- (iii) Unless the employee concerned has been notified at least twenty-four hours in advance, one meal allowance shall be paid for during such shift at the rate prescribed for tea money in clause 6, Allowances.
- (iv) An employee rostered off on a public holiday shall be credited with a days recreation leave for each such day, provided that a six or seven-day shift roster is in operation.
- (v) An employee employed under this clause and working a six or seven-day week three-shift roster shall be credited with an additional five days' recreation leave per annum. This leave shall accrue at the rate of 5/12 of a day for each complete month that an employee so works.

B. Employees on Field Work

(1) Hours

- (a) The ordinary working hours for day shifts shall not exceed those worked daily or weekly by employees on field works working normal hours Monday to Friday. The only break will be for lunch.

The lunch break shall be taken in the employee's time and shall not be regarded as working time.

- (b) The ordinary working hours for afternoon and night shifts shall not exceed those worked daily or weekly by other employees on field works working normal hours Monday to Friday.

Meal breaks shall be of thirty minutes duration and shall be taken as part of the ordinary working hours, to be paid for at the appropriate shift rate.

- (c) No employee shall be required to work more than five consecutive hours without a meal break.

- (d) The following additional provisions will apply to employees whose ordinary working hours are thirty-eight per week:
- (i) Employees engaged for work under the terms of this subclause shall accrue 0.4 of one hour for each shift worked to allow one shift to be taken off as a paid shift for every twenty-shift cycle.

The twentieth shift shall be paid for at the shift rate(s) prescribed in paragraphs (a), (b), (c) and (d) of subclause (2) Payment of Part C, Employees on Field Work of this clause.
 - (ii) Each shift of paid leave taken and any public holidays occurring during any cycle of four weeks shall be regarded as a shift worked for accrual purposes.
 - (iii) An employee who has not worked, or is not regarded by reason of subparagraph (ii) of this paragraph as having worked a complete four-week cycle, shall receive pro rata accrued entitlements for each shift worked (or fraction of a shift 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.
 - (iv) The Agency and employees working under the terms of this subclause shall agree upon arrangements for rostered paid days off during the twenty-shift cycle or for accumulation of accrued days, provided that such accumulation shall be limited to no more than five such accrued days before they are taken as paid days off, and when taken the days shall be regarded as days worked for accrual purposes in the particular twenty-shift cycle.
 - (v) Once such shifts have been rostered they shall be taken as paid shifts off provided that where the Agency for emergency reasons requires an employee to work on the rostered shift off, the employees shall take one paid shift off before the end of the succeeding work cycle, and the employee shall be paid for the shift worked at the rates prescribed for Saturday work in clause 3, Overtime.

(2) Payment

- (a) Payment for day shift shall be at ordinary rates of pay.
- (b) Employees shall be paid at the rate of time and one-quarter when working on the second (afternoon) shift on either a two or three-shift system.
- (c) If three shifts are worked, the third (night) shift shall be paid for at the rate of time and one-quarter.
- (d) Where employees are required to work on a shift not worked on a two or three-shift system, which commences at or after 4.00pm and which finishes at or before 7.00am such shift shall be of no longer duration than eight hours and shall be paid for at the rate of time and one-half.
- (e) Where the arrangement for working shifts provides for shifts on less than five continuous working days then overtime rates shall be applicable; provided also that in cases where less than a full week is worked due to the action of the employee then in such cases the rate payable for the actual time worked shall be ordinary shift rates.
- (f) Shift work hours shall be worked between Monday and Friday inclusive. Time worked on a Saturday, Sunday or a public holiday shall be paid for at overtime rates; provided that an ordinary night shift commencing before and extending beyond midnight Friday shall be regarded as a Friday shift.
- (g) An employee shall be given at least 48 hours notice of a requirement to work shift work.
- (h) Notice of any alteration to shift hours shall be given to the employee not later than ceasing time of the previous shift.

- (i) No employee who is employed during ordinary working hours shall be employed on afternoon or night shifts except at overtime rates.
- (3) Rosters
- (a) Where the arrangement for working shifts requires employees to be rostered to work shifts on a rotating basis not more than five consecutive shifts shall be worked in seven consecutive days.
 - (b) Wherever reasonably practicable notice shall be given of shifts to be worked at least seven days in advance. Rotating shifts shall rotate weekly commencing Monday. Where three shifts per day are being worked, the order of rotation shall be from day shift to night shift, from night shift to afternoon shift and from afternoon shift to day shift.
 - (c) An employee on rotating shifts shall not be rostered to work more than two weeks on afternoon shift and/or night shift in any period of three working weeks other than at the employee's own request or by agreement between the employee concerned and the Agency. Should an employee be required to work afternoon and/or night shift for more than two consecutive working weeks (other than at the employee's own request or by agreement between the employee concerned and the Agency), the employee shall be paid at the rate of time and one-half of the ordinary time worked on afternoon and/or night shift in excess of two consecutive weeks until the shifts are rotated.

5. Increments

- (1) Except in the case of promotion from one classification to another, an employee shall not be entitled to an increase in their rate of salary until they have received that rate for a period of twelve months.
- (2) Any increments under this award may be withheld or the salary of any employee may be reduced in any case where, on account of the employee's inefficiency or misconduct in an official capacity, the Agency is of the opinion that such increments should not be paid or that the salary of such employee should be reduced.

Provided that an employee whose salary is reduced or from whom an increment is withheld shall, within thirty days of the reduction taking effect or the increment becoming due, be furnished with a statement in writing of the reason for withholding the increment or for the reduction in salary. The provisions of clause 16, Appeals in Respect of Salary, Grade or Classification, shall then apply.

Periods of leave without pay where the total period of absence in any one year exceeds five days shall not count as service for increment purposes.

Nothing included in this clause shall preclude the reference of matters by the Association or the Agency to the NSW Industrial Relations Commission.

6. Allowances

A. Meal Allowances

- (1) Meal Break while Travelling
 - (a) Employees are entitled to claim a meal allowance when travelling on RMS business if they:
 - (i) return to their headquarters or place of residence on the same day;
 - (ii) have a meal break of at least 30 minutes away from their residence or headquarters; and
 - (iii) incur expense in obtaining the meal.

- (b) Employees shall receive meal allowances at the rates contained in Item 1 of Table B, Rates - Allowances, and subject to the following provisions:
 - (i) Breakfast - the journey must have commenced before 6am and at least one hour before the employee's normal starting time.
 - (ii) Lunch - when employees are required to travel a total distance of at least 100km on the day and take their lunch break at least 50km from their normal headquarters. Employees whose position requires them to undertake work in the field and are regularly required to take lunch away from their nominated headquarters shall not be entitled to a lunch allowance.
 - (iii) Evening meal - the allowance may only be claimed when the meal is taken after 6:30pm.

(2) Meal Allowance - Overtime

- (a) Subject to clause 3, Overtime, where an adequate meal is not provided by RMS, an employee will be paid a meal allowance for meal breaks taken, provided that:
 - (i) the performance of the work concerned at that time was necessary;
 - (ii) the employee incurred expenditure in obtaining the meal;
 - (iii) where the employee was able to cease duty for at least 30 minutes before or during the working of overtime they did so; and
 - (iv) the employee resumed duty after the meal break, unless there are acceptable reasons for a meal to be taken at the end of an overtime period.
- (b) Employees shall receive meal allowances at the rates contained in Item 2 of Table B, Rates - Allowances and subject to the following provisions:
 - (i) Breakfast - employees are required to commence work at or before 6am and at least one hour before the prescribed starting time.
 - (ii) Lunch - employees are required to work on any Saturday, Sunday or state-wide public holiday and their prescribed starting time is
not later than 8.30am and they are required to work until or beyond 1.30pm; or
later than 8.30am and they are required to work until or beyond 2pm.
 - (iii) Evening meal - when employees are required to work until or beyond 6pm on a normal working day, an evening meal allowance will be paid to employees who
work under a flexible working hours arrangement and work for more than eight and one-half hours, excluding the lunch break on that day;
do not work under a flexible working hours arrangement and whose prescribed starting time is not later than 8:50am, work for at least one and one-half hours after the prescribed ceasing time.

B. Travelling, Field and Lodging Allowances

(1)

- (a) This subclause applies to employees who:

- (i) are required to proceed on duty away from their normal headquarters;
 - (ii) cannot return to their normal headquarters on the day of departure; and
 - (iii) do not permanently change their headquarters.
- (b) For the purposes of this subclause, travelling allowance will be calculated at the hourly rate of the relevant sustenance allowance as set at Item 3 of Table B, Rates - Allowances.
- (c) The need to obtain overnight accommodation will be determined by RMS, having regard to the safety of the employee travelling on official business and local conditions. Where employees are required to attend conferences or seminars which involve evening sessions or make an early start in a location away from their normal workplace, overnight accommodation will be appropriately granted.
- (d) Employees who are required to stay in overnight accommodation will receive the rate for that region as set at Item 3 of Table B, Rates - Allowances. The allowance will be reduced to 50% of the relevant rate for employees who remain in a region for more than 35 days and up to a period of six months.
- (e) Employees who wish or are directed to claim actual and reasonable expenses while staying in overnight accommodation will be entitled to an 'Incidentals' allowance as set at Item 4 of Table B, Rates - Allowances.
- (f) Sustenance allowance will be calculated from the time of departure from:
- (i) their normal headquarters;
 - (ii) their normal place of residence where they travel directly from their normal place of residence; or
 - (iii) another temporary work location.
- (g) Employees who are sent from one temporary work location to another will continue to be entitled to the relevant allowance, provided that the distance between their headquarters and the subsequent temporary work location is sufficient to make it necessary to continue such arrangements.
- (h) Subject to paragraph (f) of this subclause, where the allowance for overnight accommodation at the subsequent temporary work location(s) is a different rate than that for the previous temporary work location, employees will receive the relevant rates based on the times of departure from each location. Methods for calculation of sustenance allowance for employees travelling between different locations are contained in the RMS Expenses and Allowances Policy (as varied from time to time).
- (i) Sustenance allowance is not payable in respect of:
- (i) any period during which employees return to their residence on weekends or public holidays, from the time of arrival at the residence until the time of departure;
 - (ii) any period of leave, except with the approval of RMS, or as otherwise provided by Part B, Travelling, Field and Lodging Allowances of this clause; or
 - (iii) any other period during which employees are absent from the temporary work location, otherwise than on official duty.
- (j) For the purposes of this clause, 'Sydney' means the area bounded by Palm Beach and Cowan in the north, St Marys in the west and Catherine Fields and Heathcote in the south. Notwithstanding this definition, employees in receipt of an allowance for overnight

accommodation, are expected to find accommodation as close as possible to the temporary work location which they are attending.

- (k) Employees who return from a temporary work location after more than 35 days and less than six months' lodging will be paid for their travelling at the hourly rate of the relevant 35 days or less allowance. Travelling will be calculated from the time of departing the temporary work location to the time of arrival at their headquarters or normal place of residence.
 - (l) Where the sustenance or meal allowance claimed under subclause (1) of Part A, Meal Allowances or Part B, Travelling, Field and Lodging Allowances of this clause is deemed
 - (i) insufficient to adequately reimburse an employee for expenses properly and reasonably incurred, a further amount may be paid to reimburse the employee for the additional expenses incurred; or
 - (ii) in excess of the amount which would adequately reimburse an employee for expenses properly and reasonably incurred, RMS may reduce the allowance to that which would reimburse the employee for expenses incurred properly and reasonably.
 - (m) Payment of any actual expenses will be subject to the production of receipts, unless RMS is prepared to accept other evidence from the employee concerned.
- (2)
- (a) Employees who perform official duty at a temporary location may be directed to lodge in accommodation organised and provided by RMS.
 - (b) Where RMS does not provide meals, employees will be reimbursed meal expenses actually and reasonably incurred during the time spent away from their residence to perform that duty.
 - (c) Employees staying in RMS-provided accommodation will receive an 'incidentals' allowance at the rate set at Item 4 of Table B, Rates - Allowances.
- (3) In the case of employees whose duties require them to proceed from their headquarters to the field for a period of one week or more and who are within reasonable travelling distance from their headquarters at weekends (reasonable travelling distance from Sydney being within the area bounded by Newcastle, Singleton, Bowenfels, Yass and Nowra), their claims for field and lodging allowances are to be calculated as follows:
- (a) Travelling allowance will be paid from time of departure from headquarters to time of arrival at a new location and on return journeys to headquarters. Where, with approval, an employee uses a private vehicle, travelling allowance shall not exceed the allowance which would have been payable had the employee travelled by the appropriate mode of public transport.
 - (b) Lodging allowance will be paid at the rate in accordance with the above provisions, on the basis of reasonable actual cost plus \$15.45 per day subject to the production of receipts from time of arrival at a new location until time of departure, which normally would be Monday to Friday, respectively.

If it is necessary to obtain accommodation on a weekly basis in order to preserve continuity of accommodation, the reasonable actual cost plus \$15.45 per day will be paid if this cost should exceed the allowance payable under this award from time of arrival to time of departure each week. Where the actual cost is being claimed, expenses must be supported by receipts.
 - (c) Journeys each week to and from one location will be regarded as separate trips for the purpose of calculating travelling, field and lodging allowances.
 - (d) Return rail warrants will be issued each week to enable the employee concerned to return to headquarters at weekends.

Where approval is given for an employee to travel by private conveyance the employee shall be granted the equivalent cost of rail fares or fares by the recognised mode of public transport. Provided that the employee may be required to produce evidence that the journey was actually made in a private conveyance.

Employees whose duties require them to proceed from their headquarters to the field, and who are not within reasonable travelling distance from their headquarters at weekends, may return and have their fares paid to their headquarters at the intervals and under the conditions set out hereunder:

- (i) Where the distance to be travelled from the field to their headquarters is such that the issue of rail warrants (including sleepers) will enable employees to travel in their own time to spend 48 hours at their headquarters:
 - (1) Employees with dependants after four weeks absence from headquarters shall be issued with one first-class return rail warrant (including sleepers). Thereafter one first-class return rail warrant (including sleepers) will be issued each four weeks. Alternatively, one economy class return rail warrant may be issued each two weeks.
 - (2) Employees without dependants after eight weeks absence from headquarters shall be issued with one first-class return rail warrant (including sleepers). Thereafter, one first-class return rail warrant (including sleepers) will be issued each eight weeks. Alternatively, one economy return rail warrant may be issued each four weeks.
- (ii) Where the distance to be travelled from the field to their headquarters by the shortest practicable route is such that employees are unable to travel in their own time to spend 48 hours at their headquarters:
 - (1) Employees with dependants after four weeks absence from headquarters shall be issued with one first class return rail warrant (including sleepers) and shall be granted special leave not exceeding two days (normally Friday and/or Monday) each four weeks.
 - (2) Employees without dependants after eight weeks absence from headquarters shall be issued with one first class return rail warrant (including sleepers) and shall be granted special leave not exceeding two days (normally Friday and/or Monday) each eight weeks.

Provided that the Agency may, having regard to the period of absence from duty necessitated by rail travel, elect to provide transport by air.
- (iii) Those employees who, in accordance with subparagraphs (i) and (ii) of this paragraph, return to their headquarters after the specified period of absence has elapsed will be entitled to the following additional expenses and conditions:
 - (1) Travelling time as provided in subclause (1) of this clause.
 - (2) Each journey will be regarded as a separate trip for the purpose of calculating field and lodging allowances.
- (iv) Where an entitlement to the issue of travel warrants exists in accordance with the provisions of subparagraphs (i) and (ii) of this paragraph, an employee may travel by other forms of conveyance subject to approval and be granted the equivalent cost of rail fares (including sleepers) or fares by the recognised mode of public transport, subject to production, on request, of evidence that the journey was actually made: provided that the period of absence from duty shall not in any case exceed the period which would be required if the journey was made by the form of public transport approved.

C. Allowances to Transferred Employees

- (1)
- (a) This clause shall apply to all transfers except:
- (i) Transfers made at the request of the employee within a period of two years of taking up duty at their previous headquarters.
 - (ii) Transfers to a new headquarters within 34 km of an employee's previous headquarters.
 - (iii) Transfers by reason of official misconduct.
- (b) Where special circumstances exist and the Agency so approves, this clause shall apply to a transfer within the meaning of subparagraphs (i) or (ii) of paragraph (a) of this subclause.
- (2) Where an employee is transferred from one headquarters to another the employee shall be paid a travelling allowance at the rate per hour set out in Part B, Travelling, Field and Lodging Allowances of this clause until the time of their arrival at the new headquarters and thereafter the appropriate allowance or allowances set out hereunder:
- (a) An employee required to occupy camp or local quarters in the field shall be paid the relevant accommodation allowance prescribed in the said Part B, for employees in camp or local quarters.
- (b) Where the Agency is prepared to meet the expense of transferring the dependants of an employee, but does not provide a residence, and because of inability to secure a residence or for any other reason accepted by the Agency, the employee finds it necessary while separated from their dependants to go into lodgings while waiting to take up occupation of their new residence, then the relevant accommodation allowances as set out in the said Part B, shall be paid for the period of such lodging, but not for any period in excess of eight weeks.
- (c) For the period beyond the first eight weeks after arrival at a new location, a transferred employee who is separated from their dependants under circumstances set out in paragraph (b) of this subclause, shall be recouped actual and reasonable out-of-pocket expenses less an amount set at Item 5 of Table B, Rates Allowances, per week subject to the production of receipts. Such recoupment shall be limited to a period not exceeding six months, except with the special approval of the Agency.
- (d) An employee who is separated from their dependants under circumstances set out in paragraphs (a), (b) and (c) may return and have the fares paid to their home at the intervals and under the conditions set out hereunder:
- (i) After four weeks absence from home one first class return rail warrant (including sleepers) will be issued. Thereafter, one first class return rail warrant (including sleepers) will be issued each four weeks. Alternatively, one economy class rail warrant may be issued each two weeks. In either case the employee shall travel in their own time.
 - (ii) Where, owing to the distance to be travelled it is not possible for an employee to travel in their own time to spend 48 hours at home, the employee will, after four weeks absence from home, be issued with one first class return rail warrant (including sleepers) and be granted special leave not exceeding two days (normally Friday and Monday) each four weeks. Alternatively, the Agency may, having regard to the period of absence from duty necessitated by rail travel, elect to provide transport by air.
 - (iii) An employee entitled to the issue of travel warrants under the provisions of subparagraphs (i) or (ii) of this paragraph may travel by other forms of conveyance subject to approval and be granted the equivalent cost of rail fares (including sleepers). The period of absence from duty shall not in any case exceed the period which would be required if the journey was made by the recognised form of public transport. If the journey was

actually made in their own motor vehicle, the employee may be required to produce evidence to this effect.

- (iv) If the employee's new headquarters are within reasonable travelling distance of their previous headquarters, as defined in the said Part B, the conditions set out in that Part will apply.

(e)

- (i) Where the Agency is prepared to meet the expense of transferring the dependants of an employee, but does not provide a residence, and because of inability to secure a residence or for any other reason accepted by the Agency the employee finds it necessary to go into temporary accommodation with his/her dependants while waiting to take up occupation of a residence, then the employee shall be recouped, subject to the production of receipts, three-quarters of the actual and reasonable expenses so incurred by the employee and dependants within a period of eight weeks of their arrival at the new headquarters.

Prior approval of the Agency is to be sought where, having regard to the special circumstances involved, any reimbursement beyond this period is considered necessary.

- (ii) Where the Agency is prepared to meet the expenses of transferring an employee without dependants, but does not provide a residence, and because of inability to secure permanent accommodation or for any other reason accepted by the Agency the employee finds it necessary to go into temporary lodgings while waiting to take up occupation of permanent accommodation, then the employee shall be recouped, subject to the production of receipts, 50 per cent of the actual and reasonable expenses so incurred for a period up to four weeks from the date of the employee's arrival at the new headquarters subject to the maximum allowance so payable not exceeding the amount set at Item 6 of Table B, Rates - Allowances, per week.

Prior approval of the Agency is to be sought where, having regard to the special circumstances involved, any reimbursement beyond this period is considered necessary.

- (f) Where the Agency is not prepared to meet the expense of transferring the dependants of an employee and such employee finds it necessary to go into camp, local quarters or lodgings at the new location the relevant accommodation allowance set out in Part B, Travelling, Field and Lodging Allowances, shall apply.
- (g) Where an employee is in receipt of an accommodation allowance under the provisions of paragraph (f) of this subclause they shall be entitled to the issue of travel warrants and the granting of special leave as prescribed in paragraph (d) of this subclause.

(h)

- (i) When an employee is transferred from one headquarters to another under circumstances which require them to change their place of residence and necessitate removal of normal household furniture and effects, the following additional allowance shall be paid:
The amount set at Item 7(b) of Table B, Rates - Allowances, where the household furniture and effects are of not less value than the amount set at Item 7(a).

The amount set at Item 7(c) of Table B, Rates - Allowances, where the household furniture and effects are of not less value than the amount set at Item 7(a).

- (ii) In the event of a transferred employee changing their place of residence and not being eligible to receive the allowance referred to under subparagraph (i) above, the amount set at Item 7(d) of Table B, Rates - Allowances shall be paid.

- (i) Where an employee and spouse, who is also an employee, are both transferred to the same new headquarters which necessitates a change in place of residence the Agency's prior approval is to be sought regarding their leave and expenses entitlements as transferred employees.
- (3)
- (a) Where an employee already owning their home is transferred under circumstances where the Agency is prepared to meet the cost of transferring their dependants and effects, and sells the home at the then headquarters for the purpose of purchasing a home or land upon which to erect a residence at the new headquarters the employee shall, subject to the conditions prescribed in subparagraph (ii) of this paragraph, be entitled to reimbursement of the following expenses incurred in such transactions:
- (i) where the employee has engaged a Solicitor to act for them in those transactions, the Solicitor's professional costs and disbursements in respect of such transactions which are limited to Schedule 1 under the Conveyancing Act;
- (ii) stamp duty paid in respect of the purchase of the residence or land at the employee's new location, and in respect of any mortgage entered into or discharge of mortgage in connection with such transactions;
- (iii) fees paid in respect of the registration of transfer and mortgage;
- (iv) where the employee has engaged an estate agent to sell the residence at the former location, the commission paid to the estate agent in respect of such sale.
- (b)
- (i) Reimbursement of expenses under this clause shall only be made where the sale of the employee's former residence and the purchase of either a residence or land upon which to erect a residence at their new location are effected within a period commencing not earlier than six months prior to the employee's transfer and ending not more than four years after such transfer.
- (ii) A transferred employee owning a residence at a former location but who has taken up rented accommodation on transfer shall be regarded as covered by the provisions of this award relating to the reimbursement of conveyancing and incidental costs on a subsequent transfer, provided periods of not more than four years have elapsed between transfers.
- (iii) Where it is not practicable for the transferred employee to purchase a residence in their new location and they have disposed of their former residence, such employee is not to be excluded from the benefit of this award when subsequently purchasing a residence in their new location on current or subsequent transfer within the time limit allowed in subparagraph (b) of this paragraph.
- (iv) The Agency will be prepared to consider individual cases where the four-year period referred to in subparagraphs (a), (b) and (c) of this paragraph has been exceeded but may require full details of why sale and/or purchase of residence could not be completed in the four-year period.
- (v) The maximum amounts which an employee may be reimbursed under this clause shall be limited to the amounts which would be payable had the sale and purchase prices of the properties involved in each case had been the amount set at Item 8 of Table B, Rates - Allowances.
- (vi) In so far as stamp duty is concerned, the limit set at said Item 8 does not apply where an employee purchases a residence or land on which to erect a residence, and enters into occupation of the home within a period of 15 months of the date of transfer to the new headquarters.

- (vii) The reimbursement of expenditure paid to estate agents in respect of commission charges shall be limited to 5 per cent on the first \$15,000; 3 per cent on the next \$45,000; and 2.5 percent thereafter up to a maximum value of the amount set at Item 8 of Table B, Rates - Allowances.
- (c)
- (i) Where a transferred employee entitled to the reimbursement of conveyancing and other costs under paragraphs (i) and (ii) of subclause (b) of this clause, purchases a residence or the land upon which to erect a residence at their new headquarters prior to the sale of their former residence, they shall be entitled to reimbursement for any Council or other Local Government rates levied in respect of the former residence in respect of any period during which such former residence remains untenanted. Provided that the Agency may require the employee to furnish acceptable evidence that reasonable efforts are being made to sell the former residence at a fair market price.
 - (ii) A transferred employee shall be entitled to reimbursement of any costs incurred in respect of the connection of gas and/or electricity supplies not being refundable costs.
 - (iii) A transferred employee entitled to reimbursement of conveyancing and other costs under paragraphs (i) and (ii) of subclause (b) of this clause, shall be entitled to reimbursement of the cost of Survey Certificates, Pest Certificate and/or Building Society registration fees reasonably incurred in seeking financial assistance for the purpose of purchasing a new residence or the land upon which to erect a new residence at their new headquarters.
- (4) When an employee is transferred under circumstances where the Agency is prepared to meet the cost of transferring the employee's dependants and effects, the employee shall be granted reimbursement of the costs of installing a telephone at the new location.

Provided that:

- (a) The employee was a telephone subscriber at the previous residence at the time of transfer;
 - (b) The amount of the reimbursement will be the full amount of transfer or installation fee only, that is, fees for extra telephone equipment and services etc., will be excluded;
 - (c) Claims are supported by receipts.
- (5) Where an employee is transferred from one location to another and desires to arrange in advance housing accommodation, the employee and one member of the employee's household may each be provided with one first class return rail warrant, plus sleeping berths where applicable. Alternatively, if the employee provides their own transport, reimbursement at the appropriate specified journey rate for the return journey, with a maximum reimbursement equal to the cost of two first class return rail fares (including sleeping berths) will be made.

In addition, subject to approval, an employee shall be entitled to special leave of:-

- (a) Two days on full pay for the purpose of visiting the new location with a view to obtaining suitable accommodation; and
- (b) Such leave as is necessary, on full pay, to travel to the new location for the purpose referred to in paragraph (a) of this subclause.

Provided that where the purpose referred to in paragraph (a) of this subclause is achieved in a lesser time than that specified, the employee shall be entitled to leave on full pay for that lesser time and provided also where the purpose referred to in the said paragraph (a) cannot be achieved in the time specified the Agency may grant such extra leave as is considered necessary.

When an employee in accordance with the said paragraph (a), travels to the new location to seek accommodation and incurs expenses in relation to overnight accommodation, the employee shall, subject to the production of receipts be reimbursed reasonable and actual costs of accommodation and meals for self and a member of the employee's household, provided the amount to be reimbursed does not exceed that prescribed under Part B, Travelling Field and Lodging Allowances of this clause.

When an employee has been unable to take advantage of the above-mentioned concessions but, subsequent to entry on duty at the new headquarters, desires that one member of their household travel to the new headquarters to assist in the search for permanent accommodation, the member concerned may be granted one first class return rail warrant, including necessary sleeping berths, to undertake the journey. Should another mode of transport be used, the actual cost of such transport may be refunded subject to the amount payable not exceeding the value of one first class return rail warrant (including sleeping berths). Where the journey is undertaken by car, the allowance payable is to be based on the appropriate specified journey rate as advised from time to time.

This provision will not apply when an employee's residence is available or where the employee concerned proposes to re-occupy their own home.

- (6) The Agency may grant, on application and having regard to the circumstances, a weekly allowance to an employee who is faced with increased accommodation costs following transfer.

Provided that the allowance shall:

- (a) be based on the difference between an employee's outgoings for rent in the new location and outgoings for rent in the previous location;
- (b) be a maximum of the amount set at Item 9 of Table B, Rates - Allowances per week;
- (c) be payable for a period of up to six months in each case, unless exceptional circumstances exist which would warrant an extension up to a maximum period of 12 months;
- (d) apply to an employee occupying privately owned property or property required for future road works, but not to one occupying a property purchased by the Agency for staff housing;
- (e) apply only to transfers made for the Agency's purposes, that is, not to transfers made at an employee's own request;
- (f) apply to transfers from city to country location, country location to city and from one country location to another; and
- (g) be considered for payment only after written application has been supported by receipts as to the actual rental being paid.

- (7) A transferred employee shall be reimbursed:

- (a) The cost of board and lodging in respect of dependant children undergoing secondary education in Year 12 at a school in the employee's old location when elected subjects are not available at a school at the employee's new location. In such case, the employee, on production of receipts of payment and a certificate from the Department of Education and Training that the elected subjects are not available at a school at the employee's new location, shall be granted an allowance to meet such costs. In these cases, the parent/guardian will be required to pay the amount set at Item 10(a) of Table B, Rates - Allowances per week of the board and lodging expenses and the Agency will reimburse further costs up to a maximum of the amount set at Item 10(b) of Table B per week for each child.
- (b) The cost of those items of essential school clothing listed from time to time in personnel circulars that are required to be replaced or purchased as a direct result of the employee's transfer from the

former location to the new location requiring the changing of schools. When an item of clothing required at the new school is not included in the list, the Agency will consider reimbursing the transferred employee the cost of same, but will require full particulars and the circumstances surrounding the requirement to purchase.

D. Climatic Allowances

- (1) Employees stationed in an area upon or to the west of a line starting from a point on the bank of the Murray River opposite Swan Hill and thence by straight lines passing through the following towns or localities in the order stated, namely, Conargo, Coleambally, Hay, Rankin's Springs, Marsden, Condobolin, Peak Hill, Nevertire, Gulargambone, Coonabarabran, Wee Waa, Moree, Warialda, Ashford and Bonshaw shall be paid a climatic allowance.
- (2) The amounts of climatic allowances for each classification are set at Item 11 of Table B, Rates - Allowances.
- (3) Grade B allowances are payable to employees stationed and resident at the following locations:
Angledool, Barrigun, Bourke, Brewarrina, Clare, Enngonia, Goodooga, Ivanhoe, Lake Mungo, Lightning Ridge, Louth, Mungindi, Pooncarie, Redbank, Walgett, Wanaaring, Weilmoringle, White Cliffs, Wilcannia and Willandra.
- (4) Grade C allowances are payable to employees stationed and resident at the following locations:
Fort Grey, Mootwingee, Mount Wood, Nocolche, Olive Downs, Tibooburra and Yethong.
- (5) All other locations where the climatic allowance is payable are classified as Grade A.

N.B. Deniliquin is to be classified as Grade A for the payment of this allowance.

E. Fares Subsidy - Climatic Allowance Area

- (1) An employee whose headquarters are situated in an area in which a climatic allowance is paid shall be entitled to a subsidy toward the cost of fares incurred when proceeding on annual recreation leave from that area.

The maximum amount payable to such an employee in respect of a period of annual recreation leave for a return journey from their headquarters to Sydney, or elsewhere not exceeding the cost of a return journey to Sydney, shall be:

- (a) The actual cost, less the amount set at Item 12(a) of Table B, Rates - Allowances, of fares incurred in travel by rail (including the cost of sleeping berths where these are actually used) and/or service car; or
- (b)
 - (i) The amount set at Item 12(b) of Table B in respect of a married employee, their spouse and dependant children; or
 - (ii) The amount set at Item 12(c) of Table B in respect of an employee without dependants whichever is the lesser amount.

Payment will not be made in respect of taxi fares or meals.

- (2) Where a means of transport other than rail and/or service car is used, the subsidy will be calculated on the basis of equivalent fares (including sleepers) as if such public transport had been used.
- (3) An employee shall not be entitled to payment under these provisions more than once in respect of each period of 12 months commencing from the date of taking up duty in the area.

- (4) For the purposes of this clause, "annual recreation leave" shall, except with the special approval of the Agency, mean leave of not less duration than would be required to qualify for the annual leave loading referred to in Part H, Annual Recreation Leave of Absence, of clause 9, Leave.

F. Calculation of Allowances

- (1) In the case of weekly allowances, the allowance for any portion of a week shall be calculated on a daily basis of one-fifth of the weekly rate, and on an hourly basis of one twenty-fourth of the daily rate so calculated. In the case of the daily allowances prescribed in clause 6, Allowances, the allowance for any portion of a day shall be calculated at one twenty-fourth of the daily rate.
- (2) In computing the time occupied, a fraction of an hour if less than half an hour shall not be taken into account, but if half an hour or more, it shall be reckoned as one hour.

G. Employee Relieving

- (1) Where in any one period of relief an employee relieves in a higher graded position for five working days or more and is instructed to perform the whole of the duties of this position, they shall be paid for the full period of relief the minimum salary of the higher graded position.
- (2) Where in any one period of relief an employee relieves in a higher graded position for five working days or more and does not perform the whole of the duties of such employee in the higher graded position, they shall be paid such allowance as may be determined by the Agency and prior to entering on relief shall be advised of the allowance to be paid and the basis for its assessment.

Provided that:

- (a) should the period of relief be in excess of 12 months the relieving employee shall be entitled to be paid the salary that would be payable under the relevant award, industrial agreement or determination to a person appointed to that position on the day the relieving employee commenced relieving duties in that position; or such proportion thereof as may be determined by the Agency;
 - (b) except in an emergency, prior approval to payment of a higher duties allowance is to be obtained;
 - (c) an employee relieving another in a lower graded position shall not suffer any reduction in salary.
- (3) Incremental Progression by Allowance - Where a very lengthy period of acting in the one higher graded position is unavoidable, the employee concerned may progress by way of allowance to the next incremental step, provided that 100 per cent allowance has been paid continuously for a period of 12 months.

Where the allowance has been discontinued during a period of leave, the increment should be delayed accordingly.

Where there are broken periods of relief in the higher graded position or positions, such periods may be aggregated, irrespective of the nature of the work of the position(s). Such aggregated periods may be regarded as continuous service for the purpose of incremental progression within the grade of the position(s), provided that:

- (a) only periods in respect of which the level of the allowance together with the employee's salary is greater than or equal to the salary of the new position to which the employee is substantively appointed are counted;
- (b) any period of leave during which allowance was not paid is discounted;
- (c) aggregation does not extend over any break in excess of six months.

The same principles apply if an employee who has been relieving in higher graded positions is subsequently appointed to a similarly graded position, to determine salary and/or allowance in the new position.

H. Sydney Harbour Bridge Allowance

A Works Supervisor who is employed on the maintenance of the structure of the Sydney Harbour Bridge shall be paid an allowance as set out at Item 13 of Table B, Rates - Allowances.

7. Protective Clothing

Employees required to wear a uniform shall be responsible for maintaining such uniforms in a clean and pressed condition and shall be paid an allowance of \$8.00 per week for care and cleaning of uniform clothing.

General - The Agency shall provide free of charge such protective footwear, as necessary, which is reasonably expected to adequately protect all employees in the workplace.

8. Conveyance

A. Employees on Duty

- (1) Wherever possible, when an Agency vehicle is not provided, employees shall travel by the mode of public transport which affords the greatest economy. The full cost of fares for such conveyance shall be met by the Agency.

Provided that:

- (a) Where there is no public transport service and a taxi, hire car or rented car has to be used, the amount claimed must be supported by a receipt of payment for the service, or the claim may be disallowed.
 - (b) When, subject to prior approval, an employee uses a private conveyance, the equivalent cost of rail fares (including sleepers) or fares by the recognised mode of public transport to the location/s shall be allowed.
 - (c) Where air travel is considered appropriate, prior approval must be obtained.
 - (d) When an employee, subject to prior approval, uses a private conveyance for official Agency business, the employee shall be reimbursed the transport allowance rate as advised from time to time.
- (2) An employee will not be entitled to payment of fares for travel between their usual permanent place of work (i.e. headquarters) and their usual permanent place of residence. Provided that an employee required to attend temporarily at another location which involves extra fares shall be paid such fares (public transport) in excess of those usually incurred between home and headquarters. Alternatively, when public transport presents difficulties, an employee may, subject to prior approval, use a private conveyance and be reimbursed at the specified journey rate, as advised from time to time, less the amount of normal fares.
 - (3) Part B, Travelling, Field and Lodging Allowances, of clause 6, Allowances, deals with conveyance of an employee on periodic return to their headquarters.
 - (4) Part B of this clause deals with conveyance of an employee and dependants upon transfer.

B. Employees and Their Dependants Together With the Removal of Furniture

- (1)
- (a) Subject to the provisions of paragraphs (b) and (c) of this subclause, this clause shall apply to all transfers except:
 - (i) transfers made at the request of an employee within two years of taking up duty at their previous headquarters.
 - (ii) transfers to a new headquarters within 34 km of an employee's previous headquarters; and
 - (iii) transfers by reason of official misconduct.
 - (b) Where special circumstances exist and the Agency so approves this clause shall apply to a transfer coming within the meaning of subparagraphs (i) or (ii) of paragraph (a) above.
 - (c) The provisions of subclause (4) shall also apply to employees transferred under subparagraphs (i), (ii) or (iii) of paragraph (a) of this subclause.
- (2) When an employee is transferred by the Agency to a different headquarters which necessitates a change in place of residence involving removal of furniture and effects, the expense of packing, removing, unpacking and transit insurance thereon shall be paid by the Agency. Storage charges, for the period prescribed in subclause (3), will also be met.

Provided that:

Payment by the Agency for "all risk" insurance shall be made for the total cost involved, but shall not exceed the total cost which would be incurred by insuring the furniture and effects for an amount set at Item 14 of Table B, Rates - Allowances. Where the insured value exceeds that amount, the matter is to be referred to the Agency for consideration.

- (3)
- (a) Prior to incurring expense approval shall be obtained for the removal of furniture and effects and/or storage thereof up to a maximum of 8 weeks. Requests for approval are to be accompanied by:
 - (i) an inventory of the furniture and effects with the value and approximate volume thereof;
 - (ii) quotations from carriers for the cost of removal; and
 - (iii) if applicable, quotations for storage, limited to a maximum of 8 weeks from the date of transfer of the employee to their new headquarters. The Agency's prior approval shall be obtained for any extension of this period.

