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NEW SOUTH WALES  
**INDUSTRIAL GAZETTE**

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SERIAL C7614

**STATE WAGE CASE 2010 (No. 2)**INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES  
FULL BENCHSummons to Show Cause - Commission on its own Initiative pursuant to Part 3 of Chapter 2 of the *Industrial Relations Act 1996*

(No. IRC 471 of 2010)

Before The Honourable Justice Boland, President  
The Honourable Justice Walton, Vice-President  
The Honourable Mr Deputy President Harrison  
Mr Deputy President Grayson  
Commissioner Tabbaa

25 March 2011

**ORDERS**

The Full Bench makes the following orders:

- (1) Pursuant to s 51(1) of the *Industrial Relations Act*, the Commission orders that the Commission's Wage Fixing Principles shall be as set out in Appendix A to this decision and shall operate on and from 4 April 2011.
- (2) The Principles in Order (1) supersede the Principles that are Appendix A to the *State Wage Case 2010* (2010) NSWIRComm 183.
- (3) The new Principles shall be reviewed in the 2012 State Wage Case.

**APPENDIX A**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

STATE WAGE CASE MARCH 2011

WAGE FIXING PRINCIPLES

**1. Preamble**

**1.1** These principles have been developed to accommodate the changing nature of the jurisdiction of the Industrial Relations Commission of New South Wales under the *Industrial Relations Act 1996* ("the Act") in light of the creation of a national system of private sector employment regulation, relevantly established by the *Industrial Relations (Commonwealth Powers) Act 2009*, the *Industrial Relations Amendment (Consequential Provisions) Act 2010*, the *Fair Work Act 2009* (Cth) and the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* (Cth).

**1.2** The four primary aims of these principles are:

**1.2.1** to provide a framework under which wages and employment conditions in the government and local government sectors of New South Wales remain fair and reasonable in accordance with the requirements of the Act, and economically sustainable having regard to the obligation of the Commission to take into account the public interest and, in doing so, have regard to the objects of the Act and to the state of the economy of New South Wales and the likely effect of the Commission's decisions on that economy;

- 1.2.2 to provide a framework that accommodates the interests of employers and employees and their representatives and ensures consistency of approach and certainty and predictability as to the principles that are to operate in respect of the fixation of wages and the setting of employment conditions;
      - 1.2.3 to provide a framework in which all operative and non-operative awards within the Commission's jurisdiction are maintained up to date in respect of rates of pay and allowances; and
      - 1.2.4 to protect the low paid.
    - 1.3 Movements in wages and conditions must fall within the following principles.
  2. **When an Award may be Varied or Another Award Made Without the Claim Requiring Consideration as an Arbitrated Case**
    - 2.1 In the following circumstances an award may, on application, be varied or another award made without the application requiring consideration as an Arbitrated Case under Principle 8:
      - (a) to include previous State Wage Case increases in accordance with Principle 2.2;
      - (b) to incorporate test case standards in accordance with Principle 3;
      - (c) to adjust wages for the State Wage Case 2010 in accordance with Principle 4;
      - (d) to adjust allowances and service increments in accordance with Principle 5;
      - (e) where the application is consented to by the parties it will be dealt with in terms of the Act;
      - (f) to approve an enterprise arrangement reached in accordance with Principle 10; and
      - (g) to adjust wages pursuant to an application claiming that work has been undervalued on a gender basis in accordance with Principle 12.
    - 2.2 Applications for increases available under previous State Wage Case decisions will be determined in accordance with the relevant principles contained in those decisions.
  3. **Test Case Standards**

Test case standards established and/or revised by a Full Bench of the Commission may be incorporated into an award in accordance with the Act. Where disagreement exists as to whether a claim involves a test case standard, those asserting that it does must make an application for a special case.
  4. **State Wage Case Adjustments**
    - 4.1 Following the completion of an Annual Wage Review by Fair Work Australia, the Commission shall issue a notice to show cause why that decision should not be flowed on to relevant New South Wales awards (as per 4.3(c) of this Principle) in the New South Wales industrial jurisdiction.
    - 4.2 Subject to s 50(1) of the Act, if there are no written objections from any of the parties to the flow on of the Fair Work Australia decision then the Commission may issue a general order "on the papers" for that decision to apply to all relevant New South Wales awards.
    - 4.3 Unless the Commission determines otherwise, all relevant New South Wales awards (excluding those that are caught by Principles 4.3(c) and 14) will be varied to include a State Wage Case adjustment by the making of a general order of the Commission pursuant to s 52 of the Act, subject to the following:

- (a) At the time when the award is to be varied to insert the State Wage Case adjustment (or a proportionate amount in the cases of part-time and casual employees, juniors, trainees, apprentices, employees on a probationary rate, employees on a supported wage or with permits under s 125 of the Act), the following clause will be inserted in the award:

"The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:

- (i) any equivalent overaward payments, and/or  
(ii) award wage increases other than State Wage Case adjustments."

The above clause will replace the offsetting clause inserted into awards pursuant to the Principles determined in the State Wage Case 2009 decision.

- (b) By consent of all parties to an award, where the minimum rates adjustment has been completed, award rates may be expressed as hourly rates as well as weekly rates. In the absence of consent, a claim that award rates be so expressed may be determined by arbitration.
- (c) The State Wage Case adjustment will only be made in respect of rates in awards which have not been increased, other than by State Wage Case adjustments.
- (d) The State Wage Case adjustment may apply where the rates in an award have increased under the Arbitrated Case and/or Equal Remuneration Principles in accordance with the Commission's Decision as set out in Principles 8.2(1) and 12.16 respectively.

## **5. Adjustment of Allowances and Service Increments**

- 5.1** Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect relevant changes in the level of such expenses.
- 5.2** Existing allowances which relate to work or conditions which have not changed other than by State Wage Case adjustments, including shift allowances expressed as monetary amounts and service increments, will be increased by 4.25 per cent for the State Wage Case 2010 adjustment by general order of the Commission pursuant to s 52 of the Act.
- 5.3** Existing allowances for which an increase is claimed because of changes in the work or conditions will be determined in accordance with the relevant provisions of the Arbitrated Case Principle if there is no consent.
- 5.4** New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses.
- 5.5** Where changes in the work have occurred or new work and conditions have arisen, the question of a new allowance, if any, will be determined in accordance with the Arbitrated Case Principle.
- 5.6** New service increments may only be awarded to compensate for changes in the work and/or conditions and will be determined in accordance with the relevant provisions of the Arbitrated Case Principle.

## **6. Award Review Classification Rate**

- 6.1** The Award Review Classification Rate of \$592.30 shall be the rate below which no full-time adult employee (excluding trainees, apprentices and employees on a supported wage or on a probationary rate) should be paid under the relevant award.
- 6.2** Where a classification in an award is below the Award Review Classification Rate the following process will apply on application:

- (a) The award will be listed for a mention at which the parties will report as to:
  - (i) how the Award Review Classification Rate will be achieved, or
  - (ii) whether the award is obsolete.

The Commission may direct the parties to confer in order to set a program for an updating of the award to reflect the Award Review Classification Rate.

- (b) If the parties to the award do not appear at this mention, the Commission shall request the parties to the award to show cause why the award should not be considered obsolete and rescinded under s 17(3) of the Act.
- (c) Where no agreement is reached with respect to (a) above, the Commission shall re-list the matter in order to conciliate the issues in dispute.
- (d) If the attempt at conciliation is unsuccessful the Commission shall arbitrate any outstanding issue(s).

## **7. Minimum Wage for Award/Agreement Free Employees**

**7.1** Subject to the provisions set down in Principle 4, State Wage Case Adjustments and following the completion of an Annual Wage Review by Fair Work Australia:

**7.1.1** The Minimum Wage shall apply to those adult employees, junior employees, employees to whom training arrangements apply and employees with a disability who are employed in the jurisdiction of the Commission and whose employment is not subject to the terms of an industrial instrument.

**7.1.2** The minimum weekly rate of pay payable to an adult employee (as defined in s 5 of the Act) engaged on a full-time basis whose employment is not subject to the terms of an industrial instrument (as defined in s 8 of the Act) shall be the rate of pay equal to the National Minimum Wage, as varied from time to time by the Commission.

**7.1.3** The minimum hourly rate of pay payable to an adult employee (as defined in s 5 of the Act) engaged on a part-time basis whose employment is not subject to the terms of an industrial instrument (as defined in s 8 of the Act) shall be the rate of pay equal to the National Minimum Wage, as varied from time to time by the Commission divided by 38.