The quotations shall be obtained, where practicable, from at least two reputable carriers, and are to show the cost of removal from house to house, including packing and unpacking and the cost of "all risk" insurance.

The employee concerned must enter into a contract for the removal of the furniture and effects and the Agency will not be in any case be responsible for any loss or damage to the furniture or effects in the course of removal.
 - (b) An employee who is transferred to or from a country office may be granted special leave as follows:
 - (i) up to two days for the purpose of preparation and supervision of packing of personal and household effects prior to removal or to arrange storage; and

- (ii) up to one day for the combined purpose of cleaning the premises being vacated and/or occupying and settling into the new premises.
- (4) First class rail warrants and sleeping berths where applicable shall be granted to transferred employees and to their dependants. Other actual and necessary fares incurred with respect to the most economical mode of public transport during the journey shall also be allowed.

Provided that:

- (a) Where an employee elects to use their private vehicle the employee shall be paid a car allowance at the official business rate prescribed from time to time;
 - (b) Any time occupied on the journey in working hours in excess of what would have been occupied had the journey been made by the quickest practicable public surface transport route shall be deducted from the employee's recreation leave or be granted as leave without pay;
 - (c) Travelling allowances payable under clause 6, Allowances, to employees shall be limited to those payable if the quickest practicable route referred to had been followed.
- (5) An employee, during the transit of their furniture and effects, whether accompanied by their family or not, shall be entitled to claim Travelling, Field and Lodging Allowances under the said clause 6 for the time necessarily spend in travelling from the previous headquarters to the new headquarters.

Where it is necessary to lodge the employee's family or dependant relatives between leaving the previous headquarters and arriving at the new headquarters, the employee shall be recouped, subject to production or receipts, three-quarters of the actual and reasonable additional expenses so incurred but not for a period exceeding one week.

When a receipt is submitted for joint accommodation costs for the employee and family or dependant relatives, the family cost, for the purposes of this clause, shall be determined by deducting from the total of the accommodation account, plus an amount of \$15.45 per day (or amount as may be prescribed from time to time in Part B, Travelling, Field and Lodging Allowances of clause 6 where reasonable actual expenses are being claimed), an amount representing the single tariff rate, for room only; then deducting the cost of meals for the employee concerned at the rate prescribed in Part A, Meal Allowances of clause 6. (Three-quarters of the amount so assessed is payable in terms of this clause.)

- (6)
- (a) Upon retirement at a place other than the place of the employee's original headquarters, an employee shall be entitled to be reimbursed the costs actually and necessarily incurred in removing personal and household effects to a location of the employee's choice, together with the cost of insuring the same against damage in transit, provided:
 - (i) that the maximum amount of such reimbursement shall be limited to that payable had the employee moved to the place of their original headquarters on appointment to the Agency; and
 - (ii) the employee's relocation is effected within the period of 12 months following their retirement.
 - (b) Upon the death of an employee, the provisions referred to above shall apply to any claim made by the widow or widower within a period of 12 months of the transferred employee's death.
 - (c) The Agency will be prepared to consider any claims by children or dependant relatives of the deceased employee in similar circumstances but will require full particulars as to the reasons for special consideration.

9. Leave

This clause applies to staff subject to the following clauses:

Clause 10, Additional Conditions for Motor Registry and Telephone Customer Centre Staff

Clause 11, Additional Conditions for DRIVES Help Desk Staff

A. Generally

- (1) Special Leave - Further to Part C, Family and Community Service Leave of this clause, special leave may be granted by the Agency having regard to all the circumstances for which the leave is required, together with the length of service of the employee.
- (2) Examination Leave - Subject to prior approval, leave of absence with pay at ordinary rates may be granted for the time actually occupied in sitting for examinations approved by the Agency, up to a maximum of five days in any one calendar year, and for time necessarily spent in travelling to and from such examinations.
- (3) General Provisions -
 - (a) When an employee has been granted leave without pay covering a total period of absence from duty of not more than two weeks, payment shall be made at ordinary rates for public holidays occurring during such absence, provided that such public holidays fall on days which would normally be working days.
 - (b) Where an employee who is eligible for sick leave produces a satisfactory medical certificate to the effect that they have been incapacitated for any period whilst on recreation leave, or five consecutive working days or more whilst on extended leave, they may be re-credited with an equivalent period of recreation leave or extended leave, as the case may be, to the extent of the sick leave taken. Provided that the foregoing provision may be applied to extended leave taken prior to retirement but not to such leave taken prior to resignation or termination of services or to recreation leave taken prior to retirement, resignation or termination of services.
 - (c) For the purposes of this clause, periods of absence other than leave of absence approved by the Agency shall not be regarded as service.
 - (d) Except for leave without pay taken as part of leave for maternity purposes, the leave of absence expressed in these clauses shall be on the basis of a five-day working week.

B. Compensatory Travel Leave/Payment

- (1) Employees are entitled to claim ordinary-time payment or, if it is convenient to the Agency, compensatory leave, when directed to travel (outside normal working hours) on or in connection with official business in the following circumstances;
 - (a) Where travel is on a non-working day for time spent in travelling after 7.30 am;
 - (b) Where travel is on a working day for time spent in travelling before their normal commencing time or after their normal ceasing time, subject to the following conditions;
 - (i) the time normally taken for the periodic journey from home to headquarters and return is deducted from employees' travelling time (except on a non-working day);
 - (ii) periods of less than a quarter of an hour on any day shall be disregarded;
 - (iii) travelling time shall not include any period of travel between 11.00 pm on any one day and 7.30am on the following day where employees have travelled overnight and accommodation has been provided for them;

- (iv) travelling time shall be calculated by reference to the time that might reasonably have been taken by the use of the most practical and economic means of transport;
 - (v) travelling time shall not include time spent in travelling on permanent transfer where the transfer involves promotion which carries increased salary or where the transfer is for disciplinary reasons or where the transfer is made at the employee's request; or by ship on which meals and accommodation are provided.
- (2) Where employees qualify for compensatory leave or ordinary time payment they shall be entitled to have any necessary waiting time treated as travelling time subject to the following conditions:
- (a) Where there is no overnight stay with accommodation at a centre away from home or headquarters, 1 hour shall be deducted from the necessary waiting time between the time of arrival at the centre and the commencement of duty, and 1 hour shall be deducted from the necessary waiting time between the time of ceasing duty and the time of departure for home or headquarters or another centre;
 - (b) Where overnight accommodation is provided at a centre, any time from the completion of arrival at the centre until departure for home or headquarters or another centre shall not count as travelling time except:
 - (i) where duty is performed on the day of such departure, any necessary waiting time (less 1 hour) from completion of such duty until departure shall be counted; and
 - (ii) where no duty is performed on that day of such departure, necessary waiting time (less 1 hour) after the employee's normal commencing time until such departure shall be counted.
 - (c) Payment for travelling time and waiting time shall be at the employee's ordinary rate of pay on an hourly basis calculated as follows:

$$\text{Annual salary} \quad \times \quad \frac{7}{365.25} \quad = \quad \text{1 day at normal hours of work}$$

The rate of payment for travelling or waiting time on a non-working day shall be the same as that applying to a working day.

- (d) Employees that are in receipt of a salary in excess of the rate applicable to the maximum rate for USS Grade 7, plus \$1.00 per annum shall be paid travelling time calculated at the maximum rate for USS Grade 7, plus \$1.00 per annum, as adjusted from time to time.
- (e) An employee who receives an allowance for travel outside normal hours or whose salary includes compensation for travel outside normal hours shall not be entitled to compensatory leave or ordinary time payment for excess travelling and waiting time.
- (f) When an employee stops on a journey to take a meal, the time spent in taking the meal does not count for travelling compensation.
- (g) The maximum amount of compensatory leave or ordinary time payment which shall be granted in any period of 24 consecutive hours is 8 hours.
- (h) The decision as to whether an employee is to receive leave or payment for travel time is the prerogative of the functional manager.

C. Family and Community Service Leave

- (1) Employees may be granted Family and Community Service Leave (FACSL):
- for reasons related to family responsibility;

- for reasons related to performance of community service; or
- in case of pressing necessity.
- (2) The maximum amount of FACSL that an employee may be granted at ordinary rates is:
- two and a half days in the first 12 months of service; or
- five days in any period of two years after the first 12 months of service; or
- one day for each completed year of service, less the total amount of any FACSL or Short Leave already taken by the employee,
- whichever is the greater.
- (3) Part-time employees are entitled to FACSL on a pro-rata basis, based on the number of hours worked.
- (4) Employees who have exhausted their entitlements to FACSL may be granted additional FACSL up to three days to cover the period necessary to arrange or attend the funeral of a family member or relative as contained in 9I(3). Additional FACSL will be granted on a discrete 'per occasion' basis.
- (5) Employees appointed to RMS who have had immediate previous employment in the NSW Public Sector may transfer their FACSL from their previous employer.
- (6) 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 person prescribed in subclause (3) of Part I, Carer's Leave of this clause.
- (b) RMS 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) If required by RMS, the casual employee must establish the need to take leave, by production of evidence, such as a death certificate or statutory declaration providing details of the circumstances of death.
- (d) RMS shall not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of RMS to engage or not engage a casual employee are otherwise not affected.

D. Maternity Leave

- (1) General
- (a) Maternity leave is available to all female employees (including casual employees who have worked on a regular and systematic basis with RMS for at least 12 months) to enable them to take care of their new born child and retain their position and return to work within a reasonable period of time after they have given birth.
- (b) An employee who has been granted maternity leave and whose child is stillborn may elect to take available sick leave instead of maternity leave.
- (c) An employee who has applied for or been granted maternity leave and whose pregnancy terminates, must, as soon as practicable, notify RMS of the termination and the date on which it occurred.

- (d) Where an employee is on one form of leave and her child is born before the expected date of birth, maternity leave commences from the date of birth of the child.

(2) Paid Maternity Leave

Permanent and limited duration employees who have completed at least 40 weeks continuous service prior to the expected date of birth are entitled to paid maternity leave at their ordinary rate of pay for

- (a) fourteen weeks, or
- (b) the period of maternity leave taken,
whichever is the lesser period.

Leave may be taken at full pay, half pay or as a lump sum.

(3) Unpaid Maternity Leave

- (a) Pregnant employees are entitled to maternity leave:
 - (i) on a full-time basis for a period of not more than nine weeks prior to giving birth; and
 - (ii) for a further period ending not more than 12 months after the date of giving birth.
- (b) Employees who have been granted maternity leave may, with the permission of RMS, take leave after the date of birth:
 - (i) full-time for a period not exceeding 12 months; or
 - (ii) part-time for a period not exceeding two years; or
 - (iii) partly full-time and partly part-time over a proportionate period of up to two years.

(4) RMS shall not fail to re-engage a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*) because:

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

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

E. Adoption Leave

(1) General

- (a) Employees are entitled to adoption leave (including casual employees who have worked on a regular and systematic basis with RMS for at least 12 months) when they are to be the primary care giver of an adopted child.
- (b) Adoption leave commences on the date that the employee takes custody of the child concerned, whether that date is before or after the date on which a court makes an order for the adoption of the child.
- (c) Adoption leave may be granted as either paid or unpaid.

(2) Paid Adoption Leave

Permanent and limited duration employees who have completed at least 40 weeks continuous service prior to the commencement of adoption leave are entitled to paid at their ordinary rate of pay for:

- (a) fourteen weeks, or
- (b) the period of adoption leave taken,
whichever is the lesser period.

Leave may be taken at full pay, half pay or as a lump sum.

(3) Unpaid Adoption Leave

(a) Employees are entitled to adoption leave for:

- (i) a maximum period of 12 months where the child has not commenced school; or
- (ii) a period as RMS determines, up to a maximum of 12 months if the child has commenced school.

(b) Employees who have been granted adoption leave may also, with the permission of RMS, take leave:

- (i) part-time for a period not exceeding two years; or
- (ii) partly full-time and partly part-time over a proportionate period of up to two years.

(4) RMS shall not fail to re-engage a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*) because the employee is or has been immediately absent on adoption leave. The rights of RMS in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

F. Parental Leave

(1) General

- (a) Employees who are not entitled to maternity or adoption leave (including casual employees who have worked on a regular and systematic basis with RMS for at least 12 months) may be entitled to parental leave for a period of up to 12 months, to enable parents to share in the responsibility of caring for their young children.
- (b) Parental leave may commence at any time up to two years after the date of birth of a child or the date of placement of an adopted child.
- (c) Parental leave is granted without pay except as provided in paragraph (2) of this subclause.

(2) Paid Parental Leave

(a) Permanent and limited duration employees who have completed at least 40 weeks continuous service prior to the commencement of parental leave are entitled to be paid at their ordinary rate of pay for:

- (i) One week on full pay, or
- (ii) Two weeks on half pay.

- (b) The period of paid leave does not extend the current entitlement of up to 12 months leave, but is part of it.
- (3) Taking Of Parental Leave
- Employees who have been granted parental leave may, with the permission of RMS, also take leave:
- (a) part-time over a period not exceeding two years; or
 - (b) partly full-time and partly part-time over a proportionate period of up to two years.
- (4) RMS shall not fail to re-engage a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*) because the employee is or has been immediately absent on parental leave. The rights of the RMS in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

FA. Communication During Maternity, Adoption and Parental Leave

- (1) Where an employee is on maternity, adoption or parental leave and a definite decision has been made to introduce significant change at the workplace, RMS 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 maternity, adoption or 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 position the employee held before commencing maternity, adoption or parental leave.
- (2) The employee shall take reasonable steps to inform RMS about any significant matter that will affect the employee's decision regarding the duration of maternity, adoption or 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.
- (3) The employee shall also notify RMS of changes of address or other contact details which might affect RMS's capacity to comply with subclause (1) of this Part.

FB. Rights of Request During Maternity, Adoption Or Parental Leave

- (1) An employee entitled to maternity, adoption or parental leave may request that RMS allow the employee:
- (a) To extend the period of unpaid maternity, adoption or parental leave for a further continuous period of leave not exceeding 12 months;
 - (b) 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.
- (2) RMS 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 RMS business. Such grounds might include cost, lack of adequate replacement employees, loss of efficiency and the impact on customer service.

- (3) The employee's request and RMS's decision to be in writing.

The employee's request and RMS's decision made under subclause (1) of this Part must be recorded in writing.

- (4) Request to return to work part-time.

Where an employee wishes to make a request under paragraph (b) of subclause (1) of this Part, 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 maternity, adoption or parental leave.

G. Resumption of Duty After Maternity, Adoption Or Parental Leave

Employees who return to work immediately after the expiration of maternity, adoption or parental leave, are entitled to be placed in:

- (1) The position they held immediately prior to the taking of leave, if the position still exists; or
- (2) Another position for which they are qualified, subject to availability, if the position they held immediately prior to the taking of leave no longer exists.

H. Annual Recreation Leave of Absence

- (1) Annual recreation leave shall accrue to an employee at the rate of one and two-thirds days per month, from date of appointment, provided that:

- (a) Recreation leave shall not accrue during any period that an employee is absent without pay if the period of absence exceeds 28 consecutive days. Deductions under this paragraph shall be made in the ratio the number of days absent bears to 261 days. For the purpose of calculation, a fraction of less than one half day shall not count.

- (b)

- (i) Where employees whose services have been satisfactory, resign, retire or have their services otherwise terminated (except by death), the monetary value of recreation leave due as at the last day of duty will be paid as a gratuity on ceasing duty.

The last day of duty will be the last day of service where recreation leave is paid as a gratuity and further recreation leave will not accrue from that date.

The money value of the leave is calculated for the period over which the leave would run had it been granted as recreation leave commencing from the first working day after cessation of employment, and includes any public holiday occurring in that period.

(The procedure under this paragraph (i) will not apply to any employee, whether a resignation has been tendered or not, whose services have been under adverse notice for any reason or who is under bond. Such cases will be viewed separately).

- (ii) As an alternative, employees may elect to take either the whole or part of recreation leave due at the last day of duty as leave, instead of as a lump sum payment in lieu of leave (i.e. it shall be regarded as service for the accrual of recreation leave) and the last day of service will be the date upon which recreation leave, taken as leave in lieu of a lump sum payment, would have expired. Payment of the monetary value of such leave will be made at the last day of duty and will be taxed as normal salary. In addition, increments which fall due in the period covered by the extension of recreation leave after the last day will be paid to employees subject to the employee's services being satisfactory prior to resignation. This procedure will not apply where recreation leave is paid as a gratuity.

- (2) An employee shall be entitled to be paid in advance for salary payable to them in respect of the period for which recreation leave has been approved.
- (3) Limits on accumulation and direction to take leave:
 - (a) Employees must take at least two consecutive weeks of recreation leave every 12 months, unless otherwise approved in special circumstances.
 - (b) Where operational requirements permit, the wishes of the employee will be taken into account on the time such leave is taken.
 - (c) RMS will notify an employee in writing when accrued recreation leave reaches six weeks. Employees may be directed to take at least two weeks recreation leave within three months of the notification at a time convenient to RMS.
 - (d) RMS will notify employees when accrued recreation leave reaches eight weeks. Employees will be directed to take at least two weeks recreation leave within six weeks of the notification at a time convenient to RMS.
- (4) Any employee who is in receipt of the climatic allowance prescribed in clause 6, Allowances, or is stationed at Parkes, Forbes, Griffith, Leeton, Dubbo, Wagga Wagga, Narrandera, West Wyalong, Finley or Deniliquin shall receive additional recreation leave at the rate of five days per annum accruing monthly.
- (5)
 - (a) An employee shall be granted an annual leave loading equivalent to 17½ per cent of four weeks salary on a maximum salary of USS Grade 11.
 - (b) The annual leave loading shall be granted to employees subject to the following conditions:
 - (i) The full entitlement to the loading on annual leave that an employee has accrued over the previous leave year will be paid on the first occasion after December 1 in any year an employee takes sufficient recreation leave to permit them to be absent from duty for at least two consecutive weeks. The loading will apply only to leave accrued in the year ending on the preceding 30 November, up to a maximum of four weeks.
 - (ii) In the event of no such absence occurring by 30 November of the following year, an employee (provided they are still employed) will be paid the monetary value of the annual leave loading payable on leave accrued as at 30 November of the previous leave year.
 - (iii) Shift Workers - Unless determined otherwise, shift workers proceeding on annual leave are to be paid in respect of leave taken in any period of 12 months commencing 1 December, shift premiums and penalty rates (or other allowance paid on a regular basis in lieu thereof) they would have received had they been on duty or the 17 1/2 per cent annual leave loading as herein prescribed, whichever is the more favourable. Payment of shift premiums and penalty rates shall not be made for public holidays which fall on a seven-day shift worker's rostered day off. In the case of seven-day continuous shift workers, the 17 1/2 per cent annual leave loading is to be calculated on the basis of 17 1/2 per cent of five weeks ordinary salary.
 - (iv) If an employee is eligible to receive more favourable conditions than those set out herein, such conditions shall apply.

- (v) Upon voluntary separation (i.e. retirement) or termination of services by the Agency for any reason other than misconduct, an employee who has not taken recreation leave qualifying them for payment of the annual leave loading since the preceding 1 December shall be paid the loading, which would have been payable had such leave been taken.
 - (vi) The annual leave loading is not payable when an employee is granted recreation leave to his credit, or the monetary value thereof, on resignation or dismissal for misconduct.
 - (vii) Broken service during a year does not attract the annual leave loading, e.g., if an employee resigns and is subsequently re-employed during the same year, only the service from the date of re-employment attracts the annual leave loading, subject to the foregoing conditions.
- (c) The rate of payment of the annual leave loading will be based on leave accrued to 30 November of the previous leave year (to maximum of four weeks) and will be calculated on the salary rate paid for the leave when taken, i.e., new rates granted by award, or State Wage Case decision, unless otherwise prescribed and, if necessary, retrospective adjustment of the loading will be made. Where payment is made as at 30 November, because no period of two weeks leave has been taken during the year, the payment will be calculated at the rate applicable as at that date.
- (d) Provided adequate notice is given the annual leave loading will be paid prior to entry on leave and normally at the same time as the advance of salary.

I. Carer's Leave

(1) General

- (a) Employees will be able to elect to use available paid sick leave, subject to the conditions specified in this subclause, to provide care and support when a family member is ill.
- (b) Employees will be entitled to Carer's Leave when:
 - (i) their entitlements to Family and Community Service Leave is exhausted; and
 - (ii) they are the primary care-giver of a category of person set in subclause (3) of this Part.
- (c) Carer's leave is only available for employees to care for people mentioned in subclause (3) of this Part where the illness is sudden or short term.

(2) Taking of Carer's Leave

- (a) Sick leave will initially be taken from the current year's entitlement, followed by the sick leave accumulated over the previous three years.
- (b) In special circumstances, RMS may grant additional sick leave from the sick leave accumulated during the employee's eligible service.
- (c) If required by RMS, employees must establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

(3) Categories of People for Which Carer's Leave can be Obtained

Employees will be entitled to Carer's Leave for the care and support of their ill:

- (a) spouse;

- (b) defacto spouse, being a person of the opposite sex who lives in the same house as their husband or wife on a bona fide basis, although they are not legally married;
- (c) child or adult child (including an adopted child, step child, foster child or ex-nuptial child);
- (d) parent (including a foster parent or legal guardian);
- (e) grandparent or grandchild;
- (f) sibling (including the sibling of a spouse or de facto spouse);
- (g) same sex partner who they live with as a de facto partner on a bona fide domestic basis; or
- (h) relative who is a member of the same household where, for the purposes of this definition -
 - (i) 'relative' means a person related by blood, marriage, affinity or Aboriginal kinship structures;
 - (ii) 'affinity' means a relationship that one spouse or partner has to the relatives of another; and
 - (iii) 'household' means a family group living in the same domestic dwelling.

(4) Other forms of leave and carer's responsibilities

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

(5) Personal Carers Entitlement for casual employees

- (a) 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 (3) of this Part who are sick and require care due to an unexpected emergency, or the birth of a child.
- (b) RMS 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) If required by RMS, the employee must establish, by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (d) RMS shall not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of RMS to engage or not to engage a casual employee are otherwise not affected.

J. Extended Leave

(1) General

Extended leave for employees is provided for by Schedule 5 of the *Transport Administration Act 1988*.

(2) Extended Leave Entitlements

- (a) An employee who has completed 10 years of continuous service with RMS, or as recognised in accordance with subparagraphs (e) and (f) of this subclause, is entitled to extended leave of:
44 working days at full pay, or

- 88 working days at half pay, or
- 22 working days at double pay.
- (b) For each additional calendar year of service completed in excess of 10 years, employees accrue 11 working days extended leave.
- (c) From 1 January 2005, employees who have completed at least 7 years of continuous service with the RMS, or as recognised in accordance with subparagraphs (e) and (f) below, are entitled to access the extended leave accrual indicated in subparagraph (a) above on a pro rata basis of 4.4 working days per completed year of service.
- (d) Employees who are employed part-time, or as a casual with a regular and consistent pattern of employment with RMS, are entitled to extended leave on the same basis as that applying to a full-time employee but payment for the leave is calculated on a pro rata basis.
- (e) All previous full-time and part-time service with RMS, the former RTA, the former Department of Main Roads, Department of Motor Transport or the Traffic Agency is to be taken into account as service when determining the appropriate rate of accrual of extended leave for employees employed on a full-time or part-time basis with the RMS.
- (f) Permanent service with other NSW government bodies will also be recognised by RMS in accordance with Schedule 3A of the *Public Sector Employment and Management Act 2002* (NSW)
- (g) Nothing in subparagraphs (e) or (f) of this subclause entitles an employee to payment for previous service recognised where the accrual for that service has previously been taken as leave or paid out on termination.
- (3) Effect of Approved Leave Without Pay (LWOP) on Extended Leave Entitlements
- (a) To determine if an employee has completed the required 10 years of service:
- (i) Any period of approved leave taken without pay before 13 December 1963 counts as service to determine whether or not an employee has completed 10 years of service.
- (ii) Any period of approved LWOP taken without pay after 13 December 1963 does not count as service to determine whether or not an employee has completed 10 years of service.
- (b) Where an employee has completed 10 years continuous service with RMS, or as recognised in accordance with paragraphs (2)(e) and 2(f) of this Part, approved LWOP for the reasons listed below counts as service for extended leave accrual:
- (i) Military service (eg Army, Navy or Air Force);
- (ii) Major interruptions to public transport;
- (iii) Periods of leave accepted as workers compensation.
- (c) For an employee who has completed 10 years continuous service, or as recognised in accordance with paragraphs (2)(e) and 2(f) of this Part, any period of approved leave without pay not exceeding 6 months counts for the purpose of calculating the length of service.
- (4) Payment and Taking of Extended Leave
- (a) Subject to RMS approval, extended leave may be taken:
- (i) at a time convenient to RMS;

- (ii) for a minimum period of one hour;
 - (iii) at full pay, half pay or double pay.
 - (b) If an employee takes leave at double pay:
 - (i) The employee's extended leave balance will be debited for the actual number of working days/hours of leave at full pay plus the equivalent number of working days/hours at full pay necessary to make up the additional payment;
 - (ii) The additional payment is made as a taxed, non superable allowance, with the exception of payment to members of First State Super or another complying fund of their choice for whom the additional payment is superable;
 - (iii) All leave entitlements will accrue on the actual number of working days absent from work on extended leave.
 - (c) If an employee takes leave at half pay:
 - (i) The employee's extended leave balance will be debited at the rate of half the days/hours taken as extended leave;
 - (ii) Recreation leave entitlements will accrue at half the ordinary rate for the actual number of working days absent from work;
 - (iii) All other leave entitlements will accrue based on the actual number of working days absent from work on extended leave.
 - (d) If an employee's ordinary hours of work are constant, payment is made at the current rate of pay.
 - (e) Where an employee is part-time or casual and the employee's ordinary hours are not constant, payment is made based on the substantive rate of pay averaged over:
 - (i) the past 12 months, or
 - (ii) the past 5 yearswhichever is the greater.
 - (f) Payment includes all allowances in the nature of salary but does not include any amounts normally paid for shift work, overtime or penalty rates.
 - (g) Payments will be increased to reflect any increment action an employee becomes eligible for while absent on extended leave.
 - (h) An employee who takes extended leave whilst in service may choose to be paid fortnightly or in one lump sum in advance of taking the leave.
- (5) Sick leave while on Extended Leave
- (a) An employee is only entitled to claim sick leave that occurs during an absence on extended leave when sick for five or more consecutive working days.
 - (b) To claim sick leave, an employee must provide a medical certificate for the period claimed as soon as possible.
 - (c) If sick leave is approved, the employee's extended leave balance is re-credited with:
 - (i) the equivalent period of sick leave if taking leave on a full or half pay basis; or

- (ii) the equivalent period of sick leave and the extra amount of extended leave entitlement accessed to make up the double pay allowance if taking leave on a double pay basis.
 - (d) If extended leave is taken at double pay, RMS will recoup any allowance already paid for the period being claimed as sick leave.
 - (e) These sick leave provisions apply if an employee takes extended leave prior to retirement but not extended leave prior to resignation or termination of services.
- (6) Public Holidays while on Extended Leave
- (a) The days set out in clause 16, Public Holidays and Bank Holiday, of this award that fall while an employee is absent on extended leave are not recognised as extended leave and are not deducted from the employee's extended leave balance.
 - (b) Payment due for the days set out is calculated on the employee's ordinary hours of work and paid at single time, even if the employee has chosen to take extended leave at half-pay or double pay.
- (7) Payment or Transfer of Extended Leave on Termination
- (a) An employee, who is entitled to extended leave on termination of service, including retirement, is paid the monetary value of the leave as a gratuity, in lieu of taking the leave.
 - (b) If an employee is employed on a full-time basis, payment is calculated at the substantive rate of pay on the last day of service.
 - (c) If an employee is employed on a part-time or casual basis, payment is calculated as per paragraph (4)(e) of this Part.
 - (d) Employees who have at least five years' service but less than seven years' service are paid a pro-rata of the extended leave entitlement if employment is terminated:
 - (i) by RMS for any reason other than serious and intentional misconduct;
 - (ii) by the employee in writing on account of illness, incapacity or domestic or other pressing necessity; or
 - (iii) on retirement.
 - (e) In the event of paragraph (d) of this subclause above applying, any period of leave without pay taken does not count as service.
 - (f) An employee who resigns to join another Government Department recognised by Schedule 3A of the Public Sector Employment and Management Act 2002 (NSW) is entitled to have their extended leave accrual accepted by the new employer.

K. Sick Leave

- (1) Where it is established that leave is necessary on account of ill health, an employee may be granted leave of absence with pay at ordinary rates as follows:
- (a) Ordinary Sick Leave - In each sick leave year, and subject to compliance with instructions regarding notifications, completion of applications and submission of medical certificates: 15 full days with full pay.
 - (b) Additional Special Sick Leave - An additional period of sick leave may be granted in the following circumstances:
 - the person has 10 or more years of service;

the person has been or will be absent for more than three months; and

the person has exhausted or will exhaust available paid sick leave.

The additional period of sick leave may be granted on the basis of one month for each completed 10 years of service plus 10 calendar days, less all Additional Special Sick Leave taken during service.

(2)

- (a) Any employee absent on account of sickness for any period of three days or less, shall, if called upon by the Agency to do so, submit a medical certificate showing the nature of the employee's illness.
- (b) Any employee absent on account of sickness for more than three days shall, as soon as practicable after the expiry of such three days, submit a medical certificate showing the nature of the illness and the probable duration thereof, unless exempted from so doing.
- (c) In the case of extended absence, an employee may be required to furnish fresh medical certificates each week or submit to an examination by a medical practitioner nominated by the Agency.

(3) Additional grants will be made to ex-servicemen with war-caused disabilities accepted by the Department of Veterans' Affairs as follows:

Employees who are ex-services personnel and who have an accepted war caused disability are entitled to an additional annual entitlement of 15 days per calendar year non-cumulative. This additional grant of leave is separate from the normal annual entitlement.

NB. A war caused disability is an injury or illness resulting from armed service in a Recognised War Zone (All World War II service is recognised).

Injuries or illnesses resulting directly or indirectly from service in the armed forces but not in a war zone are not regarded as war caused disabilities and as such this additional sick leave should not be granted.

The Department of Veterans Affairs should be contacted to determine whether the injury or illness was as a result of service in a war zone.

L. Leave for Matters Arising from Domestic Violence

- L.1 The definition of domestic violence is found in subclause 1 (4), of clause 1 Definitions, of this award;
- L.2 Leave entitlements provided for in clause 9(C) Family and Community Service Leave, 9(I) Carers Leave, and 9K, Sick Leave, may be used by staff members experiencing domestic violence;
- L.3 Where the leave entitlements referred to in subclause 9(L)2 are exhausted, the Agency shall grant up to five days Special Leave per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations;
- L.4 The Agency will need to be satisfied, on reasonable grounds, that domestic violence has occurred and may require proof presented in the form of an agreed document issued by the Police Force, a Court, a Doctor, a Domestic Violence Support Service or Lawyer;
- L.5 Personal information concerning domestic violence will be kept confidential by the agency;
- L.6 The Agency, where appropriate, may facilitate flexible working arrangements subject to operational requirements, including changes to working times and changes to work location, telephone number and email address.

10. Additional Conditions for Motor Registry and Telephone Customer Service Centre Staff**A. Hours of Duty****(1) Spread of Hours**

The ordinary hours of duty shall be within the spread of hours as follows:

Monday to Friday	7.50 am to 5.20 pm
Saturday	8.20 am to 4.20 pm

No employee shall be required to work more than five consecutive hours without a meal break. A meal break shall be for a minimum of 30 minutes duration.

(2) Change of Hours within the Spread of Hours

Any change to the trading hours of a Motor Registry or Telephone Customer Service Centre within the spread of hours as set out in subclause (1) of this Part shall be subject to the following Consultative Process:

- (a) The Agency shall notify the Association in writing of any change to trading hours at least six weeks in advance of the date on which the change is proposed to take place.
- (b) The Association shall be given two weeks in which to provide any written comments on the proposed change.
- (c) Following consideration of any comments received, the Agency shall notify the Association in writing of the full details of its decision including the reasons for making such decision.

(3) Standard Hours of Work**Full time employees**

The ordinary hours of duty for full-time employees shall be worked over a two week roster cycle of 70 hours within the spread of hours in subclause (1) of this Part.

Full-time employees, in a motor registry or Telephone Customer Service Centre which trades on Saturdays, that are rostered to work one Saturday in two, shall work nine days during the two week roster cycle. Provided that full time employees will, with the agreement of the Agency, be able to work ten days including Saturdays during the roster cycle.

Full-time employees shall not be required to work more than five consecutive days during the roster cycle.

Subject to Part C, Rosters, of this clause, any other change to the days worked or the span of hours will be by agreement between the Agency and the employee.

The minimum hours to be worked by full-time employees on a Saturday shall be four.

Part time employees

The minimum ordinary hours of duty to be worked by part-time employees shall be fifteen hours per week. Part-time employees can agree to work additional ordinary hours of duty. The maximum ordinary hours that may be worked by part-time employees shall be 35 hours per week. The hours of duty shall be worked within the spread of hours, as set out in subclause (1) of this Part. The hours of work shall be recorded in writing between staff and the Agency and advised to the employee in advance in accordance with subclause (1) of Part C, Rosters of this clause.

The minimum hours to be worked by part-time employees per engagement, including Saturdays shall be three.

Part-time employees shall not be required to work more than five consecutive days in any fortnight roster cycle. Part-time employees shall not be required to work more than one Saturday in two except by mutual agreement.

Part-time employees are engaged for specified days, and specified minimum hours per week within specified spans of hours. The Agency can change the hours worked within the specified span by giving one months notice. For the purposes of this paragraph specified span of hours shall mean the band of ordinary hours of duty that the part-time employee has agreed to work.

Notwithstanding the days specified part time employees may be required to work on Saturdays. In the event that a part-time employee is so required the specified days and/or the hours on the specified days will be reduced accordingly to retain the specified hours as a minimum.

Subject to Part C, Rosters, of this clause, any other change to the days worked or the span of hours will be by agreement between the Agency and the employee. The employee can require up to three months between the agreement to change the specified span of hours or days and the implementation of the change.

Casual employees

Casual employees shall work on an hourly basis for a minimum of three hours per engagement within the spread of hours, as set out in subclause (1) of this Part.

Casual employees shall not be required to work more than five consecutive days under any contract of employment

B. Part-Time and Casual Rates

- (1) Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 35.
- (2) Casual employees shall be paid an hourly rate equal to 1.17 x the Monday to Friday ordinary hourly rate of pay for the first year of the classification in which they are employed, except for Registry Services Officers 21 years of age and over who shall be paid the fourth year of that classification.

C. Rosters

- (1) Rosters will be based on fortnightly periods and published monthly in advance. Rosters will be posted in a position accessible to employees.
- (2) In the event of an emergency the hours of work and/or the rostered starting and finishing times on any one day may be changed.
- (3) Where less than seven days notice is given by the Agency of a change to a roster by deleting or reducing the hours of a rostered day, any loading applicable to the original roster shall be paid in addition to the payment applicable to the work performed.
- (4) Mutual exchanges of rostered days between employees shall be subject to the Agency's prior agreement.
- (5) Where employees are rostered in such a fashion that the days on which they are rostered to work fluctuate from week to week, an employee rostered off work on a public holiday being a day on which the employee usually works shall be paid by mutual agreement between the Agency and the employee in one of the following methods:
 - (a) payment of an additional day's salary;
 - (b) addition of one day to the employee 's annual holidays;

- (c) an alternate day off with pay within 28 days after the public holiday falls, or during the week prior to the public holiday.

Provided that for this subclause "day" is the number of hours the employee would have worked were the employee rostered on that day.

- (6) The Agency can, on up to three Saturdays each calendar year, require employees to attend a training session after trading hours and within the spread of hours as set out in subclause (1) of Part A,- Hours of Duty of this clause. The time spent on training will be adjusted as part of the employee's ordinary hours. The employee will be rostered off for one equivalent block of hours during that roster cycle or during either of the next two roster cycles.

D. Loadings for Certain Ordinary Hours

- (1) Payment for all ordinary hours of duty Monday to Friday shall be at the ordinary salary rate.
- (2) For full-time and part-time employees payment for all ordinary hours of duty on Saturday shall be at the ordinary salary rate plus 50 per cent. For casual employees the payment for all ordinary hours of duty on Saturday shall be 1.66 times the Monday to Friday ordinary hourly rate for the first year of the classification in which they are employed, except for Registry Services Officers 21 years of age and over who shall be paid the fourth year of that classification.
- (3) Where part-time employees work in excess of the rostered hours for a day and within the spread of ordinary hours of duty as set out in paragraph 1 of Part A - Hours of Duty of this clause, Monday to Friday, payment for time worked in excess of the rostered hours shall be made at the ordinary hourly rate.
- (4) Where part-time employees are required to work in excess of the rostered hours on a Saturday - but within the spread of ordinary hours of duty for Saturday, as set out in subclause (1) of Part A,- Hours of Duty of this clause, a loading of 50% as prescribed in subclause (2) of this Part shall apply.

E. Overtime

- (1) Full-time employees shall be paid overtime for all time worked:
- (a) outside the spread of ordinary hours of duty as set out in subclause (1) of Part A, Hours of Duty of this clause.
- (b) before or after the daily ordinary hours of duty set out in the roster described in the provisions of Part C - Rosters of this clause and worked within the spread of hours of duty set out in subclause (1) of Part A, Hours of Duty of this clause.
- (2) Part-time employees and casual employees shall be paid overtime for all time worked:
- (a) outside the spread of ordinary hours of duty as set out in subclause (1) of Part A, Hours of Duty of this clause
- (b) in excess of 35 hours per week.
- (3) Where employees are rostered on six consecutive days, work within the spread of ordinary hours of duty on the sixth day shall be paid at the overtime rate, and does not include loading in accordance with Part D, Loadings for Certain Ordinary Hours of this clause.