**7.1.4** The minimum hourly rate of pay payable to an adult employee (as defined in s 5 of the Act) engaged on a casual basis whose employment is not subject to the terms of an industrial instrument (as defined in s 8 of the Act) shall be the rate of pay equal to the National Minimum Wage, as varied from time to time by the Commission divided by 38 plus any casual loading calculated in accordance with 7.1.8 hereof.

**7.1.5** Unless the Commission otherwise determines, the minimum weekly rate of pay for junior employees, employees to whom training arrangements apply and employees with a disability (as defined by s 12 of the *Fair Work Act 2009* (Cth)) engaged on a full-time basis whose employment is not subject to the terms of an industrial instrument (as defined in s 8 of the Act) shall be the rate of pay equal to the special National Minimum Wage as per s 294(1)(b) of the *Fair Work Act 2009* (Cth), as varied from time to time by the Commission.

**7.1.6** Unless the Commission otherwise determines, the minimum hourly rate of pay for junior employees, employees to whom training arrangements apply and employees with a disability (as defined by s 12 of the *Fair Work Act 2009* (Cth)) engaged on a part-time basis whose employment is not subject to the terms of an industrial instrument (as defined in s 8 of the Act) shall be the rate of pay equal to the special National Minimum Wage as

per s 294(1)(b) of the *Fair Work Act 2009* (Cth), as varied from time to time by the Commission divided by 38.

**7.1.7** The minimum hourly rate of pay for a junior employee, employees to whom training arrangements apply and employees with a disability (as defined by s 12 of the *Fair Work Act 2009* (Cth)) engaged on a casual basis whose employment is not subject to the terms of an industrial instrument (as defined in s 8 of the Act) shall be the rate of pay equal to the special National Minimum Wage as per s 294(1)(b) of the *Fair Work Act 2009* (Cth), as varied from time to time by the Commission divided by 38 plus any casual loading calculated in accordance with 7.1.8 hereof.

**7.1.8** Casual loadings (if applicable) for adult employees, junior employees, employees to whom training arrangements apply and employees with a disability who are award or agreement free will be adjusted in line with s 294(1)(c) of the *Fair Work Act 2009* (Cth), as varied from time to time by the Commission.

## **8. Arbitrated Case**

### **8.1 General**

Any claim for increases in wages and salaries, or changes in conditions in awards, other than those allowed elsewhere in the Principles, will be processed as an Arbitrated Case by a Full Bench of the Commission unless otherwise allocated by the President. In determining such an application, the Commission shall, subject to the relevant provisions of the Act, do so in accordance with the following criteria:

### **8.2 Work Value Considerations**

- (a) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.
- (b) In addition to meeting the test in (a), a party making a work value application will need to justify any change to wage relativities that might result not only within the relevant internal award structure but also against any external classification to which that structure is related. There must be no likelihood of wage leapfrogging arising out of changes in relative position.
- (c) The foregoing circumstances are the only ones in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed in accordance with this Principle.
- (d) In applying the Work Value Changes Principle, the Commission will have regard to the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed.
- (e) Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification, or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.
- (f) The time from which work value changes in an award should be measured is the date of operation of the second structural efficiency adjustment allowable under the State Wage Case 1989 (1989) 30 IR 107 or the last work value inquiry or the date of a consent award

where the parties have agreed pursuant to a consent award the wage increases reflect increases in work value, whichever is the later.

- (g) Care should be exercised to ensure that changes that were, or should have been, taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this Principle.
- (h) Where the tests specified in (a) are met, an assessment will have to be made as to how that alteration should be measured in money terms. Such assessment will normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work or the date of a consent award where the parties have agreed pursuant to a consent award the wage increases reflect increases in work value.
- (i) The expression "the conditions under which the work is performed" relates to the environment in which the work is done.
- (j) The Commission will guard against contrived classifications and over-classification of jobs.
- (k) Any changes in the nature of the work, skill and responsibility required or the conditions under which the work is performed, taken into account in assessing an increase under any other Principle of these Principles, will not be taken into account under this Principle.
- (l) In arbitrating an application made under this Principle, the Commission is required to determine whether or not future State Wage Case general increases will apply to the award.

### **8.3** Productivity and Efficiency Considerations

Productivity and efficiency measures that have delivered substantial costs savings and/or productivity or efficiency improvements or which have made a substantial contribution towards the attainment of the objectives of the employer (including departments and agencies of the Crown) in seeking to become more competitive and/or efficient, to which employees have made a significant contribution, may constitute the basis for increases to wages and salaries or improvements in employment conditions without the requirement to make out a special case, provided that such measures, savings or improvements have not already been taken into account in previous wage adjustments.

### **8.4** Special Case Considerations

**8.4.1** A claim for increases in wages and salaries, or changes in conditions in awards, other than those allowed elsewhere in the Principles, and which is not based on work value and/or productivity and efficiency pursuant to this Principle, will be processed as a special case in accordance with the principles laid down in *Re Operational Ambulance Officers (State) Award* (2001) NSWIRComm 331; (2001) 113 IR 384 and the cases referred to therein at (165)-(168).

**8.4.2** All special cases shall be tested against the public interest.

### **8.5** Exclusions

**8.5.1** Claims that are based substantially on comparative wage justice, attraction and retention or community standards will not be countenanced except as provided in *Re Public Hospital Nurses (State) Award* (No 3) (2002) NSWIRComm 325; (2002) 121 IR 28 and *Re Health Employees Pharmacists (State) Award* (2003) NSWIRComm 453; (2003) 132 IR 244.

**8.5.2** There shall be no double counting, provided, however, that an Arbitrated Case claim may rely upon a cumulation of the factors referred to in this Principle.

## 9. Negotiating Principles

- 9.1** In order to encourage participation in industrial relations by representative bodies of employees and employers, avoid industrial disputes, provide a prompt and fair manner for their resolution with a minimum of legal technicality, and to encourage and facilitate co-operative workplace reform, the following processes shall be followed with respect to claims under Principles 8 and 12.
- 9.2** In respect of the commencement of negotiations for a new award:
- (a) At least one month before the nominal expiry date of an award a party to the award must notify the Commission (where a major industrial case is contemplated pursuant to Practice Direction 8A) and the other parties to the award that it is their intention to enter into negotiations for a new award in respect of claims pursuant to Principles 8 and/or 12.
  - (b) The parties to the award shall begin negotiations as soon as is practicable after the notification has been given. In this regard, once a written claim has been made by one party on another party, negotiations should begin within a reasonable period of time unless it is agreed by the parties to postpone the commencement of negotiations to a later time.
  - (c) Disputes about these procedures shall be dealt with in accordance with the relevant dispute resolution procedure.
- 9.3** Subject to the provisions of the Act, and unless the Commission otherwise determines, a party is not entitled to prosecute an arbitration unless the party has bargained beforehand in good faith and, in particular, the party has:
- (a) attended meetings they have agreed to attend and had been represented at the negotiations by persons capable of giving genuine consideration to the proposals of other parties and giving reasoned responses to those proposals; and
  - (b) complied with agreed or reasonable negotiating or meeting procedures; and
  - (c) disclosed relevant information for the purposes of negotiation; and
  - (d) responded to each other's claims and/or counter claims in a reasonable and timely manner.
- These good faith bargaining requirements do not require:
- (a) a party to make concessions during bargaining; or
  - (b) to reach agreement on the terms that are to be included in the agreement.
- 9.4** The Commission may assist the parties in reaching agreement. The Commission may provide such assistance in respect of a dispute when a request is made by any party or on its own motion.
- 9.5** The Commission may exercise conciliation powers under the Act, and in that connection may, at the request of all the parties to a dispute, engage in a "Bluescope" process: see Construction, Forestry, Mining and Energy Union (New South Wales Branch) and Macquarie Generation (2009) NSWIRComm 160; Re Operational Ambulance Officers (State) Award (2008) NSWIRComm 168; Minister for Industrial Relations (Notification under s 167 of a dispute between BHP Billiton) and The Australian Workers Union (2002) NSWIRComm 378; Crown Employees (NSW Fire Brigades Permanent Firefighting Staff) Award 2008 (2008) NSWIRComm 174; and Re Crown Employees (Public Sector - Salaries 2008) Award (2008) NSWIRComm 193.
- 9.6** If conciliation fails, and the parties do not elect for the "Bluescope" process, the Commission may arbitrate consistent with the powers under the Act and these Principles.

**10. Enterprise Arrangements**

- 10.1** The Commission may approve of enterprise arrangements reached in accordance with this Principle and the provisions of the Act.
- 10.2** Industrial unions of employees and industrial unions of employers, or industrial unions of employees and employers, or employees and employers may negotiate enterprise arrangements which, subject to the following provisions, shall prevail over the provisions of any award or order of the Commission that deals with the same matters insofar as they purport to apply to parties bound by the arrangements, provided that, where the arrangement is between employees and an employer, a majority of employees affected by the arrangement genuinely agree.
- 10.3** An enterprise arrangement shall be an agreed arrangement for an enterprise, or discrete section of an enterprise, being a business, undertaking or project, involving parties set out in Principle 10.2.
- 10.4** Enterprise arrangements shall be for a fixed term and there shall be no further adjustments of wages or other conditions of employment during this term other than where contained in the arrangement itself. Subject to the terms of the arrangement, however, such arrangement shall continue in force until varied or rescinded in accordance with the Act.
- 10.5** For the purposes of seeking the approval of the Commission, and in accordance with the provisions of the Act, a party shall file with the Industrial Registrar an application to the Commission to either:
- (a) vary an award in accordance with the Act; or
  - (b) make a new award in accordance with the Act.
- 10.6** On a hearing for the approval of an enterprise arrangement, the Commission will consider, in addition to the industrial merits of the case under the State Wage Case Principles:
- (a) ensuring the arrangement does not involve a reduction in ordinary time earnings and does not depart from the Commission's standards of hours of work, annual leave with pay or long service leave with pay; and
  - (b) whether the proposed award or variation is consistent with the continuing implementation at enterprise level of structural efficiency considerations.
- 10.7** The Commission is available to assist the parties to negotiations for an enterprise arrangement by means of conciliation and, in accordance with these Principles and the Act, by means of arbitration. If any party to such negotiations seeks arbitration of a matter relating to an enterprise arrangement, such arbitration shall be as a last resort.
- 10.8** Enterprise arrangements entered into directly between employees and employers shall be processed as follows, subject to the Commission being satisfied in a particular case that departure from these requirements is justified:
- (a) All employees will be provided with the current prescriptions (e.g. award, industrial agreement or enterprise agreement) that apply at the place of work.
  - (b) The arrangement shall be committed to writing and signed by the employer, or the employer's duly authorised representative, with whom agreement was reached.
  - (c) Before any arrangement is signed and processed in accordance with this Principle, details of such arrangement shall be forwarded in writing to the union or unions with members or persons eligible for membership in that enterprise who are affected by the changes and the employer association, if any, of which the employer is a member.

- (d) A union or employer association may, within 14 days thereof, notify the employer in writing of any objection to the proposed arrangements, including the reasons for such objection and in such circumstances the parties are to confer in an effort to resolve the issue.
- (e) Where an arrangement is objected to by a union or employer association and the objection is not resolved, an employer may make application to the Commission to vary an award or create a new award to give effect to the arrangement.
- (f) A union and/or employer association shall not unreasonably withhold consent to the arrangements agreed upon by the parties.
- (g) If no party objects to the arrangement, then a consent application shall be made to the Commission to have the matter approved in accordance with paragraph (e) of this Principle.
- (h) Such arrangement once approved shall be displayed on a notice board at each enterprise affected.

## 11. Superannuation

**11.1** An application to make or to vary a minimum rates or paid rates award which:

- (a) seeks a greater quantum of employer contributions than required by the *Superannuation Guarantee (Administration) Act 1992* (Cth) ("the SGA Act"); or
- (b) seeks employer contributions to be paid in respect of a category of employee in respect of which the SGA Act does not require contributions to be paid;

shall be referred to a Full Bench for consideration as a special case, unless otherwise allocated by the President. Exceptions to this process are applications which fall within the Enterprise Arrangements Principle.

**11.2** If an application is made that does not fall within Principle 11.1, the Commission will, subject to Principle 11.3:

- (a) make or vary an award by inserting a clause stating:

"Superannuation Legislation - The subject of superannuation is dealt with extensively by federal legislation including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth); the *Superannuation (Resolution of Complaints) Act 1993* (Cth) and s 124 of the *Industrial Relations Act 1996*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties".

- (b) if appropriate, ensure that the award contains specification of an employee's earnings (e.g. "ordinary time earnings") which, for the purposes of the SGA Act, will operate to provide a "notional earnings base", and
- (c) if the award is to continue to prescribe a "flat dollar" amount of employer contribution, ensure that appropriate amounts are inserted so as to give effect to the levels of contribution required from time to time under the SGA Act.

**11.3** The Commission may award provisions which differ from those in Principle 11.2:

- (a) by consent; or

- (b) in the absence of consent, by arbitration, provided the Commission is satisfied that there are particular factors warranting the awarding of different provisions. Such factors may include:
  - (i) the wishes of the parties;
  - (ii) the nature of the particular industry or enterprise;
  - (iii) the history of the existing award provisions;
  - (iv) relevant decisions of the Commission establishing superannuation principles; and
  - (v) relevant statutory provisions.

**11.4** Before any different provisions are awarded under Principle 11.3, either by consent or arbitration, the Commission must be satisfied, on expert evidence, that the award to be made will not contain requirements that would result in an employer not meeting the requirements imposed by the SGA Act.

**11.5** Subject to s 124 of the Act, any specification of a fund will carry with it the obligation for an employer to pay contributions at such intervals as are required by the fund.

**11.6** In determining applications as to specification of a fund, the Commission will, as appropriate:

- (a) ensure that any fund specified by it is one into which payment will meet the employer's obligations under the SGA Act;
- (b) have regard to the *Superannuation Industry (Supervision) Act 1993* (Cth) ("the Supervision Act") which provides for the prudent management of certain superannuation funds and for their supervision by the Insurance and Superannuation Commissioner. In particular, the requirement with respect to equal representation of employers and members on what are called "standard employer-sponsored funds" (Pt 9 of the Supervision Act) should be noted;
- (c) have regard to previous decisions of the Commission with respect to the specification of a fund or funds; and
- (d) have regard to relevant statutory provisions.

**11.7** Due to the variety of existing award superannuation provisions and the impact and complexity of the SGA Act, all applications to the Commission may not be capable of being dealt with in accordance with the approach set out above. In any such case it may be appropriate for the application to be dealt with as a special case.

## **12. Equal Remuneration and Other Conditions**

**12.1** Claims may be made in accordance with the requirements of this Principle for an alteration in wage rates or other conditions of employment on the basis that the work, skill and responsibility required, or the conditions under which the work is performed, have been undervalued on a gender basis.

**12.2** The assessment of the work, skill and responsibility required under this Principle is to be approached on a gender neutral basis and in the absence of assumptions based on gender.

**12.3** Where the under-valuation is sought to be demonstrated by reference to any comparator awards or classifications, the assessment is not to have regard to factors incorporated in the rates of such other awards which do not reflect the value of work, such as labour market attraction or retention rates or productivity factors.

- 12.4** The application of any formula, which is inconsistent with proper consideration of the value of the work performed, is inappropriate to the implementation of this Principle.
- 12.5** The assessment of wage rates and other conditions of employment under this Principle is to have regard to the history of the award concerned.
- 12.6** Any change in wage relativities which may result from any adjustments under this Principle, not only within the award in question but also against external classifications to which the award structure is related, must occur in such a way as to ensure there is no likelihood of wage leapfrogging arising out of changes in relative positions.
- 12.7** In applying this Principle, the Commission will ensure that any alternative to wage relativities is based upon the work, skill and responsibility required, including the conditions under which the work is performed.
- 12.8** Where the requirements of this principle have been satisfied, an assessment shall be made as to how the undervaluation should be addressed in money terms or by other changes in conditions of employment, such as reclassification of the work, establishment of new career paths or changes in incremental scales. Such assessments will reflect the wages and conditions of employment previously fixed for the work and the nature and extent of the undervaluation established.
- 12.9** Any changes made to the award as a result of this assessment may be phased in and any increase in wages may be absorbed in individual employees' overaward payments.
- 12.10** Care should be taken to ensure that work, skill and responsibility which have been taken into account in any previous work value adjustments or structural efficiency exercises are not again considered under this Principle, except to the extent of any undervaluation established.
- 12.11** Where undervaluation is established only in respect of some persons covered by a particular classification, the undervaluation may be addressed by the creation of a new classification and not by increasing the rates for the classification as a whole.
- 12.12** The expression "the conditions under which the work is performed" has the same meaning as in Principle 8.2, Work Value Considerations.
- 12.13** The Commission will guard against contrived classification and over-classification of jobs. It will also consider:
- (a) the state of the economy of New South Wales and the likely effect of its decision on the economy;
  - (b) the likely effect of its decision on the industry and/or the employers affected by the decision; and
  - (c) the likely effect of its decision on employment.
- 12.14** Claims under this Principle will be processed before a Full Bench of the Commission, unless otherwise allocated by the President.
- 12.15** Equal remuneration shall not be achieved by reducing any current wage rates or other conditions of employment.
- 12.16** In arbitrating an application made under this Principle, the Commission is required to determine whether or not future State Wage Case general increases will apply to the award.