12. Additional Conditions for Traffic Operations Control Staff

A. Definitions

For the purpose of this clause:

'TMC' shall mean the Transport Management Centre

'TOCS' shall mean employees employed by the Authority as Traffic Operations

Control Staff in the Traffic Operations Unit of the Transport Management Centre.

'Continuous Work' means work carried on with consecutive shifts of TOCS throughout the 24 hours of each of 7 consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the Authority.

B. Hours of Work

(1) Ordinary Hours

The ordinary hours of work shall be 35 per week.

(2) Full-Time Employees

TOCS shall be continuous shift workers. The ordinary hours of work shall be 70 hours worked over a 2 week roster cycle. TOCS shall work on either a 7 hours 44 minutes or 11 hours 40 minutes shift basis which shall be worked in accordance with shifts as rostered.

When rostered for 7 hours 44 minutes shifts during a roster cycle full time TOCS shall not be required to work more than five consecutive days in any seven day period.

When rostered for 11 hours and 40 minutes shifts during a roster cycle full time TOCS shall not be required to work more than three days in any seven day period.

(3) Where TOCS are rostered to work 11 hours 40 minutes shifts:

(a) They shall be entitled to a rest break of at least 10 hours between the cessation of an ordinary rostered shift and the commencement of the next ordinary rostered shift. Where TOCS have not observed a rest break of at least 10 hours prior to the commencement of the next ordinary shift, they shall be paid at the rate of double time calculated at the ordinary salary rate until such time as TOCS are released from duty.

(b) They shall not be required to be on duty for more than 14 consecutive hours. After being on duty for 14 consecutive hours TOCS shall take a rest break of at least 4 consecutive hours and where TOCS are directed to resume work without having a rest break of 10 consecutive hours, payment shall be at the rate of double time until they are released from duty for 10 consecutive hours. Any rostered working time occurring during such absence shall be paid for at the ordinary rate of pay.

(4) Part-Time Employees

(a) The minimum number of hours to be worked by part-time TOCS shall be 25 hours per week. The hours of work shall be rostered on a 5 hour shift basis, morning and/or afternoon, over a 5 day working week, Monday to Friday and shall be worked in accordance with shifts as rostered.

(b) The maximum number of ordinary hours that may be worked shall be 7 hours per shift or 35 hours per week.

(c) Where additional hours are worked in excess of the minimum hours as set out in paragraph (a) of this subclause part-time staff shall be paid a loading of 4/48ths in lieu of recreation leave for all additional ordinary hours worked.

(5) Meal Break

(a) 7 Hours 44 minutes Shift

TOCS rostered on a 7 hours 44 minutes shift shall not work more than 5 hours from the commencement of a shift without a minimum 30 minutes meal break.

(b) 11 Hours 40 Minutes Shift

TOCS rostered on an 11 hours 40 minutes shift shall not work more than 5 hours from the commencement of a shift without a minimum 30 minutes meal break.

After a further 5 hours of work TOCS shall be entitled to a paid crib break of 20 minutes.

(6) Accrued Shift Off

Where TOCS are rostered on a 7 hours 44 minutes shift pattern during a shift cycle they may observe 'Banktime' working hours (i.e. a bank up of hours) under the following provisions:

- (a) The additional 44 minutes per shift shall be worked on 9 days each 2 week work cycle to allow for the accumulated time off during the 2 week cycle.
- (b) Subject to provision (d) of this subclause, one accrued day off may be taken in each 2 week work cycle.
- (c) The accrued day off will be observed between Monday to Friday (inclusive), as provided for by the roster.
- (d) Where TOCS work on the accrued day off, TOCS may elect, where practicable, to have another day off in substitution thereof before the end of the succeeding 2 week work cycle. Provided that in such case the accrued entitlements are transferred to the substituted day off.
- (e) TOCS absent from duty on any type of approved leave or a public holiday will be credited with 7 hours 44 minutes in respect of each day absent from duty. TOCS absent from duty on approved leave (sick, recreation leave etc) will have 7 hours and 44 minutes debited against their leave accrual for each day absent from duty.

C. Shift Work

(1) For the purposes of this subclause:

'Early Morning shift' shall mean those shifts commencing at or after 4.00 am.

'Day Shifts' shall mean those shifts commencing at or after 6.00 am.

'Afternoon Shifts' shall mean those shifts commencing at or after 12 noon.

'Night Shifts' shall mean those shifts commencing at or after 4.00 pm.

(2) Payment for Shift Work

- (a) Payment for day shift shall be at ordinary rate of pay.
- (b) Payment for early morning shift shall be at the ordinary rate of pay plus 10 per cent.
- (c) Payment for afternoon shift shall be at ordinary rate of pay plus 12½ per cent.
- (d) Payment for night shift shall be at ordinary rate of pay plus 15 per cent.
- (e) Payment for all ordinary time worked on a Saturday shall be at the rate of time and one-half of the ordinary rate of pay.

- (f) Payment for all ordinary time worked on a Sunday shall be at the rate of double the ordinary rate of pay.
 - (g) Payment for all ordinary time worked on a Public Holiday shall be at the rate of double and one-half of the ordinary rate of pay.
 - (h) TOCS rostered off on a public holiday shall be credited with a day in lieu for each such day.
 - (i) Full-time TOCS employed under this subclause on continuous shift work shall be credited with an additional 5 days recreation leave per annum. This leave shall accrue at the rate of 5/12th of a day for each complete month that an employee so works.
- (3) Shift Rosters
- (a) TOCS shall be rostered to work shifts as required by the Authority.
 - (b) Notice shall be given of shifts to be worked at least 7 days in advance.
 - (c) Where notice is given of a change in shift with less than 7 days notice any shift so worked shall be paid at the rate of the previously rostered shift provided it is greater.

12. Additional Conditions for Work Support Officers

A. Definitions

For the purpose of this clause:

‘WSO’ shall mean employees employed by the Agency as Work Support Officers.

‘Competency’ shall mean the combination of knowledge, skills and attributes that are needed for specific job relation tasks.

B. Hours of Duty

- (1) The ordinary hours of duty of WSO's shall be 35 hours per week and by agreement with the Association shall be between 7.00 am to 5.30pm on 5 days per week, Monday to Friday, inclusive.
- (2) A lunch break shall be taken of not less than 30 minutes in the WSO's time.
- (3) WSO's may observe ‘Banktime’ working hours (i.e. a bank up of hours) under the following provisions:
 - (a) An additional 22 minutes per day shall be worked on 19 days each four week work cycle to allow for the accumulated time off during the next four week cycle.
 - (b) Subject to provision (d) of this subclause, one accrued day off may be taken in each four week work cycle.
 - (c) The accrued day off will be observed between Monday to Friday (inclusive).
 - (d) Where a WSO works on the accrued day off, the WSO may elect, where practicable, to have another day off in substitution thereof before the end of the succeeding work cycle. Provided that in such case the accrued entitlements are transferred to the substituted day off.
- (4) WSO's absent from duty on any type of approved leave or a public holiday will be credited with 7 hours 22 minutes in respect of each day absent from duty. WSO's absent from duty on approved leave (sick, recreation leave etc) will have 7 hours 22 minutes debited against their leave accrual for each day absent from duty.

C. Progression from Grade to Grade

WSO positions will only be created where the range of tasks at the location would eventually allow the incumbent to progress to Grade 3.

Progression from grade to grade need not depend upon the availability of an advertised job vacancy nor is it restricted by the number of WSO's already at a particular grade. Progression to another grade is totally dependent upon the meeting of the progression criteria detailed in the "Work Support Officer Management Guidelines".

Persons at the time of appointment as a WSO will be assessed to determine the grade at which they will commence. Once appointed to a grade, a WSO will need to meet the progression criteria in order to further progress through the grades.

Persons appointed as a WSO in Training will remain at that level until they are eligible to progress to Grade 1.

D. Maintenance of Grade

Maintenance of grade and salary shall be dependent upon WSO's maintaining the required level of competence in the tasks for which they have been assessed and for which their grading and salary level has been determined.

To ensure the level and the currency of competencies, the WSO will undergo supplementary assessment of their tasks every two years to demonstrate that they have maintained their skills in those tasks.

13. Grievance Resolution and Dispute Settlement

A. Grievance Resolution

- (1) A grievance is defined as a personal complaint or difficulty. A grievance may:
 - relate to a perceived denial of an entitlement
 - relate to a perceived lack of training opportunities
 - involve a suspected discrimination or harassment.
- (2) The RMS has a Grievance Resolution Policy and a Grievance Resolution Procedure which should be observed when grievances arise.
- (3) The RMS's policy is detailed in Appendix A.
- (4) While the policy and procedure are being followed, normal work will continue.

B. Dispute Settlement

- (1) A dispute is defined as a complaint or difficulty which affects more than one employee. A dispute may relate to a change in the working conditions of employees that is perceived to have negative implications for that group.
- (2) It is essential that management and the Association consult on all issues of mutual interest and concern, not only those issues that are considered likely to result in a dispute.
- (3) Failure to consult on all issues of mutual interest and concern to management and the Association is contrary to the intention of these procedures.
 - (a) If a dispute arises in a particular work location which cannot be resolved between the employee or their representative and the supervising employee, the dispute must be referred to RMS's

Manager of the Employee Relations Section or another nominated officer who will then arrange for the issue to be discussed with the Association.

- (b) If the issue cannot be resolved at this level, the issue must be referred to senior management.
- (c) If the issue cannot be resolved at this level, the issue may be referred to the Industrial Relations Commission of NSW.
- (d) While these procedures are continuing, no work stoppage or any other form of work limitation shall occur.
- (e) The Association reserves the right to vary this procedure where a safety factor is involved.

14. Anti-Discrimination

- (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.
- (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 the effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provisions of the award, which by its terms or operation, has a direct or indirect discriminatory effect.
- (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) Nothing in this clause is to be taken to effect:
 - (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.
 - (e) 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

- (1) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (2) 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."

15. Public Holidays and Bank Holiday

- (1) Public Holidays - The following shall be holidays for the purpose of this award: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Eight Hour Day, Christmas

Day, Boxing Day and any day proclaimed in the New South Wales Government Gazette as a public holiday for the State.

- (2) Bank Holiday - The day traditionally observed as a holiday on the August Bank Holiday will now be worked as an ordinary working day. The day will be observed on an ordinary working day which falls between Christmas Day and New Year's Day each year.

16. Appeals in Respect of Salary Grade Or Classification

- (1) An employee shall have the right to apply to the Agency through the head of their branch or section for an increase in excess of the rate of salary provided, or for an alteration in the grade or classification to which the employee may be appointed.
- (2) Any employee dissatisfied with a decision or determination of the Agency;
 - (a) in respect to the salary, grade or classification affecting such employee; or
 - (b) in respect to any other matter of the nature referred to in Part 7 of the Industrial Relations Act 1996, may, if the employee does not exercise their rights before the NSW Industrial Relations Commission, forward to the Agency within 30 days after the employee has been advised of such decision or determination, a notice of appeal setting forth the grounds of such appeal. The Agency shall hear and determine such appeal and shall allow the employee, if they so desire, to attend and to present their case personally or by their representative.

17. Deduction of Union Membership Fees

- (1) The Association shall provide the Agency with a schedule setting out Association membership fees payable by members of the Association in accordance with the Association's rules.
- (2) The Association shall advise the Agency of any change to the amount of membership fees made under its rules. Any variation to the schedule of Association membership fees payable shall be provided to the Agency at least one month in advance of the variation taking effect.
- (3) Subject to subclauses (1) and (2) of this clause, the Agency shall deduct Association membership fees from the salary of any employee who is a member of the Association in accordance with the Association's rules, provided that the employee has authorised the Agency to make such deductions.
- (4) Monies so deducted from employees' salary shall 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.
- (5) Unless other arrangements are agreed to by the Agency and the Association, all Association membership fees shall be deducted each pay period from the employees' salary and forwarded to the Association each pay period.
- (6) Where an employee has already authorized 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.

18. Secure Employment

- (1) 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.

(2) Casual Conversion

- (a) 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 six 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.
- (b) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this subclause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (c) Any casual employee who has a right to elect under paragraph (2)(b), upon receiving notice under paragraph (2)(b) 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.
- (d) 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.
- (e) 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.
- (f) 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 (2)(c), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (2)(c), discuss and agree upon:
 - (i) whether the employee will convert to full-time or part-time employment; and
 - (ii) 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.

- (g) 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.
- (h) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

(3) Work Health and Safety

(a) For the purposes of this subclause, the following definitions shall apply:

- (i) 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.
- (ii) 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.

(b) 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):

- (i) consult with employees of the labour hire business and/or contract business regarding the work health and safety consultative arrangements;
- (ii) 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;
- (iii) 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
- (iv) 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.

(c) Nothing in this subclause (3) 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*.

(4) 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.

(5) 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 Agency to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

19. Area, Incidence and Duration

(1) This Award applies to employees of the Roads and Maritime Service of New South Wales as defined in clause 1, Definitions of this award.

(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 27 September 2012.

Changes made to this award subsequent to it first being published on 9 May 2008 have been incorporated into this award as part of the review.

- (3) This award does not apply to RMS staff covered by the NSW Maritime Enterprise Agreement 2010-2013.
- (4) The award remains in force until varied or rescinded, the period for which it was made having already expired.

PART B

Table A - Salaries

Unified Salary Scale Grades	1.7.07 Per annum \$	1.7.08 Per annum \$	1.7.09 Per annum \$	1.7.10 Per annum \$	1.7.11 Per annum \$	1.7.12 Per annum \$
Grade 1	28,908	30,064	31,267	32,518	33,331	34,164
	31,706	32,974	34,293	35,665	36,557	37,471
	36,249	37,699	39,207	40,775	41,794	42,839
Grade 2	38,230	39,759	41,349	43,003	44,078	45,180
	39,964	41,563	43,226	44,955	46,079	47,231
	41,452	43,110	44,834	46,627	47,793	48,988
Grade 3	44,013	45,774	47,605	49,509	50,747	52,016
	46,076	47,919	49,836	51,829	53,125	54,453
	48,223	50,152	52,158	54,244	55,600	56,990
Grade 4	49,694	51,682	53,749	55,899	57,296	58,728
	51,642	53,708	55,856	58,090	59,542	61,031
	53,674	55,821	58,054	60,376	61,885	63,432
Grade 5	55,518	57,739	60,049	62,451	64,012	65,612
	57,313	59,606	61,990	64,470	66,082	67,734
	58,346	60,680	63,107	65,631	67,272	68,954
Grade 6	59,626	62,011	64,491	67,071	68,748	70,467
	61,436	63,893	66,449	69,107	70,835	72,606
	63,447	65,985	68,624	71,369	73,153	74,982
Grade 7	64,827	67,420	70,117	72,922	74,745	76,614
	67,115	69,800	72,592	75,496	77,383	79,318
	68,418	71,155	74,001	76,961	78,885	80,857
Grade 8	71,225	74,074	77,037	80,118	82,121	84,174
	74,117	77,082	80,165	83,372	85,456	87,592
	76,431	79,488	82,668	85,975	88,124	90,327
Grade 9	79,947	83,145	86,471	89,930	92,178	94,482
	82,244	85,534	88,955	92,513	94,826	97,197
	85,945	89,383	92,958	96,676	99,093	101,570
Grade 10	88,113	91,638	95,304	99,116	101,594	104,134
	91,589	95,253	99,063	103,026	105,602	108,242
	96,293	100,145	104,151	108,317	111,025	113,801
Grade 11	99,269	103,240	107,370	111,665	114,457	117,318
	103,591	107,735	112,044	116,526	119,439	122,425
	105,923	110,160	114,566	119,149	122,128	125,181
Grade 12	112,122	116,607	121,271	126,122	129,275	132,507
	115,395	120,011	124,811	129,803	133,048	136,374
	119,426	124,203	129,171	134,338	137,696	141,138
Grade 13	122,990	127,910	133,026	138,347	141,806	145,351
	126,177	131,224	136,473	141,932	145,480	149,117
	132,224	137,513	143,014	148,735	152,453	156,264

TABLE B**Rates - Allowances**

Item No	Clause No.	Description	Amount \$	
1	6A(1)(b)	Meal Allowance while Travelling		
		Capital Cities & High Cost Country Centres (refer to (5) below)		
		Breakfast		23.65
		Lunch		26.55
		Evening Meal		45.60
		'Tier 2' Country Centres & 'Elsewhere' (refer to (5) below)		
		Breakfast		21.15
2	6A(2)(b)	Lunch		24.20
		Evening Meal		41.65
		Meal Allowance on Overtime		
2	6A(2)(b)	Breakfast		26.45
		Lunch		26.45
		Evening Meal		26.45
3	6B(1)	Lodgings		
		Location	Per Day \$	Per Hour \$
		Capital Cities		
		Sydney	296.10	12.33
		Adelaide	270.10	11.25
		Brisbane	314.10	13.09
		Canberra	278.10	11.59
		Darwin	302.10	12.58
		Hobart	238.10	9.92
		Melbourne	286.10	11.92
		Perth	289.10	12.05
		High Cost Country Centres (NSW)		
		Newcastle	255.60	10.65
		Maitland	244.60	10.19
		Wollongong	241.10	10.05
		'Tier 2' Country Centres (NSW)		
		Bathurst	224.30	9.35
		Broken Hill	224.30	9.35
		Orange	224.30	9.35
		Port Macquarie	224.30	9.35
Wagga Wagga	224.30	9.35		
All other Country Centres (NSW)				
'Elsewhere'	204.30	8.51		
4	6B(1), (2)	Incidentals allowance (all locations)		17.30 per day
5	6C(2)(c)	Amount for incidentals deducted from actual/reasonable expenses		17.30 per week
6	6C(2)(g)	Maximum allowance for staff separated from dependants		254.00 per week
7(a)	6C(2)(h)	Allowance for removal of furniture - value of furniture:		7,037.00
7(b)		If value above amount in 7(a), employees receive -		1,126.00
7(c)		If value below amount in 7(a), employees receive -		563.00
7(d)		If not eligible, employees shall receive -		281.00

8	6C(3)	Max purchase price of home on which reimbursement of expenses is based	520,000
9	6C(6)	Max amount of allowance with increased accom. Costs	51.00
10 (a)	6C(7)	Parents to pay first	27.00 per week
10 (b)		RTA pays up to a maximum of	56.00 per week
11	6D	Remote areas allowance (with dependants) - A	1806.00
		B	2396.00
		C	3199.00
		Remote areas allowance (without dependants) - A	1260.00
		B	1679.00
		C	2240.00
12(a)	6E	Fares subsidy for climatic area - actual cost less or	44.55
12(b)		Maximum amount for employee with spouse/dependants; or	298.25
12(c)		Maximum amount for employee without spouse/dependants	147.30
13	6H	Sydney Harbour Bridge Allowance for Works Supervisors	7750 per annum
14	8B	Maximum value of furniture and effects on which risk insurance is paid	38,000

APPENDIX A

GRIEVANCE RESOLUTION POLICY

Policy Number: PN 026

(Human Resources Manual)

RMS Corporate Policy

Grievance Resolution Policy

Purpose and intended outcomes

To make RMS staff aware of what constitutes a grievance and the responsibilities of all staff in preventing and managing such matters so that:

- staff work in a collaborative and cooperative way;
- workplace grievances are resolved in a timely manner; and
- the RMS maintains a safe and healthy work environment.

Note: This policy must be read in conjunction with the Grievance Resolution Procedure PN 026P.

Policy

To support the Code of Conduct and Ethics all RMS staff are to:

- treat others in a professional, courteous, respectful and fair way;
- communicate with each other and management in an open and honest manner;
- raise their workplace grievances at an early stage and aim to resolve them at the local level;

actively participate in the resolution of workplace grievances;
treat grievance matters in a private, confidential, and timely manner;
respect the right of others to raise grievances; and
not victimise or disadvantage any parties to a grievance.

Coverage

This policy covers:

permanent staff;
temporary staff;
casual staff; and
skill hire and professional services contractors.

Scope

This policy may be used by:

staff to address workplace grievances with other staff; and
managers to resolve workplace grievances between staff.

This policy does not cover:

WHS and workers compensation matters;
poor performance issues;
harassment, discrimination or workplace bullying matters;
fraud and corruption, maladministration or serious and substantial waste of resources; or
matters that require disciplinary action.

If a grievance is investigated and it is found that the matter is related to work performance or disciplinary issues, the grievance process is to terminate immediately. The RMS has other processes for managing these issues e.g. Management of Unsatisfactory Performance and Conduct Policy, Harassment, Discrimination and Workplace Bullying Policy, Corruption and Maladministration Prevention Policy and the Discipline Policy.

Definitions and Key Terms

Grievance

A grievance is a personal concern/problem about work or the work environment that the staff member seeks hearing or resolution of, and may be the result of a perceived or actual concern regarding:

allocation of work or development opportunities;
workplace communication difficulties, or interpersonal dispute; and
changes in work processes/practices.

Detailed information on how to raise and resolve grievances are contained in the Grievance Resolution Procedure.

Grievant

The staff member who raises a concern is referred to as the Grievant. For each grievance there may be one or more Grievants.

Respondent

The staff member who is claimed to be the cause of the grievance is referred to as the Respondent. There may be more than one Respondent in a grievance matter.

Grievance Network Coordinator (GNC)

The GNC, Human Resources Branch administers the support system for Grievance Contact Officers (GCOs). The GNC is responsible for co-ordinating the recruitment, selection and training of GCOs and arranging mediations. The General Manager, Human Resources will approve GCO selections.

Applicants will require their manager's approval to be released to undertake GCO duties.

Grievance Contact Officer (GCO)

The GCO is recruited and supervised in GCO role by the GNC, HR Branch. Their role is to assist both the grievant and respondent generate options to resolve their grievance, direct the grievant or respondent to appropriate RMS policies and procedures or other available services i.e. Employee Assistance Scheme (EAP), the OHS Hotline or the Ethics Hotline.

The GCO will not:

take sides;

make judgements; or

act as an advocate or spokesperson for the Grievant or Respondent.

A list of GCOs is available on the RMS Phone Guide and in every issue of Human Resources Notices.

Background

Interpreters

Where a staff member has difficulty in communicating effectively in English, an interpreter may be used. Only accredited interpreters are to be used in order to minimise risks to privacy and error. The HR Branch, on advice from the GCO or the Grievant's manager, will make the necessary arrangements to engage an interpreter. The business unit where the grievance has transpired will be responsible for any associated cost.

Confidentiality

All forms of information about a grievance are to be restricted to those individuals who need to know the information in order to resolve the grievance. Access to Grievance Files is highly restricted. Access provisions can be located in Attachment B of Corporate Policy Statement No.26, "Employees' Personal Records Policy.

Documentation

When managers are dealing with a grievance locally they are to take brief, factual diary/file notes that avoid personal opinions. These notes are to be retained by the manager for one year.

Where a manager has attempted to resolve a grievance unsuccessfully and the matter is escalated to the General Manager, detailed documentation is required.

Records include:

- names of parties to the grievance;
- grievance details;
- sufficient information to establish that a satisfactory process took place;
- the outcome and reasons for the decision; and
- any recommendation for action.

This documentation is to be retained by local management for one year.

If the grievance matter is referred for mediation through the GNC, a Grievance File will be created. Grievance files are to be retained for five years after settlement of the grievance. Grievance records are to be kept confidential and on a separate Grievance File, not on Personal or other RMS files. The RMS Document Management Section, Auburn, creates Grievance Files.

If the grievance is referred to an external body for settlement, the GNC must be notified and will create a Grievance File, which must be kept for 5 years.

If the grievance sets a precedent and results in significant change to RMS corporate procedure the file must be kept for ten years. In such a case the General Manager, Human Resources must be contacted.

Vexatious Claims

A vexatious claim is a grievance reported without sufficient grounds for action. Vexatious claims include but are not limited to those that are:

- malicious;
- raised to annoy or harass the respondent;
- lacking in substance; and/or
- frivolous.

Where a complaint is found to be vexatious, malicious or substantially frivolous and reported only to annoy or harass the Respondent, the staff member reporting the original grievance may be dealt with under the provisions of the RMS's Harassment, Discrimination and Workplace Bullying Policy or Discipline Policy.

Protection

Any staff member who is involved in a grievance in accordance with the RMS grievance procedures, or is required to prepare a report concerning another member of staff in relation to a grievance, is protected against any action for defamation provided they:

- do not intentionally make a vexatious, malicious or substantially frivolous complaint;
- raise the grievance in accordance with these established procedures and confidentiality is maintained; and
- do not publish or make information available to persons who have no legitimate interest in receiving it.

Mediation

Mediation provides the opportunity for a trained, independent person to assist in the resolution of the grievance. The mediation may result in the parties agreeing to and signing an agreement or understanding. The General Manager and/or Branch Manager must approve the engagement of an external mediator. Mediators are to be engaged through the GNC, HR Branch who manages the RMS Mediator Panel.

Appeal Right

Any Grievant who is dissatisfied with his or her treatment in terms of the Grievance Resolution Policy procedures may appeal to the Director or Chief Executive Officer for a re-examination of the matter. This appeal right does not in any way diminish a Grievant's right to seek the assistance or support of his or her union or staff association in the matter. Appeals must be lodged within 21 days from the date that the parties involved in the grievance are advised of the outcome.

Employee Assistance Program

The Employee Assistance Program (EAP) is available to assist all staff and their families. The service offers short term face-to-face or telephone professional advice and counselling to help cope with personal, family and work related issues.

Responsibilities

Title	Responsibilities
Staff	<p>Ensure their behaviour is aligned with the RMS Code of Conduct and Ethics.</p> <p>Report inappropriate behaviour in the workplace when witness to it, or when it is brought to their attention.</p> <p>Participate in grievance resolution and maintain confidentiality in the process as and when required.</p> <p>Not participate in the harassment or victimisation of any party involved in a grievance.</p> <p>Not lodge vexatious, frivolous or malicious grievances.</p>
Managers	<p>Promote, explain and model the standards of behaviour expected of staff members as set out in the RMS Code of Conduct and Ethics.</p> <p>Be familiar with and actively promote and support the RMS Grievance Resolution Policy, procedures and strategies.</p> <p>Monitor the workplace for early identification and resolution of grievances.</p> <p>Chair grievance related meetings and make grievance related decisions based on fact.</p> <p>Ensure confidentiality in the process except where there is a serious breach of an RMS policy or where there are grounds to believe there may be harm or injury to person or property in which case the matter must be referred to an appropriate person.</p> <p>Make appropriate arrangements to release a selected GCO to carry out his/her GCO duties.</p>
Grievance	<p>Advise their manager of the time involved in dealing with a grievance and make reasonable arrangements to carry out their normal duties.</p>

Contact Officers	<p>Assist the Grievant or Respondent to identify the options available to address the grievance.</p> <p>Direct the Grievant or Respondent to appropriate RMS policies, procedures or services (e.g. Ethics Hotline or EAP)</p> <p>Refer the Grievant to an appropriate staff member responsible for handling grievances.</p> <p>Complete a Grievance Resolution Report for each grievance received and forward to the GNC, HR Branch.</p> <p>Notify GNC of any changes to their contact details and work location.</p>
Grievance Network Coordinator	<p>Recruit, select, train and supervise GCOs in their role as a GCO.</p> <p>Coordinate the grievance resolution network and case management system.</p> <p>Ensure that the practices and processes applied and decisions proposed in individual workplace grievance cases are equitable and conform to RMS policy, legislation and industrial instruments.</p> <p>Provide grievance resolution advice to line management.</p> <p>Manage and report on administrative and contract matters associated with grievance resolution.</p> <p>Facilitate Grievance Resolution workshops to ensure that grievance resolution is communicated and understood.</p> <p>Manage and coordinate the RMS panel of mediators.</p>

Evaluation

This policy will be evaluated as appropriate, taking into account changes to New South Wales and Commonwealth legislation, identification of changing trends, and feedback provided to Human Resources Branch on its effectiveness.

Breaches

The RMS may take disciplinary action (including the termination of services) against any staff member who breaches this policy and the RMS Code of Conduct and Ethics.

Quality Records

2M4203

Additional Information

Legislation

Anti-Discrimination Act 1977 (NSW)

Work Health and Safety Act 2011 (NSW)

Industrial Relations Act 1996 (NSW)

Privacy and Personal Information Protection Act 1998 (NSW)

C. G. STAFF J.

Printed by the authority of the Industrial Registrar.

**CROWN EMPLOYEES (ROADS AND MARITIME SERVICES
DIVISION OF THE GOVERNMENT SERVICE OF NEW SOUTH
WALES - SALARIED STAFF SALARIES AND CONDITIONS OF
EMPLOYMENT) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 249 of 2012)

Before The Honourable Mr Justice Staff

27 September 2012

REVIEWED AWARD

PART A

1. Arrangement

PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Salaries
4.	Allowances
5.	Salary Packaging Arrangements, including Salary Sacrifice to Superannuation
6.	Conditions of Employment
7.	Dispute Settlement Procedure
8.	Anti-Discrimination
9.	Area, Incidence and Duration

Schedule A - List of Awards

Schedule B - List of Allowances

PART B

MONETARY RATES

2. Definitions

- (1) "Agency" shall mean Roads and Maritime Services Division of the Government Service of New South Wales established under Chapter 1A of the *Public Sector Employment and Management Act 2002* (NSW).
- (2) "Employee" shall mean a person to whom this Award applies.
- (3) "Association" shall mean the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.
- (4) "2007 Award" means the Crown Employees (Public Sector - Salaries 2007) Award made by the Industrial Relations Commission of New South Wales and published on 30 March 2007 (362 I.G. 404).

- (5) "DPE" shall mean the Director of Public Employment, as established under the *Public Sector Employment and Management Act 2002*.

3. Salaries

- (i) The salaries under this Award are payable to Employees appointed to or performing the duties of any of the classifications covered by the Awards, Agreements and Determinations listed in Schedule A to this Award.
- (ii) The salaries payable are prescribed in Part B, Monetary Rates, of this Award.
- (iii) The salaries prescribed in Part B reflect increases to the salaries paid under the 2007 Award of:
- (a) 4% to salaries contained in those Awards, Agreements and Determinations listed in Schedule A and payable with effect from the first full pay period to commence on or after 1 July 2008; and
 - (b) a further 4% to salaries paid under paragraph (a) of this subclause, payable with effect from the first full pay period to commence on or after 1 July 2009; and
 - (c) a further 4% to salaries paid under paragraph (b) of this subclause, payable with effect from the first full pay period to commence on or after 1 July 2010;
 - (d) a further 2.5% to salaries paid under paragraph (c) of this subclause, payable with effect from the first full pay period to commence on or after 1 July 2011; and
 - (e) a further 2.5% to salaries paid under paragraph (d) of this subclause, payable with effect from the first full pay period to commence on or after 1 July 2012
- (iv) The salary increases referred to in paragraphs (a) of subclause (iii) of this clause, insofar as they apply from the first full pay period on or after 1 July 2008 and have retrospective effect, shall only be paid to those employees who are employed as at the date of the making of this Award.

4. Allowances

- (i) The allowances specified in Schedule B and payable under the Awards and agreements in Schedule A are subject to adjustment in line with the salary increases in clause 3, Salaries of this Award.
- (ii) In addition to the allowances referred to in subclause (i) of this clause, any other allowance in the Awards, Agreements and Determinations listed in Schedule A which is normally moved in accordance with salary increases is to be adjusted in line with the salary increase in clause 3, Salaries of this Award.

5. Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation

- (i) The entitlement to salary package in accordance with this clause is available to:
- (a) permanent full-time and part-time employees;
 - (b) temporary employees, subject to the Agency's convenience; and
 - (c) casual employees, subject to the Agency's convenience, and limited to salary sacrifice to superannuation in accordance with subclause (vii).
- (ii) For the purposes of this clause:
- (a) "salary" means the salary or rate of pay prescribed for the employee's classification by clause 3, Salaries, Part B of this Award, and any other payment that can be salary packaged in accordance with Australian taxation law.

- (b) "post compulsory deduction salary" means the amount of salary available to be packaged after payroll deductions required by legislation or order have been taken into account. Such payroll deductions may include, but are not limited to, taxes, compulsory superannuation payments, HECS payments, child support payments, and judgement debtor/garnishee orders.
- (iii) By mutual agreement with the Agency, an employee may elect to package a part or all of their post compulsory deduction salary in order to obtain:
- (a) a benefit or benefits selected from those approved by the DPE; and
- (b) an amount equal to the difference between the employee's salary, and the amount specified by the Agency for the benefit provided to or in respect of the employee in accordance with such agreement.
- (iv) An election to salary package must be made prior to the commencement of the period of service to which the earnings relate.
- (v) The agreement shall be known as a Salary Packaging Agreement.
- (vi) Except in accordance with subclause (vii), a Salary Packaging Agreement shall be recorded in writing and shall be for a period of time as mutually agreed between the employee and the Agency at the time of signing the Salary Packaging Agreement.
- (vii) Where an employee makes an election to sacrifice a part or all of their post compulsory deduction salary as additional employer superannuation contributions, the employee may elect to have the amount sacrificed:
- (a) paid into the superannuation fund established under the *First State Superannuation Act 1992*; or
- (b) where the employer is making compulsory employer superannuation contributions to another complying superannuation fund, paid into the same complying fund; or
- (c) subject to the Agency's agreement, paid into another complying superannuation fund.
- (viii) Where the employee makes an election to salary sacrifice, the employer shall pay the amount of post compulsory deduction salary, the subject of election, to the relevant superannuation fund.
- (ix) Where the employee makes an election to salary package and where the employee is a member of a superannuation scheme established under the:
- (a) *Superannuation Act 1916*;
- (b) *State Authorities Superannuation Act 1987*; or
- (c) *State Authorities Non-contributory Superannuation Act 1987*,
- the Agency must ensure that the employee's superable salary for the purposes of the above Acts, as notified to the SAS Trustee Corporation, is calculated as if the Salary Packaging Agreement had not been entered into.
- (x) Where the employee makes an election to salary package, and where the employee is a member of a superannuation fund other than a fund established under legislation listed in subclause (ix) of this clause, the Agency must continue to base contributions to that fund on the salary payable as if the Salary Packaging Agreement had not been entered into. This clause applies even though the superannuation contributions made by the Agency may be in excess of superannuation guarantee requirements after the salary packaging is implemented.

- (xi) Where the Employee makes an election to salary package:
 - (a) subject to Australian Taxation law, the amount of salary packaged will reduce the salary subject to appropriate PAYG taxation deductions by the amount packaged; and
 - (b) any allowance, penalty rate, payment for unused leave entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an employee is entitled under this Award or any applicable Award, Act or statute which is expressed to be determined by reference to the Employee's rate of pay, shall be calculated by reference to the rate of pay which would have applied to the Employee under clause 3, Salaries, or Part B of this Award if the Salary Packaging Agreement had not been entered into.
- (xii) The Agency may vary the range and type of benefits available from time to time following discussion with the Association. Such variations shall apply to any existing or future Salary Packaging Agreement from date of such variation.
- (xiii) The Agency will determine from time to time the value of the benefits provided following discussion with the Association. Such variations shall apply to any existing or future Salary Packaging Agreement from the date of such variation. In this circumstance, the Employee may elect to terminate the Salary Packaging Agreement.

6. Conditions of Employment

- (i) The parties agree that they will have further discussions and negotiations regarding the conditions of employment which will apply to the employees covered by this award with the objective of achieving consolidated conditions of employment for all employees to be provided for in this award.
- (ii) Subject to the outcome of discussions and negotiations referred to in subclause (i) of this clause existing conditions of employment as provided for in the instruments set out in Schedule A of this Award and applicable policies of the Agency and agreements between the parties shall continue to apply.
- (iii) This Award provides pay increases of 4% with effect from the first full pay period that commenced on or after 1 July 2008, a further increase of 4% with effect from the first full pay period to commence on or after 1 July 2009, a further increase of 4% with effect from the first full pay period to commence on or after 1 July 2010, a further increase of 2.5% with effect from the first full pay period to commence on or after 1 July 2011, and a further increase of 2.5% with effect from the first full pay period to commence on or after 1 July 2012.
- (iv) These increases arise from the agreement of the parties contained in the Memorandum of Understanding between the NSW Government and the Association for the period 1 July 2008 to 30 June 2011 entered into on 2 October 2008 ("Memorandum of Understanding").
- (v) The pay increases under this Award are provided on the basis of the "no extra claims" commitment contained in clause 8 of the Memorandum of Understanding, provided that this shall not prevent the parties from applying for the award changes identified in the Memorandum of Understanding or subclause (i) of this clause.

7. Dispute Settling Procedure

All 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 Agency within the appropriate agency, if required.

- (i) An employee is required to notify (in writing or otherwise) their immediate manager, as to the substance of the dispute or difficulty, request a meeting to discuss the matter and, if possible, state the remedy sought.
- (ii) 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

employee to advise their immediate manager, the notification may occur to the next appropriate level of management, including, where required, to the appropriate agency head or Delegate.

- (iii) The immediate manager shall convene a meeting in order to resolve the dispute or difficulty within two (2) days, or as soon as practicable, of the matter being brought to attention.
- (iv) If the matter remains unresolved with the immediate manager, the employee 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) days, or as soon as practicable. This sequence of reference to successive levels of management may be pursued by the employee until the matter is referred to the agency head.
- (v) In the event that the matter remains unresolved, the Agency shall provide a written response to the employee and any other party involved in the dispute or difficulty, concerning action to be taken, or the reasons for not taking action, in relation to the matter.
- (vi) An employee, at any stage, may request to be represented by an Association representative.
- (vii) The employee, or the Association on their behalf, or the Agency may refer the matter to the Industrial Relations Commission of New South Wales if the matter is unresolved following the use of these procedures.
- (viii) The employee, Association, and the Agency shall agree to be bound by any lawful recommendation, order or determination by the Industrial Relations Commission of New South Wales in relation to the dispute.
- (ix) Whilst the procedures are being followed, normal work undertaken prior to notification of the grievance or dispute shall continue unless otherwise agreed between the parties, or, in the case of a dispute involving Occupational Health and Safety, if practicable, normal work shall proceed in such a manner as to avoid any risk to the health and safety of any employee or member of the public.

8. 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.

NOTES

- (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."

9. Area, Incidence and Duration

- (i) This Award shall apply to Employees appointed to or performing the duties of any of the classifications covered by the Awards, Agreements and Determinations listed in Schedule A of this Award.
- (ii) 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 27 September 2012.

Changes made to this award subsequent to it first being published on 15 May 2009 have been incorporated into this award as part of the review.

- (iii) This Award does not apply to RMS staff covered by the NSW Maritime Enterprise Agreement 2010-2013.

SCHEDULE A

LIST OF AWARDS, AGREEMENTS AND DETERMINATIONS

The wages, salaries and relevant allowances under this Award are payable to Employees appointed to or performing the duties of any of the positions covered by the following Awards, Agreements and Determinations

Awards, Agreements and Determinations:

Crown Employees (Roads and Traffic Authority of New South Wales - Salaried Staff) Award.

Crown Employees (Roads and Traffic Authority of New South Wales - School Crossing Supervisors) Award.

Inspectors Vehicle Regulation - Industrial Instrument 8411 of 1990.

SCHEDULE B

LIST OF ALLOWANCES

Additional Responsibilities Allowance

All Incidents of Employment Allowance

Charge Hand Allowance

Community Language Allowance

Diving Allowance

Environmental Allowance

Extraneous Duties Allowance

First Aid Allowance

Flying Allowance

In-Lieu of Overtime Allowance

Leading Hand Allowance

Licence Allowances covered in Trade Based Groups Agreement No. 2301 of 1981 and the Crown Employees (General Staff - Salaries) Award 2007

Officer-in-Charge Allowance

On-Call Allowance

Part-Time Building Managers/House Officers Allowance

Any Wage Related Allowances applicable to the Crown Employees (General Staff - Salaries) Award 2007

Qualifications Allowances - where the qualification is deemed to be a requisite for the position in question

Resident Officers Allowance

Shift Allowances

Special Rates Allowance

Supervision Allowance

Service Increments expressed as a separate sum

Word Processing Allowance

PART B

MONETARY RATES

AWARDS

Crown Employees (Roads and Traffic Authority of New South Wales - Salaried Staff) Award

Unified Salary Scale Grades	1.7.07 Per annum \$	1.7.08 Per annum \$	1.7.09 Per annum \$	1.7.10 Per annum \$	1.7.11 Per annum \$	1.7.12 Per annum \$
Grade 1	28,908	30,064	31,267	32,518	33,331	34,164
	31,706	32,974	34,293	35,665	36,557	37,471
	36,249	37,699	39,207	40,775	41,794	42,839
Grade 2	38,230	39,759	41,349	43,003	44,078	45,180
	39,964	41,563	43,226	44,955	46,079	47,231
	41,452	43,110	44,834	46,627	47,793	48,988

Grade 3	44,013	45,774	47,605	49,509	50,747	52,016
	46,076	47,919	49,836	51,829	53,125	54,453
	48,223	50,152	52,158	54,244	55,600	56,990
Grade 4	49,694	51,682	53,749	55,899	57,296	58,728
	51,642	53,708	55,856	58,090	59,542	61,031
	53,674	55,821	58,054	60,376	61,885	63,432
Grade 5	55,518	57,739	60,049	62,451	64,012	65,612
	57,313	59,606	61,990	64,470	66,082	67,734
	58,346	60,680	63,107	65,631	67,272	68,954
Grade 6	59,626	62,011	64,491	67,071	68,748	70,467
	61,436	63,893	66,449	69,107	70,835	72,606
	63,447	65,985	68,624	71,369	73,153	74,982
Grade 7	64,827	67,420	70,117	72,922	74,745	76,614
	67,115	69,800	72,592	75,496	77,383	79,318
	68,418	71,155	74,001	76,961	78,885	80,857
Grade 8	71,225	74,074	77,037	80,118	82,121	84,174
	74,117	77,082	80,165	83,372	85,456	87,592
	76,431	79,488	82,668	85,975	88,124	90,327
Grade 9	79,947	83,145	86,471	89,930	92,178	94,482
	82,244	85,534	88,955	92,513	94,826	97,197
	85,945	89,383	92,958	96,676	99,093	101,570
Grade 10	88,113	91,638	95,304	99,116	101,594	104,134
	91,589	95,253	99,063	103,026	105,602	108,242
	96,293	100,145	104,151	108,317	111,025	113,801
Grade 11	99,269	103,240	107,370	111,665	114,457	117,318
	103,591	107,735	112,044	116,526	119,439	122,425
	105,923	110,160	114,566	119,149	122,128	125,181
Grade 12	112,122	116,607	121,271	126,122	129,275	132,507
	115,395	120,011	124,811	129,803	133,048	136,374
	119,426	124,203	129,171	134,338	137,696	141,138
Grade 13	122,990	127,910	133,026	138,347	141,806	145,351
	126,177	131,224	136,473	141,932	145,480	149,117
	132,224	137,513	143,014	148,735	152,453	156,264

**Crown Employees (Roads and Traffic Authority of New South Wales - School Crossing Supervisors)
Award**

School Crossing Supervisors Category (refer cl. 7 of award for the Calculation of rates)	1.7.07 Per hour \$	1.7.08 Per hour \$	1.7.09 Per hour \$	1.7.10 Per hour \$	1.7.11 Per hour \$	1.7.12 Per hour \$
Base Rate (N)	16.8730	17.5479	18.2498	18.9798	19.4543	19.9407
Permanent SCS (P)	15.8184	16.4511	17.1092	17.7935	18.2383	18.6944
Additional hours/training (A)Casual SCS (C)	18.2791 20.2476	19.0103 21.0575	19.7707 21.8998	20.5615 22.7758	21.0755 23.3452	21.6024 23.9288

Crown Employees (Roads and Traffic Authority of New South Wales - Toll Plaza Officers) Award

Salary rates are included above in the Crown Employees (Roads and Traffic Authority of New South Wales - Salaried Staff) Award.

Inspectors Vehicle Regulation - Industrial Instrument 8411 of 1990

Salary rates are included above in the Crown Employees (Roads and Traffic Authority of New South Wales - Salaried Staff) Award.

C.G. STAFF *J*

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CROWN EMPLOYEES (TEACHERS IN SCHOOLS AND RELATED EMPLOYEES) SALARIES AND CONDITIONS AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Communities.

(No. IRC 932 of 2012)

Before Commissioner Bishop

19 September 2012

VARIATION

1. Delete clause 2 Dictionary, of the award published 3 August 2012 (373 I.G. 956) and insert in lieu thereof the following:

2. Dictionary

- 2.1 "Aboriginal Student Liaison Officer" means a person or teacher who has been temporarily appointed to the position of Aboriginal student liaison officer.
- 2.2 "Alternate Mode Course" means a course of teacher training other than a course completed by full time study with a higher education institution.
- 2.3 "Alternate Period" means a period taught by a teacher being a period other than a period which the teacher is normally timetabled to teach and where the need for the period to be taught arises from the absence from duty on leave of another teacher.
- 2.4 "Assistant Principal" means a teacher who is appointed as such to assist a principal of a school in the management of the school.
- 2.5 "Casual Teacher" means a teacher engaged on an hourly or daily rate of pay in the Teaching Service.
- 2.6 "Conditionally Trained Teacher (C)" means a teacher whose approval to teach is conditional upon completion of additional educational requirements prescribed by the Director-General.
- 2.7 "Core Hours" means the normal daily hours of operation of a school during which classes are conducted and in a high or central school includes a daily core timetable of eight periods, or the time equivalent.
- 2.8 "Degree" means a course of study in a higher education institution leading to a degree as described in the Australian Qualifications Framework as at 1 January 1995.
- 2.9 "Department" means the Department of Education and Communities.
- 2.10 "Deputy Principal" means a teacher appointed as such who is the deputy to the principal in a school and who acts as substitute in the absence of the principal, and is required to assist generally in the management of the school and, as required, in the special duties of the principal.
- 2.11 "Diploma" means a course of study in a higher education institution leading to a diploma as described in the Australian Qualifications Framework as at 1 January 1995.
- 2.12 "Director-General" means the Director-General of Education and Communities.
- 2.13 "Distance Education Centre" means a school established to provide full time or part time programs of secondary or primary courses to students who cannot normally attend on a daily basis. Provided that

- distance education centres can be either stand alone schools or centres attached and integrated into an existing school.
- 2.14 "District" means a group of schools.
- 2.15 "District Guidance Officer" means an officer appointed as such in a school district(s) or a group of schools who is responsible to the Director-General or nominee for the guidance service within the district(s) or group of schools.
- 2.16 "Education Officer" means an officer appointed as such, provided that for appointment the officer shall have an appropriate degree from a higher education institution or other qualifications and experience which the Director-General determines as satisfying requirements.
- 2.17 "Employee" means a person employed in a classification covered by this award by the Director-General or delegate under the provisions of the Teaching Service Act on a permanent or temporary basis.
- 2.18 "Environmental Education Centre" means a teaching and learning facility operated by the Department which students attend to participate in educational programs relevant to all primary and secondary key learning areas and/or to receive specific instruction in field work, and which provides support to schools in implementing environmental education.
- 2.19 "Equivalent" when referring to qualifications means those qualifications deemed by the Director-General to be equivalent to specified qualifications.
- 2.20 "Executive Principal, Connected Communities" means a person or officer employed temporarily under the provisions of the Teaching Service Act, 1980 to lead the schools selected by the Department to participate in the Connected Communities strategy for the period of the operation of that strategy.
- 2.21 "Executive Director Connected Communities" means a person who is responsible for leadership and implementation of the Connected Communities strategy in the Department.
- 2.22 "Federation" means the New South Wales Teachers Federation.
- 2.23 "Five Year Trained Teacher (5YT)" means a teacher who has obtained a degree and teaching qualifications from a higher education institution which together require a minimum of five years full time study. Any period of training in excess of that normally required to complete such a course shall not be deemed to be a training period for the purposes of any other definition.
- 2.24 "Four Year Trained Teacher (4YT)" means a teacher who has:
- 2.24.1 obtained a degree from a higher education institution and has, in addition, satisfactorily completed a teacher education qualification of at least one year's duration at a higher education institution; or
- 2.24.2 completed a four year teacher education degree from a higher education institution; or
- 2.24.3 completed such other course(s) which the Director-General determines as satisfying requirements for classification as a teacher.
- 2.25 "General Secretary" means the General Secretary of the Federation.
- 2.26 "Graduate" means a person who has obtained a degree from a higher education institution or possesses qualifications determined by the Director-General to be equivalent to such a degree.
- 2.27 "Graduate Diploma" means a course of study in a higher education institution leading to a graduate diploma as described in the Australian Qualifications Framework as at 1 January 1995.
- 2.28 "Head Teacher" means a teacher who is appointed as such in a high school, distance education centre or central school, and is responsible to the principal for the program of work in a designated subject or

learning area and the coordination of the work of classes in that area. The head teacher also exercises supervision over and gives advice and direction, when necessary, to other teachers in the subject or learning area in addition to their teaching duties. Provided that head teachers may be appointed with specific designated responsibilities, including:

- 2.28.1 Head teacher (female students) advises female school students and promotes their interests in a high school or a secondary department of a central school where the enrolment of female school students in the school or department exceeds 500.
- 2.28.2 Head teacher (welfare) assists the principal and or deputy principal in the area of student welfare. Head teacher (welfare) includes head teacher (welfare) - residential agricultural high schools.
- 2.28.3 Head teacher (administration) is responsible for assigned duties associated with the general administration of the school.
- 2.29 "Higher Education Institution" means a university or other tertiary institution recognised by the Director-General which offers degrees, diplomas or teacher education courses.
- 2.30 "Highly Accomplished Teacher" means a person or officer employed temporarily by the Department pursuant to the provisions of the Teaching Services Act, 1980 under the period of the National Partnerships on Improving Teacher Quality and Low Socio Economic Status School Communities.
- 2.31 "Home School Liaison Officer" means a person or teacher who has been temporarily appointed to the position of home school liaison officer.
- 2.32 "Industrial Relations Commission" means the Industrial Relations Commission of New South Wales, established by the *Industrial Relations Act 1996*.
- 2.33 "In Lieu of Duties" means duties undertaken by a teacher for a teacher absent from the classroom on duty elsewhere or performing other duties when that teacher is relieved of part of their regular face to face teaching load through variations in school organisation.
- 2.34 "Officer" means and includes all persons permanently employed in the Teaching Service under the provisions of the Teaching Service Act and who, on the date of commencement of the award, were occupying one of the positions covered by the award or who, after that date, are appointed to one of these positions.
- 2.35 "Parties" means the Department and the Federation.
- 2.36 "Period" means, in a high or central school, a 40 minute teaching period.
- 2.37 "Principal" means a teacher appointed as such to be responsible for the management, organisation, administration, supervision and efficiency of a school and all departments in a school. A principal does not include a teacher in charge of a school.
- 2.38 "Residential Agricultural High School" means a school classified as such by the Director-General.
- 2.39 "School" means a Department school or other centre, where instruction is provided by the Department, excluding an institute and including any place designated as part of, or as an annex to, such school.
- 2.40 "School Counsellor" means a teacher with an equivalent of four years training and a major in psychology who has responsibility for providing schools with advice and support in matters relating to student academic and personal development, welfare and discipline and provides psychological and other testing as required.
- 2.41 "Schools for Specific Purposes" (SSPs) for the purpose of the award are schools which are classified as such by the Director-General and are established under the Education Act 1990 to provide education for students with disabilities as listed in subclause 2.49.

- 2.42 "Senior Assistant" means a two or three year trained teacher who has been classified as a senior assistant on or before 1 January 1973 and who is employed in a school providing secondary education.
- 2.43 "Service" means continuous service, unless otherwise specified in the award.
- 2.44 "Supervisor of Female Students" means a female teacher appointed as such to advise female students and to promote their interests in a high school or secondary department of a central school where the school or department does not qualify for the appointment of a head teacher (female students).
- 2.45 "Teacher" means a person or officer employed permanently or temporarily in a full time or part time teaching position under the provisions of the *Teaching Service Act* 1980 and appointed to a school. Unless otherwise specified in the award, a teacher shall include a school teacher in training.
- 2.46 "Teacher in Charge (Schools)" means a teacher in charge of a centre not designated as a school determined by the Director-General where a principal is not appointed.
- 2.47 "Teacher in Charge of Residential Supervision of Agricultural High Schools" means a teacher selected by the principal to be responsible for the supervision and administration of additional duties relating to school student residence in residential agricultural high schools.
- 2.48 "Teacher in Training (Schools)" means a graduate recruited to train as a teacher through an alternate mode course.
- 2.49 "Teachers of Students with Disabilities" means school teachers appointed to schools for specific purposes, or support classes in primary or high schools established to provide education for students with disabilities and including appointments as itinerant support teacher, as follows:
- 2.49.1 students with: mild intellectual disabilities (IM); moderate intellectual disabilities (IO); severe intellectual disabilities (IS); behaviour disorders (BD); emotional disabilities (ED); hearing impairments (H); language disabilities (L); physical disabilities (P); severe reading (R), vision impairments (V); and
- 2.49.2 students in: an early childhood intervention program (EC); hospital schools, Royal Far West School, Stewart House (W); and community care programs (CT).
- 2.50 "Teaching Service Act" means the *Teaching Service Act* 1980.
- 2.51 "TAFE" means the New South Wales Technical and Further Education Commission.
- 2.52 "Temporary Teacher" means a person employed in one engagement full time for four weeks or more or in one engagement for one to four days per week for two terms or more.
- 2.53 "Temporary Employee" means and includes all persons employed on a temporary basis, other than on a casual or part time casual basis under the *Teaching Service Act* 1980.
- 2.54 "Trained Teacher" means a teacher who has satisfactorily completed a prescribed course of training at a higher education institution, or such other course or courses which the Director-General determines as satisfying requirements for classification as a teacher.
- 2.55 "Two Year Trained Teacher (2YT) or Three Year Trained Teacher (3YT)" means a teacher who has satisfactorily completed a prescribed course of teacher education of two or three years duration respectively at a higher education institution, or such other course or courses which the Director-General determines as satisfying requirements for classification as a school teacher.
- 2.56 "Year Adviser" means a teacher appointed to assist Year 7-12 students in every high school or every central school which has a secondary department.

- 2.57 "Year 12 Relieving Period" means a relieving period required to be undertaken by a teacher when that school teacher has been relieved of their timetabled Year 12 face to face teaching duties after Year 12 students leave school to sit for the Higher School Certificate Examination in Term 4 of each year.
2. Insert after subclause 5.8 of clause 5, Allowances the following new subclause.
- 5.9 To Executive Principals, Connected Communities as set out in Schedule 2 subject to the:
- 5.9.1 completion by the Executive Principal, Connected Communities of five (5) years of service in that position; and
- 5.9.2 satisfactory performance of the Executive Principal, Connected Communities in that position at the end of the five year period as determined by the Executive Director, Connected Communities; and
- 5.9.3 on completion of each subsequent five years of service in that position subject to the provisions of 5.9.2 above.
3. Delete subclause 16.5 of clause 16, Allocation of Duties in High School and insert in lieu thereof the following:
- 16.5 Teachers may, at the discretion of the principal, be required to take "in lieu of" classes as defined in subclause 2.33.
4. Delete Schedule 2, Allowances, and insert in lieu thereof the following:

SCHEDULE 2

Allowances

Schools	Rates from the first pay period to commence on or after 1.1.2012
Increase	2.5%
Home School Liaison Officer and Aboriginal Student Liaison Officer	2,551
Teacher in Charge	3,951
Year Adviser	3,504
Teachers with Health Education Certificate	1,261
Teachers other than the principal of classes of students with disabilities	2,240
Principals, schools for specific purposes	2,919
Principal of Stewart House	14,886
Assistant Principal of Stewart House	9,859
In a central school - DP (Primary), AP	1,775
Demonstration Schools:	
Principal	
Class PP1	2,577
Class PP2	2,287
Other promotion positions	2,003
Trained Teacher	1,626

Demonstration lessons:	
Teachers in schools required to take demonstration lessons: per lesson	45.85
In other schools: per half hour lesson	55.45
per 40 min. lesson	73.90
Maximum per annum	4,175
Residential Agricultural High Schools:	
Rostered supervision teachers	9,859
Head Teacher (Welfare) residential supervision allowance	1,643
Teacher in charge of residential supervision allowance	1,688
Principal on call and special responsibility allowance	14,886
Deputy Principal on call and special responsibility allowance	13,450
Supervisor of female students	
Up to 200 students	1,758
201-400 students	2,829
More than 400 students	3,504
Education Officers:	
Non Graduate	
Year 2	4,526
Year 1	4,526
Graduate	
Year 2	3,535
Year 1	3,535
Classification	Amount (*) \$
Executive Principal, Connected Communities	50,000

(*) Allowance payable subject to the Executive Principal Connected Communities satisfying the provisions of subclause 5.9.

5. Delete Schedule 4, Salaries - Promotion Classifications in the Teaching Service and insert in lieu thereof the following:

SCHEDULE 4

Salaries - Promotion Classifications in the Teaching Service

Classification	Salary from the first pay period to commence on or after 1.1.2012 Per annum \$
Schools	
Increase	2.5%
High School Principal Grade 1 (PH1) Grade 2 (PH2)	149,317 143,062
Central School Principals PC1 PC2 PC3 PC4	141,002 130,024 124,758 120,571
Primary School Principal PP1 PP2 PP3 PP4 PP5 PP6	139,636 128,766 123,547 119,405 116,736 99,982
Executive Principal, Connected Communities	165,000
Principal - Environmental Education Centre or Hospital School Grade 2 Principal - Environmental Education Centre or Hospital School Grade 1	116,736 99,982
High School Deputy Principal Deputy Principal (Secondary) Central School	116,736
Primary School Deputy Principal Deputy Principal (Primary) Central School	116,736
Assistant Principal Primary School Assistant Principal Central School	99,982
Head Teacher High School Head Teacher Central School Highly Accomplished Teacher District Guidance Officer	99,982
Senior Assistant in Schools	89,137

Classification	Salary from the first pay period to commence on or after 1.1.2012 Per annum \$
Non-school Based Teaching Service Classifications Salary Scales	Per annum \$
Increase	2.5%
Principal Education Officer	130,172

Senior Education Officer Class 2	117,319
Senior Education Officer Class 1	
Year 3	108,245
Year 2	104,115
Year 1	99,982

6. Delete subclause 9 of Schedule 9, Special Conditions Covering Teachers at Residential Agricultural High Schools, and insert in lieu thereof the following:
9. At each school, one teacher in charge of residential supervision shall be appointed by the principal (consistent with subclause 2.47 of clause 2, Dictionary of the award) to receive the Teacher in Charge of Residential Supervision Allowance as provided for in paragraph 5.5.3 of clause 5, Allowances, and Schedule 2.
7. This variation shall take effect on and from 19 September 2012.

E. A. R. BISHOP, Commissioner

Printed by the authority of the Industrial Registrar.

**CROWN EMPLOYEES (TEACHERS IN TAFE AND RELATED
EMPLOYEES, BRADFIELD COLLEGE AND TAFE CHILDREN'S
CENTRES) (VARIATION NO. 1) AWARD 2009**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(No. IRC 129 of 2012)

Before The Honourable Mr Justice Staff

22 August 2012

ORDER OF RESCISSION

The Industrial Relations Commission of New South Wales orders that the Crown Employees (Teachers in TAFE and Related Employees, Bradfield College and TAFE Children's Centres) (Variation No. 1) Award 2009 published 30 July 2010 (370 I.G. 371) as varied, be rescinded on and from 22 August 2012.

C.G. STAFF J

Printed by the authority of the Industrial Registrar.

(308)

SERIAL C8017**LOCAL GOVERNMENT (STATE) AWARD 2010**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union, Industrial Organisation of Employees.

(No. IRC 922 of 2012)

Before Commissioner Ritchie

3 September 2012

VARIATION

1. Delete subclause (i) of clause 40, Leave Reserved of the award published 31 December 2010 (370 I.G. 648) and insert in lieu thereof the following:
 - (i) Leave is reserved for the parties to the Award to apply to vary tool allowances as set out in Clause 14(v)(a) and compensation of tools as set out in clause 14(v)(d) of this Award in line with the Crown Employees (Skilled Trades) Award.
2. Insert after subclause (xix) of clause 41, Area Incidence and Duration the following new subclauses.
 - (xx) The increase to clause 14(ix)(a)(i), clause 14(ix)(c) - Minimum Quarterly Payment, and clause 14(x)(h) (under 2.5 litres) Vehicle Allowances shall take effect from the first full pay period commencing on or after 3 September 2012.
 - (xxi) The increase to clause 14(v)(a) Tool Allowances, and clause 14(v)(d) Compensation of Tools take effect from the first full pay period commencing on or after 3 September 2012.
3. Delete in Table 2 - Allowances of Part B - Monetary Rates, items "clause 14(v)(a)" "clause 14(v)(d) Tool Allowance" "clause 14 (ix)(a), clause 14 (ix) (c), and "clause 14(x)(h) Vehicle Allowance (under 2.5 litres)" and insert in lieu thereof the following:

	First Pay Period 01/11/10 \$	First Pay Period 01/07/11 \$	First Pay Period 16/08/11 \$	First Pay Period 03/09/12 \$	First Pay Period 01/07/13 \$
Clause 14(v)(a) Tool Allowance					
Bricklayer	18.60 p.w.	18.60 p.w.	18.60 p.w.	20.00 p.w.	20.00 p.w.
Carpenter and Plumber	26.20 p.w.	26.20 p.w.	26.20 p.w.	28.10 p.w.	28.10 p.w.
Metal and Mechanic Trades	26.20 p.w.	26.20 p.w.	26.20 p.w.	28.10 p.w.	28.10 p.w.
Painter and signwriter	6.30 p.w.	6.30 p.w.	6.30 p.w.	6.80 p.w.	6.80 p.w.
Plasterer	26.20 p.w.	26.20 p.w.	26.20 p.w.	28.10 p.w.	28.10 p.w.
Clause 14(v)(d) Insurance Value	1517.00 p.a.	1517.00 p.a.	1517.00 p.a.	1628.00 p.a.	1628.00 p.a.
Clause 14(ix) Vehicle Allowance (cents per km)					
(a) Under 2.5 litres	0.65 p.km.	0.65 p.km.	0.65 p.km.	0.66 p.km.	0.66 p.km.
(c) Minimum quarterly payment	1809.00	1809.00	1809.00	1823.00	1823.00
Clause 14(x)(h) Vehicle Allowance (cents per km)					
Under 2.5 litres	0.65 p.km.	0.65 p.km.	0.65 p.km.	0.66 p.km.	0.66 p.km.

4. This variation shall take effect on and from the first full pay period after 3 September 2012.

D.W. RITCHIE, Commissioner

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PUBLIC HEALTH SERVICE EMPLOYEES SKILLED TRADES (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(No. IRC 762 of 2012)

Before Commissioner Bishop

18 July 2012

AWARD

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PART B

MONETARY RATES

Table 1 - Weekly Wages

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Table 4 - Apprentices Wages and Allowances

2. Definitions

"Local Health District" means a Local Health District as specified in Schedule 1 of the *Health Services Act* 1997, and, for the purposes of this Award, will also include the Ambulance Service of NSW as described in section 76A of the said Act and also "Statutory Health Corporations" as specified in Schedule 2 of the said Act.

"Blindmaker" means a person appointed as such who is a journeyman/woman engaged in making and/or cutting or measuring or fixing inside window blinds.

"Bricklayer" means a person appointed as such who is employed on bricklaying or tuckpointing work.

"Carpenter" means a person appointed as such who is employed on carpentry work.

"Electrical Tradesperson" means a tradesperson, including an Electrician, in an electrical trade, which includes the following electrical trades:

"Electrical Fitter" means a tradesperson who is mainly engaged in making, fitting or repairing electrical machines, instruments or appliances, and who in the course of his/her work applies electrical knowledge including the welding, fabrication, and erection of brackets and equipment associated with electrical installation work.

"Electrical Mechanic" means a tradesperson who is mainly engaged on electrical installation, repair and maintenance work including the welding, fabrication, and erection of brackets, and equipment associated with electrical installation work.

"Electrical Fitter and Assistant to Chief Engineer - Sydney Hospital" means a person appointed as such, who in addition to undertaking the duties of an Electrical Fitter, assists the Chief Engineer at Sydney Hospital.

"Electrical Fitter and Assistant to Chief Engineer - Other Hospitals" means a person appointed as such, who in addition to undertaking the duties of an Electrical Fitter, assists the Chief Engineer.

"Electrician in Charge of Generating Plant" means an electrician who has complete charge of the whole plant, including the prime mover and generator and is required to run the plant and maintain and attend to the installation generally.

"Plant Electrician" means a tradesperson who is an electrical mechanic or electrical fitter who has practically complete charge of the general maintenance, alteration and repair work of an installation and carries out the orders of an employer having no knowledge of the electrical trade and not carrying on any business in the trade

as a partner or otherwise or carries out the orders of an employer's engineer or other officer who is not a practical electrician.

"Refrigeration and/or Air Conditioning Mechanic or Fitter" means a tradesperson who in the course of his/her work applies electrical trade experience and is mainly engaged on the installation, repair, and maintenance work in connection with electrically operated refrigeration and/or air conditioning units.

"Electrical Instrument Fitter" means a tradesperson, not necessarily an electrical fitter, who is required to design, test and/or repair and maintain electrical and/or electro-pneumatic measuring and/or scientific electrical instruments.

"Employer" means the Director-General, NSW Ministry of Health.

"Fitter" means a person appointed as such who is a tradesperson of one or more of the following classes: mechanical fitter, pipe fitter on refrigeration work and/or high pressure work which includes live steam and hydraulic press work.

"Floor/Wall Tiler" means a person appointed as such and without limiting the meaning of the expression "floor/wall tiler", a person employed in the laying or fixing of tiles, faience, mosaic, ceramic, opalite and the like not exceeding in measurement 930 square centimetres when such opalite and the like is fixed with cement composition.

"Hospital" means any facility operated by a "Local Health District" as defined in this Award.

"Motor Mechanic" means a person appointed as such who is a tradesperson engaged in repairing, altering, overhauling, assembling or testing metal and/or electrical parts of the engine or chassis of motor cars, motor cycles or other motor vehicles.

"Mechanical Tradesperson - Special Class" means a fitter or mechanic who satisfies the requirements for appointment to Level 2 in the classification structure, and who did so, fully or in part, by virtue of having obtained skills and/or knowledge beyond the base trade in hydraulics and/or pneumatics.

"Painter" means a person appointed as such who is engaged in any manner whatsoever in the painting and/or decorating of or in connection with all buildings and structures, plant, machinery, and equipment, fences and posts.

"Plasterer" means a person appointed as such who is employed on internal and/or external plastering and/or cement, including without limiting the generality of the foregoing, fibrous plaster fixing, gypsum plaster board fixing and floorlaying.

"Plumber" means a person appointed as such and without limiting the ordinary meaning of "plumbing", who is engaged on work including lead burning, chemical plumbing, oxy-welding, electric welding and brazing applicable to plumbing work, gas fitting, maintenance, installations and repair of hot and cold water services and hot water and/or steam heating services, air conditioning plants, the making up, fitting and installation of sewage and sewerage systems in sheet lead, galvanised iron, cast iron or any other material which supersedes the materials usually used by plumbers, the fixing of roofing, curtain walling, spouting, downpipes, gutters, valleys, ridging and flashings in any metal or any material, and the fixing, maintenance and repair of metal drain pipes and vent pipes to any building.

"Scientific Instrument Maker" means a person appointed as such who is a tradesperson engaged on the work of manufacturing, repairing, adjusting, and/or testing of optical and scientific instruments, but does not include an employee working exclusively as a tradesperson.

"Signwriter" means a person appointed as such and who in addition to having a knowledge of painting does any of the following work:

Signwriting, designing and/or lettering of tickets and showcards.

Pictorial and scenic paintings, or production of signs or posters by means of stencils, screens or like methods or any other work incidental thereto including cutout displays of all description, pictorial, scenic or lettering and without limiting the generality of the foregoing shall include:

- (a) lettering of every description, size or shape applied by brush on any surface or material which, without limiting its meaning, shall include stone, wood, iron, metal, brick, cement, glass (plain and fancy), canvas, paper, calico, sheeting, bunting, silk, satin, wire blinds;
- (b) designing for windows, poster, show window and theatre displays, honour rolls, illuminated addresses, neon signs, stencils, display banners;
- (c) gilding, i.e., the application of gold, silver, aluminium, or any metal leaf to any surface;
- (d) designing and laying out of cutout displays of all descriptions, either pictorial, scenic or lettering;
- (e) screen process work, i.e., the designing, setting up and the operation for duplication of signs on any material whether of paper, fabric, metal, wood, glass, or any similar material.

Without limiting the general meaning signwriting work shall include making of stencils and stencilling by screen or any other method, and the making and/or fixing of transfers.

"Spray Painter" means a tradesperson who is required to prepare all types of surfaces, colour match and apply paint to vehicle panels, vehicle components and whole vehicles with the use of general trade experience.

"Test case decision" means a decision made under Part 3 - National and State Decisions of Chapter 2 of the Industrial Relations Act 1996 or any other decision which the Industrial Relations Commission of New South Wales determines to be a test case having general application to awards in the State.

"Toolmaker" means a person appointed as such who is a tradesperson making and/or repairing any precision tool, gauge, die or mould to be affixed to any machine who designs or lays out his/her work and is responsible for its proper completion and includes any tradesperson engaged in or in connection with the making of any tool, gauge, die or mould as aforesaid who by agreement with the employer is classified as a toolmaker.

"Tradesperson" means any employee who has completed an apprenticeship or holds a relevant trade certificate or equivalent or, is otherwise appointed to any classification under this Award as at 1 September 1997.

"Union" means any or all of the following organisations as the case may be:

Construction Forestry Mining and Energy Union, New South Wales Branch;

New South Wales Plumbers and Gasfitters Employees' Union;

Automotive Food Metal Engineering Printing & Kindred Industries Union - Metals Division and Vehicle Division.

The Electrical Trades Union of Australia, New South Wales Branch.

"Upholsterer" means a person appointed as such who is a journeyman engaged in upholstering.

"Welder 1st Class" means a person appointed as such who is a tradesperson using electric arc and/or oxy-acetylene blow pipe and/or coal gas cutting plant who is required to apply general trade experience as a welder.

"Welder Special Class" means a welder who, in addition to satisfying the requirements of a Welder 1st Class, is required to and is competent to apply general trade experience in welding all the following

classes of metals: mild steel, stainless steel, cast iron, aluminium, copper, brass, die cast metal and magnesium.

3. Classification Structure and Labour Flexibility

Tradespersons in the NSW public Health system perform, both on a planned and emergency basis, a variety of manual and technical tasks related to preventative and corrective maintenance and the installation, renovation and construction of buildings, plant and equipment. Those tasks include the performance of peripheral and incidental tasks and assisting other staff so as to complete the whole job.

In recognition of the skills and knowledge brought to the performance of tasks by tradespersons, the following classification structure is to be applied from the first full pay period to commence on or after the 1 September 1997.

Trade Classification	% of Weekly Wage	Definition
Level 1	100%	Complete Apprenticeship and/or holds relevant trade certificate or equivalent.
Level 2	105%	120 hours of approved course/s and is regularly required to use the skills/knowledge acquired in such courses.
Level 3	110%	240 hours of approved course/s and is regularly required to use the skills/knowledge acquired in such courses.
Level 4	115%	360 hours of approved course/s and is regularly required to use the skills/knowledge acquired in such courses.

Note: Approved courses in respect of skills/knowledge no longer regularly required shall not be counted for progression purposes.

Approved Courses - are TAFE courses and any others that the Employer approves. Ministry of Health Study Leave provisions apply. Courses approved however must relate to the acquisition of new skills (performing additional functions) and not simply the modernisation or updating of current work practices or methods (performing the same functions better/differently - for example, personal OH&S related courses, updated inventory or programmed maintenance systems, new computer software etc).

Placement - The relevant Chief Executive Officer will determine where each tradesperson should be placed within the classification structure.

This must be done firstly by determining which skills/knowledge, above classification level 1 skills, are regularly required of the tradesperson and secondly, in relation to each of those, determining whether the relevant approved course has been successfully completed or, alternatively, in respect of tradespersons in employment as at 1 September 1997, determining whether the skills/knowledge possessed by the tradesperson is equivalent to skills/knowledge acquired from successfully undertaking the approved course.

Where the tradesperson in question is placed within a classification in the structure greater than level 1, the employee is to be paid the higher rate from the first full pay period to commence on or after that date that the higher skill/knowledge was regularly required of the tradesperson.

Progression - Progression to classification levels 2, 3 and 4 is to be on the basis of the tradesperson in question having successfully undertaken at least 120 hours of additional approved course/s, and, being required to regularly use the skills/knowledge acquired in such courses. Approved courses in respect of skills/knowledge no longer regularly required shall not be counted for progression purposes.

The employer will determine which and how many employees are to be regularly required to use additional skills/knowledge for which a higher classification level is to be paid.

Tradespersons at classification levels 2,3 and 4 are responsible for maintaining the additional skills/knowledge to a standard equivalent to that of having successfully undertaken a current approved course/s in order to continue to be paid the higher classification level.

Equivalent Skills - For the purposes of progression under the foregoing clause, the Chief Executive Officer may determine that the skills/knowledge possessed by and regularly required of a tradesperson who was in employment as at 1 September 1997, should be considered equivalent to skills/knowledge acquired from successfully undertaking an approved course/s. Any such decision requires that the tradesperson in question be credited with hours equivalent to that of the relevant approved course/s.

No Double Counting - There will be no credit toward progression to a higher classification level in relation to the performance of any function for which payment of an allowance is already made, for example, Thermostatic Mixing Valve Allowance and, any functions for which Additional Wage Rates are paid, for example, to Plumbers, Electrical Tradespersons and Welders.

Leading Hand Allowances - Leading hand allowances, where applicable, will be paid in addition to the skills based increment of the tradesperson in question.

Disputes - The Issue Resolution procedures should be utilised if any disputes arise concerning implementation of this clause.

4. Hours and Contract of Employment

- (i) Employment under this Award will be full-time, part-time or casual. Any employee not specifically engaged as a casual employee shall be deemed to be employed by the week.
- (ii) Full-time employees - Hours:
 - (a) "Day Worker" means a worker who works his/her ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6:00 am and at or before 10:00 am otherwise than as part of a shift system.

"Shift Worker" means a worker who is not a day worker as defined.
 - (b) Except as provided elsewhere in this Award the ordinary working hours excluding meal times shall be thirty-eight per week and shall be worked in accordance with the following provisions for a four week cycle. The ordinary hours of work for day workers shall be 8 hours per day worked between 6:00 am and 6:00 pm Monday to Friday inclusive and arranged in a four weekly cycle such that an employee 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, on pay, in each four weekly cycle of twenty working days.
 - (c) Each day of paid sick or recreational leave taken and any public holiday/s occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes.
 - (d) An employee who has not 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 allocated day off. Such payment shall also be made to an employee on termination of employment.
 - (e) The accrued allocated day off prescribed in paragraph (b) of this subclause shall be taken as a paid day off unless the employee is required to work that day by the employer to cover unforeseen or emergency circumstances which would impair the productivity of other employees, delay the completion of a project or section thereof or prevent other employees from carrying out maintenance work outside ordinary working hours.