### **13. Economic Incapacity**

- 13.1** Any employer or group of employers bound by an award may apply to, temporarily or otherwise, reduce, postpone and/or phase in the application of any increase in labour costs determined under

the Principles on the ground of very serious or extreme economic adversity. The merit of such an application shall be determined in the light of the particular circumstances of each case and any material relating thereto shall be vigorously tested. Significant unemployment or other serious consequences for the employees and employers concerned are significant factors to be taken into account in assessing the merit of any application.

**13.2** Such an application shall be processed according to the Special Case Principle.

**13.3** Any decision to temporarily reduce or postpone an increase will be subject to a further review, the date of which will be determined by the Commission at the time it decides any application under this principle.

#### **14. Transitional provisions**

**14.1** These new Principles shall apply to:

- (a) any application to make or vary an award that is made on or after the date of commencement of the new Principles; and
- (b) any such application filed prior to that time where the hearing of the matter has not commenced as at the date of the commencement of the new Principles (directions hearings shall not count for this purpose).

**14.2** The new Principles shall not operate in respect of awards that are still within their nominal term on the date the Principles commence to operate. In such cases the Principles, which are Appendix A to the State Wage Case 2010 (2010) NSWIRComm 183 ("the former Principles"), will apply. Subject to 14.1(b) the former Principles shall apply to any application made in respect of such awards as well as any part heard proceedings.

#### **15. Duration**

These Principles will operate on and from 4 April 2011 until further order of the Commission.

R. P. BOLAND *J, President.*  
M. J. WALTON *J, Vice-President.*  
R. W. HARRISON *D.P.*  
J. P. GRAYSON *D.P.*  
I. TABBAA, Commissioner.

**CROWN EMPLOYEES (AUDIT OFFICE) AWARD 2009**

## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

**VARIATION**

1. Insert in the Arrangement of Annexure 4 of the award, published 31 December 2010 (370 I.G. 580), the following new clause number and subject matter:

6.18 Leave for Matters Arising from Domestic Violence

2. Insert in alphabetical order in clause 2, Definitions, the following new subclause:

"Domestic Violence" means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Insert after subclause 6.17.8 of clause 6.17, Special Leave of Annexure 4, the following new subclause:

6.17.9 Matters arising from domestic violence situations.

When the leave entitlements referred to in clause 6.18 Leave for Matters Arising From Domestic Violence have been exhausted, the Audit Office shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

4. Insert after clause 6.17, Special Leave, of Annexure 4, the following new clause:

6.18 Leave for Matters Arising from Domestic Violence

6.18.1 The definition of domestic violence is found in clause 2, Definitions, of this award;

6.18.2 Leave entitlements provided for in clause 6.5 Family and Community Services Leave, 6.12 Sick Leave and 6.14, Sick Leave to Care for a Family Member, in Annexure 4 may be used by employees experiencing domestic violence;

6.18.3 Where the leave entitlements referred to in subclause 6.8.2 are exhausted, the Audit Office shall grant Special Leave as per clause 6.17.9;

6.18.4 The Audit Office 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;

6.18.5 Personal information concerning domestic violence will be kept confidential by the Audit Office;

6.18.6 The Audit Office 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.

5. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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## **CROWN EMPLOYEES (HOME CARE SERVICE OF NEW SOUTH WALES - ADMINISTRATIVE STAFF) AWARD 2007**

### INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

### **VARIATION**

1. Insert in numerical order in clause 1, Arrangement of the award published 30 May 2008 (365 I.G.1629), the following new clause number and subject matter:

34A. Leave for Matters Arising from Domestic Violence

2. Insert after subclause (ix) clause 4, Definitions the following new subclause.

- (x) Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Insert after clause 34, Study Leave, the following new clause:

#### **34A. Leave for Matters Arising from Domestic Violence**

- (i) The definition of domestic violence is found in subclause 4(x), of clause 4, Definitions, of this award;
- (ii) Leave entitlements provided for in clause 30, Family and Community Service Leave, clause 29, Sick Leave and clause 31, Personal/Carers Leave, may be used by an employee experiencing domestic violence;
- (iii) Where the leave entitlements referred to in subclause 34(ii) are exhausted, the employer 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;
- (iv) The employer 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.
- (v) Personal information concerning domestic violence will be kept confidential by the service;
- (vi) The employer, 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.

4. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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## **CROWN EMPLOYEES (INDEPENDENT PRICING AND REGULATORY TRIBUNAL 2009) AWARD**

### INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

### **VARIATION**

1. Insert in clause 1, Arrangement of the award, published 28 August 2009 (368 I.G. 1388), the following new clause number and subject matter.

#### 29A. Leave for Matters Arising from Domestic Violence

2. Insert after subclause 3.18, of clause 3, Definitions, the following new subclause:
  - 3.19 Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.
3. Insert after subclause 29.4 of clause 29 Special Leave, the following new subclause:
  - 29.5 Matters arising from domestic violence situations.

When the leave entitlements referred to in clause 29A Leave for Matters Arising From Domestic Violence have been exhausted, the Chief Executive shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

4. Insert after clause 29, Special Leave, the following new clause:

#### **29A. Leave for Matters Arising from Domestic Violence**

- 29A.1 The definition of domestic violence is found in sub clause 3.19, of clause 3 Definitions, of this award;
- 29A.2 Leave entitlements provided for in clause 20, Family and Community Service Leave, and clause 28, Sick Leave, may be used by staff members experiencing domestic violence;
- 29A.3 Where the leave entitlements referred to in subclause 29A.2 are exhausted, the Chief Executive Officer shall grant Special Leave as per sub clause 29.5;
- 29A.4 The Chief Executive Officer 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;
- 29A.5 Personal information concerning domestic violence will be kept confidential by the agency;
- 29A.6 The Chief Executive Officer, 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.

5. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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(1894)

SERIAL C7569

## CROWN EMPLOYEES (INDEPENDENT TRANSPORT SAFETY AND RELIABILITY REGULATOR) AWARD 2009

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

### VARIATION

1. Insert in numerical order in clause 1, Arrangement of the award, published 28 August 2009 (368 I.G. 1411), the following new clause number and subject matter:

17A. Leave for Matters Arising from Domestic Violence

2. Insert after subclause (v) of clause 2, Definitions, the following new subclause:  
(vi) "Domestic Violence" means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Insert after the first paragraph of clause 17, Special Leave, the following new paragraph

Matters arising from domestic violence situations

When the leave entitlements referred to in clause 17A, Leave for Matters Arising From Domestic Violence have been exhausted, the Chief Executive shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

4. Insert after clause 17, Special Leave, the following new clause:

#### 17A. Leave for Matters Arising from Domestic Violence

- (i) The definition of domestic violence is found in subclause (v) of clause 2 Definitions, of this award;
- (ii) Leave entitlements provided for in clause 12, Family and Community Service Leave, clause 11 Sick leave may be used by staff members experiencing domestic violence;
- (iii) Where the leave entitlements referred to in subclause 17A(ii) are exhausted, the Chief Executive shall grant Special Leave as per the second paragraph of clause 17.
- (iv) The Chief Executive 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;
- (v) Personal information concerning domestic violence will be kept confidential by the agency;
- (vi) The Chief Executive 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.

5. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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(1343)

SERIAL C7558

## **CROWN EMPLOYEES (INSTITUTE MANAGERS IN TAFE) SALARIES AND CONDITIONS AWARD 2009**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

### **VARIATION**

1. Insert in numerical order in clause 1, Arrangement of the award published 30 October 2009 (369 I.G.443), the following new clause number and subject matter:

15A. Leave for Matters Arising from Domestic Violence

2. Insert after subclause 2.12, of clause 2 Dictionary, the following new subclause:
- 2.13 Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.
3. Insert after clause 15, Leave, the following new clause:

#### **15A. Leave for Matters Arising from Domestic Violence**

15A.1 The definition of domestic violence is found in clause 2.13, of clause 2 Dictionary, of this award;

15A.2 Leave entitlements provided for in clause 15.3, Sick Leave, clause 15.4, Family and Community Service Leave, and clause 15.5, Personal/Carers Leave, may be used by an employee experiencing domestic violence;

15A.3 Where the leave entitlements referred to in subclause 15A.2 are exhausted, the employer 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;

15A.4 The employer 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;

15A.5 Personal information concerning domestic violence will be kept confidential by the agency;

15A.6 The employer, 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.

4. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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**CROWN EMPLOYEES (NSW TAFE COMMISSION -  
ADMINISTRATIVE AND SUPPORT STAFF CONDITIONS OF  
EMPLOYMENT) AWARD 2009**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 February 2011

**VARIATION**

1. Insert in numerical order in clause 1, Arrangement of the award published 31 July 2009 (368 I.G.793), the following new clause number and subject matter:

80A. Leave for Matters Arising from Domestic Violence

2. Insert in alphabetical order in clause 3, Definitions, the following new subclause:

"Domestic Violence" means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Insert after subclause (j) of clause 80 Special Leave, the following new subclause:

- (k) Matters arising from domestic violence situations.

When the leave entitlements referred to in Clause 80A Leave for Matters Arising From Domestic Violence have been exhausted, the Managing Director shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

4. Insert after clause 80, Special Leave, the following new clause:

**80A. Leave for Matters Arising from Domestic Violence**

- (a) The definition of domestic violence is found in clause 3, Definitions, of this award;
- (b) Leave entitlements provided for in clause 68, Family and Community Service Leave, clause 75, Sick Leave and clause 72, Personal Carers leave, may be used by staff members experiencing domestic violence;
- (c) Where the leave entitlements referred to in subclause 80A (b) are exhausted, the Managing Director shall grant Special Leave as per subclause 80(k);
- (d) The Managing Director 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;
- (e) Personal information concerning domestic violence will be kept confidential by the agency;
- (f) The Managing Director, 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.

5. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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**CROWN EMPLOYEES (NSW TAFE COMMISSION -  
ADMINISTRATIVE AND SUPPORT STAFF CONDITIONS OF  
EMPLOYMENT) AWARD 2009**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Training.

(No. IRC 529 of 2011)

Before The Honourable Mr Justice Staff

12 May 2011

**VARIATION**

1. Delete subclause (b) of clause 76 - Sick Leave - Requirements for Evidence of Illness of the award published 31 July 2009 (368 I.G. 793), and insert in lieu thereof the following:
  - (b) In addition to the requirements under subclause 75(a), a staff member may absent themselves for a total of 5 working days per calendar year due to illness without the provision of evidence of illness to the Managing Director. Staff members who absent themselves in excess of 5 working days in a calendar year may be required to furnish evidence of illness to the Managing Director for each occasion absent for the balance of the calendar year.
2. This variation shall take effect on and from the first pay period of 12 May 2011.

C.G. STAFF J

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(092)

SERIAL C7567

## CROWN EMPLOYEES (PARLIAMENT HOUSE CONDITIONS OF EMPLOYMENT) AWARD 2010

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

### VARIATION

1. Insert in clause 1, Arrangement of the award published 11 February 2011 (371 I.G. 14), the following new clause number and subject matter:

51A. Leave for Matters Arising from Domestic Violence

2. Insert in alphabetical order in clause 2, Definitions, the following new subclause:

"Domestic Violence" means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Insert after subclause (vi) of clause 51, Special Leave, the following new subclause:

- (vii) Matters arising from domestic violence situations.

When the leave entitlements referred to in clause 51A, Leave for Matters Arising From Domestic Violence have been exhausted, the Clerk(s) shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

4. Insert after clause 51, Special Leave, the following new clause:

#### 51A. Leave for Matters Arising from Domestic Violence

- (i) The definition of domestic violence is found in clause 2, Definitions of this award;
- (ii) Leave entitlements provided for in clause 46, Family and Community Service Leave, clause 42 Sick leave to care for Family Member and clause 40, Sick Leave, may be used by staff members experiencing domestic violence;
- (iii) Where the leave entitlements referred to in subclause 51A (ii) are exhausted, the Clerk(s) shall grant Special Leave as per subclause 51(vii);
- (iv) The Clerk(s) 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;
- (v) Personal information concerning domestic violence will be kept confidential by the agency;
- (vi) The Clerk(s), 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.

5. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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## CROWN EMPLOYEES (PARLIAMENTARY ELECTORATE OFFICERS) AWARD

### INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

### VARIATION

1. Insert in clause 1, Arrangement of the award, published 24 September 2010 (370 I.G. 418), the following new clause number and subject matter:

19A. Leave for Matters Arising from Domestic Violence

2. Insert in alphabetical order in clause 2, Definitions, the following new subclause:

"Domestic Violence" means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Insert after clause 19, Family and Community Service Leave, Personal/Carer's Leave and Flexible Use of Other Leave Entitlements, the following new clause:

#### **19A. Leave for Matters Arising from Domestic Violence**

- (a) The definition of domestic violence is found in clause 2, Definitions, of this award;
- (b) Leave entitlements provided for in clause 17 Sick Leave and clause 19 Family and Community Service Leave, Personal/Carers Leave and Flexible Use of Other Leave Entitlements, may be used by officers experiencing domestic violence;
- (c) Where the leave entitlements referred to in subclause 19A (b) are exhausted, the Speaker 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;
- (d) The Speaker 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;
- (e) Personal information concerning domestic violence will be kept confidential by the agency;
- (f) The Speaker, 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.

4. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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Printed by the authority of the Industrial Registrar.

## **CROWN EMPLOYEES (PARLIAMENTARY ELECTORATE OFFICERS) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by The Speaker NSW Legislative Assembly.

(No. IRC 257 of 2011)

Before The Honourable Mr Justice Staff

23 March 2011

### **VARIATION**

1. Delete subclauses 19.5 and 19.6 of clause 19, Family and Community Service Leave, Personal/Carer's Leave and Flexible Use of Other Leave Entitlements, of the award published 24 September 2010 (370 I.G. 418), and insert in lieu thereof the following:

19.5 Family and Community Service Leave - entitlement.

- (a) Family and community service leave shall accrue as follows:
  - (i) two and a half days in the staff member's first year of service;
  - (ii) two and a half days in the staff member's second year of service; and
  - (iii) one day per year thereafter.
- (b) If available family and community service leave is exhausted as a result of natural disasters, the Clerk shall consider applications for additional family and community service leave, if some other emergency arises.
- (c) If available family and community service leave is exhausted, on the death of a family member or relative, additional paid family and community service leave of up to 2 days may be granted on a discrete, per occasion basis to a staff member.
- (d) The Clerk may also grant staff members other forms of leave such as accrued recreation leave, time off in lieu, flex leave and so on for family and community service leave purposes.

19.6 Use of sick leave to care for a sick dependant - general

When family and community service leave is exhausted or unavailable, the sick leave provisions under subclause 19.7 of this clause may be used by an officer to care for a sick dependant.

2. This variation is to take effect on and from 15 November 2010.

C.G. STAFF J

## CROWN EMPLOYEES (ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES - SALARIED STAFF) AWARD

### INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

### VARIATION

1. Insert after subclause (3) of clause 1, Definitions, of the award, published 9 May 2008 (365 I.G. 1395), the following new subclause:
  - (4) Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.
2. Insert after subclause 9K, Sick Leave, of clause 9, Leave the following new subclause:

#### **9L. Leave for Matters Arising from Domestic Violence**

- 9L.1 The definition of domestic violence is found in subclause 1 (4), of clause 1 Definitions, of this award;
  - 9L.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;
  - 9L.3 Where the leave entitlements referred to in subclause 9(L)2 are exhausted, the Authority 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;
  - 9L.4 The Authority 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;
  - 9L.5 Personal information concerning domestic violence will be kept confidential by the agency;
  - 9L.6 The Authority, 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.
3. This variation shall take effect on and from 15 February 2011.

C.G. STAFF J

(1323)

SERIAL C7623

**CROWN EMPLOYEES (SCHOOL ADMINISTRATIVE AND SUPPORT STAFF) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Training.