- (f) Where an employee has been absent on workers' compensation during a 20 day cycle and returns to work prior to his/her next allocated day off duty, in normal sequence, he/she shall be given and shall take such day as though he/she had worked the whole of the 20 day cycle.
 - (g) Where an employee is required to work on his/her accrued allocated day off, other than a call back, he/she shall be paid at the rate of time and one-half for the time worked in ordinary hours and at double time for all time worked outside the ordinary hours on that day and the employer and employee shall confer with the view of substituting another day off, in lieu thereof, in the current 20 day cycle. Should it be impractical for such a day to be substituted in the current 20 day cycle, it shall be given and taken as soon as practicable after the commencement of the next 20 day cycle in sequence.
 - (h) Where an employee requests, and the employer agrees to a temporary change of the allocated day off in the four weekly cycle, no penalty payments shall be payable to an employee in respect of the change of the allocated day off. Similarly no penalty payments shall be payable to the employee where he/she and the employer agree to change the allocated day off, in the four weekly cycle, on a permanent basis.
 - (i) When an employee's allocated day off duty, on pay; as prescribed by paragraph (b) of this subclause, falls on a public holiday as prescribed by clause 22, Public Holidays, and clause 23, Picnic Day, the next working day shall be taken in lieu of the allocated day, unless an alternative day in that four weekly cycle (or the next four weekly cycle) is agreed to between the employer and the employee.
 - (j) The ordinary hours of work of shift workers exclusive of meal times shall be 8 hours per shift with 0.4 of one hour at ordinary rates for each shift worked accruing as an entitlement to take one shift off duty, on pay, in each cycle of four weeks such that 19 shifts of eight hours (152 hours in total) are worked in each cycle.
 - (k) Each shift worker shall be free from duty for not less than two full days in each week or where this is not practicable, four full days in each period of two weeks and where practicable such days shall be consecutive.
 - (l) Except at regular changeover of shifts an employee shall not be required to work more than one shift in each period of twenty-four hours.
 - (m) Shift rosters shall specify the commencing and finishing times of the ordinary working hours of the respective shifts.
 - (n) The method of working shifts may be varied by agreement between the employer and the accredited representative of the union to suit the circumstances of the establishment or in the absence of agreement by seven days notice of alteration given by the employer to the employee.
 - (o) Before shift work is introduced into any hospital or section thereof, the proposals relating thereto shall be conveyed to the Health Administration Corporation for its approval and to afford it an opportunity to discuss such proposals with representatives of the employer and the union or unions concerned.
 - (p) There shall be allowed, without deduction of pay, a tea break of twenty minutes between 9:00 am and 11:00 am, or at such other time as may be mutually agreed upon, provided however that employees shall not necessarily take it at the same time or in the same location. Where practicable such tea break shall be taken at the nearest facility to the workplace and at the convenience of the employer.
- (iii) Part Time Employment:
- (a) A part-time employee is one who is permanently appointed by the employer to work a specified number of hours in a roster cycle. The specified hours must be less than those prescribed for a full-time employee.

- (b) Employees engaged under this clause shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate relevant to their classification and shall be entitled to all other benefits not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.

This includes pro rata of appropriate weekly allowances and pro rata of appropriate daily allowances in the same proportion as actual hours on a day bears to eight. A part-time employee shall not be entitled to an additional day off or part thereof as prescribed by this Award and shall not be entitled to Public Holidays where the employee would not have worked that day pursuant to his/her usual roster.

- (c) The minimum number of hours per shift worked is four hours. The maximum ordinary hours which may be worked within a 7 day period (coincidental with the pay period) is thirty two. Days of work and starting and finishing times may be varied at any time by agreement, or by the employer with notice having regard to the employees circumstances.
- (d) All time worked by part-time employees in excess of eight hours on any shift, or beyond the rostered finishing time of the majority of full-time employees employed on that shift in the section concerned, shall be overtime and paid for at the rate of time and one half for the first two hours and double time thereafter, except that on Sunday such overtime shall be paid for at the rate of double time and on public holidays at the rate of double time and one half.

Extensions to the time worked on any shift, up to and including eight hours, or up to and including the rostered finishing time of the majority of full-time employees employed on that shift in the section concerned, whichever occurs first, 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.

- (e) Part-time employees shall have their pro-rata entitlements calculated by the average of ordinary hours worked per annum. In this respect ordinary hours worked means their contracted hours and any additional hours worked at ordinary rates of pay. In other words, hours which include extensions to shifts referred to in (d) above.
- (iv) Termination of Weekly Employment - One week's notice of termination of employment shall be given by the hospital or the employee, respectively, but when the conduct of an employee justifies instant dismissal such notice of termination of employment shall not apply; provided that should an employee fail to give the prescribed notice such employee shall be liable to the forfeiture of one week's wages. Where the services of an employee are terminated without due notice he/she shall be paid one week's salary in lieu thereof.
- (v) Casual Employment:
- (a) A casual employee shall mean a person engaged for a period of less than the hours prescribed for full-time employees in clause 4, Hours and Contract of Employment, but shall not include any person employed under an unemployment relief scheme.
- (b) A casual employee shall be paid 15 per centum in addition to the rate calculated by adding the weekly wage and tool allowance for the class of work which he/she performs.
- (c) A casual employee who is requested to report for work shall be paid a minimum of 2 hours pay for each start.
- (vi) All employees:
- (a) Except for meal breaks, at the discretion of the employer, the ordinary hours of work shall be worked continuously provided that no employee shall be required to work for more than 5 hours without a meal break.
- (b) Painters shall be allowed five minutes before lunch and before the cessation of the day's work or shift to clean and put away their brushes, tools, etc.

- (vii) Locally negotiated hours of work patterns which are in place as at 1 September 1997 are preserved. Such work patterns are known to exist at Northern Sydney Area Health Service (12 hour shifts), Central Sydney Area Health Service (12 hour shifts) and Western Sydney Area Health Service (9 day fortnight). The preservation of those work patterns includes the preservation of other conditions and administrative arrangements altered/adopted locally to supplement and or accommodate the existence of those work patterns.

4A. On Call

- (i) The employer shall advise all employees and the Union(s) of any proposal to introduce an on call roster, including the proposed details of the roster.
- (ii) An employee required by his or her employer to be on call, otherwise than as provided in (iii) hereof shall be paid the allowance as set out at Table 2 for each period of 24 hours or part thereof, provided that only one allowance shall be payable in any period of 24 hours.
- (iii) An employee required to be on call on rostered days off shall be paid the allowance set out at Table 2 for each period of 24 hours or part thereof, provided that only one allowance shall be payable in any period of 24 hours.
- (iv) On call rostering arrangements shall be determined in consultation with affected employees and having regard to the availability and training of employees placed on the on call roster. Such arrangements should also have regard to particular local geographical concerns and travelling distances involved.
- (v) Wherever possible the employer shall supply a mobile telephone and or pager to an employee rostered on call.
- (vi) Where provided with a mobile telephone or pager a rostered employee must remain near the mobile telephone which must remain switched on unless a pager has been provided. Alternatively an employee not provided with a mobile telephone or pager must remain available via their home telephone. A rostered employee shall be available to answer calls personally and must not utilise an answering machine.
- (vii) An employee rostered on call must contact the employer/hospital immediately it becomes known that the employee shall be unavailable for rostered duty.
- (viii) The employee must be able to respond appropriately within a reasonable time frame as determined by the employer.
- (ix) Where appropriate an employee rostered on call may be provided with a motor vehicle.
- (x) The employer shall ensure that all employees who participate in the after hours service are provided with any training necessary to respond effectively to calls received.
- (xi) When an employee is recalled to work, payment is in accordance with clause 5(v).

4B. 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 six 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 six 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 or 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) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:

- (1) 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.
 - (2) 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 *Workplace Health and Safety Act 2011* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (d) 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.
- (e) 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.

5. Overtime

- (i) For all work done outside ordinary hours, (inclusive of time worked for accrual purposes as prescribed in clause 4, Hours and Contract of Employment and Clause 21, Shift Work) the rates of pay shall be time and one half for the first two hours and double time thereafter, such double time to continue until the completion of the overtime work.
- Except as provided in this subclause or subclause (ii) of this clause, in computing overtime each day's work shall stand alone, except where overtime is continuous from the previous day.
- (ii) Rest period after overtime - when overtime work is necessary it shall wherever reasonably practicable be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.

An employee who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that he/she has not had at least ten consecutive hours off duty between these times shall, subject to this subclause, be released after completion of such overtime until he/she has had ten 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 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.

The provisions of this subclause shall apply in the case of shift workers as if eight hours were substituted for ten hours when overtime is worked:

- (a) For the purpose of changing shift rosters; or
 - (b) Where a shift worker does not report for duty and a day worker or a shift worker is required to replace the absent shift worker; or
 - (c) Where a rostered shift is altered by arrangement between the employees themselves.
- (iii) Overtime worked on a Saturday or Sunday not being a public holiday shall be paid for as follows:
- (a) Saturday - time and one half for the first two hours and double time thereafter with a minimum payment of four hours except where such overtime is continuous with overtime commenced on the previous day.

All overtime work after twelve noon on a Saturday shall be paid for at double time.
 - (b) Sunday - double time for all time worked with a minimum payment for four hours. Payment of double time for overtime worked on a Sunday shall continue until the employee is relieved from duty.
- (iv) Overtime worked on Public Holidays:
- (a) Overtime worked on a public holiday as prescribed by clause 22, Public Holidays, shall be paid at the rate of double time and one half for all time worked with a minimum payment of four hours at such rate.
 - (b) Overtime worked on a public holiday and which continues beyond twelve midnight into the next day not being a public holiday shall be paid for at the same rate for a public holiday until such time as the employee is relieved from duty.
- (v) Call back:
- (a) An employee recalled to work after leaving the premises (including the allocated day off, on pay) shall be paid for a minimum of four hours work at the appropriate rate for each time he/she is so recalled; provided that, except in unforeseen circumstances arising, the employee shall not be required to work the full minimum number of hours prescribed above if the work he/she was recalled to perform is completed within a shorter period.
 - (b) An employee recalled to work overtime as prescribed by paragraph (a) of this subclause shall be paid all fares and expenses reasonable incurred in travelling to and from his/her place of work.

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

- (c) The provisions of this subclause shall apply in the case of employees on call back as if eight hours were substituted for ten hours in subclause (ii) of this clause, unless such call back occurs after an employee has worked continuing overtime from the normal shift immediately preceding the call back.
- (vi) Temporary night work - Wherever it may be necessary for a "day worker" to work temporary night work in the course of alteration or renovations of a building.
 - (a) No employee who is employed during ordinary hours shall be employed on temporary night work except at overtime rates or vice versa.
 - (b) A meal break of not less than 20 minutes shall be allowed during such shift.
 - (c) An employee employed for less than five continuous shifts (inclusive of the allocated day off, on pay, as prescribed in clause 4, Hours and Contract of Employment) in any working week shall be paid at the rate of double time and one half for all time worked with a minimum payment of four hours at such rate.
 - (d) The rate of pay for temporary night work shall be time and one half.
 - (e) Start and finishing times for temporary night work shall be agreed upon mutually between the employer and the employees concerned.
- (vii) Meal hours - Work done during meal hours and thereafter until a meal hour break is allowed shall be paid for at double time rates. An employee shall not be compelled to work for more than five hours without a break for a meal.
- (viii) Meal money - An employee required to work overtime in excess of one and one half hours after working ordinary hours shall be paid by his/her employer an amount set out at Table 3 to meet the cost of a meal. During the term of this Award, expense related allowances will be adjusted in accordance with movements in the expense related allowances in the Crown Employees Wages Staff (Rates of Pay) Award.

After the completion of each four hours on continuous overtime shall be paid an amount set out at Table 3 for each subsequent meal in addition to his/her overtime payment, but such payment need not be made to employees living in the same locality as their places of work who can reasonably return home for meals.
- (ix) Transport of employees - When an employee after having worked overtime or a shift for which he/she has not been regularly rostered finishes work at a time when reasonable means of transport are not available the employer shall provide him with a conveyance to his/her home, or pay him his/her current wage for the time reasonably occupied in reaching his/her home (provided that this subclause shall not apply to an employee who uses his/her own vehicle to travel to and from his/her place of work).
- (x) Reasonable overtime:
 - (a) Subject to paragraph (b) below, an employer may require an employee to work reasonable overtime at overtime rates or as otherwise provided for in this award.
 - (b) 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.
 - (c) For the purposes of paragraph (b) what is unreasonable or otherwise will be determined having regard to:
 - (i) any risk to employee health and safety;
 - (ii) the employee's personal circumstances including any family and carer responsibilities;

- (iii) 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.
- (xi) Cribs:
- (a) An employee who is required to work overtime for one and one half hours or more after the normal creasing time inclusive of time worked for accrual purposes as prescribed in clause 4, Hours and Contract of Employment, and Clause 21, Shift Work, shall be allowed, at the expiration of the said one and one half 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.
 - (b) When 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 pm which meal break shall be taken without loss of pay.

6. Wages

- (i) The weekly wages of full-time employees shall be as set out in Table 1.
- (ii) The weekly wages referred to in subclause (i) and (iv) of this clause are inclusive of the Industry Allowance, paid in consideration for:
 - (a) working in the open and there being subjected to climatic conditions, i.e., dust blowing in the wind, brick dust, drippings from concrete, etc.;
 - (b) sloppy conditions;
 - (c) lack of usual amenities associated with factory work e.g., meal rooms, change rooms, lockers, etc.
- (iii) The weekly wages referred to in subclause (i) and (iv) of this clause are inclusive of the Hospital Trades Staff Allowance, paid in recognition of the responsibility, specialised skills, flexibility and discretion exercised by such tradespersons and the environment in which they work.
- (iv) The weekly wages and allowances for Apprentices shall be as set out in Table 4. The conditions of employment within this Award which specifically refer to Apprentices will be applied to Apprentices.

6A. Salary Sacrifice to Superannuation

- (i) Notwithstanding the salaries prescribed in Clause 6. Wages, 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 Clause 6 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 6B. 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 wages 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 (vi) above, the employer will continue to base contributions to that fund on the salary payable under Clause 6 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.

6B. 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 Services Salary Packaging Policy and Procedure Manual, 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 4 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 6. Wages, 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 Salary Packaging Policy and Procedure Manual.
 - (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 Services Salary Packaging Policy and Procedure Manual as amended from time to time.

7. Additional Wage Rates

- (i) Electrician - An electrician who is the holder of a Qualified Supervisors Certificate or Contractors licence shall be paid an amount per week set out at Grade A of Table 2. An electrician who is the holder of a Certificate of Registration shall be paid an amount per week set out at Grade B of Table 2.
- (ii) Lead Burner - The ordinary rates for lead burners shall be calculated by adding to the rate prescribed for journeymen plumbers in this Award the sum per hour set out at Table 2.
- (iii) Plumber - The ordinary rates for plumbers are increased by the weekly amounts (or pro rata hourly for Part-time/Casual) set out in Table 2 for all purposes for acting on various licences or combinations thereof as set out:
- (a) when required to act on plumber's licence;
 - (b) when required to act on gasfitter's licence;
 - (c) when required to act on drainer's licence;
 - (d) when required to act on plumber's and gasfitter's licence;
 - (e) when required to act on plumber's and drainer's licence;
 - (f) when required to act on gasfitter's and drainer's licence;
 - (g) when required to act on plumber's, gasfitter's and drainer's licence.

A plumber who may be required by his/her employer to act on his/her licence or licences during the course of his/her employment shall be paid at the rate per hour mentioned in this Award for every hour of his/her employment whether he/she had in any hour in fact acted on such licence or not.

Gasfitting licence shall be deemed to include coal gas, natural gas, liquid petroleum gas or any other gas where it is required by any State Act of Parliament or regulation that the holder of a licence be responsible for the installation of any such service or services.

- (iv) A plumber and/or gasfitter and/or drainer who is or will be required to be the holder of a Certificate of Registration shall be paid the amount per hour set out at Table 2 in addition to his/her ordinary rate of pay. This allowance shall be paid for all purposes of the Award with the exception of clause 21, Shift Work, and clause 5, Overtime, in which cases it shall be paid as a flat rate and not be subject to penalty addition.
- (v) Electric Welding - An employee being the holder of a Department of Industrial Relations oxy-acetylene or electric welding certificate who may be required by his/her employer to act on either of his/her certificates during the course of his/her employment shall be entitled to be paid for every hour of his/her employment on work the nature of which is such that it is done by or under the supervision of the holder of a certificate or while not performing but supervising such work the sum per hour set out at Table 2 with a minimum payment of one hour per day for each certificate in addition to the rates of a journeyman plumber in this Award.
- (vi) Computing Quantities - Employees who are regularly required to compute or estimate quantities of materials in respect to the work performed shall be paid an additional amount per day or part thereof set out at Table 2.
- (vii) An employee being the possessor of a boiler attendant's certificate who is required to supervise or operate a boiler shall for each week he/she is so required to be paid in addition to the rates prescribed an amount set out at Table 2.

(viii) BMC Operators:

- (a) Tradespersons employed on rotational shiftwork in building maintenance centres attending computerised systems monitoring the status and functions of plant and equipment connected thereto and attending to alarms recorded thereon shall be paid an allowance per week as set out at Table 2 above the Award margin prescribed for their respective trade classifications. Such allowance shall be paid for all purposes of the Award and subject to wage indexation increases.
 - (b) In addition to the foregoing such tradesperson/s shall also be paid the tool allowance prescribed for their respective trade classification under this Award.
 - (c) Tradespersons attending the computerised system shall hold their work station for a period of one quarter of an hour at shift change over to acquaint the oncoming shift with the status of the plant and equipment or maintenance work in hand. Such time shall be counted as time worked and paid for at overtime rates.
- (ix) Motor mechanics who are required to inspect and issue certificates of inspection in respect of the road worthiness of motor vehicles shall be paid an amount set out at Table 2 for each vehicle inspected plus an amount per day set out at Table 2 whilst actually at work.
- (x) In addition to the ordinary rate paid to an Electrical Tradesperson (Electrical Fitter/Mechanic and Refrigeration and/or Air Conditioning Mechanic or Fitter), the following types of Electrical Tradespersons (see Definitions) shall be paid the weekly amounts (or pro rata hourly for Part-time/Casual) set out at Table 2 for all purposes:

Electrical Fitter & Assistant to Chief Engineer - Sydney Hospital;

Electrical Fitter & Assistant to Chief Engineer - Other Hospitals;

Electrician in Charge of Generating Plant less than 75 Kilowatts;

Electrician in Charge of Generating Plant 75 Kilowatts or more;

Plant Electrician.

- (xi) In addition to the ordinary rate paid to a Welder 1st Class, a Welder Special Class as defined shall be paid the weekly amount (or pro rata hourly for Part-time/Casual) set out at Table 2 for all purposes.

8. Tool Allowances

Employees shall be paid tool allowances for all purposes as for Table 1, except Electrical Trades classifications (Electrical Tradesperson and Electrical Instrument Fitter), who shall be paid tool allowances for all purposes as for Table 2. During the term of this Award, expense related allowances will be adjusted in accordance with movements in the expense related allowances in the Crown Employees Wages Staff (Rates of Pay) Award.

9. Leading Hands

(i) Leading Hand Electrician:

- (a) For the purposes of this subclause, Leading Hand means any electrical worker (not being a Foreman) who is placed in charge of work on which 4 or more employees or 2 or more electrical mechanics or fitters in addition to him/herself are engaged. Any worker who receives orders from an officer, and is placed in charge as herein set out in the absence of such officer, shall be deemed to be a leading hand whilst so placed in charge of the work carrying out such orders.
- (b) A leading hand electrician as defined herein shall be paid an additional amount per week set out at Table 2.

- (ii) Leading Hand, other than Electrician:
 - (a) An employee appointed to be in charge of up to and including 5 employees shall be paid an amount per week extra as set out at Table 2.
 - (b) An employee appointed to be in charge of more than 5 and up to and including 10 employees shall be paid an amount per week extra as set out at Table 2.
 - (c) An employee appointed to be in charge of 11 or more employees shall be paid an amount per week extra as set out at Table 2.

10. Special Rates

In addition to the wages, additional wage rates and allowances of this Award, the following special rates and allowances shall be paid to employees:

- (i) Cold Places - Employees working in places where the temperature is reduced by artificial means below 0 degrees Celsius shall be paid an amount per hour extra as set out at Table 2. Where the work continues for more than two hours, employees shall be entitled to a rest period of twenty minutes every two hours without loss of pay.
- (ii) Confined Spaces - Employees working in a place the dimensions or nature of which necessitate working in a stooped or cramped position or without sufficient ventilation shall be paid an amount per hour extra as set out at Table 2.
- (iii) Dirty Work - Work which a supervisor and employee agree is of a dirty or offensive nature by comparison with the work normally encountered in the trade concerned and for which no other special rates are prescribed shall be an amount per hour extra as set out at Table 2.
- (iv) Height Money - Employees working at a height of 7.5 metres from the ground, deck, floor or water shall be paid an amount per hour extra as set out at Table 2 and the same amount again extra for every additional 3 metres. Height shall be calculated from where it is necessary for the employee to place his/her hands or tools in order to carry out the work to such ground, floor, deck or water. For the purpose of this subclause deck or floor means a substantial structure which, even though temporary, is sufficient to protect an employee from falling any further distance. Water level means in tidal waters mean water level. This subclause shall not apply to employees working on a suitable scaffold erected in accordance with the Occupational Health and Safety Act 2000.
- (v) Hot Places - Employees working in the shade in places where the temperature is raised by artificial means to between 46 degrees Celsius and 54 degrees Celsius shall be paid an amount per hour extra as set out at Table 2; in places where the temperature exceeds 54 degrees Celsius, such employees shall be paid an additional amount per hour as set out at Table 2. Where work continues for more than two hours in temperatures exceeding 54 degrees Celsius, employees shall also be entitled to twenty minutes' rest after every two hours work, without deduction of pay. The temperature shall be decided by the foreman of the work after consultation with the employees who claim the extra rate.
- (vi)
 - (a) Insulation Material - An employee who is called upon to handle charcoal, pumice, granulated cork, silicate of cotton, insulwool, slagwool, fibreglass or mineral wool or other recognised insulating material of a like nature or an employee in the vicinity of such work shall be paid an amount per hour extra as set out at Table 2 or part thereof whilst so engaged.
 - (b) Asbestos - An employee required to work with any materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment such employees shall be paid an amount per hour extra as set out at Table 2 whilst so engaged.

- (vii) Smoke-boxes, etc. - Employees working on repairs to smoke-boxes, furnace or flues of boilers shall be paid an amount per hour extra as set out at Table 2; provided that an employee engaged on repairs to oil fired boilers, including the casings, uptakes and funnels, or flues and smoke stacks, shall, while working inside such boiler, be paid an amount per hour extra as set out at Table 2.
- (viii) Wet Places:
- (a)
- (1) An employee working in a place where water other than rain is falling so that his/her clothing shall be appreciably wet and/or water, oil or mud underfoot is sufficient to saturate his/her boots shall be paid an amount per hour extra as set out at Table 2; provided that his/her extra rate shall not be payable in respect to an employee who is provided with suitable and effective protective clothing and/or footwear. An employee who becomes entitled to this extra rate shall be paid such rate for such part of the day or shift as he/she is required to work in wet clothing or boots.
- (2) Where an employee is required to work in the rain he/she shall be paid an amount per hour extra as set out at Table 2 for the time so worked.
- (b) An employee called upon to work knee-deep in mud or water, shall be paid an amount per day extra as set out at Table 2 in addition to ordinary rates of pay prescribed for each day or portion thereof so worked; provided that this subclause shall not apply to an employee who is provided with suitable protective clothing and/or footwear.
- (ix) Acid Furnaces, Stills, etc:
- (a) A bricklayer required to work on the construction or repairs to acid furnaces, acid stills, acid towers and all other acid resisting brickwork, shall be paid an amount per hour extra as set out at Table 2. This additional rate shall be regarded as part of the wage rate for all purposes of the Award.
- (b) An employee engaged on the construction or alteration or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work shall be paid an amount per hour extra as set out at Table 2. This additional rate shall be regarded as part of the wage rate for all purposes.
- (x) Depth Money - An employee engaged in tunnels, cylinders, caissons, coffer dams and sewer work and in underground shafts exceeding 3 metres in depth shall be paid an amount per hour extra as set out at Table 2.
- (xi) Swing Scaffolds:
- (a) An employee other than a plasterer, working in a bosun's chair or on a swing scaffold shall be paid an amount as set out at Table 2 for the first four hours whilst so engaged thence an amount per hour as set out at Table 2.
- (b) Plasterers working in a bosun's chair or on a swing scaffold shall be paid an amount per hour extra as set out at Table 2 more than that rate applicable to other employees, in paragraph (a) above.
- (c) An employee shall not raise or lower a bosun's chair or swing scaffold alone and an employer shall not require an employee to raise or lower a bosun's chair or swing scaffold alone.
- (xii) Spray Application - An employee engaged on all spray applications carried out in other than a properly constructed booth, approved by the Department of Industrial Relations shall be paid an amount per hour extra as set out at Table 2.
- (xiii) Working Secondhand Timber - Where, whilst working secondhand timber, a Carpenter's tools are damaged by nails, dumps or other foreign matter in the timber he/she shall be entitled to an allowance

per day extra as set out at Table 2 on each day upon which his/her tools are so damaged; provided that no allowance shall be so payable under this clause unless it is reported immediately to the employer's representative on the job in order that he/she can prove his/her claim.

- (xiv) Roof Work - Employees engaged in the fixing or repairing of a roof or any other work in excess of 12 metres from the nearest floor level shall be paid an amount per hour extra as set out at Table 2 with a minimum payment of one hour.
- (xv) Explosive Powered Tools - Employees required to use explosive powered tools shall be paid an amount per day extra as set out at Table 2.
- (xvi) Morgues - An employee required to work in a morgue shall be paid an amount per hour extra as set out at Table 2 whilst so employed.
- (xvii) Toxic and Obnoxious Substances:
 - (a) An employee engaged in either the preparation and/or the application of toxic or epoxy based materials or material of a like nature shall be paid an amount per hour extra as set out at Table 2.
 - (b) In addition, employees applying such material in buildings which are normally air-conditioned shall be paid an amount per hour extra as set out at Table 2 for any time worked when the air conditioning plant is not operating.
 - (c) Where there is an absence of adequate natural ventilation, the employer shall provide ventilation by artificial means and/or supply an approved type of respirator and in addition protective clothing shall be supplied where recommended by the Ministry of Health, New South Wales.
 - (d) Employees working in close proximity to employees so engaged shall be paid an amount per hour extra as set out at Table 2.
 - (e) For the purpose of this clause, all materials which are toxic or which include, or require the addition of a catalyst hardener and reactive additives or two pack catalyst system shall be deemed to be materials of a like nature.
- (xviii) Employees working in areas accommodating psychiatric patients shall be paid an amount per hour extra as set out at Table 2 whilst so engaged.
- (xix) Animal House - An employee required to work in an animal house shall be paid an amount per hour extra as set out at Table 2 whilst so employed.
- (xx) Rates not subject to Penalty Provisions - The special rates herein prescribed shall be paid irrespective of the times at which the work is performed, and shall not be subject to any premium or penalty conditions.
- (xxi) Asbestos Eradication - Application: This subclause shall apply to employees engaged in the process of asbestos eradication on the performance of work within the scope of this Award.

Definition: Asbestos eradication is defined as work on or about building, involving the removal or any other method of neutralisation of any materials which consist of, or contain asbestos.

Control: All aspects of asbestos eradication work shall be conducted in accordance with the Occupational Health and Safety Act 2000 and the Occupational Health and Safety Regulation 2001.

Rate of Pay: In addition to the rates prescribed in this Award an employee engaged in asbestos eradication (as defined) shall receive an amount per hour extra as set out at Table 2 in lieu of special rates as prescribed in clause 10, Special Rates, with the exception of subclauses (i) Cold Places; (v) Hot Places; (xi) Swing Scaffold; (xii) Spray Application; and (xiii) Working Secondhand Timber.

Other Conditions: The conditions of employment rates and allowances, except so far as they are otherwise specified in this Clause shall be the conditions of employment, rates and allowances of the Award as varied from time to time.

(xxii) Extra Rate not Cumulative - When more than one of the above rates provide payment for disabilities of substantially the same nature then only the highest of such rates shall be payable.

(xxiii)

(a) Tradespersons who are employed to work in psychiatric hospitals (i.e., formerly 5th Schedule Hospitals) shall be paid an amount per hour extra as set out at Table 2.

Provided that the allowance prescribed by this paragraph shall not be taken into consideration in the calculation of overtime or other penalty rates. Provided further that the allowance shall not be paid for work carried out in such areas as may be agreed upon between the respondent unions and the Director-General, NSW Ministry of Health.

(b) Geriatric Hospitals - Employees working or required to work in Allandale and Garrawarra hospitals shall be paid an amount per hour extra as set out at Table 2. Employees working or required to work in Lidcombe Hospital shall be paid an amount per hour extra as set out at Table 2.

Provided that the allowance prescribed by this paragraph shall not be taken into consideration in the calculation of overtime or other penalty rates.

11. Thermostatic Mixing Valve

An allowance per week as set out at Table 2 shall be paid to licensed plumbers who hold a Thermostatic Mixing Valve Certificate from a College of Technical and Further Education and who are required to service thermostatic mixing valves.

12. Chokages

Subject to clause 10, Special Rates, if an employee is employed upon any chokage and is required to open up any soil pipe, waste pipe, drain pipe or pump conveying offensive material or a scupper containing sewage or if he/she is required to work in a septic tank in operation he/she shall be paid an amount as set out at Table 2 per day or part thereof.

13. Fouled Equipment

An employee who in working on any equipment containing body fluids or body waste encounters such matter shall be paid an amount set out at Table 2 per day or part thereof: Provided that this allowance shall not apply in circumstances where the allowance prescribed in clause 12, Chokages, would otherwise be payable.

14. Excess Fares and Travelling Time

- (i) An employee who on any day or from day to day is required to work at a job away from his/her accustomed place of work shall, at the direction of his/her employer present him/herself for work at such job at the usual starting time and shall be paid an amount set out at Table 3 for each such day. During the term of this Award, expense related allowances will be adjusted in accordance with movements in the expense related allowances in the Crown Employees Wages Staff (Rates of Pay) Award. Where the travelling time and fares are in excess of those normally incurred in travelling to his/her accustomed place of work the employee shall also be paid that amount of such excess which exceeds that above amount.
- (ii) An employee who, with the approval of the employer, uses his/her own means of transport for travelling to or from outside jobs, shall be paid a Transport Allowance as provided by Determination made under the *Health Services Act 1997*, as varied from time to time. .

- (iii) Where the 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. Such discussions should include consideration of the impact of the change on affected employees.

The employer shall give the employee one calendar month's notice of the requirement to report to a new accustomed place of work.

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.

Where a change to the accustomed place of work would impose unreasonable hardship on the employee, the employer may agree to apply the entitlements of PD2007_085, as amended or superseded from time to time, provided that such amendments or successors will not have force under this Award if they have the effect of providing a set of entitlements on this subject which are overall less beneficial than any relevant 'test case' decision as defined.

Do not have the effect of providing a set of entitlements which are overall less beneficial than any relevant 'test case' decision as defined.

If there is disagreement about such decision after such discussion or if a significant number of employees are involved, the matter may be referred to the Ministry of Health, Workplace Relations Branch, and/or, the Industrial Relations Commission consistent with the Issues Resolution Procedure.

- (iv) Some Provisions of Former Enterprise Agreements Preserved. The provisions of clauses 16 and 17 of the former Central Sydney Area Health Service Skilled Trades Wages Agreement 1994 and clause 20 of the former Southern Sydney Area Health Service Engineering & Maintenance Services Enterprise Agreement 1994 are preserved as if those clauses continue to apply to those Area Health Services (and successors) under this Award.

15. Payment and Particulars of Wages

- (i) Wages shall be paid weekly or fortnightly; provided that, for the purpose of adjustments of wages, from time to time effective, the pay period shall be deemed to be weekly. On each pay day the pay shall be made up to a day not more than three days prior to the day of payment.
- (ii) Wages shall be paid into a nominated bank or other accounts, except in isolated areas where payment will be made by cheque to a given address.
- (iii) Notwithstanding the provision of subclause (ii) of this clause, an employee who has been given one week's notice of termination of employment, in accordance with clause 4, Contract of Employment and Hours, shall be paid all moneys due to him/her prior to ceasing duty on the last day of employment. Where an employee is dismissed or his/her services are terminated without due notice, in accordance with the said clause, any moneys due to him/her shall be paid as soon as possible after such dismissal or termination but in any case not more than 48 hours 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 number of hours of overtime worked, if any, the amount of any overtime payment, the amount of any other moneys paid, and the purpose of which they are paid and the amount of the deductions made from total earnings and the nature thereof.
- (v) Where retrospective adjustments of wages are paid to employees, such payments where practical shall be paid as a separate payment to ordinary wages with a separate statement containing particulars as set out in subclause (iv) of this clause.

16. Higher Duties Allowance

- (i) Where a Leading Hand is on his/her allocated day/s off, on pay, and another employee relieves in the position for that day only, no higher duty allowance shall be paid.
- (ii) Except as provided for in subclause (i) of this clause an employee engaged for more than two hours on any day or shift on duties carrying a higher rate than his/her ordinary classification or entitling him/her to a leading hand allowance shall be paid the higher rate or allowance as the case may be for such day or shift. Where the period of relief, on any day, is for two hours or less the employee acting in the higher classification shall only be paid the higher duty allowance for the time so worked.
- (iii) Except as provided for in subclause (i) of this clause where an employee is required to act as a leading hand at the commencement of a day or shift he/she shall be paid the appropriate allowance for the whole of such day or shift.

17. Accumulation of Additional Days Off

Full-time employees may accumulate up to five ADOs (as measured at any one point in time), subject to the mutual agreement of the employee and local management. The limit on the accumulation right means that any employee who has already accumulated five ADOs must take the sixth ADO accruing to him/her as and when it falls due in accordance with roster.

Any ADOs accumulated but not taken as at the date of termination, shall be paid out at ordinary rates as part of the usual termination entitlement.

The parties recognise that accrual of ADOs may not be possible in all settings and circumstances.

Records of all time accrued owing to and taken by employees must be maintained by management.

18. Special Conditions

- (i) Employees engaged in installing brine or ammonia pipes or repairs to same or who work on other destructive materials, who have their clothing or boots destroyed or damaged, shall be reimbursed the amount of damage sustained.
- (ii) All rope and gear shall be of sound material, used or stored in such a way that it does not come in contact with sharp edges, acid or acid fumes. At all times, the regulation under the *Workplace Health and Safety Act 2011* shall be complied with.
- (iii) Each employee working in battery rooms or like places where acids or caustic soda are stored or used, shall be provided with gloves, overalls and rubber boots to be periodically disinfected in accordance with the requirements of the Ministry of Health for disinfecting clothing while in use.
- (iv) The employer shall provide to each employee a suitable gas mask at the place of work when the employee is required to work on a live gas service.
- (v) X-ray - An employee working in an infectious area shall be X-rayed at the employer's expense and in the employer's time after each six months or at the termination of his/her employment, whichever is the sooner.
- (vi) Sufficient, suitable and serviceable ear muffs and face masks shall be made available for the use of employees required to work in areas where noise levels are excessive and in proximity to dust or fumes. Suitable protective garb shall also be made available for employees required to work in proximity to dust or fumes. Suitable protective garb shall also be made available for employees required to work in proximity to radioactive material.
- (vii) No employee shall be required to use a paint brush exceeding five inches in width or eight ounces in weight (or their metric equivalents) or a kalsomine brush exceeding eight inches (or its metric equivalent) in width.

- (viii) An employee shall not be required to use a roller in excess of twelve inches in width on the painting of ceilings or walls.

19. First-Aid Equipment

The employer shall provide and continuously maintain at a place or places reasonably accessible to all employees an efficient first-aid outfit including a stretcher.

20. Amenities

The provisions contained in the "Accommodation and Amenities" Clause of the Health Employees Conditions of Employment (State) Award shall apply to employees covered by this Award.

21. Shift Work

- (i) Definitions - for the purpose of this clause:

"Afternoon Shift" means any shift finishing after 6 pm and at or before midnight.

"Night Shift" means any shift finishing subsequent to midnight and at or before 8 am.

"Rostered Shift" means a shift of which the employee concerned has had at least forty-eight hours' notice.

- (ii) Shift workers whilst on afternoon or night shifts shall be paid 15 per centum more than the ordinary rate for such shifts. Shift workers who work on any afternoon or night shift which does not continue for at least five successive afternoons or nights (including the allocated day off on pay) shall be paid at the rate of time and one-half for the first three hours and double time thereafter.
- (iii) Saturdays - The minimum rate to be paid to any shift worker for work performed between midnight on Friday and midnight on Saturday shall be time and a half. Such extra rates shall be in substitution for and not cumulative upon the shift premium prescribed in subclause (ii) of this clause.
- (iv) Sundays and Holidays:
- (a) Shift workers whose ordinary working hours include work on a Sunday shall be paid at the rate of double time.
- (b) Shift workers whose ordinary working hours include work on any of the public holidays referred to in clause 22, Public Holidays, shall be paid at the rate of double time and one-half.
- (c) Where shifts commence between 11 pm and midnight on a Sunday or a holiday the time so worked before midnight shall not entitle the employee to the Sunday or holiday rate; provided that the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday shall be regarded as time worked on such Sunday or holiday.
- Where shifts fall partly on a holiday that shift the major portion of which falls on a holiday shall be regarded as the holiday shift.
- (d) The rates prescribed in paragraphs (a) and (b) of this subclause shall be in substitution for and not cumulative upon the shift premium prescribed in subclause (ii) of this clause.

22. Public Holidays

- (i)
- (a) Public holidays shall be allowed to employees on full pay. Where an employee is required to and does work on any of the holidays set out in this subclause, 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, such payment to be in lieu of weekend or shift allowances which would otherwise be payable had the day not been a public holiday: Provided that, if the employee so elects, he/she 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.

- (b) 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, Anzac Day, Queen's Birthday, local Labour Day, Christmas Day and Boxing Day.
 - (c) Day workers are to be paid one days pay in addition to the weekly rate for each public holiday, other than Easter Saturday, falling on non-working Saturdays.
 - (d) Shift workers rostered off duty (other than on their allocated day off duty on pay) on a public holiday shall:
 - (1) be paid one day's pay in addition to the weekly rate; or if the employee so elects;
 - (2) have one day added to his/her period of annual leave.
 - (e) The election referred to in paragraphs (a) and (d) of this subclause is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during the currency of that year of employment.
- (ii) Transfer of Additional or Local Public Holiday - In addition to those public holidays specified in paragraph (b) of subclause (i) of this clause, employees shall be entitled to one extra public holiday each year. Such public holiday is to be taken in the Christmas/New Year period or other suitable period, on a date determined by the employer, or on another date where agreed by the parties. Such public holiday shall substitute for any day or half day duly proclaimed and observed as a public holiday within the area in which the employer is situated.

23. Picnic Day

- (i) The first Monday in December of each year shall be the Union's Picnic Day.
- (ii) All employees shall as far as practical be given and shall take this day as the Picnic Day and shall be paid therefore as for 7.6 hours work at the rate of pay prescribed in clause 6, Wages, with 0.4 of a hour accruing for the allocated day off, on pay. Any employee required to work on Picnic Day shall be paid at the rate of double time and one-half for all time worked on such day with a minimum payment for four hours work. Provided that an employee who is required to work on Picnic Day and fails to comply with such requirement shall not be entitled to payment for the day.
- (iii) An employer may require from an employee evidence of his/her attendance at the picnic and the production of the butt of a picnic ticket issued for the picnic shall be sufficient evidence of such attendance. Where such evidence is requested by the employer, payment need not be made unless the evidence is produced.

24. Special Tools, Clothing and Sharpening Tools

- (i) The employer shall provide at the place of work a suitable sand grindstone or a carborundum stone for the use of tradespersons.
- (ii) Where such a grindstone or carborundum stone is not driven by mechanical power, the employer shall provide assistance in turning the grindstone or carborundum stone.
- (iii) Saw sharpening and tool grinding may be done by the employee during the progress of the work.
- (iv) Where paragraphs (i) and (ii) of this clause are not observed by the employer, the employer shall pay for or provide for grinding of the tools.

- (v) The employer shall provide the following tools and protective clothing when they are required for the work to be performed by the employees:
- (a) Bricklayers - Scutch combs; hammers (excepting mash and brick hammers); rubber mallets and T squares.
 - (b) Carpenters - Dogs and cramps of all descriptions; bars of all descriptions over 61 cm long; augers of all sizes; star bits and bits not ordinarily used in a brace, including dowelling bits; hammers (except claw hammers and tack hammers); glue pots and glue brushes; dowel plates; trammels, hand thumb screws and soldering irons.
 - (c) Plasterers shall be provided with overalls when required to brush on to walls and ceilings bondcrete, plasterweld, or similar substances. The approved grass brush to perform the work prescribed in this subclause shall be provided by the employer.
 - (d) Plumber - Metal pots; mandrills; long dummies; stock and dies for iron, copper and brass pipes; cutters; tongs; vices; taps and drills; ratchets; files; cramps, caulking tools; hacksaw and blades; welding and brazing outfits, goggles where necessary and liquid petroleum gas equipment where necessary and all shop tools, the usual kit bag of tools only to be supplied by the employee.
 - (e) Electricians - An employer shall provide for the use of tradespersons a hacksaw and blades; all power tools; special purpose tools; precision measuring instruments and electrical measuring and/or testing instruments where the use of such equipment is reasonable and necessary.
 - (f) Painters and Signwriters to be supplied with all brushes.
 - (g) All power tools shall be provided where in the opinion of the employer they are necessary.
- (vi)
- (a) Clause 24 (vi) shall not apply to employees of the Ambulance Service.
 - (b) Sufficient, suitable and serviceable protective attire shall be supplied, free of cost to each employee required to wear it, provided that any employee to whom new attire or a part thereof has been supplied by the hospital who, without good reason fails to return the corresponding article last supplied, shall not be entitled to have such article replaced without payment therefore at a reasonable price in the absence of a satisfactory reason for the loss of such article or failure to produce such attire or part thereof.
 - (c) 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 by that employee immediately prior to leaving.
- (vii)
- (a) Clause 24 (vii) shall not apply to employees of the Ambulance Service.
 - (b) Sufficient, suitable and serviceable overalls or alternative garments, as may be agreed to between tradespersons and the employer, in lieu of overalls, shall be laundered by the employer.
 - (c) If the overalls or alternative garments of the employee cannot be laundered by or at the expense of the employer, an allowance as set out at Table 3 per week shall be paid to such employee. During the term of this Award, expense related allowances will be adjusted in accordance with movements in the expense related allowances in the Crown Employees Wages Staff (Rates of Pay) Award.
 - (d) Any employee to whom overalls or alternative garments have been supplied by the employer, who, without good reason fails to return the corresponding article last supplied, shall not be entitled to have such article replaced without payment therefore at a reasonable price in the

absence of a satisfactory reason for the loss of such article or failure to produce such attire or part thereof.

- (e) 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 by that employee immediately prior to leaving.

(viii) Ambulance Service Uniform and Protective Clothing.

- (a) The Ambulance Service shall provide each new employee with sufficient, suitable and serviceable uniforms as determined by the Ambulance Service.
- (b) Uniforms shall be issued to all maintenance officers annually on the employee's anniversary date.
- (c) The issue of uniforms shall be to the value contained in Table 3. During the term of this Award, expense related allowances will be adjusted in accordance with movements in the expense related allowances in the Crown Employees Wages Staff (Rates of Pay) Award.
- (d) The ambulance service shall provide any other special clothing which the ambulance service requires the employee to wear.
- (e) Articles of special clothing issued under subclause (d) shall be replaced by the Ambulance Service on the basis of sufficient, suitable and serviceable clothing when required.
- (f) Articles of special clothing issues under subclause (d) shall remain the property of the Ambulance Service and shall be returned upon the request of the Ambulance Service.
- (g) Any request for uniform replacement by the Ambulance Service or the employee will not be reasonably refused.
- (h) In the event of any difficulties with the application of the above provisions, the Award 'Issues Resolution Procedures' may be utilised.
- (i) Where the Ambulance Service elects not to launder, or not to have laundered at its own expense the overall or alternative garments to overalls of maintenance officers, the employee is to be paid the laundry allowance per week as set out in Table 3.

- (ix) In the event that it is necessary for an employee in the course of his/her duties to use tools other than those of his/her own trade, such tools shall be supplied by the employer.

25. Climatic and Isolation Allowance

- (i) Subject to subclause (ii) of this clause, persons employed in places situated upon or to the west of a line drawn as herein specified shall be paid an allowance as set out at Table 2 per week in addition to the salary to which they are otherwise entitled.

The line shall be drawn as follows, viz., commencing at 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) Persons employed in places situated upon or to the west of a line drawn as herein specified shall be paid an allowance as set out at Table 2 per week in addition to the salary to which they are otherwise entitled. The line shall be drawn as follows: commencing at a point on the right bank of the Murray River opposite 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 by this clause shall be regarded as part of the salary for the purposes of this Award.

26. Damage to Or Loss of Clothing Or Tools

- (i) An employee whose clothing, footwear or tools are spoiled by acids or sulphur, other deleterious substance or fire, due to the circumstances of his/her employment shall be recompensed by his/her employer to the extent of his/her loss.
- (ii) The employer shall insure and keep insured, to the extent of the amount set out at Table 3, clothing and tools of employees against loss, destruction or damage by fire, acid or other deleterious substances or breaking and entering whilst securely stored on the employers' premises. During the term of this Award, expense related allowances will be adjusted in accordance with movements in the expense related allowances in the Crown Employees Wages Staff (Rates of Pay) Award.
- (iii) The employer shall provide at the place of work a suitable and secure weather-proof lock-up solely for the purpose of storing employees tools. Where such lock-up is not provided and tools are stolen by reason of the employers default he/she shall compensate the employee to the extent of his/her loss.
- (iv) The employee shall, if requested to do so, furnish the employer with a list of his/her tools.
- (v) The limit on insurance coverage is described in subclause (ii) and prescribed in Table 3. This limit shall not apply to Motor Mechanics employed in the Ambulance Service provided that an agreed list of tools has been provided by the Motor Mechanic and signed by both the Motor Mechanic and the Fleet Manager for the Ambulance Service.

27. Transport of Employee's Tools

- (i) Where an employee in the course of a normal working day is required to travel from one location to another, or from place to place outside of workplace precincts the employer shall provide transport for the employee and all necessary tools of trade. However, should the employee, with the approval of the employer, use his/her/her own means of transport then they shall be entitled to a Transport Allowance as provided by Determination made under the Health Services Act 1997, as varied from time to time. .
- (ii) On termination of employment of an employee leaving the employer's premises by public transport, the employer shall provide transport for the employee's tools to the nearest public conveyance except where the employee gives notice or is dismissed for misconduct.

28. Annual Leave

- (i) All employees: See *Annual Holidays Act 1944*.
- (ii) Where an employee's allocated day off duty, on pay, falls due during a period of annual leave such day shall be taken on the next working day immediately following the period of annual leave.
- (iii)
 - (a) Employees who are rostered to work their ordinary hours on Sundays and/or public holiday during a 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 (five working days);
 - (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

(38 hours) worked, half or more than half of one-fifth being regarded as one-fifth and less than half being disregarded.

- (b) Provided further that on termination of employment shift workers shall be entitled to payment for any untaken annual leave due under this subclause (on the basis of 7.6 hours per day) together with payment for any untaken annual leave in respect of an uncompleted year of employment.
- (iv) The employer shall give to each employee three months' notice where practicable and not less than one month's notice of the date upon which the employee shall enter upon annual leave.
- (v) A shift worker shall be paid, whilst on annual leave his/her ordinary pay plus shift allowance and weekend penalties relating to ordinary time the shift worker would have worked if he/she had not been on annual leave. Provided that shift allowances and weekend penalties shall not be payable for the allocated day off duty on pay which may fall on the first day off duty in the annual leave period or for public holidays which occur during the period of annual leave or for days which have been added to the annual leave in accordance with the provisions of clause 22, Public Holidays.
- (vi) Employees shall be entitled to an annual leave loading of 17 per cent, or shift penalties as set out in subclause (v) of this clause, whichever is the greater.

The conditions relating to the grant of leave loading are set out in the Ministry of Health Circulars 74/166 and 75/251.

29. Long Service Leave

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

From 21 November 2005, if an employee has completed seven years of continuous service with the employer, the employee is entitled to access his/her long service leave on a pro-rata basis per completed year of service.
 - (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.
 - (c) Where the services of an employee with at least seven years' service 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.
- (ii) For the purposes of subclause (i) of this clause -
 - (a) service shall mean continuous service in one or more hospitals/Ambulance Service. Service shall be deemed continuous if it meets the provisions as set out in clauses 3 and 4 of Schedule 3A of the Public Sector Employment and Management Act 2002;
 - (b) broken periods of service in one or more hospitals/Ambulance Service shall count as service subject to the following:
 - (1) where an employee, after ceasing employment in a hospital/Ambulance Service, is re-employed in a hospital/Ambulance Service subsequent to 1st January, 1973, any service of that employee before he/she was so re-employed shall not be counted for the purpose of determining any long service leave due to that employee 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 employee employed in a hospital/Ambulance Service at the 1st January, 1973, but who was not entitled to count broken service under the provisions of the Award in force prior thereto shall not be entitled to count such broken service until he/she has completed at least five years' continuous service from the date upon which he/she commenced his/her current period of employment.
 - (3) an employee employed in a hospital/Ambulance Service at the 1st January, 1973, 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 1st January, 1973.
- (c) service shall not include 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 the 1st January, 1973.
- (iii) An employee with an entitlement to long service leave, may elect to access their entitlement:
- (a) on full pay, or
 - (b) on half pay, or
 - (c) on double pay.
- (iv) When an employee elects to access their long service leave entitlement the following amounts of long service leave are to be deducted from the employee's long service leave entitlement:
- (a) for each period of long service leave taken on full pay - the number of days so taken,
 - (b) for each period of long service leave taken on half pay - half the number of days so taken,
 - (c) for each period of long service leave taken on double pay - twice the number of days so taken,
- (v) If a public holiday occurs while an employee is taking long service leave, and but for the taking of the long service leave the employee would have worked, the amount of long service leave to be deducted is to be reduced by 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; provided that where an employee is transferring between hospitals and or Ambulance Service he/she may, if he/she so desires and by agreement with his/her present employer and his/her proposed employer, be allowed to retain his/her credit to long service leave in lieu of payment of the monetary value under this subclause.
 - (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 widower, the children of such employee, or if there is not 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) 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) Except as provided for in subclause (ix) 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.
- (ix) An employee who is employed in a hospital, to which Clause 25 Climatic and Isolation Allowance applies as at the 1st January, 1973, shall be granted long service leave in accordance with the long service leave provisions in force prior to the 1st January, 1973, in lieu of the provisions provided by this Award, where such benefits are more favourable to the employee.
- (x)
 - (a) Where an employee has accrued the right to an allocated day off duty, on pay, prior to entering on a period of long service leave, such day shall be taken on the next working day immediately following the period of long service leave.
 - (b) In all other circumstances the accrued time in credit (accumulated at 0.4 of one hour for each day worked in the 20 day work cycle immediately preceding the leave) shall count towards payment for the next allocated day off duty, on pay, occurring in sequence after the employee's return to duty.
 - (c) Provided further that no accrual of 0.4 of an hour shall be attracted to the paid days off during the period of long service leave and such days shall be paid for at the rate of 7.6 hours per day.

Notwithstanding the foregoing the employee on returning to duty from long service leave shall be given his/her next allocated day off duty, on pay, in sequence irrespective of whether sufficient credits have been accumulated or not."

30. Sick Leave

- (i)
 - (a) A full-time employee shall be entitled to sick leave on full pay calculated by allowing eighty ordinary hours off work for each year of continuous service up to 24 May 1982, and 76 ordinary hours thereafter for each further year of continuous service provided that for the purpose of determining an employee's sick leave credits as at 24 May 1982, sick leave in hand shall be proportioned on the basis of 80:76 and henceforth each day's absence shall be deducted at 7.6 hours.
 - (b) Employees of the Ambulance Service who (as at 27 March 2000) were accruing sick leave at the rate of 15 days per annum will continue to do so. This accrual is specific to those employees on a personal basis and will not flow to any other employees.
 - (c) All periods of sickness shall be certified to by the Medical Superintendent, or by a legally qualified Medical Practitioner, provided however, that the employer may dispense with the requirements of a medical certificate where the absence does not exceed two (2) consecutive days or where in the employer's opinion the circumstances are such as not to warrant such requirements.

- (d) The employer shall not change the rostered hours of work of an employee, fixed by the roster or rosters applicable to the employee, seven days immediately following the commencement of sick leave merely by reason of the fact that the employee is on sick leave.
 - (e) An employee shall not be entitled to sick leave until after three months' continuous service.
 - (f) Service for the purpose of this clause shall mean service in a public hospital/Ambulance Service and shall be deemed to have commenced on the date of engagement by a public hospital/Ambulance Service in respect of any period of employment with that hospital/Ambulance Service.
 - (g) "Continuous Service" for the purposes of this clause, shall be calculated in the same manner as provided under paragraph (a) of subclause (ii) of clause 29, Long Service Leave, excepting that all periods of service in any hospital/Ambulance Service (providing such service is not less than three months' actual service) shall be counted.
 - (h) Each employee shall take all reasonably practicable steps to inform the employer of his/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.
- (ii) 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.

31. Miscellaneous Leave Conditions

- (i) Employees shall be granted Repatriation Leave in accordance with Ministry of Health Policy Directive 2006_095, as it is amended or superseded from time to time, provided that such amendments or successors will not have force under this Award if they have the effect of providing a set of entitlements on this subject which are overall less beneficial than any relevant 'test case' decision as defined.
- (ii) Employees shall be granted Study Leave in accordance with Ministry of Health Policy Directive 2006_066, as it is amended or superseded from time to time, provided that such amendments or successors will not have force under this Award if they have the effect of providing a set of entitlements on this subject which are overall less beneficial than any relevant 'test case' decision as defined.
- (iii) Employees shall be granted Defence Leave in accordance with Ministry of Health Policy Directive 2006_013, as it is amended or superseded from time to time, provided that such amendments or successors will not have force under this Award if they have the effect of providing a set of entitlements on this subject which are overall less beneficial than any relevant 'test case' decision as defined.
- (iv) Employees shall be granted severance pay in accordance with the Ministry of Health Policy Directive 2007_085, as it is amended or superseded from time to time, provided that such amendments or successors will not have force under this Award if they have the effect of providing a set of entitlements on this subject which are overall less beneficial than any relevant 'test case' decision as defined.

31A. Family and Community Service 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.

(iii) Casual employees 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 appropriate Chief Executive or authorised delegate 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 Chief Executive or authorised delegate 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. 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 take FACS leave for a full 8 hour shift, the employee would be debited 10 hours of FACS leave.

Example B: 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 eg 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 appropriate Chief Executive or authorised delegate 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 Chief Executive or authorised delegate 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 5, 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 (ie 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 carers 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 (ie 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.

31B. 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 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.

(ii) Portability of Service for Paid Maternity Leave

Portability of service for paid maternity leave involves the recognition of service in public sector organisations for the purpose of determining an employee's eligibility to receive paid maternity leave. For example, where an employee moves between a Public Sector 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 public sector service as defined in the *Public Sector Employment and Management Act 2002* 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 commences duty with the new employer on the next working day after ceasing employment with the former employer (there may be a break in service of up to two months before commencing duty with the new employer provided that the new

position was secured before ceasing duty with the former 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 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 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 should indicate the period of leave desired and must include a medical certificate stating the expected date of birth.

(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, sick 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, sick 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 (ie 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 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 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 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 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 ie for long service leave the period of service is to be converted to the full time equivalent and credited accordingly.

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).

F. Casual Employees

- (i) Casual employees are entitled to parental leave in accordance with the provisions of Part 4, Parental Leave, of 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 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 the employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

32. Issues Resolution Procedures

The parties agree that every effort will be made to settle any grievance or dispute amicably between the parties as quickly as possible and that they will comply with the following procedures:

- (i) When any dispute develops at a particular work place which cannot be resolved, discussion should firstly take place between the employee/s and the immediate supervisor to try and resolve the matter. If it cannot be resolved at this level then:
- (ii) The matter should be raised with the supervisor by the employee/s or their union representative, if it cannot be resolved then:
- (iii) Discussions shall include representatives of senior management of the Area Health Service and relevant union/s, if it cannot be resolved, then:-
- (iv) When all the above steps have been exhausted, either party may submit the dispute to the Industrial Relations Commission which may exercise its functions under the Industrial Relations Act 1996.
- (v) Nothing in these procedures will preclude the Local Health District and any union concerned from entering into direct negotiations in any matter. Nor will these procedures preclude a Local Health District or relevant union from seeking the assistance of the Industrial Relations Commission on any health or safety issue of concern to the employees in question.
- (vi) The parties agree that during these procedures normal work will continue and there will be no stoppages of work, lockouts, or any other bans or limitations on the performance of work. A Local Health District will consult with relevant unions in relation to any proposal that work done in the Health Service by tradespersons covered by this Award be contracted out.

33. Living Away from Home Allowance

- (i) Where an employee is required to work at a place other than his/her/normal place of work and the distance or travelling facilities make it reasonably necessary for the employee to temporarily reside at other than his/her/normal residential accommodation the employer shall provide suitable free accommodation and meals for the employee or pay an allowance as set out at Table 3 per day. Where two or more employees are involved then uniformity of application of this provision shall prevail unless an employee or employees request otherwise. During the term of this Award, expense related allowances will be adjusted in accordance with movements in the expense related allowances in the Crown Employees Wages Staff (Rates of Pay) Award.
- (ii) All fares and travelling expenses involved in conveyance of the employee and his/her/tools of trade to or from such temporary places of residence shall be paid by the employer: Provided no fares or expenses shall be paid where:
 - (a) An employee travels to or from such place of temporary residence without the approval of the employer or
 - (b) the employee terminates his/her/own employment or is dismissed by the employer for gross or wilful misconduct.
- (iii) Time spent in travelling (outside normal working hours) to or from temporary places of residence shall be paid for at ordinary rates of pay provided that no employee shall receive payment for more than eight hours travelling time on any one day irrespective of whether work has been performed on that day or not.

34. Exhibition of Award

See section 361 of the *Industrial Relations Act* 1996, which provides for the exhibition of industrial instruments in the workplace.

35. Consultative Committees

Each Local Health District and the Ambulance Service shall establish a Trades Staff Consultative Committee (the Committee) on the following basis:

The Committee will consist of an equal number of representatives nominated by the employer and representatives of the tradespersons covered by this Award as nominated by the Unions.

The Committee is intended by the parties to advise and assist the statewide Productivity Savings Committee on all productivity savings issues and provide a local forum for information exchange and consultation. To these ends, the Committee will meet during normal working hours as often as is reasonably required.

Union officials and other management employees can be invited to attend meetings on an ad hoc basis where it is considered appropriate by either employee or employer representatives on the Committee. However, such attendance will not constitute membership of the Committee.

The parties intend that the operation of the Committee will in no way diminish the rights and obligations of the parties in relation to Award Issues Resolution Procedures. The Committee may participate in the resolution of industrial issues the subject of Award Issues Resolution Procedures where it is of the view that it is reasonable to do so and provided that such participation shall not prejudice the rights of any party.

36. Union Dues

Subject to an employee's written authorisation, the employer will automatically deduct union dues from the pay of union members, subject to current payroll practice and restrictions.

37. Rights of Union Delegates

An employee appointed as union delegate shall, upon notification to the employer, be recognised as an accredited representative of the union and shall be allowed reasonable time during working hours to interview the employer (or representative) on matters affecting those he/she represents.

38. 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 and age.
- (ii) It follows that in fulfilling their obligations under the Issues 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.

39. No Extra Claims

- (i) The parties agree that, during the term of this Award, there will be no extra wage claims, claims for improved conditions of employment or demands made with respect to the employees covered by the Award and, further that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the Industrial Relations Commission or any other industrial tribunal.
- (ii) 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 provisions in this Award.

40. Area, Incidence and Duration

- (i) This Award shall apply to employees (and apprentices where specifically referred to) of the classifications mentioned in clause 2, Definitions who are employed by the Director General, NSW Ministry of Health. Such employment being within the state of New South Wales, excluding the County of Yancowinna, within the jurisdiction of the Public Hospitals Skilled Trades Industrial Committee.
- (ii) This Award replaces and rescinds the Public Health Service Employees Skilled Trades (State) Award (Incorporating the Ambulance Service of NSW Skilled Trades) published 31 December 2011 (371 IG 1643) and all variations thereof.
- (iii) The Award shall take effect on and from 18 July 2012 and remain in force until 31 December 2012.

PART B

MONETARY RATES

Table 1

Weekly Wages

Each date referred to in the table is a reference to the first full pay period to commence on or after that date.

(Note: Excepting for Electrical Trades classifications, tool allowances are expense-related allowances).

Description	01/01/2012 \$ per week
Fitter/Motor Mechanic	
Level 1	886.20
Level 2 (Level 1 plus 5%)	909.50
Level 3 (Level 1 plus 10%)	952.80
Level 4 (Level 1 plus 15%)	996.10
Welder 1 st Class	
Level 1	866.20
Level 2 (Level 1 plus 5%)	909.50
Level 3 (Level 1 plus 10%)	952.80
Level 4 (Level 1 plus 15%)	996.10
Mechanic Tradesperson Special Class is paid as Fitter/Motor Mechanic Level 2 plus Tool Allowance from 1/7/97 and thereafter. Welder Special Class is paid as Welder 1 st Class plus Additional Wage Rates plus Tool Allowance.	
Plumber	
Level 1	874.50
Level 2 (Level 1 plus 5%)	918.20
Level 3 (Level 1 plus 10%)	962.00
Level 4 (Level 1 plus 15%)	1,005.70

Plumbers acting alone on Plumbers/Drainers/Gasfitters licences and combinations are paid as Plumber plus Additional Wage Rates plus Tool Allowance.	
Carpenter	
Level 1	868.50
Level 2 (Level 1 plus 5%)	911.90
Level 3 (Level 1 plus 10%)	955.40
Level 4 (Level 1 plus 15%)	998.80
Painter/Spray Painter	
Level 1	868.50
Level 2 (Level 1 plus 5%)	911.90
Level 3 (Level 1 plus 10%)	955.40
Level 4 (Level 1 plus 15%)	998.80
Signwriter	
Level 1	887.70
Level 2 (Level 1 plus 5%)	932.10
Level 3 (Level 1 plus 10%)	976.50
Level 4 (Level 1 plus 15%)	1,020.90
Plasterer	
Level 1	868.50
Level 2 (Level 1 plus 5%)	911.90
Level 3 (Level 1 plus 10%)	955.40
Level 4 (Level 1 plus 15%)	998.80
Bricklayer	
Level 1	868.50
Level 2 (Level 1 plus 5%)	911.90
Level 3 (Level 1 plus 10%)	955.40
Level 4 (Level 1 plus 15%)	998.80
Floor/Wall Tiler	
Level 1	868.50
Level 2 (Level 1 plus 5%)	911.90
Level 3 (Level 1 plus 10%)	955.40
Level 4 (Level 1 plus 15%)	998.80
Upholsterer	
Level 1	897.40
Level 2 (Level 1 plus 5%)	942.30
Level 3 (Level 1 plus 10%)	987.10
Level 4 (Level 1 plus 15%)	1,032.00
Blindmaker	
Level 1	861.60
Level 2 (Level 1 plus 5%)	904.70
Level 3 (Level 1 plus 10%)	947.80
Level 4 (Level 1 plus 15%)	990.80
Electrical Tradesperson	
Level 1	919.10
Level 2 (Level 1 plus 5%)	965.10
Level 3 (Level 1 plus 10%)	1,011.00
Level 4 (Level 1 plus 15%)	1,057.00
Electrical Instrument Fitter	
Level 1	962.80
Level 2 (Level 1 plus 5%)	1,010.90
Level 3 (Level 1 plus 10%)	1,059.10
Level 4 (Level 1 plus 15%)	1,107.20
Elec Fitter & Ass to Chief Eng.-Syd Hosp/Elec Fitter & Ass to Chief Eng - Other Hosp/Plant Elec/Elec in Charge of Generating Plant are paid as Electrical Tradesperson plus Additional Wage Rate plus Tool Allowance.	

Scientific Instrument Maker	
Level 1	895.00
Level 2 (Level 1 plus 5%)	939.80
Level 3 (Level 1 plus 10%)	984.50
Level 4 (Level 1 plus 15%)	1,029.30
Tool Maker	
Level 1	895.00
Level 2 (Level 1 plus 5%)	939.80
Level 3 (Level 1 plus 10%)	984.50
Level 4 (Level 1 plus 15%)	1,029.30

Table 2

**Additional and Special Rates/Allowances
(Including Tool Allowance for Electrical Trades)**

Each date referred to in the table is a reference to the first full pay period to commence on or after that date.

Clause	Allowance Type	01/01/2012
4A(ii)	On-call - Rostered on duty (per 24 hours)	\$20.34
4A(iii)	On-call - Rostered off duty (per 24 hours)	\$40.17
7(i)	Electricians License	
	Grade A	\$41.86
	Grade B	\$22.83
7(ii)	Lead Burner	\$0.86
7(iii)	Plumbers - combination of licenses	
	Plumbers license	\$41.55
	Gasfitters license	\$41.55
	Drainers license	\$33.86
	Plumbers & gasfitters license	\$54.86
	Plumbers & drainers license	\$54.86
	Gasfitters & drainers license	\$54.86
	Plumbers, gasfitters & drainers license	\$76.44
7(iv)	Plumbers/Gasfitters/Drainers Reg. Cert	\$0.83
7(v)	Electric Welding	\$0.64
7(vi)	Computing Quantities	\$5.23
7(vii)	Boiler Attendants Certificate	\$6.45
7(viii)	BMC Operator	\$33.54
7(ix)	Motor Mechanic	\$0.66
	Motor Mechanic per day	\$2.65
7(x)	Elec Fitter & Asst to Chief Eng.-Sydney Hospital	\$59.09
	Elec Fitter & Asst to Chief Eng.-Other Hosp.	\$47.14
	Electrician in Charge of Generating Plant less than 75 kilowatts.	\$17.36
	Electrician in charge of Generating Plant 75 Kilowatts or more	\$60.29
	Plant Electrician	\$56.69
7(xi)	Welder Special Class	\$10.79
8	Tool Allowance - Electrical Trades	\$17.24
9(i) (b)	Leading Hand Electrician	\$56.69
9(ii)	Leading Hand - Other than Electricians	
(a)	I/C up to 5 employees	\$43.21
(b)	I/C 6 up to 10 employees	\$56.50
(c)	I/C over 10 employees	\$72.39
10(i)	Cold Place	\$0.69
10(ii)	Confined Spaces	\$0.83
10(iii)	Dirty Work	\$0.69
10(iv)	Height Money	\$0.69

10(v)	Hot Places - 46C-54C	\$0.69
	Hot Places - more than 54C	\$0.83
10(vi)(a)	Insulation Material	\$0.83
10(vi)(b)	Asbestos	\$0.83
10(vii)	Smoke Boxes etc	\$0.50
	Oil fired Boiler	\$1.70
10(viii)(a)(1)	Wet Places - other than rain	\$0.69
10(viii)(a)(2)	Rain	\$0.69
10(viii)(b)	Mud Allowance	\$5.30
10(ix)(a)(b)	Acid Furnaces etc.	\$3.49
10(x)	Depth Money	\$0.69
10(xi)(a)	Swing Scaffolds other than plasterers:	
	First four hours	\$4.93
	Thereafter	\$1.03
10(xi)(b)	Swing Scaffolds - plasterers	\$0.15
10(xii)	Spray Application	\$0.69
10(xiii)	Working Secondhand timber	\$2.62
10(xiv)	Roof Work	\$0.69
10(xv)	Explosive Powered Tools	\$1.63
10(xvi)	Morgues	\$0.78
10(xvii)(a)	Toxic, Obnox - Epoxy Materials	\$0.83
10(xvii)(b)	Toxic, Obnox Sub A/C not operating	\$0.57
10(xvii)(d)	Close proximity to above	\$0.69
10(xviii)	Psychiatric Patients (PH Ward)	\$0.57
10(xix)	Animal House	\$0.46
10(xxi)	Asbestos Eradication	\$2.30
10(xxiii)(a)	Psychiatric Hospitals	\$1.33
10(xxiii)(b)	Geriatric Allowances:	
	Allandale/Garrawarra	\$0.48
	Lidcombe (former)	\$0.44
11	Thermostatic Mixing Valve	\$22.78
12	Chokages	\$7.93
13	Fouled Equipment	\$7.93
25(i)	Climatic and Isolation Allowance	\$7.51
	Climatic and Isolation Allowance	\$15.11
	Apprentice Passing Exams:	
	1st Year	\$1.41
	2nd year	\$4.39
	3rd Year	\$5.80

Table 3

Expense Related Allowances

(Including Tool Allowances for all Trades other than Electrical)

Expense related allowances will be adjusted in accordance with movements in the expense related allowances in the Crown Employees Wages Staff (Rates of Pay) Award.

The date referred to in the table is a reference to the first full pay period to commence on or after that date.

Clause	Allowance Description	01/07/2011
		\$
8	Tool Allowance Fitter, Motor Mechanic	28.10
8	Tool Allowance Plumber	28.10
8	Tool Allowance Carpenter	28.10

8	Tool Allowance Painter, Spray Painter, Signwriter	6.80
8	Tool Allowance Welder 1 st Class	28.10
8	Tool Allowance Plasterer	23.20
8	Tool Allowance Bricklayer	20.00
8	Tool Allowance Floor/Wall Tiler	20.00
8	Tool Allowance Upholsterer/Blindmaker	7.90
8	Tool Allowance Scientific Instrument/Tool Maker	28.10
5(viii)	Meal Allowance for meal on overtime	23.00
	For each subsequent meal	9.80
14(i)	Employee required to work at a job away from accustomed place of work (per day)	19.00
24(vii)(c)	Laundry Allowance (per week)	0.90
26(ii)	Damage to clothing and tools - insurance to the extent of	1577.80
33	Living away from home allowance:	
	Per week	437.20
	Per day	62.50
24 (viii)	Ambulance Service - Uniform provided up to the value of	353.60

Table 4

Apprentices Wages and Allowances

Each date referred to in the table is a reference to the first full pay period to commence on or after that date.

Description	01/01/2012 \$ per week
Apprentice Plumber	
1 st Year	377.90
2 nd Year	502.30
3 rd Year	648.80
4 th Year	750.20
Apprentice Fitter	
1 st Year	377.90
2 nd Year	502.30
3 rd Year	648.80
4 th Year	750.20
Apprentice Electrician	
1 st Year	377.90
2 nd Year	502.30
3 rd Year	648.80
4 th Year	750.20
Apprentice Carpenter	
1 st Year	377.90
2 nd Year	502.30
3 rd Year	648.80
4 th Year	750.20
Apprentice Painter	
1 st Year	377.90
2 nd Year	502.30
3 rd Year	648.80
4 th Year	750.20

Apprentice Bricklayer	
1st Year	377.90
2nd Year	502.30
3rd Year	648.80
4th Year	750.20
Tool Allowances for Apprentices are the same as those of the corresponding Tradesperson at Table 1, except for Apprentice Electricians, who will be paid the Tool Allowance for Electrical Trades at Table 2.	
Other Allowances at Table 2, which are relevant to Apprentices (disability allowances etc), will also apply. This includes the Allowances for Apprentices passing exams.	

E. A. R. BISHOP, Commissioner

Printed by the authority of the Industrial Registrar.

STAFF SPECIALISTS (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Australian Salaried Medical Officers' Federation (New South Wales), Industrial Organisation of Employees.

(No. IRC 721 of 2012)

Before Commissioner Tabbaa

13 July 2012

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PART A - AWARD**1. Title**

This Award shall be known as the Staff Specialists (State) Award.

2. Definitions

"Award" means the Staff Specialists (State) Award.

"Employer" means the Director-General exercising employer functions on behalf of the Government of New South Wales (and includes a delegate of the Director General).

"Entitlements" means entitlements pursuant to this Award as varied from time to time.

"Federation" means the Australian Salaried Medical Officers' Federation (New South Wales).

"Health System" means the Public Health System of New South Wales.

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

"Normal Duties" means clinical, teaching, research, administrative, quality improvement or other duties and responsibilities undertaken by the Staff Specialist.

"Part Time Working Arrangement" means an agreement between a Staff Specialist and the Employer for the Staff Specialist to provide his/her services on a part time employment basis pursuant to Clause 13 of this Award.

"Performance Agreement" is an agreement in accordance with the provisions of clause 12 of this Award.

"Postgraduate Fellow" means an employee who has completed postgraduate medical training but who has not yet been appointed as a specialist/senior specialist and who occupies a position classified as Postgraduate Fellow.

"Practice" means clinical, administrative, teaching, research, quality improvement or other duties and responsibilities undertaken by the Staff Specialist.

"Public Health Organisation" is as defined in section 7 of the *Health Services Act 1997*.

"Salary" means the salary set out in Part B, Schedule 1 to this Award as varied from time to time by Clause 5 of this Award.

"Staff Specialist" means a Specialist, Senior Specialist and Post Graduate Fellow (except where specifically excluded) employed on either a full time or a part time basis.

"Specialist" means a person appointed to a position of Specialist by the Employer. To be eligible for appointment a specialist must be a person who: -

- (a) holds a medical qualification that is registrable in New South Wales; and
- (b) after full registration has spent not less than five years in the practice of medicine in New South Wales in the Health System or in any other institution, whether in New South Wales or elsewhere, deemed by the Employer to be of equivalent standing; and
- (c) inclusive within the period described in (b) above has spent not less than three years in supervised specialist training and/or experience; and
- (d)
 - (i) has obtained a Fellowship of a recognised Australasian Specialist College (see Part C Schedule 2 for list of recognised Australasian Specialist Colleges); or
 - (ii) has proof of recognition as a specialist by the Specialists Recognition Advisory Committee; or
 - (iii) has conditional registration with the NSW Medical Board as an overseas-trained specialists (not including conditional registration as a general practitioner; or
 - (iv) does not have a qualification recognised under (i) (ii) or (iii) above, but has obtained an appropriate higher qualification in his/her specialty acceptable to the Employer after consideration by the Medical and Dental Advisory Committee of the Employer.
- (e) Any decision made by the Employer in determining whether any person is eligible to be appointed as a specialist shall not contravene any applicable provision of the *Anti-Discrimination Act 1977*

Notwithstanding the provisions of subclause (d) above, Staff Specialists who are paid pursuant to this Award (or an Enterprise Agreement) in place immediately before the commencement of this Award will continue to be recognised as Staff Specialists for the purpose of this Award.