(No. IRC 530 of 2011)

Before The Honourable Mr Justice Staff

12 May 2011

**VARIATION**

1. Insert in numerical order in the Arrangement of the award published 31 October (366 I.G. 887) the following new clause number and subject matter:

16A. Leave for Matters Arising from Domestic Violence

2. Insert after subclause 2.22, of clause 2, Definitions the following new subclause:  
2.23 Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.
3. Insert after clause 16 Leave, the following new clause:

**16A. Leave for Matters Arising from Domestic Violence**

- 16A.1 The definition of domestic violence is found in clause 2.23, Definitions, of this award;
- 16A.2 Leave entitlements provided for in sub clause 16.4 Family and Community Service Leave, 16.7, Personal Carers Leave, and 16.9, Sick Leave, may be used by an employee experiencing domestic violence;
- 16A.3 Where the leave entitlements referred to in subclause 16A.2 are exhausted, the Director-general shall grant Special Leave as per clause 16.14.11;
- 16A.4 The Director-General 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;
- 16A.5 Personal information concerning domestic violence will be kept confidential by the agency;
- 16A.6 The Director-General, 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.
4. Delete subclause 16.4 of clause 16, and insert in lieu thereof the following:  
16.4.1 The Director-General shall grant to a permanent or long term temporary employee some, or all of their accrued family and community service leave on full pay, for reasons relating to unplanned and emergency family responsibilities or other emergencies as described in subclause 16.4.2 of this clause. The Director-general may also grant leave for the purposes in subclause 16.4.3 of this clause. Non-emergency appointments or duties shall be scheduled or performed outside of normal working hours or through approved use of appropriate leave.

16.4.2 Such unplanned and emergency situations may include, but not be limited to, the following:

- (i) Compassionate grounds - such as the death or illness of a close member of the family or a member of the staff member's household;
- (ii) Emergency accommodation matters up to one day, such as attendance at court as defendant in an eviction action, arranging accommodation, or when required to remove furniture and effects;
- (iii) Emergency or weather conditions; such as when flood, fire, snow or disruption to utility services etc, threatens a staff members property and/or prevents a staff member from reporting for duty;
- (iv) Attending to unplanned or unforeseen family responsibilities, such as attending child's school for an emergency reason or emergency cancellations by child care providers;
- (v) Attendance at court by a staff member to answer a charge for a criminal offence, only if the Department Head considers the granting of family and community service leave to be appropriate in a particular case.

16.4.3 Family and community service leave may also be granted for:

- (i) An absence during normal working hours to attend meetings, conferences or to perform other duties, for staff members holding office in Local Government, and whose duties necessitate absence during normal working hours for these purposes, provided that the staff member does not hold a position of Mayor of a Municipal Council, President of a Shire Council or Chairperson of a County Council; and
- (ii) Attendance as a competitor in major amateur sport (other than Olympic or Commonwealth Games) for staff members who are selected to represent Australia or the State.

16.4.4 Family and community service leave shall accrue as follows:

1. two and a half days in the staff members first year of service;
2. two and a half days in the staff members second year of service; and
3. one day per year thereafter.

16.4.5 If available family and community service leave is exhausted as a result of natural disasters, the Director-General shall consider applications for additional family and community service leave, if some other emergency arises. On the death of a person defined in paragraph 16.7.3 of this clause, additional paid family and community service leave of up to two days may be granted on a discrete, per occasion basis to a permanent or long-term temporary employee

16.4.6 In cases of illness of a family member for whose care and support the employee is responsible, paid sick leave in accordance with subclause 16.7 of this clause shall be granted when paid family and community service leave has been exhausted or is unavailable.

5. Insert after clause 16.14.10 the following new subclause.

16.14.11 Matters arising from domestic violence situations.

When the leave entitlements referred to in clause 16A. Leave for Matters Arising From Domestic Violence have been exhausted, the Department Head shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

6. This variation is effective from 15 February 2011.

C.G. STAFF *J*

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**CROWN EMPLOYEES (TIPSTAVES TO JUSTICES) AWARD 2007**

## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

**VARIATION**

1. Insert in the Arrangement of the award, published 14 March 2008 (365 I.G. 127), the following new clause number and subject matter:

**9A. Leave for Matters Arising from Domestic Violence**

2. Insert after subclause 2.5, of clause 2 Definitions, the following new subclause:

2.6 Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Insert after clause 9, Leave for Special Purposes, the following new clause:

**9A. Leave for Matters Arising from Domestic Violence**

- 9A.1 The definition of domestic violence is found in subclause 2.5, of clause 2 Definitions of this award;
  - 9A.2 Leave entitlements provided for in clause 7 Sick Leave and subclause 9.11, Personal Carers Leave, may be used by employees experiencing domestic violence;
  - 9A.3 Where the leave entitlements referred to in subclause 9A.2 are exhausted, the employer 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;
  - 9A.4 The employer 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;
  - 9A.5 Personal information concerning domestic violence will be kept confidential by the agency;
  - 9A.6 The employer, 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.
4. This variation shall take effect on and from 15 February 2011.

C.G. STAFF J

**CROWN EMPLOYEES (TRADES ASSISTANTS) AWARD**

## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

**VARIATION**

1. Insert in the Arrangement of the award published 14 March 2008 (365 I.G. 155), the following new clause number and subject matter:

20A. Leave for Matters Arising from Domestic Violence

2. Insert after Clause 20, Family and Community Service/Personal Carer's Leave, the following new clause:

**20A. Leave for Matters Arising from Domestic Violence**

20A.1 Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*;

20A.2 Leave entitlements provided for in clause 20, Family and Community Service/Personal Carer's Leave, may be used by an employee experiencing domestic violence;

20A.3 Where the leave entitlements referred to in sub clause 20A.2 are exhausted, the employer 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;

20A.4 The employer 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;

20A.5 Personal information concerning domestic violence will be kept confidential by the agency;

20A.6 The employer, 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.

3. This variation shall take effect on and from 15 February 2011.

C.G. STAFF J

**CROWN EMPLOYEES CASINO CONTROL AUTHORITY - CASINO  
INSPECTORS (TRANSFERRED FROM DEPARTMENT OF GAMING  
AND RACING) AWARD 2007**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2010

**VARIATION**

1. Insert in the Arrangement of the award, published 26 October 2007 (364 I.G. 97), the following new clause number and subject matter:

4A. Leave for Matters Arising from Domestic Violence

2. Insert in alphabetical order in clause 1, Definitions, the following new subclause:

"Domestic Violence" means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Insert after clause 4, Leave, the following new clause:

**4A Leave for Matters Arising from Domestic Violence**

- (a) The definition of domestic violence is found in clause 1, Definitions, of this award;
- (b) Leave entitlements provided for in clause 6, Family and Community Service Leave/Personal Carers leave, and sick leave provided for clause 4, Leave, may be used by staff members experiencing domestic violence;
- (c) Where the leave entitlements referred to in subclause 4A (b) are exhausted, the Chief Executive 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;
- (d) The Chief Executive 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;
- (e) Personal information concerning domestic violence will be kept confidential by the agency;
- (f) The Chief Executive, 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.

4. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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**INDEPENDENT COMMISSION AGAINST CORRUPTION AWARD**

## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

**VARIATION**

1. Insert in the Arrangement of the award, published 28 August 2009 (368 I.G. 1594) the following new clause number and subject matter.

23A. Leave for Matters Arising from Domestic Violence

2. Insert in clause 2, Dictionary of Terms, the following new subclause:

Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Insert after subclause (1) of clause 23, Special Leave, the following new subclause:

- (2) Matters arising from domestic violence situations.

When the leave entitlements referred to in clause 23A Leave for Matters Arising From Domestic Violence have been exhausted, the Commissioner shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

4. Insert after clause 23, Special Leave, the following new clause:

**23A. Leave for Matters Arising from Domestic Violence**

23A.1 The definition of domestic violence is found in clause 2, Dictionary of Terms, of this award;

23A.2 Leave entitlements provided for in clause 16, Family and Community Service Leave, and clause 22, Sick Leave, may be used by staff members experiencing domestic violence;

23A.3 Where the leave entitlements referred to in subclause 23A.2 are exhausted, the Commissioner shall grant Special Leave as per subclause 23(2);

23A.4 The Commissioner 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;

23A.5 Personal information concerning domestic violence will be kept confidential by the agency;

23A.6 The Commissioner, 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.

5. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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## LIVESTOCK HEALTH AND PEST AUTHORITIES SALARIES AND CONDITIONS AWARD

### INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

### VARIATION

1. Insert in clause 1, Arrangement of the award, published 31 July 2009 (368 I.G. 964), the following new clause number and subject matter:

13A. Leave for Matters Arising from Domestic Violence

2. Insert after subclause 2.22, of clause 2 Definitions, the following new subclause:

2.23 Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Insert after subclause 13.6 of clause 13 Special Leave, the following new subclause:

13.7 Matters arising from domestic violence situations.

When the leave entitlements referred to in clause 13A.2 Leave for Matters Arising From Domestic Violence have been exhausted, the Board shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

4. Insert after clause 13, Special Leave, the following new clause:

#### **13A. Leave for Matters Arising from Domestic Violence**

13A.1 The definition of domestic violence is found in clause 2.24, of clause 2 Definitions, of this award;

13A.2 Leave entitlements provided for in clause 15A State Personal and Carer's Leave Case and clause 15, Sick Leave, may be used by employees experiencing domestic violence;

13A.3 Where the leave entitlements referred to in subclause 13A.2 are exhausted, the Board shall grant Special Leave as per subclause 13.7;

13A.4 The Board 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;

13A.5 Personal information concerning domestic violence will be kept confidential by the agency;

13A.6 The Board 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.

5. This variation shall take effect on and from 15 February 2011.

C.G. STAFF *J*

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**TRANSPORT INDUSTRY - COURIER AND TAXI TRUCK  
CONTRACT DETERMINATION**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Correction to Serial C5694 published 27 July 2007

(363 I.G. 1)

(No. IRC 5493 of 2004)

**CORRECTION**

1. For the date "19 December 2006" appearing to the right of the words "Before Commissioner Connor" at the top of the variation substitute the following:

"27 January 2006"

G. M. GRIMSON *Industrial Registrar.*

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**TRANSPORT INDUSTRY - GENERAL CARRIERS CONTRACT  
DETERMINATION**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Transport Workers' Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 1507 of 2010)

Before Commissioner Connor

7 April 2011

**AWARD**

1. Delete Table One - Vehicle Rates and Table 2 - Vehicle Rates in Schedule 1 - Rates of Remuneration of the award published 9 December 1984 (235 I.G. 1611), and insert in lieu thereof the following:

**Table One - Vehicle Rates**

(Where the Commonwealth Government's fuel tax credit subsidy ('the subsidy') is applicable)

Class of Vehicle	Vehicle Age					
	Scale A (Up to 1 year)		Scale B (over 1 year, up to 3 yrs)		Scale C (over 3 yrs)	
<u>Rigid Vehicles Carrying Capacity</u>	Hourly Standing Rate (\$ per hour)	Running Rate (cents per km)	Hourly Standing Rate (\$)	Running Rate (cents per km)	Hourly Standing Rate (\$)	Running Rate (cents per km)
Up to 2 Tonnes	n/a	n/a	n/a	n/a	n/a	n/a
2 to 5 Tonnes	34.72	42.50	30.43	42.56	24.58	42.59
5 to 8 Tonnes	40.94	55.06	34.74	55.20	26.34	55.20
8 to 10 Tonnes	47.74	67.70	39.50	68.13	33.54	68.12
10 to 12 Tonnes	63.59	94.78	49.81	94.31	40.58	94.36
12 to 14 Tonnes	82.27	119.31	62.06	119.18	48.81	119.24
14 Tonnes +	91.63	141.09	68.36	140.43	52.31	140.51
Single Axle Prime Mover	66.62	128.65	52.05	129.01	42.60	129.05
Bogie Axle Prime Mover	94.19	148.08	70.21	148.04	53.64	148.11

**Table Two - Vehicle Rates****(Where the Commonwealth Government's fuel tax credit subsidy ('the subsidy) does not apply)**

Class of Vehicle	Vehicle Age					
	Scale A (Up to 1 year)		Scale B (over 1 year, up to 3 yrs)		Scale C (over 3 yrs)	
Rigid Vehicles	Hourly Standing Rate (Per Hour) (\$)	Running Rate (cents per km)	Hourly Standing Rate (\$)	Running Rate (cents per km)	Hourly Standing Rate (\$)	Running Rate (cents per km)
Up to 2 Tonnes	30.77	39.29	26.57	39.66	n/a	n/a
2 to 5 Tonnes	34.72	45.26	30.42	45.33	24.58	45.37
5 to 8 Tonnes	40.94	58.39	34.73	58.72	26.34	55.62
8 to 10 Tonnes	47.74	71.27	39.48	72.22	33.54	68.74
10 to 12 Tonnes	63.59	100.65	49.79	99.23	40.58	95.41
12 to 14 Tonnes	82.27	126.30	62.03	126.48	48.81	120.18
14 Tonnes +	91.63	150.04	68.32	148.59	52.31	141.79
Single Axle Prime Mover	66.62	136.43	52.03	137.17	42.60	130.06
Bogie Axle Prime Mover	94.19	156.97	70.18	156.91	53.64	149.39

2. Delete the second paragraph from the Table in clause 9, of Schedule 2, Procedure and Time for Adjustments of Rates and Amounts, and insert in lieu thereof the following:

Return on Capital Depreciation Lease Cost	Adjust by the average percentage change in the price of the following vehicles: (i) Freightliner CL 112 450HP (ii) Isuzu FTR 900 MWB (iii) Holden Colorado Ute 2dr Man 5sp CC or a comparable vehicle replacing any of these vehicles as determined by "The Red Book"
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3. Delete the amount "\$118.45" in subclause (d) of clause 12, Schedule 2, and insert in lieu thereof the following:

"121.09"

4. Delete the amounts in subclause 1, Trailer Allowance, in Schedule 3, Additional Amounts, and insert in lieu thereof the following:

Single Axle	\$18.59 per day
Dual Axle	\$24.37 per day
Tri Axle	\$29.98 per day

5. Delete the amount "\$3.67" in clause 2 Ropes and Gear Allowance, in Schedule 3, and insert in lieu thereof the following:

"\$3.77"

6. Delete the amount "\$2.77" in subclause 3, Twistlock Allowance, in Schedule 3, and insert in lieu thereof the following:

"\$2.84"

7. Delete the amounts "\$4.40", "\$6.02", and "\$19.42" in subclause 4, of Schedule 3, and insert in lieu thereof the following:

"\$4.52" "\$6.18" and "\$19.93".

8. Delete the table in subclause 2, of paragraph (c), of Schedule 4, Container Depots And Waterfront Areas, and insert in lieu thereof the following:

Class of Vehicle	Rate A	Rate B
Rigid Vehicle	Subsidy	No-Subsidy
Not less than 8 and not greater than 10 tonnes	44.47	45.07
Not less than 10 and not greater than 12 tonnes	54.08	54.81
Not less than 12 and not greater than 14 tonnes	64.66	65.71
Not less than 14 Tonnes	71.20	72.41
Single - Axle Prime Mover	61.07	62.27
Bogie Axle Prime Mover	73.33	74.65

9. Delete the table in subclause 3, Trailer Allowance, of Schedule 4, and insert in lieu thereof the following:

40 ft Skel trailer	\$49.14 per day
40 ft General Purpose trailer	\$49.14 per day
Dog or Pig trailer	\$36.78 per day
Pup trailer	\$24.56 per day
20 ft Skel trailer	\$44.23 per day

10. Delete the table in subclause 4, Towing Rates, in Schedule 4, and insert in lieu thereof the following:

40 ft trailer	\$2.57 per hour
Dog/Pig trailer	\$5.04 per hour
Pup trailer	\$3.70 per hour

11. This variation shall take effect on or from the first pay period on or after 7 April 2011.

P. J. CONNOR, Commissioner

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# TRANSPORT NSW (TRANSPORT AGENCIES CONDITIONS OF EMPLOYMENT) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Transport NSW.

(No. IRC 189 of 2011)

Before Mr Deputy President Grayson

3 March 2011

## AWARD

### 1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Parties to the Award
3.	Definitions
4.	Statement of Intent
5.	Content
6.	Employee Travel Passes
7.	Dispute Settlement Procedures
8.	Anti-Discrimination
9.	Area, Incidence and Duration

Schedule A - Former Industrial Instruments

### 2. Parties to the Award

Parties to the Award include:

Transport NSW

RailCorp

Roads and Traffic Authority

State Transit Authority

Sydney Ferries

Transport Construction Authority

Country Rail Infrastructure Authority

Independent Transport Safety Regulator

Association of Professional Engineers, Scientists and Managers, Australia (New South Wales Branch)

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (New South Wales Branch)

Australian Institute of Marine and Power Engineers, New South Wales District

Australian Maritime Officers Union of New South Wales

Australian Services Union of New South Wales

NSW Plumbers and Gasfitters Employees Union

Electrical Trades Union of Australia, NSW Branch

Australian Workers' Union, New South Wales

Australian Rail, Tram and Bus Industry Union, New South Wales

Construction, Forestry, Mining and Energy Union (New South Wales Branch)

The Seamens Union of Australia, NSW Branch

Transport Workers Union of Australia (New South Wales Branch)

Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales

Transport Workers Union of New South Wales

Unions NSW.