"Senior Specialist" means a person who:

- (a) has been employed by the Employer on the maximum salary provided by this Award or the Award for a Specialist for a period of at least three years; and/or
- (b) has gained such experience and attained such ability in his/her specialty which is acceptable to the Employer after consideration by the Medical Appointments Advisory Committee of the employer to justify appointment to the classification; and
- (c) is appointed to a position having such duties and responsibilities as are deemed by the Employer to require the services of a Senior Specialist.

3. Issue Resolution

- (a) All parties must:
 - (i) use their best endeavours to co-operate in order to avoid grievances and disputes arising between the parties or between the Employer and individual Staff Specialists; and
 - (ii) abide by the procedures set out in this Clause to resolve any issue which might arise; and
 - (iii) place emphasis on negotiating a settlement of any issue at the earliest possible stage in the process.
- (b) In this Clause, "issue" means any question, issue, grievance, dispute or difficulty which might arise between the parties about the interpretation, application or operation of this Award.
- (c) The following procedures will be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.

- (d) Any issue must be discussed in the first instance by the Staff Specialist and his or her immediate supervisor.
- (e) If the issue is not resolved within a reasonable time it must be referred by the Staff Specialist's immediate supervisor to the Chief Executive (however called) of the relevant Public Health Organisation (or his or her nominee). Discussions at this level must take place and be concluded within a reasonable time or such extended period as may be agreed.
- (f) If the issue remains unresolved the Staff Specialist may request the Federation to then confer with the Chief Executive of the Public Health Organisation or his/her nominee. The conclusions reached by those representatives must be reported to the parties involved in the grievance/dispute within a reasonable time or such extended period as may be agreed.
- (g) If these procedures are exhausted without the issue being resolved, either party may seek to have the matter mediated by an agreed third party being:
 - (i) by way of preference, a person who is not employed as a Staff Specialist by the Employer and who has a knowledge of Staff Specialist arrangements, including this Award; or
 - (ii) a suitably qualified mediator.

If the matter remains unresolved either party may then

refer the matter to the Director-General of the NSW Ministry of Health, or

refer the matter in accordance with the provisions of the *Industrial Relations Act 1996* (NSW) to the Industrial Relations Commission for its assistance in resolving the issue.

- (h) The parties agree that normal work will continue and there will be no stoppages of work or any other bans or limitations on the performance of work while these procedures are being followed. 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 practice in place:
 - (i) immediately before the issue arose; or
 - (ii) immediately before any change was made to those procedures or practices which caused the issue to arise.
- (i) The Employer must ensure that all practices applied during the operation of these procedures are in accordance with safe working practices.
- (j) Throughout all stages of these procedures adequate records must be kept of all discussions.

4. Normal Duties

Part A - General

- (a) Normal Duties will be worked for:
 - (i) Not less than 40 hours per week; or
 - (ii) 10 sessions per week over five days per week.
- (b) The Normal Duties hours set out in (a) above may be averaged over
 - (i) four days per week; or
 - (ii) a longer roster period

as agreed between the Staff Specialist and the Employer, and specified in the Staff Specialist's performance agreement.

(c)

- (i) With the exception of Staff Specialists working in accordance with paragraph (d) below, Normal Duties will be worked within the span of hours of 7.00 am to 6.00 pm Monday to Friday inclusive.
- (ii) Where Normal Duties hours are averaged over a roster period longer than 1 week as provided for in (b) above, Normal Duties may be worked Monday to Sunday inclusive.

(d) Shift Work

- (i) Staff Specialists who are employed in a specialty or category specified in Part C Schedule 3 to this Award may be required to undertake shiftwork as part of their Normal Duties as specified in (a) or (b) above. This shiftwork may comprise day or evening shifts.
- (ii) For Staff Specialists working shift work, Normal Duties will be worked within the span of hours of 7.00 am to midnight Monday to Sunday inclusive;
- (iii) For Staff Specialists who undertake shiftwork, the normal rostered duties hours will be paid at ordinary time plus the appropriate penalty rate:

hours worked between 6.00 pm and midnight Monday to Friday - 12.5%;

hours worked between 7.00 am and midnight Saturday - 50%;

hours worked between 7.00 am and midnight Sunday - 75%; and

all hours worked on Public Holidays - 150%.

The penalty rate will be calculated on the Staff Specialist's salary as set in Part B Schedule 1 Rates of Pay of this Award plus the Special Allowance and Level 1 Private Practice Allowance specified in the Salaried Senior Medical Practitioners Determination, as varied from time to time.

- (iv) Additional specialties or categories may be included in Part C Schedule 3 to this Award from time to time by agreement between the Federation and the Director-General of the NSW Ministry of Health. If agreement cannot be reached, either party may make application to the Industrial Relations Commission for a variation to Part C Schedule 3.

(e) Staff Specialists will be available for reasonable on call and recall duties outside of Normal Duties.

Part B - Normal Duties Roster Changes

- (a) When developing rosters for Normal Duties in accordance with the provisions of Clause 4, Normal Duties of the Award, the Employer will ensure that:
 - (i) Staff specialists are consulted and regard is to be given to any family, carer or other personal and professional concerns and responsibilities identified by the staff specialist to ensure, where practicable, that the staff specialist is not adversely affected and that alternative arrangements can be made if possible (eg change of child care or outside practice arrangements); and
 - (ii) the principal outcome of changes to rosters is to maximise the effective delivery of clinical services by ensuring that senior medical staff are rostered to work Normal Duties at times and at places that most effectively meet the service delivery needs and operational requirements; and

- (iii) rosters identify the general nature of the work to be performed on each shift (clinical/direct patient care, administrative, teaching, research or quality improvement) and the facility at which the shift is to be worked.
- (b) On call rosters and responsibilities should align with Normal Duties roster days wherever practicable.
- (c) Wherever practicable, the usual pattern of Normal Duties will be consistent from one roster period to the next.
- (d) Notice Periods
 - (i) Wherever possible, the following notice periods will apply to changes to the Normal Duties roster:
 - 3 months notice of an ongoing change; or
 - 1 months notice of short-term change (eg to cover a planned absence or one-off event);
 - (ii) These provisions do not prevent the Employer from varying the roster of Normal Duties at short notice in an emergency, in response to an unplanned event or to cover an unplanned absence.
- (e) Shifts are to be shared equally amongst the staff specialists unless otherwise agreed.

Part C - Transition Arrangements for Implementation of Clause 4 Normal Duties

- (a) Staff Specialists employed at the time of making this Award will continue to work in accordance with the rostering arrangements in place at that time for a period of 6 months, unless a shorter transitional period is agreed between the Employer and Staff Specialists.
- (b) During this 6-month period, the Employer and Staff Specialists will work co-operatively to review the existing Normal Duties rostering arrangements and, where necessary, develop new Normal Duties rosters in accordance with the principles set out in the Normal Duties Roster Changes clause.

5. Salary

- (a) A full time Staff Specialist will be paid the salary as set out in Schedule 1 of Part B Monetary Rates of this Award.
- (b) A Postgraduate Fellow will be paid the salary as set out in Schedule 1 Part B Monetary Rates of this Award.
- (c) A Staff Specialist will progress to the next incremental step on the anniversary date of his/her commencement as a Staff Specialist pursuant to Clause 2, Definitions.
- (d) This clause does not preclude the Employer, at the Employer's sole discretion:
 - (i) initially appointing a Staff Specialist to a higher step within the Staff Specialist range; or
 - (ii) accelerating a Staff Specialist through the steps within the Staff Specialist range irrespective of the length service.
 - Such accelerated progression does not include the Senior Specialist rate, which can only be accessed by appointment to a Senior Specialist position, in accordance with the definition in Clause 2 of this Award.
- (e) The weekly rate will be ascertained by dividing the annual salary by 52.17857.
- (f) The hourly rate for calculation of penalty rates will be 1/40th of the weekly rate.

- (g) Except as provided for elsewhere in this Award and other relevant industrial instruments, the salary set out in Part B Schedule 1, Rates of Pay of this Award will be full compensation for all aspects and hours of work.

6. Salary Sacrifice - Definition

For the purposes of Clauses 7, 8, 9, 10 "salary sacrifice" means the reduction in legally payable salary and allowances in exchange for benefits provided by the Employer.

7. Salary Sacrifice

In this clause 'superannuable salary' means the Staff Specialist's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations as per the relevant superannuation legislation governing the fund, or, in respect of Staff Specialists who elect to have contributions made to a non public sector superannuation scheme, 'superannuable salary' means the Staff Specialist's salary that would have been notified from time to time to the New South Wales public sector superannuation trustee corporations but for the Staff Specialist's election to have contributions made to a non public sector superannuation scheme.

- (a) Subject to the other provisions of this clause, Staff Specialists may salary sacrifice from the range of benefits the Director-General of the NSW Ministry of Health and Federation agree upon from time to time.
- (b) Salary sacrifice arrangements must be formalized by an agreement between the Staff Specialist and the employer.
- (c) The salary sacrifice agreement must be prospective, that is, the agreement must be made prior to the commencement of the period of service to which the earnings relate.
- (d) Subject to Australian Taxation Law, the sacrificed amount of superannuable salary will reduce the Staff Specialist's remuneration subject to appropriate PAYE taxation deductions by the amount sacrificed.
- (e) The fringe benefits tax on the benefits chosen by the Staff Specialist that would have been payable except for the public hospital fringe benefit exemption status, will be calculated for each Staff Specialist who enters into a salary sacrifice arrangement. This amount will be divided equally between the Employer and the Staff Specialist.
- (f) Any fringe benefits tax applicable to the benefits packaged by a Staff Specialist will be deducted from the total amount sacrificed in that Staff Specialist's salary sacrifice agreement.
- (g) The administration cost of each salary sacrifice agreement will be shared equally by the Employer and the participating Staff Specialist. The Staff Specialist's share will be deducted from the total amount sacrificed in that Staff Specialist's salary sacrifice agreement.
- (h) Subject to Clause 9, the total amount sacrificed in any salary sacrifice agreement may be up to 100% of the Staff Specialist's superannuable salary.
- (i) Any allowance, payment for unused leave entitlements, weekly workers' compensation or other payment, other than any payment for leave taken in service, to which a Staff Specialist is entitled under this award or applicable Act or statute which is expressed to be determined by reference to a Staff Specialist's salary, shall be calculated by reference to the salary and allowances which would have applied to the Staff Specialist in the absence of any salary sacrifice arrangements made pursuant to this award.
- (j) Any pre-tax or post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be sacrificed. 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.

8. Salary Sacrifice for Superannuation

- (a) In this clause 'superannuable salary' means the Staff Specialist's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations as per the relevant superannuation legislation governing the fund, or, in respect of Staff Specialists who elect to have contributions made to a non public sector superannuation scheme, 'superannuable salary' means the Staff Specialist's salary that would have been notified from time to time to the New South Wales public sector superannuation trustee corporations but for the Staff Specialist's election to have contributions made to a non public sector superannuation scheme.
- (b) Consistent with the provisions of Clause 7. Salary Sacrifice, a Staff Specialist may elect, subject to the agreement of the Staff Specialist's employer, to sacrifice a part or all of his/her superannuable salary to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. Subject to Clause 9, the amount sacrificed may be up to 100% of the superannuable salary.
- (c) Where the Staff Specialist has elected to sacrifice a part or all of that superannuable salary to additional employer superannuation contributions:
- (i) Subject to Australian Taxation Law, the sacrificed amount of superannuable salary will reduce the Staff Specialist's remuneration subject to appropriate PAYE taxation deductions by the amount sacrificed; and
 - (ii) Any allowance, payment for unused leave entitlements, weekly workers' compensation, or other payment, other than any payment for leave taken in service, to which a Staff Specialist is entitled under this award or any applicable Act or statute which is expressed to be determined by reference to a Staff Specialist's salary, shall be calculated by reference to the salary and allowances which would have applied to the Staff Specialist in the absence of any salary sacrifice arrangements made pursuant to this award.
- (d) The Staff Specialist may elect to have the amount of superannuable salary which is sacrificed to additional superannuation contributions:
- (i) paid into the superannuation scheme established under the First State Superannuation Act 1992 as optional employer contributions; or
 - (ii) subject to the employer's agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.
- (e) Where a Staff Specialist elects to salary sacrifice in terms of subclause (d) above, the employer will pay the specified amount into the relevant superannuation fund.
- (f) Where the Staff Specialist is a member of a superannuation scheme established under:
- (i) the *Police Regulation (Superannuation) Act, 1906*;
 - (ii) the *Superannuation Act, 1916*;
 - (iii) the *State Authorities Superannuation Act, 1987*;
 - (iv) the *State Authorities Non-contributory Superannuation Act, 1987*; or
 - (v) the *First State Superannuation Act, 1992*.

The Staff Specialist's employer must ensure that the amount of any additional employer superannuation contributions specified in subclause (a) above is included in the Staff Specialist's superannuable salary which is notified to the New South Wales public sector superannuation trustee corporations.

- (g) Where, prior to electing to sacrifice a part or all of his/her superannuable salary to superannuation, a Staff Specialist had entered into an agreement with the employer to have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause (f) above, the employer will continue to base contributions to that fund on the superannuable salary to the same extent as applied before the Staff Specialist 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.
- (h) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be sacrificed. 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.

9. Limitation on the Amount to be Sacrificed

If a Staff Specialist sacrifices under both Clauses 7 and 8, the total amount to be sacrificed may be up to 100% of the superannuable salary.

10. Exclusions

For the individuals named in Part C Schedule 1 to this Award, the provisions of Clauses 6, 7, and 9 will be applied with certain modifications, while they remain in the positions they occupy as at 22 October 1999. The details of the modifications are set out in Schedule 1 of Part C, Other Matters of this Award. Those individuals who move to new positions or who elect to be removed from Schedule 1, Part C Other Matters will be entitled to the provisions of Clauses 6, 7, and 9 without modification and will have no right of reversion to the previous provisions.

11. Managerial Allowance

- (a) It is an expectation that a certain level of management responsibility is an essential part of the duties of a Staff Specialist.
- (b) In addition to the salaries prescribed by this Award, a Staff Specialist required by the Employer to undertake additional responsibilities specifically associated with the management of a unit, department or service shall be paid an additional allowance as set out in Schedule 2 of Part B to this Award.
- (c) To be eligible for payment of this allowance, the additional management responsibilities will include direct line responsibility for a unit, department or service and involvement in a number of, but not necessarily all, of the following:
- (i) cost centre management including budget preparation and management of allocated budget
 - (ii) participation in planning and policy development
 - (iii) responsibility for the co-ordination of research, training or teaching programs
 - (iv) membership and participation in senior executive management teams
- (d) The Managerial Allowance at the Level 1 rate is payable to Staff Specialists who satisfy the criteria in (c) and who are specifically required by the Employer to undertake these additional managerial responsibilities. It is expected that a Staff Specialist receiving a Level 1 allowance will as a minimum perform human resource management responsibilities which include the direct supervision of staff (including other Staff Specialists, Career Medical Officers and Junior Medical Officers where staff from these classifications are in the unit, service or department being managed), allocation of duties, approval of staff rosters, implementation of the provisions of Clause 12 Performance Agreement in respect of other Staff Specialists in the unit, service or department being managed, monitoring of hours worked and other performance management matters. It is also expected that a Staff Specialist receiving a Level 1 allowance will be responsible for ensuring that quality improvement and clinical governance activities are implemented.

- (e) The Managerial Allowance at the Level 2 rate is payable to those Staff Specialists satisfying the criteria in (c) and (d) who, in the assessment of the Employer, have significant additional managerial responsibilities involving multiple units, services or departments, eg. Divisional responsibility.
- (f) The Managerial Allowance at the Level 3 rate is payable to those Staff Specialists who, in addition to satisfying the criteria in (e), have a level of managerial responsibility deemed by the Employer to require an allowance at the Level 3 rate, eg. Area-wide responsibility. It is recognised that managerial responsibilities at this level may not involve the duties at a Department or unit level outlined in (d).
- (g) The Managerial Allowances are not cumulative and are only payable for the period in which the Staff Specialist has been allocated the additional managerial responsibilities by the Employer.
- (h) Managerial allowances may be withdrawn with one month's notice by the Employer if it determines that it no longer requires the Staff Specialist to undertake the relevant managerial responsibilities. This subclause does not apply to Staff Specialists who have been appointed to a position where the managerial duties for which the allowance is paid are an intrinsic part of the substantive position.
- (i) The Managerial Allowances shall be paid during paid absences on approved leave, on termination of employment including voluntary redundancy (on the basis of pro rata the annual amount for each week of paid leave) and for superannuation.
- (j) The Employer may direct a Staff Specialist, as a condition of receiving the managerial allowance, to attend training intended to support and improve management skills and competencies.

12. Performance Agreement

- (a) Each full time and part time Staff Specialist will have a written annual Performance Agreement developed jointly by the Staff Specialist and his/her designated supervisor and signed by the Chief Executive (however called) of the relevant Public Health Organisation or his or her nominee. The standard format to be used for performance agreements is annexed to this Award.
- (b) The Performance Agreement will be developed and completed within one month of the offer of a draft performance agreement. A Staff Specialist who at the time of making of this Award does not have a written Performance Agreement, will develop and complete a Performance Agreement within one month of the offer of a draft performance agreement.
- (c) In the event that agreement is not reached within a further 2 weeks, the matter must be resolved in accordance with the provisions of Clause 3, Issues Resolution of this Award.
- (d) The Staff Specialist and his/her designated supervisor will jointly review the Staff Specialist's performance under the Performance Agreement once in each 12 month period. Each review is to include an evaluation of the Staff Specialist's level of achievement of any specified service improvement objectives which are agreed between the Staff Specialist and his/her supervisor.
- (e) A Performance Agreement will include, but not necessarily be limited to, the following:

Details of the time and place that the normal duties are to be worked.

The nature of work to be performed during normal duties, (whether that is clinical, teaching, administrative, research, quality improvement or other activities).

The anticipated on call frequency and roster.

Any specific call back requirements.

Private billing expectations for Level 1 Staff Specialists.

Any agreement on the amount of time that the Staff Specialist will be released from Normal Duties eg to undertake college and other professional association activities.

Where appropriate, any financial, activity targets or health targets.

Specific commitments and standards from the Employer for the provision of clinical support, including staff, equipment, facilities and billing.

Expectations in respect of management responsibilities, quality improvement and clinical governance activities, post graduate and undergraduate teaching activities, continuing education, research, health outcomes.

Any part time working arrangement in accordance with clause 13 of this Award or outside practice approvals in accordance with clause 15 of this Award.

- (f) The parties agree that clinical, research, teaching, administrative, quality improvement and managerial duties are important aspects of the Normal Duties of a staff specialist. The allocation of time to perform these duties will form part of the performance agreement process and be reviewed as part of the performance agreement review process.

13. Part Time Employment and Arrangements

- (a) Staff Specialists covered by this Award may, with the approval of the Employer, work part-time with the Employer by entering into a written Part Time Working Arrangement which may be varied from time to time by agreement.
- (b) The minimum period of work under a part time working arrangement is 0.1 full time equivalent (FTE).
- (c) Part time Working Arrangements can either be on an on-going basis or for a fixed term (with subsequent return to full time hours for permanent Staff Specialists). The type of working arrangement must be specified in the Part time Working Arrangement and if the arrangement is for a fixed term, then the period of time must also be specified.
- (d) Transfer from an on-going Part Time Working Arrangement to full time employment, or early termination of a fixed term Part time Working Arrangement (with consequential return to full time employment for permanent Staff Specialists) must be by agreement between the Staff Specialist and the Employer and recorded in writing.
- (e) A Staff Specialist employed under a Part Time Agreement pursuant to this Clause will be entitled to accrue all entitlements including salary on a proportionate basis to a Staff Specialist employed on a full time basis.
- (f) A Staff Specialist who works pursuant to a Part Time Agreement will progress to the next incremental step every 12 months from the date of the Staff Specialists commencement of employment, provided the work performed by the Staff Specialist extraneous to the Part Time Agreement is commensurate with the experience of a full-time Staff Specialist and is acceptable to the Employer. This subclause does not preclude accelerated progression.
- (g) Staff Specialists employed pursuant to a Part Time Working Arrangement must participate in the on-call roster to a reasonable extent. The on-call obligations of part time Staff Specialists will be, wherever practicable, aligned to the part time Staff Specialist's normal duties.
- (h) In determining reasonable on-call rosters for part time Staff Specialists, consideration should be given to the level of on-call participation applicable to full time and part time Staff Specialists on the same on-call roster.
- (i) A Staff Specialist is required to provide a minimum notice period of three months when requesting the Employer's approval to reduce from full time to part time employment, or to reduce a fractional appointment. The Employer may consider a lesser period of notice of the request where pressing personal circumstances apply.

14. Work Location

- (a) Subject to the provisions of this clause, a Staff Specialist may be required by the Employer to work at any of the hospitals, institutions or other health services conducted by the relevant public health organisation.
- (b) Before a requirement under subclause (a) above is made, the Employer will ensure that:
- (i) the Staff Specialist is consulted in regard to the proposal to require work at another location;
 - (ii) the duties are consistent with the Staff Specialist's area of specialty, expertise and seniority and the Labour Flexibility clause of this Award;
 - (iii) the travel requirements are reasonable having regard to:
 - (1) the number of work locations,
 - (2) the frequency of attendance at each work location
 - (3) the distance of those work locations from the Staff Specialist's place of residence at the time the Staff Specialist accepted his/her offer of appointment as a Staff Specialist and
 - (4) the travelling time normally involved in attending the place of work at the time of making this award
 - (iv) while it is generally expected that Staff Specialists will not be required to provide services at more than two locations, in particular specialties, geographic circumstances or networking arrangements, Staff Specialists may be required to provide services at more than two locations;
 - (v) a Staff Specialist required to work at another location will have access to the same parking arrangements as those provided to other Staff Specialists at that location and shall be reimbursed by the Employer for any additional parking fees or road tolls paid as a consequence of working at more than one location;
 - (vi) where on call duties are rostered, the Staff Specialist is capable of returning to the workplace within a reasonable timeframe for an emergency call back (a change of the Staff Specialist's place of residence does not exempt the Staff Specialist from the on call obligations established at the time of his or her appointment or the obligations in place at the time of the making of this Award);
 - (vii) wherever practicable, on-call obligations are aligned to the Staff Specialist's normal duties. There shall be no additional on call obligations placed upon a Staff Specialist by reason of any requirement arising from this clause. In determining on-call rosters, consideration should be given to the level of on-call participation of other Staff Specialists on the same on-call roster;
 - (viii) the letter of appointment and/or the performance agreement will specify the locations where the Staff Specialist will be required to provide services. Where the Employer requires a Staff Specialist to commence work at an additional location not specified in the letter of appointment/annual performance agreement, the Employer will give 3 months notice;
 - (ix) regard is given to any family, carer or other personal responsibilities identified by the Staff Specialist so as to minimise any potential adverse impacts on those responsibilities;
 - (x) a Staff Specialist required to work at another location will not be financially disadvantaged in regard to drawings, accounting fees for partnerships and reimbursement of medical indemnity payments made from the No.1 Account, as a result of any such requirement;

- (xi) the relevant factors for determining financial disadvantage will be:
- (1) Drawings - percentage of maximum drawings paid to the Staff Specialist averaged over the last three full financial years (or for Staff Specialists where three years comparison is not available, such lesser periods as may be available by way of comparison) prior to the date on which the requirement to work at another location came into effect;
 - (2) Accounting fees for partnerships - the accounting fees for partnerships reimbursement received by or paid on behalf of the Staff Specialist, relative to her/his partnership share, averaged over the last three full financial years (or for Staff Specialists where three years comparison is not available, such lesser periods as may be available by way of comparison) prior to the date on which the requirement to work at another location came into effect; and
 - (3) Medical indemnity payments - percentage of indemnity reimbursement received by or paid on behalf of the staff specialist relative to the amount claimed where any differential is as a result of insufficient funds available in the No.1 Account, averaged over the last three full financial years (or for Staff Specialists where three years comparison is not available, such lesser periods as may be available by way of comparison) prior to the date on which the requirement to work at another location came into effect.

Where financial disadvantage occurs in relation to drawings, accounting fees for partnerships and medical indemnity reimbursement in accordance with these comparators, the Employer will provide supplementary funding to fully alleviate the financial disadvantage.

The supplementary funding, when provided, will be for an initial period of five years. At the conclusion of the five year period, the supplementary funding may be continued by approval of the Director-General of the NSW Ministry of Health.

- (xii) adequate resources are made available to the Staff Specialist at the additional work location;
 - (xiii) the next annual performance review process will be the means of determining whether non-clinical time should be changed as a result of the requirement to work at another location;
 - (xiv) reporting lines are clearly specified for each location at which the Staff Specialist is required to work;
 - (xv) the requirement for a staff specialist to work at another location will not impose an unreasonable workload on the staff specialists remaining at the primary work location.
- (c) In the event that a Staff Specialist is required to work at an additional location and the Staff Specialist contends that the requirement is unreasonable and/or would have a harsh or unfair impact, the Staff Specialist may invoke the Issue Resolution clause of this Award.
- (d) These arrangements in no way proscribe the Employer's capacity to direct a Staff Specialist to temporarily work at a location other than the Staff Specialist's primary work location or locations where there is an emergency situation, subject to the Employer considering any personal circumstances that may be raised by the Staff Specialist.

15. Outside Practice and Other Business Activities

- (a) A full time Staff Specialist must seek the Employer's approval to engage in medical practice, paid employment or other business activities otherwise than with the Employer.
- (b) Any such approval must be in writing, may be time limited, and must not conflict with the Staff Specialist's commitments to the Employer or obligations under the Code of Conduct issued by the Ministry of Health as varied from time to time.

- (c) Details of the proposed outside practice commitments, including the location, employer (if any), working times, duration of work, and any on-call commitments must be included in the request for approval.
- (d) Part time staff specialists must notify the Employer of any outside practice (including services provided for another public health organisation or Division of the NSW Health Service). Where the Employer has identified a conflict of interest, or a significant risk of a conflict of interest or conflict with the employer's duty of care arising, and the staff member refuses to cease, or to make necessary adjustments to, his or her outside practice, the Employer may take action to resolve the conflict consistent with any applicable Ministry of Health policies and the Code of Conduct as varied from time to time.
- (e) Subject to any commercial arrangement, a Staff Specialist is not to use any of the Employer's staff or property for activities associated with any outside practice they may undertake.
- (f) No outside practice is to be performed by a Staff Specialist during the span of hours designated for the performance of normal duties as applicable to him or her.

16. Postgraduate Fellow

- (a) Appointment as a post-graduate fellow will be limited to one year with eligibility for re-appointment on an annual basis for a maximum of 3 years unless there is specific agreement between the individual and the Employer for a lesser period.
- (b) Remuneration will be as outlined in Schedule 1 of Part B Monetary Rates of this Award.
- (c) Post-graduate fellows will be entitled to all other provisions of this Award as if they were appointed as a Staff Specialist, except for salary.

17. Annual Leave and Annual Leave Loading

A. Annual Leave

- (a) All Staff Specialists shall be allowed 5 weeks annual leave on full pay in respect of each 12 months service with the Employer plus 1 day on full pay in respect of each public holiday occurring within the period of such leave.
- (b) Staff Specialists who are employed in a specialty or category specified in Part C Schedule 3 to this Award and who are required to work on Sundays during a qualifying period of employment for annual leave purposes shall be entitled to receive additional annual leave in respect of each shift so worked as follows:
 - if 30 or more Sunday shifts have been worked - one week;
 - if less than 30 have been worked - leave proportionately calculated on the basis of 40 hours leave for 30 such shifts worked.
- (c) Annual leave shall be given and shall be taken within a period of 6 months after the date when the right to the 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 Staff Specialist be postponed for a further period not exceeding 6 months.
- (d) If the Staff Specialist and the Employer so agree, the annual leave or any such separate period may be taken wholly or partly in advance, before the Staff Specialist 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 12 months in respect of which the annual leave or part thereof has been so taken.

- (e) Except as provided by this clause, payment shall not be made by the Employer to a Staff Specialist in lieu of any annual leave or part thereof nor shall any such payment be accepted by the Staff Specialist.
- (f) Subject to the provisions of the New South Wales *Annual Holidays Act 1944*, the Staff Specialist and the Employer should determine a mutually agreeable date from which annual leave is to be taken and unforeseen circumstances excepted, agreement should be reached two months prior to the commencement of the annual leave.
- (g) The Employer shall pay each Staff Specialist before entering upon annual leave his/her salary for the period of leave if requested by the Staff Specialist, otherwise, the payment will be made in the usual pay period.
- (h) Where the employment of a Staff Specialist is terminated, the Staff Specialist shall be entitled to receive proportionate payment for each completed month of service at the salary which such Staff Specialist is entitled under this Award.
- (i) Where the annual holiday under this clause or any part thereof has been taken in advance by a Staff Specialist pursuant to subclause (d) of this clause, and
 - (i) the employment of the Staff Specialist terminates before he/she has completed the year of employment in respect of which such annual holiday or any part was taken; and
 - (ii) the sum paid by the Employer to the Staff Specialist as ordinary pay for the annual holiday or any part so taken in advance exceeds the sum which the Employer is required to pay to the Staff Specialist under subclause (g) of this clause;

the Employer shall not be liable to make any payment to the Staff Specialist under the said subclause (g), and shall be entitled to deduct the amount of such excess from any remuneration payable to the Staff Specialist upon the termination of the employment.

B. Entitlement to Annual Leave Loading or Shift Allowances and Weekend Penalties

- (a) Staff Specialists who become entitled to and take annual leave pursuant to Part A of this clause, shall be paid ordinary salary plus either:
 - (i) an annual leave loading in respect of that entitlement equivalent to 17.5% of four weeks ordinary salary, not exceeding the amount equivalent to 17.5% of four weeks ordinary salary for maximum salary of Clerk Grade 12 under the provisions of the Crown Employees (Administrative and Clerical Officers - Salaries 2003) Award as varied from time to time; or
 - (ii) in the case of a Staff Specialist employed in a specialty or category specified in Part C Schedule 3 to this Award who would have earned shift allowances and/or weekend penalties in excess of the amount of annual leave loading indicated in subclause (a) (i) above, had he/she not taken annual leave; those shift allowances and weekend penalties relating to the ordinary time the Staff Specialist would have earned had he/she not taken annual leave (provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during a period of annual leave).
- (b) In respect of a Staff Specialist who becomes entitled to take annual leave pursuant to subclause (a) of Part B of this clause, and takes that annual leave in broken periods; both the annual leave loading and the maximum amount referred to in subclause (a) (i) of Part B of this clause are to be calculated pro rata for the broken period being taken in the same proportion as the period being taken bears to four weeks. The resultant amount of annual leave loading calculated for the broken period of annual leave, not exceeding the maximum amount calculated for the same broken period, is to be paid to the Staff Specialist in addition to ordinary salary for the period.

- (c) In respect of a Staff Specialist employed in a specialty or category specified in Part C Schedule 3 of this Award, who becomes entitled to take annual leave pursuant to Part A of this clause, and who takes that annual leave in broken periods, the entitlement to annual leave loading and the maximum amount are to be calculated in the same way as indicated in subclause (b) of Part B of this clause, for the period of annual leave being taken compared with the ordinary time shift allowances and weekend penalties the Staff Specialist would have earned had he/she not taken the annual leave (provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during the period of annual leave), and the greater of either the calculated annual leave loading (not exceeding the calculated maximum amount) or ordinary time shift allowances and weekend penalties is to be paid to the Staff Specialist in addition to ordinary salary for the period.
- (d) The entitlement to annual leave loading or shift allowances and weekend penalties referred to in subclauses (a) (b) and (c) of Part B of this clause are to be calculated and paid at the same time as the annual leave is paid.
- (e) Annual leave loading is to be calculated at the rate of ordinary salary payable when the annual leave is taken (except provided for in subclause (f) of Part B of this clause), and excludes allowances, penalty or disability rates, commission, bonuses or incentive payments etc. Where the ordinary rate payable changes effective from a date falling within a period of annual leave, the changed rate is to be taken into account, and if necessary, adjustments calculated and corrections to pay made.
- (f) No annual leave loading is payable to a Staff Specialist who takes annual leave wholly or partly in advance of becoming entitled to such annual leave, except if his/her employment continues until the day he/she would have become entitled to take such annual leave, in which case the loading then becomes payable on that day (calculated on rates applicable on that day) in respect of the period/s of annual leave already taken wholly or partly in advance. Staff specialists employed in a specialty or category specified in Part C Schedule 3 of this Award already paid ordinary time shift allowances and weekend penalties in respect of annual leave taken wholly or partly in advance are not eligible to be paid annual leave loading under this subclause.
- (g) No annual leave loading or shift allowances and weekend penalties are payable to a Staff Specialist who is paid the monetary value of annual leave to his/her credit on resignation (not including retirement).
- (h) Upon retirement of a Staff Specialist or upon termination by the Employer of a Staff Specialist for any reason other than misconduct, the Staff Specialist shall be paid annual leave loading on that annual leave which he/she had become entitled to take that the loading would have applied to had the annual leave been taken.
- (i) In respect of that additional annual leave accrued by virtue of being rostered to work and working ordinary hours shifts on Sundays pursuant to subclause (b) of Part A of this clause, no annual leave loading is payable. Staff specialists employed in a specialty or category specified in Part C Schedule 3 of this Award are to be paid, in addition to ordinary salary for such annual leave period/s the ordinary time shift allowances and weekend penalties the Staff Specialist would have earned had he/she not taken the annual leave (provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during the period of annual leave).

18. Long Service Leave

- (a) Entitlement and Accrual
 - (i) After service for 7 years or more but not more than 10 years, a Staff Specialist is entitled to Long Service Leave, proportionate to his or her length of service, calculated at the rate of 2 months on full pay for 10 years served.
 - (ii) After service for more than 10 years, a Staff Specialist is entitled to Long Service Leave under subclause (i) above in respect of the first 10 years and additional long service leave,

proportionate to his or her length of service, calculated at the rate of 5 months on full pay for each 10 years served after the first 10 years.

(b) Definition of Service

(i) For the purposes of this clause:

- (1) service shall mean continuous service with the Employer (as defined by this Award),
- (2) continuous service shall have the same meaning as in section 3 of Schedule 3A of the Public Sector Employment and Management Act 2002,
- (3) prior government service will be recognised in accordance with the provisions outlined in Schedule 3A of the Public Sector Employment and Management Act 2002.

(ii) Broken periods of service with the Employer in one or more public health organisations shall count as service.

(iii) Service shall not include any period of leave without pay except in the case of Staff Specialists 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 6 months taken after 22 August 1972.

(c) Taking Long Service Leave

(i) A staff specialist with an entitlement to long service leave may elect to access such entitlement:

- (1) on full pay;
- (2) on half pay; or
- (3) on double pay.

(ii) When a Staff Specialist takes long service leave, the leave entitlement will be deducted on the following basis:

- (1) a period of leave on full pay - the number of days so taken;
- (2) a period of leave on half pay - half the number of days so taken; or
- (3) a period of leave on double pay - twice the number of days so taken.

(iii) If a public holiday occurs whilst a Staff Specialist is taking long service leave and the Staff Specialist would have otherwise worked on that day but for the public holiday, the amount of long service leave to be deducted is to be reduced by the public holiday.

(iv) Long Service Leave shall be taken at a time mutually arranged between the Employer and the Staff Specialist.

(d) Payment on Termination

(i) On the termination of employment of a Staff Specialist with an entitlement to long service leave, otherwise than by his/her death, the Employer will pay the Staff Specialist 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 Staff Specialist at the date of such termination.

(ii) Where a Staff Specialist who has acquired a right to long service leave, or after 5 years and less than seven years service, dies, the Staff Specialist's estate shall be entitled to receive the

monetary value of the leave not taken or which would have accrued to such Staff Specialist had his/her services been terminated as referred to in subclause (d)(i) of this clause, and such monetary value shall be determined according to the salary payable to the Staff Specialist at the time of his/her death.

- (iii) Where the services of a Staff Specialist with at least 5 years service but less than seven years service, are terminated by the Employer for any reason other than the Staff Specialist's serious and wilful misconduct, or by the Staff Specialist 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 2 months long service leave for 10 years service.
- (e) Preservation of Rights to Long Service Leave
 - (i) Rights to long service leave under this Clause shall be in replacement of rights to long service leave, if any, which at the commencement of this Award may have accrued or may be accruing to a Staff Specialist and shall apply only to persons in the employ of the Employer on or after the date of commencement of this Award.
 - (ii) Where a Staff Specialist 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 Staff Specialist may be entitled pursuant to this Clause.
- (f) Accrual of other entitlements whilst on long service leave
 - (i) During a period of long service leave on half pay, a Staff Specialist will continue to accrue at the full time equivalent rate except for annual leave that will accrue at the rate of 50%.
 - (ii) During a period of long service leave on double pay, a Staff Specialist will continue to accrue at the full time equivalent rate including annual leave which will accrue at the single time rate.

19. Sick Leave

A full-time Staff Specialist shall be entitled to sick leave on full pay calculated by allowing ten working days 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 a legally qualified medical practitioner approved by the Employer or may require other satisfactory evidence of the sickness.
- (b) a Staff Specialist shall not be entitled to sick leave until after 3 months' continuous service.
- (c) a Staff Specialist shall not be entitled to sick leave on full pay for any period in respect of which such Staff Specialist is entitled to workers' compensation; provided, however, that the Employer shall pay to a Staff Specialist who has a sick leave entitlement under this clause the difference between the amount received as workers' compensation and full pay. The Staff Specialist's sick leave entitlement under this clause shall, for each week during which such difference is paid, be reduced by that proportion of 1 week which the difference paid bears to full pay.
- (d) for the purposes of this clause "service" means service in any of the positions covered by this Award, provided that any person who was employed by the Employer immediately prior to becoming a Staff Specialist in any position covered by this Award shall be entitled to add to his/her service under this Award the service that he/she has had under any other award/agreement covering his/her employment by the Employer provided that Staff Specialists who are employed by the Employer 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 date, and provided further that such credit is not less than the entitlement otherwise prescribed by this clause.
- (e) The Employer shall not terminate the services of a Staff Specialist, except on the grounds of misconduct, during the currency of any period of paid sick leave unless an agreed independent

registered medical practitioner certifies that a Staff Specialist is fit to continue in employment and the Staff Specialist refuses to resume duty.

- (f) If a dispute arises as to whether a Staff Specialist is fit to continue in employment, such dispute shall be addressed in accordance with Clause 3, Issue Resolution.
- (g) An employee who ceases employment in one public health organisation and within two months of the last day of service commences employment in another public health organisation does not lose any accrued but untaken sick leave.

20. Family and Community Services Leave

(a) General

- (i) 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.

- (ii) The appropriate Chief Executive or authorised delegate may grant FACS leave to a Staff Specialist:

- (1) to provide care and/or support for sick members of the Staff Specialist's relatives or household; or
- (2) for reasons related to the family responsibilities of the Staff Specialist (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 Staff Specialist (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 a Staff Specialist 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).

- (iii) FACS leave replaces compassionate leave.

- (iv) A Staff Specialist is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the Chief Executive or authorised delegate 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.

(b) Entitlement

- (i) The maximum amount of FACS leave on full pay that may be granted to a Staff Specialist 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 Staff Specialist since 1 January 1995,

whichever method provides the greater entitlement.

- (ii) FACS leave is available to part-time Staff Specialists on a pro rata basis, based on the percentage of the full time salary the Staff Specialist receives.
- (c) 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 a Staff Specialist on the death of a relative or member of a household as defined in subclause (a) (i) of this clause.

- (d) Use of other leave entitlements

The appropriate Chief Executive or authorised delegate may grant a Staff Specialist other leave entitlements for reasons related to family responsibilities or community service of the Staff Specialist.

A Staff Specialist may elect, with the consent of the Employer, to take annual leave; long service leave; or leave without pay.

21. Personal/Carer's Leave

- (a) Use of sick leave to care for the person concerned - definitions

A person who needs the Staff Specialist's care and support is referred to as the "person concerned" and is:

- (i) a spouse of the Staff Specialist; or
- (ii) 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
- (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 Staff Specialist or spouse or de facto spouse of the Staff Specialist; or
- (iv) a same sex partner who lives with the Staff Specialist as the de facto partner of that Staff Specialist on a bona fide domestic basis; or
- (v) a relative of the Staff Specialist 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.

- (b) Use of sick leave to care for the person concerned - entitlement

- (i) The entitlement to use sick leave in accordance with this subclause is subject to:
- (1) the Staff Specialist being responsible for the care and support of the person concerned; and

- (2) the person concerned being as defined in subclause (a) of this clause.
- (ii) A Staff Specialist 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.
 - (iii) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (ii) above, sick leave untaken from the previous 3 years may also be accessed by a Staff Specialist with responsibilities in relation to a person who needs their care and support.
 - (iv) The Chief Executive or authorised delegate 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 (iii) above.
 - (v) The Staff Specialist 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.
 - (vi) The Staff Specialist 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.
 - (vii) The Staff Specialist is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
 - (viii) The Staff Specialist 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 Staff Specialist, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the Staff Specialist to give prior notice of absence, the Staff Specialist shall notify the Employer by telephone of such absence at the first opportunity on the day of absence.
 - (ix) In normal circumstances, the Staff Specialist must not take leave under this part where another person has taken leave to care for the same person.
- (c) Use of other leave entitlements
- A Staff Specialist may elect, with the consent of the Employer, to take:
- (i) 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. A Staff Specialist and the 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. A Staff Specialist 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.
 - (ii) long service leave; or
 - (iii) leave without pay for the purpose of providing care and support to the person concerned as defined in subclause (a) of this clause.
- (d) Use of make-up time
- (i) A Staff Specialist may elect, with the consent of the Employer, to work "make-up time". "Make-up time" is worked when the Staff Specialist takes time off during ordinary hours for family or community service responsibilities, and works those hours at another time, during the spread of normal duties hours defined in Clause 4 of this Award, at the ordinary rate of pay.
 - (ii) A Staff Specialist on shift work may elect, with the consent of the Employer, to work "make-up time" (under which the Staff Specialist 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.

22. Maternity, Adoption and Parental Leave

A Maternity Leave

(a) Eligibility

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

A Staff Specialist 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-

- (i) there has been a break in service where the Staff Specialist has been re-employed or re-appointed after a resignation, medical retirement, or after her services have been otherwise dispensed with: or
- (ii) the Staff Specialist 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.

(b) Portability of Service for Paid Maternity Leave

Portability of service for paid maternity leave involves the recognition of service in public sector organisations for the purpose of determining a Staff Specialist's eligibility to receive paid maternity leave. For example, where a Staff Specialist moves between a Public Sector Department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid maternity leave.

When determining a Staff Specialist's eligibility for paid maternity leave, continuous service with an organisation that is part of the public sector service as defined in the Public Sector Employment and Management Act 2002 will be recognised, provided that:

- (i) service was on a full-time or part-time basis;
- (ii) cessation of service with the former public sector service was not by reason of dismissal on any ground, except retrenchment or reduction of work;
- (iii) the Staff Specialist commences duty with the Employer within two months of ceasing employment with the former public sector service. Where there is such a break in service, such break will not be counted as service for the purpose of calculating any prior service prerequisite for paid maternity leave.

(c) Entitlement to Paid Maternity Leave

An eligible Staff Specialist 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 a Staff Specialist to take this period off work. However, if a Staff Specialist decides to work during the nine weeks prior to the date of birth it is subject to the Staff Specialist 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 a Staff Specialist to remain on full pay for that period.

(d) Unpaid Maternity Leave

(i) Full time and part time Staff Specialists 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.

(ii) Full time and part time Staff Specialists who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.

(e) Applications

A Staff Specialist who intends to proceed on maternity leave should formally notify the 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.

(f) Variation after Commencement of Leave

After commencing maternity leave, a Staff Specialist may vary the period of her maternity leave once only without the consent of the Employer by giving the Employer notice in writing of the extended period at least fourteen days' before the start of the extended period. The Employer may accept less notice if convenient.

A Staff Specialist 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*.

(g) Staffing Provisions

In accordance with obligations established by the Industrial Relations Act 1996 (Section 69) any person who occupies the position of a Staff Specialist on maternity leave must be informed that the Staff Specialist has the right to return to her former position. Additionally, since a Staff Specialist 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 Staff Specialist elects to return to duty, whichever occurs first.

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

When the Staff Specialist 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 Staff Specialists 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 Staff Specialist 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.

(i) Illness Associated with Pregnancy

If, because of an illness associated with her pregnancy a Staff Specialist 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 a Staff Specialist 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 Staff Specialist then commences maternity leave with the normal provisions applying.

(j) Transfer to a More Suitable Position

Where, because of an illness or risk associated with her pregnancy, a Staff Specialist cannot carry out the duties of her position, the 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 a Staff Specialist is transferred under these circumstances must be as close as possible in status and salary to her substantive position.

(k) Miscarriages

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

(l) Stillbirth

In the case of a stillbirth, (as classified by the Registry of Births, Deaths and Marriages) a Staff Specialist 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.

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

A Staff Specialist 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 a Staff Specialist return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

(n) Right to Return to Previous Position

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

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

(o) Further Pregnancy While on Maternity Leave

Where a Staff Specialist becomes pregnant whilst on maternity leave a further period of maternity leave shall be granted. If a Staff Specialist 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

A Staff Specialist who commences a subsequent period of maternity leave while on unpaid maternity leave under subclause (d)(i) of Part A of this clause or subclause (a)(ii) 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).

A Staff Specialist 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 (a)(iii) of Part D of this clause is entitled to be paid at their substantive full time rate for the subsequent period of maternity leave.

A Staff Specialist who commences a subsequent period of maternity leave more than 12 months after returning to duty on a part time basis under subclause (a)(iii) 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

(a) Eligibility

All full time and part time Staff Specialists 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 part-time Staff Specialist must also have completed at least 40 weeks continuous service prior to the date of taking custody of the child.

A Staff Specialist 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

- (i) there has been a break in service where the Staff Specialist has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with; or
- (ii) the Staff Specialist 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.

(b) Portability of Service for Paid Adoption Leave

As per maternity leave conditions.

(c) Entitlement

(i) Paid Adoption Leave

Eligible Staff Specialists 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 a Staff Specialist to remain on full pay for that period.

(ii) Unpaid Adoption Leave

Eligible Staff Specialists 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 Staff Specialist and the employer.

(d) Applications

Due to the fact that a Staff Specialist may be given little notice of the date of taking custody of a child, Staff Specialists 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.

(e) Variation after Commencement of Leave

After commencing adoption leave, a Staff Specialist 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 the Employer may accept less notice if convenient.

(f) Staffing Provisions

As per maternity leave conditions.

(g) Effect of Adoption Leave on Accrual of Leave, Increments, etc

As per maternity leave conditions.

(h) Right to return to Previous Position

As per maternity leave conditions.

C. Parental Leave

(a) Eligibility

To be eligible for parental leave a full time or part-time Staff Specialist 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.

A Staff Specialist 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-

- (i) there has been a break in service where the Staff Specialist has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with: or
 - (ii) the Staff Specialist 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.
- (b) Portability of Service for Paid Parental Leave
- As per maternity leave conditions.
- (c) Entitlements

Eligible Staff Specialists 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:

- (i) 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
 - (ii) a further unbroken period in order to be the primary caregiver of the child (extended parental leave).
 - (iii) The entitlement of one week's paid leave may be taken at anytime within the 52 week period and shall be paid:
 - at the Staff Specialists 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.
 - (iv) Extended parental leave cannot be taken at the same time as the Staff Specialist's spouse or partner is on maternity or adoption leave except as provided for in subclause (a)(i) 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 a Staff Specialist to remain on full pay for that period.
- (d) Applications
- A Staff Specialist 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.
- (i) In the case of extended parental leave, the Staff Specialist should give written notice of the intention to take the leave.
 - (ii) The Staff Specialist 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 Staff Specialist. In such an instance, the Staff Specialist should notify the employer as early as practicable.
 - (iii) The Staff Specialist 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.

- (iv) In the case of extended parental leave, the Staff Specialist must, before the start of leave, provide a statutory declaration by the Staff Specialist 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.
- (e) Variation after Commencement of Leave -

After commencing parental leave, a Staff Specialist 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 the Employer may accept less notice if convenient.
- (f) Effect of Parental Leave on Accrual of Leave, Increments etc.

As per maternity leave conditions.
- (g) Right to Return to Previous Position

As per maternity leave conditions.

D. Right to Request

- (a) A Staff Specialist entitled to maternity, adoption or parental leave may request the Employer to allow the Staff Specialist:
 - (i) to extend the period of simultaneous maternity, adoption or parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) 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 Staff Specialist in reconciling work and parental responsibilities.
- (b) The Employer shall consider the request having regard to the Staff Specialist's circumstances and, provided the request is genuinely based on the Staff Specialist'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) The Staff Specialist's request and the Employer's decision made under subclauses (a)(ii) and (iii) must be recorded in writing.
- (d) Where a Staff Specialist wishes to make a request under subclause (a)(iii):
 - (i) the Staff Specialist is to make an application for leave without pay to reduce their full time weekly hours of work
 - (ii) 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;
 - (iii) salary and other conditions of employment are to be adjusted on a basis proportionate to the Staff Specialist'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.

- (iv) Staff Specialists who return from leave under this arrangement remain full time Staff Specialists.

E. Communication During Leave

- (a) Where a Staff Specialist 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:
 - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the Staff Specialist held before commencing the leave; and
 - (ii) provide an opportunity for the Staff Specialist to discuss any significant effect the change will have on the status or responsibility level of the position the Staff Specialist held before commencing the leave.
- (b) The Staff Specialist shall take reasonable steps to inform the Employer about any significant matter that will affect the Staff Specialist's decision regarding the duration of the leave to be taken, whether the Staff Specialist intends to return to work and whether the Staff Specialist intends to request to return to work on a part time basis.
- (c) The Staff Specialist shall also notify the Employer of changes of address or other contact details which might affect the Employer's capacity to comply with subclause (a).

NOTE:

- (a) Where a temporary Staff Specialist 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.

The Employer must not fail to re-engage a temporary Staff Specialist because:

the Staff Specialist or Staff Specialist's spouse is pregnant; or

the Staff Specialist is or has been immediately absent on parental leave.

The rights of the employer in relation to engagement and re-engagement of temporary Staff Specialists are not affected, other than in accordance with this clause.

- (b) Liability for Superannuation Contributions

During a period of unpaid maternity, adoption or parental leave, the Staff Specialist will not be required to meet the employer's superannuation liability.

23. Telephones

A Staff Specialist required by the Employer to have a telephone for the purposes of official duty at his/her home address shall, on presenting an account relating to that telephone be reimbursed -

- (a) three-quarters of the cost of the rental of the telephone; and
- (b) the cost of all official STD telephone calls or its equivalent.

No payment for residential fixed telephone will be made where the Employer has issued a mobile phone to the Staff Specialist (unless the Staff Specialist resides in an area with no mobile phone coverage).

24. Office, Secretarial and Administrative Support

Staff Specialists will have access to such office, secretarial and administrative support as may be reasonably necessary to undertake the requirements of the position.

25. Specialist Medical Administrators

- (a) Where the Employer determines that Fellowship of the Royal Australian College of Medical Administrators is an essential requirement for appointment to a position, the holder of that position will be appointed as a Staff Specialist in accordance with the arrangements set out below.
- (b) Pursuant to clause 5(c) of this Award, Staff Specialists appointed in accordance with this clause will progress to the next incremental step, up to and including Year 5, on the anniversary date of his/her commencement.
- (c) Appointment or progression to Senior Staff Specialist grade may occur when the Employer requires the Staff Specialist to have duties and responsibilities:
 - (i) across an area health service; or
 - (ii) involving management of multiple services, units or department across two (2) or more facilities.
- (d) Specialist Medical Administrators paid in accordance with this clause are not entitled to the provisions of Clause 11 Managerial Allowance.
- (e) Except as otherwise provided, Staff Specialists paid in accordance with this clause are entitled to the terms and conditions of employment applicable to Staff Specialists. Staff Specialists paid in accordance with this clause are not entitled to the terms and conditions of employment applicable to medical superintendents.

26. Labour Flexibility

- (a) The Employer may direct a Staff Specialist to carry out such duties as are reasonable, and within the limits of the Staff Specialist's skill, competence and training consistent with his/her classification, grouping and/or career stream provided that such duties are not designed to promote deskilling.
- (b) The Employer may direct a Staff Specialist to carry out such duties and use such equipment as may be required provided that the Staff Specialist has been properly trained or has otherwise acquired the necessary skills in the use of and equipment.
- (c) Any direction issued by the Employer pursuant to sub-clause (a) and (b) shall be consistent with the Employer's responsibilities to provide a safe and healthy work environment.

27. Anti-Discrimination

- (a) 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.
- (b) 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.
- (c) Under the *Anti-Discrimination Act* 1977, it is unlawful to victimise a Staff Specialist because the Staff Specialist has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

- (d) Nothing in this clause is to be taken to affect:
- (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (ii) offering or providing junior rates of pay to persons under 21 years of age;
 - (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (iv) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (e) 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.

28. Redundancy

The provisions of Ministry of Health Policy Directive PD2012_021, as amended from time to time, shall apply.

29. Underpayment and Overpayment of Salaries

The following process will apply once the issue of underpayment or overpayment is substantiated.

- (a) Underpayment:
- (i) 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;
 - (ii) 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
- (i) 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.
 - (ii) One off overpayments will be recovered in the next normal pay, except that where the employee can demonstrate that undue hardship would result, the recovery rate shall be at 10% of an employee's gross fortnightly base pay.
 - (iii) 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.
 - (iv) The recovery rate of 10% of an employee's gross fortnightly base pay referred to in subclause (b) (iii) above may be reduced by agreement, where the employee can demonstrate that undue hardship would result.
 - (v) 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) (iii) 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.

30. Monthly Leave Return

Each Staff Specialist is required to provide a signed monthly leave return showing any leave taken in the previous month, to be certified by the relevant unit or service manager or the relevant hospital executive director/general manager.

31. No Extra Claims

During the term of this award, there will be no extra wage claims, claims for improved conditions of employment or demands made with respect to the employees covered by the award and, further, that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the Industrial Relations Commission or any other industrial tribunal.

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.

32. Area, Incidence and Duration

- (a) This Award rescinds and replaces the Staff Specialists (State) Award published 18 November 2011 (371 I.G. 1296).
- (b) It shall apply to all Staff Specialists as defined in Clause 2, Definitions, of this Award.
- (c) This Award will take effect from 1 July 2012. The Award will remain in force for the period to 30 June 2013 or until varied or rescinded in accordance with the provisions of *Industrial Relations Act 1996*.

PART B - MONETARY RATES

Schedule 1 - Staff Specialists Salary Rates

Staff Specialist	First Pay Period on or after 01/07/2012 Per annum \$
1	144,212
2	152,647
3	161,074
4	169,526
5	177,962
Senior	194,836
Postgraduate fellow	167,518

Schedule 2 - Allowances

Managerial allowances	First Pay Period on or after 01/07/2012 Per annum \$
Level 1	20,003
Level 2	35,005
Level 3	50,007

PART C - OTHER MATTERS**Schedule 1 - List of Exclusions in Relation to Clauses 7 - 10 (inclusive)**

SECTION A

1. List of individuals

The following individuals shall be entitled to the provisions of Clauses 6, 7, and 9 of this Award with certain modifications, as set out below

Dr J Death
Dr M Donoghue
Dr P Gale
Dr D Kirkpatrick
Dr G Nieuwkamp
Dr M Pallas
Dr P Watt
Dr D York

2. Election rights

(a) An individual named in paragraph 1 above may elect to access either: -

Option 1 - the provisions set out in paragraph 3 below, i.e. a modified form of the provisions of Clauses 6, 7, and 9 of this Award; or,

Option 2 - on the condition that he/she forfeits the right to his/her existing motor vehicle arrangement, the provisions of Clauses 6, 7, and 9 of this Award without modification.

(b) This election may be exercised prior to each salary sacrifice review date.

(c) Subject to:

(i) the conditions outlined in paragraph 3 below; and,

(ii) remaining in his/her current position (as at 22 October 1999); and,

(iii) retaining an entitlement to payment of the abnormal hours or managerial allowance (as the case may be);

an individual who elects Option 1 will be able to continue to trade the relevant allowance (abnormal hours or managerial) for the provision of a motor vehicle for full private and business use. This entitlement will not be considered to be part of the salary sacrifice arrangements for the purposes of the calculation of the 50%.

(d) An individual who elects to access Option 2 will have no right of reversion to the existing motor vehicle arrangement. The parties agree that such an individual will be deemed to have had his/her name deleted from the list in paragraph 1 above until such time as the Award is varied to reflect that election.

3. Modifications

If an individual elects Option 1 in paragraph 2 above he/she may access the provisions of Clauses 6, 7 and 9 of the Award subject to an additional contribution being made to the Employer in accordance with the following.

Each individual who elects Option 1 in paragraph 2 above shall contribute an amount equivalent to 55% of the average FBT liability for the motor vehicles provided as calculated for those individuals

participating in this option. Such calculation is to be based on the assumption that each individual is packaging the maximum permissible FBT exempt amount. This FBT calculation shall be made at the end of each FBT year and shall be applied to contributions for the following year.

SECTION B

1. List of individuals

The following individuals shall be entitled to the provisions of Clauses 6, 7, 8 and 9 of this Award with certain modifications, as set out below.

Dr V de Carvalho
Dr R Burstal
Dr W Saul

Dr P Byth
Dr R Kerridge
Dr C Wake

2. Modifications

The individuals listed immediately above shall be entitled to the provisions of Clauses 6-9 of the Award. In addition, whilst ever these individuals remain in their current positions (as at 22 October 1999) and retain an entitlement to payment of the abnormal hours allowance or managerial allowance (as the case may be), they shall be entitled to continue the current arrangements approved by the Director-General of the NSW Ministry of Health under which they forego payment of the abnormal hours allowance or managerial allowance (as the case may be), receive a motor vehicle under SES provisions and pay the difference up to the SES motor vehicle contribution rate. This entitlement is subject to payment of the full amount of fringe benefits tax payable by SES officers, i.e. the FBT exemption will not be shared between the Employer and the Staff Specialist. This entitlement will not be considered to be part of the salary sacrifice arrangements for the purposes of the calculation of the 50%.

Schedule 2 - List of Recognised Australasian Specialist Colleges

Royal Australasian College of Surgeons

Royal Australasian College of Physicians
Adult Medicine Division
Australasian Chapter of Addiction Medicine
Australasian Chapter of Palliative Medicine
Australasian Chapter of Sexual Health Medicine
Australasian Faculty of Public Health Medicine
Australasian Faculty of Rehabilitation Medicine
Australasian Faculty of Occupational and Environmental Medicine
Paediatrics and Child Health Division
Chapter of Community Child Health

Royal Australasian College of Medical Administrators

Royal Australian and New Zealand College of Obstetricians and Gynaecologists

Royal Australian and New Zealand College of Ophthalmologists

Royal Australian and New Zealand College of Psychiatrists

Royal Australian and New Zealand College of Radiologists

Faculty of Radiation Oncology

Royal College of Pathologists of Australasia

Australian and New Zealand College of Anaesthetists

Faculty of Pain Medicine

Australasian College of Dermatologists

College of Intensive Care Medicine of Australia and New Zealand

Australasian College for Emergency Medicine

Australasian College of Sports Physicians

Schedule 3 - Specialties or Categories of Positions Covered by Clause 4 (D)

- (i) Emergency medicine

ANNEXURE

PRO FORMA STAFF SPECIALIST PERFORMANCE AGREEMENT
Name of Staff Specialist:
Name of Supervisor:
Date:
Work location(s):
Allocation of time at location(s): Full-time or part-time:
Days on which normal duties are worked:
Nature of work to be performed during normal duties and time allocated:
Clinical:
Teaching:
Administrative:
Research:
Quality improvement:
Other:
Part-time Working Arrangement (Yes/No): attach approval if applicable
Outside practice (Yes/No): attach approval if applicable
Anticipated on call frequency and roster:
Any specific call-back requirements:
Agreed College or other professional association activities (include estimate of time spent):
Billing expectations (Level 1 only): (NB: categories of patients, clinics, etc, not financial targets.)
Financial, activity or health targets (where appropriate):
Specific commitments and standards from the Employer for the provision of:

<p>Clinical Support:</p> <p>Staff:</p> <p>Equipment:</p> <p>Facilities:</p> <p>Billing:</p>
<p>Expectations in respect of: Management responsibilities:</p> <p>Quality improvement/clinical governance:</p> <p>Teaching activities:</p> <p>Continuing education:</p> <p>Research:</p> <p>Health outcomes:</p>
<p>Twelve month review: Evaluation of level of achievement by supervisor:</p> <p>Signature:</p>

Comments by Staff Specialist:
Signature:
Signature of Chief Executive of the relevant public health organisation (or his/her nominee)
Signature:

I. TABBAA, Commissioner

Printed by the authority of the Industrial Registrar.

SYDNEY OLYMPIC PARK SPORTS CENTRE CASUAL EVENT STAFF AWARD 2012

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(No. IRC 135 of 2012)

Before The Honourable Mr Justice Staff

23 July 2012

REVIEWED AWARD

PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Intention
4.	Rates of Pay
5.	Income Protection Plan
6.	Hours of Work
7.	Terms of Engagement
8.	Meal Breaks
9.	Overtime
10.	Public Holidays
11.	Payment of Wages
12.	Job Representative
13.	Labour Flexibility
14.	Uniforms and Protective Clothing
15.	Tools and Equipment
16.	Change Rooms
17.	Grievance and Dispute Resolution Procedures
18.	Area, Incidence and Duration
19.	No Extra Claims
20.	No Reduction of Entitlements

PART B

Table 1 - Hourly Rates

2. Definitions

- 2.1 The parties to this award are:
- (i) The Director General of the Department of Finance and Services, as the employer for the purposes of the *Public Sector Employment and Management Act* 2002; and
 - (ii) The Australian Workers' Union, New South Wales ("the Union").
- 2.2 The Employer for the purpose of this award is the Chief Executive Officer of the Sydney Olympic Park Authority Division of the Department of Education and Communities.
- 2.3 Employee means a person employed under Chapter 1A of the *Public Sector Employment and Management Act* 2002 in the Sydney Olympic Park Authority Division of the Department of Education

and Communities at the Sydney Olympic Park Sports Centre in the classifications prescribed by this award.

3. Intention

The principal intentions of this award, consistent with the understandings agreed with Unions New South Wales on behalf of affiliates, are:

- (i) To promote harmonious industrial relations for the Sydney Olympic Park Sports Centre ("the Centre") and associated facilities;
- (ii) To maximise standards of service to the public and the Centre's users, measured against those applying in the leisure and recreation industry nationally and internationally;
- (iii) To facilitate the development of a multi-skilled casual workforce;
- (iv) To establish flexible operational arrangements to meet the needs of the Centre, its clients and those of the workforce;
- (v) To maintain the Centre and associated facilities as world class Olympic Sports Venues.

4. Rates of Pay

- (i) The minimum rates of pay for employees covered by this award shall be those set out in Table 1 of Part B of this award.
- (ii) The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:

any equivalent overaward payments; and/or

award wage increases since 29 May 1991 other than safety net, State Wage Case and minimum rates adjustments.

- (iii) Classifications (Skills/Definitions)

Level 1

Shall be an employee with no qualifications and performs duties of a routine nature, requiring the use of minimum judgement and supervision.

Employees at this level may include the initial recruit who may have limited relevant experience.

An employee at this level will be able to communicate with the public in a courteous and tactful manner.

Working under close supervision and undergoing on-the-job training, an employee at this level would perform the function of car parking attendant, door attendant, door attendant or usher cashier (including basic clerical and office duties including answering the phone).

Upon completion of 400 hours of employment at Level 1, an employee will be reclassified to Level 2.

Level 2

Shall be an employee who has:

- (a) Undertaken structured training recognised by the Centre's management as being relevant; or
- (b) Completed 400 hours employment at the level required of a Level 1 operative or equivalent work within the leisure and recreation or venue management sector.

An employee at this level would:

Demonstrate a capacity to work in a team environment under routine supervision and assist with the provision of on-the-job training to a limited degree.

Where appropriate, hold and maintain first-aid qualifications recognised as being in accord with the safe and effective conduct of duties involving public and employee health and safety.

In addition to the requirements of a Level 1 employee, a person at this level may be called upon to perform some of the following:

Program selling/merchandise selling;

Processing ticket sales and bookings;

Conduct tours of the Centre or associated facilities;

Supervise uniform room.

Level 3

An employee at this level shall exercise discretion within one's own level of skill and training and has delegated responsibility for work under their control or supervision in terms of allocation of duties, co-ordinating workflows, checking progress, quality of work and resolving problems, as well as counselling staff for performance and work-related problems where required.

Tasks would include training of new employees at Levels 1 and 2 and supervision of a discrete section or group; acts as an assistant theatre manager or event co-ordinator/client liaison, audio visual technician, security supervisor.

Level 4

Shall be an employee who, subject to broad guidance or direction, reports to more senior staff as required.

An employee at this level would have worked or studied in a relevant field and/or have specialist knowledge, qualifications and experience sufficient to enable them to advise on a range of activities and features and contribute, as required, to the determination of objectives, within their delegated area of supervision, including box office management, security, theatre craft, event management, publicity and promotion.

5. Income Protection

Employees who are members of the union to whom this award applies shall be covered by the Sickness and Accident Income Protection Plan approved and endorsed by The Australian Workers' Union. It is a term of this award that the employer will bear the costs of a daily premium of \$1.00 per employee per day worked to cover employees who are members of the union.

This clause applies only to regular casuals, i.e. employees engaged for 2 or more shifts within a calendar month.

6. Hours of Work

The ordinary hours of work shall be rostered, between the hours of 7.00 am and 11.30 pm. The ordinary hours of work may be extended to 2.00 am to cover special events, provided that management gives all employees involved 7 clear days' notice of the extension of ordinary hours, or upon agreement between the employer and employee.

7. Terms of Engagement

- (i) All employees shall be engaged as casual employees under this award.
- (ii) Employees shall be paid the appropriate hourly rate as set out in Table 1 of Part B.
- (iii) The casual hourly rate contained in this award contains a component in lieu of any entitlement to sick leave, public holidays, bereavement leave, long service leave and annual leave.
- (iv) A casual employee shall receive a minimum payment of 3 hours for each engagement, to be worked consecutively.
- (v) Casual rosters may be changed by management provided that shifts are not shortened to less than the minimum referred to above.

8. Meal Breaks

- (i) Any employee who is required to work on any shift for more than 5 hours shall be entitled to a paid meal break of 30 minutes which should be taken no more than 5 hours after commencing duty.
- (ii) Notwithstanding the provisions of subclause (i) of this clause, the Employer and employee can determine the appropriate time to take a meal break by mutual agreement.

9. Overtime

- (i) Overtime shall be paid to employees engaged under this award in the following circumstances:
 - (a) Where the hours of work exceed 10 in any day;
 - (b) Where the hours of work extend beyond the time limits specified in clause 6, Hours of Work.
 - (c) Where the employee receives less than a 10-hour break between work on consecutive days.
- (ii) Overtime shall be paid on the hourly rates contained in Table 1 of Part B, based on time and one half for the first 2 hours and double time for each hour worked thereafter calculated to the nearest quarter hour.

10. Public Holidays

- (i) The days on which New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queens Birthday, Labour Day, Christmas Day, Boxing Day or any proclaimed day or part day in lieu thereof for the State of New South Wales shall be holidays.
- (ii) Casual employees who are required to work on a public holiday shall be entitled to the appropriate hourly rate contained in Table 1 of Part B.

11. Payment of Wages

Wages will be paid fortnightly by electronic funds transfer.

12. Job Representative

- (i) A job representative appointed by the employees shall be allowed the necessary time during working hours, to interview the supervisor or officer in charge on matters affecting the employees whom he/she represents.
- (ii) The Australian Workers' Union job delegates shall be allowed up to 5 days' paid leave per year to attend approved courses run by the union.

13. Labour Flexibility

Employees covered by this award shall perform all work within their skill and competence including but not limited to work which is incidental but not peripheral to their main tasks and functions.

14. Uniforms and Protective Clothing

Where employees are required to wear a uniform, they will be provided to the employee free of charge. Employees required to work in the rain shall be provided with oilskins, gumboots or other protective clothing, free of charge.

Upon termination of employment, all uniforms and property belonging to the employer shall be returned by the employee to the Employer.

15. Tools and Equipment

All tools and equipment required by the employees to perform their duties shall be provided by the Employer, free of charge.

16. Change Rooms

The Employer shall provide a change room for the use of employees, free of charge. Such change room shall be equipped with hot and cold showers and shall be fitted with individual locker accommodation.

17. Grievance and Dispute Settling Procedures

- (i) Procedures relating to grievances of individual employees
 - (a) 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 discussion and state the remedy sought.
 - (b) 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.
 - (c) Reasonable time limits be allowed for discussion at each level of authority.
 - (d) 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.
 - (e) While a procedure is being followed, normal work must continue.
 - (f) The employee may be represented by the union for the purpose of each procedure.
- (ii) Procedures relating to disputes, etc., between the employer and its employees
 - (a) 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 level of authority.

- (b) Reasonable time limits must be allowed for discussion at each level of authority.
- (c) While a procedure is being followed, normal work must continue.
- (d) The Employer may be represented by an industrial organisation of employers and the employees may be represented by the union for the purpose of each procedure.

18. Area, Incidence and Duration

- (i) This award shall regulate the terms and conditions of employment of casual event employees of the Government Service of New South Wales in the Department of Education and Communities Sydney Olympic Park Authority Division engaged within the scope of the classification structure contained in clause 4(ii), in connection with (whether indoors or outdoors) any fixture, event, exhibition or performance at the Sydney Olympic Park Sports Centre, or associated facilities.
- (ii) This award shall not apply to employees of the Government Service of New South Wales within the Department of Education and Communities Sydney Olympic Park Authority Division engaged by the week, even though such employees may from time to time perform functions covered by the classification structure contained in clause 4 (rates of pay).
- (iii) This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the State Sports Centre Trust Casual Event Staff (State) Award 2004 published on 30 January 2009 (367 I.G. 125), as varied.
- (iv) 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 23 July 2012.
- (v) This award remains in force until varied or rescinded, the period for which it was made having already expired.

19. No Extra Claims

It is a term of this award that the union undertakes not to pursue any extra claims, award or over-award, of a general nature, for the duration of the award.

20. No Reduction in Entitlements

No existing employee at the date of the implementation of this award shall suffer a reduction in either conditions or rates of pay, whether award based or not, simply as a consequence of the existence of this award, and it impacting on their employment.

PART B**Table 1 - Hourly Rates**

The following shall be the ordinary hourly rates for employees engaged under this award:

Classification	Monday to Sunday \$	Public Holidays \$
Level 1	19.67	40.99
Level 2	21.15	44.06
Level 3	23.44	48.84
Level 4	27.90	58.12

C.G. STAFF J

Printed by the authority of the Industrial Registrar.

**TEACHERS' (NSW HEALTH EARLY CHILDHOOD SERVICE
CENTRES) SALARIES AND MISCELLANEOUS CONDITIONS
AWARD 2012**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Independent Education Union, Industrial Organisation of Employees.

(No. IRC 587 of 2012)

Before The Honourable Justice Haylen

17 September 2012

AWARD

Arrangement

PART A

Clause No.	Subject Matter
1.	Definitions
2.	Salaries
3.	Directors' and Nominated Supervisors' 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 - Directors' Allowances

Table 3 - Nominated Supervisors' 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 Education and Care Services National Law Act 2012 or its replacement.
- (m) "Union" means the Independent Education Union of Australia and/or HSU NSW.

2. Salaries

2.1 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.

2.2 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.

2.3 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*.

2.4 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.

2.5 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. Directors' and Nominated Supervisors' Allowance

3.1 Directors' 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 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 Supervisors' 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 an 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 Hospital (Professional and Associated Staff) Conditions of Employment (State) Award published 24 April 2009 (367 I.G. 1365) or as amended 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 Officer 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 Director-General 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 The parties agree that, during the term of this Award, there will be no extra wage claims, claims for improved conditions of employment or demands that made with respect to the employees covered by the Award and further, that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the Industrial Relations Commission or any other industrial tribunal.

- 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 provisions in this Award.

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 Hospital (Professional and Associated Staff) Conditions of Employment (State) Award published 24 April 2009 (367 I.G. 1365) or as amended from time to time.
- 9.3 This award shall take effect from 21 May 2012 provided that the increases in rates of pay and allowances shall be effective from the first full pay period on or after 1 September 2012.
- 9.4 This award shall remain in force for one year from the 17 September 2012.

PART B

MONETARY RATES

Table 1 - Rates of Pay

The following minimum annual salaries shall apply from the beginning of the first full pay period specified in each column respectively:

Classification/ Incremental Salary Step	1 September 2012 (2.5%) per annum \$
Three Years Trained Teachers	
Step 1	47,651
Step 2	50,077
Step 3	52,695
Step 4	55,114
Step 5	57,662
Step 6	60,410
Step 7	61,928
Step 8	63,435
Step 9	65,962
Step 10	68,599
Step 11	70,447
Four Years Trained Teachers	
Step 1	50,669
Step 2	53,808
Step 3	56,835
Step 4	60,191
Step 5	63,310
Step 6	65,962
Step 7	68,599
Step 8	71,571
Step 9	74,433

Table 2 - Directors' Allowance (Clause 3.1)

Units	1 September 2012 (2.5%) per annum \$
1	5,320
2	6,492
3	8,104
4	10,123

Table 3 - Nominated Supervisor's Allowance (Clause 3.2)

Units	1 September 2012 (2.5%) per annum \$
1	1,728
2	2,109
3	2,639
4	3,297

W. R. HAYLEN *J*

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**ENTERPRISE AGREEMENTS APPROVED
BY THE INDUSTRIAL RELATIONS COMMISSION**(Published pursuant to s.45(2) of the *Industrial Relations Act 1996*)**EA12/12 - Natural Resources Commission (Division of Government Service of NSW) Enterprise Agreement 2012**

Made Between: Natural Resources Commission of New South Wales -&- Karen Aason, Jeff Bell, Emma Benn, Di Bentley, Carla Bissett, Emma Collins, Nirvana Corleone, Andrea Ehlers, Maree Leonard, Marie Lodge, Todd Maher, Alistair Phillips, Ria Pryce, Avtar Singh, Lauren Tapp, Pia Zadnik.

New/Variation: Replaces EA08/27.

Approval and Commencement Date: Approved 13 September 2012 and commenced 1 July 2012.

Description of Employees: The agreement applies to all employees (excluding Senior Executive and Commissioners) employed by Natural Resources Commission (Division of Government Services who fall within the coverage of the Crown Employees (Public Sector Salaries - 2008) Award, and the Crown Employees (Public Service Conditions of Employment - 2009) Award located at Level 10, 15 Castlereagh Street, Sydney, 2000.

Nominal Term: 36 Months.

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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.

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