### 3. Definitions

Chief Executive - Chief Executive of a Transport Authority, as defined in the TAA.

Division Head - As defined in section 4D of the PSEM Act.

DPE - Director of Public Employment.

Employer - The Transport Authority to which an Employee has been transferred under s 66 of the TAA. A reference in a Former Industrial Instrument to an employer shall be taken to be the employer as defined in this Award.

Employee - whether appearing on its own or as part of another definition means an employee to whom this Award applies in accordance with clause 9i. of this Award.

Former Industrial Instrument - An award or agreement listed in the Schedule to this Award, or its successor, as it applied to an Employee immediately prior to transfer from one Transport Authority to another under section 66 of the TAA.

Industrial Instrument - Industrial Instrument has the same meaning as defined by the *Industrial Relations Act* 1996.

PSEM Act - Public Sector Employment and Management Act 2002

IRC - Industrial Relations Commission of NSW

TAA - *Transport Administration Act* 1988

Transport Authority - As defined in Division 4 of Part 7 of the TAA.

Former Authority - The Transport Authority from which an Employee is transferred under section 66 of the TAA.

Receiving Authority - The Transport Authority to which an Employee is transferred under section 66 of the TAA.

Transport NSW - The Department established under Part 1 of Schedule 1 of the PSEM Act, or its successor.

Union -The industrial organisation that was eligible to represent an employee immediately prior to transfer under section 66 of the TAA.

#### **4. Statement of Intent**

- (i) This Award is intended to cover those employees who have been transferred from one Transport Authority to another Transport Authority (the Employer) under section 66 of the TAA.
- (ii) The purpose of this Award is to incorporate in this industrial instrument the terms and conditions of employment of the transferred employee in place immediately before the date of transfer, as provided for in section 67(1) of the TAA at the time of the making of this Award.
- (iii) This clause is subject to clause 9 of this Award.

#### **5. Content**

- (i) This Award incorporates all the terms and conditions, including future benefits, as contained in the Former Industrial Instrument as applying to an employee immediately prior to his or her transfer pursuant to section 66 of the TAA and, by virtue of this Award, those terms and conditions, including future benefits, shall continue to apply to the Employee on and from the transfer date as if the Receiving Authority was party to and/or bound by the Former Industrial Instrument.
- (ii) To the extent that a Former Industrial Instrument was made under the Fair Work Act 2010 and did not contain all of the provisions of the National Employment Standards under that Act, those Standards that applied immediately prior to transfer will be deemed to apply to a transferred employee to whom the Former Industrial Instrument applied.

#### **6. Employee Travel Passes**

- (i) Where an Employee immediately prior to transfer from one Transport Authority to another Transport Authority under section 66 of the TAA had existing or accruing Employee Travel Pass entitlements, then such existing or accruing entitlements shall continue to apply as if the Employee had not been transferred.
- (ii) Where an Employee to whom clause 6(i) applies is, in accordance with the applicable policy for managing excess employees, subsequently redeployed to a different position within the Receiving Authority, or another Transport Authority, then any existing or accruing Employee Travel Pass entitlements shall continue to apply as if the employee had not been redeployed.

#### **7. Dispute Settlement Procedures**

- (i) Subject to clause 7v., should a dispute arise in relation to the interpretation or operation of this Award, the parties to the dispute shall advise in writing of their respective positions.
- (ii) Negotiations about the dispute will be held between the parties and/or their nominee, who will meet and conclude their discussions within two working days, excluding weekends and public holidays.
- (iii) If the dispute remains unresolved any party may refer the matter to the Industrial Relations Commission of New South Wales for conciliation, and, if necessary, arbitration.
- (iv) By mutual agreement confirmed in writing, sub-clause iii. may be avoided, and the parties to the dispute may seek the assistance of the Industrial Relations Commission of New South Wales.

- (v) Should any dispute arise in relation to the interpretation or operation of any of the provisions contained within a Former Industrial Instrument, such a dispute shall be dealt with under the Dispute Settlement Procedure provision of that Instrument.

### **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 the effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provisions of this 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**

- (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."

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

- (i) This Award shall apply to persons employed in a Transport Authority who have been transferred from one Transport Authority to another Transport Authority under section 66 of the TAA and:
- (a) whose employment was regulated by a Former Industrial Instrument;
  - (b) who, at the time of transfer, were permanently or temporarily employed by the Former Authority; and
  - (c) who have not accepted, prior to transfer or subsequently, an offer of employment in the Receiving Authority under the terms and conditions of employment that apply to employees of that Receiving Authority who were not transferred under section 66 of the TAA.

- (ii) This Award shall only apply to temporary Employees referred to in clause 9i. above for the remainder of the period of employment determined by their contract of employment (or other similar arrangement) with the Former Authority that was current on the day immediately prior to the date of their transfer.
- (iii) Employees employed in Transport NSW to whom this Award applies are engaged in the service of the Crown as defined by the PSEM Act, but are not employed under either Chapter 1A or Chapter 2 of that Act.
- (iv) This Award operates to the exclusion of any Industrial Instrument that regulates the employment of the employees of a Receiving Authority who were not transferred under section 66 of the TAA.
- (v) Redeployment
  - (a) For the life of this Award, where an Employee is transferred to a Receiving Authority and, as a result of an organisational restructure, is then redeployed in accordance with the applicable policy for managing excess or displaced Employees to another position (a subsequent position) within one of the Transport Authorities, this Award shall continue to apply to that Employee whilst the Employee continues to be employed in that subsequent position.
  - (b) Subclause (v)(a) shall not apply in cases where redeployment involves a promotion (i.e. the substantive maximum pay rate of the new position is more than 5% above the Employee's existing substantive maximum rate of pay), other than any entitlement to an Employee Travel Pass, which shall continue in accordance with clause 6ii.
  - (c) Nor shall subclause (v)(a) apply if the Employee elects to be redeployed to the subsequent position in the Receiving Authority under the terms and conditions of employment that apply to Employees of that Receiving Authority who are not Employees as defined by this Award.
- (vi) Nothing in this Award shall be read as imposing an obligation upon a Transport Authority in respect of its employees to whom this Award does not apply or in relation to the Transport Authority as a whole, its management or workplace policies.
- (vii) Nothing in this Award shall affect the operation of the PSEM Act, the Public Sector Employment and Management Regulation 2009, guidelines released in accordance with the PSEM Act or Government policies (including those issued by the Director of Public Employment) in so far as those instruments apply to a Transport Authority.
- (viii) In particular, this Award shall not apply to positions created under either Chapter 1A or Chapter 2 of the PSEM Act nor shall it affect or impose any obligations on Transport NSW with respect to the creation, filling or deletion of such positions or other similar acts by Transport NSW.
- (ix) In the event of inconsistency, this Award shall take precedence over a Former Industrial Instrument.
- (x) This Award shall take effect on and from 3 March 2011 with a nominal term of three years thereafter.

## **SCHEDULE A**

The Former Industrial Instruments applicable to the Transport Authorities at the time of the making of this Award include:

Transport NSW

Crown Employees (Public Service Conditions of Employment) Award 2009

Crown Employees (Public Sector - Salaries 2008) Award

Department of Transport Officers Employment Conditions -Agreement No. 2548 of 1998

## RailCorp

RailCorp Enterprise Agreement 2010

## Sydney Ferries

Sydney Ferries Salaried and Senior Officers Agreement 2009

Sydney Ferries Maritime (AIMPE) Agreement 2009

Sydney Ferries Maritime (AMOU & MUA) Agreement 2009

Sydney Ferries Balmain Shipyard Employees Agreement 2009-2012

## State Transit Authority

State Transit Authority of NSW Senior and Salaried Officers Enterprise (State) Award 2009

State Transit Authority Division of the Government Service Bus Operators Award 2009

State Transit Authority Division of the New South Wales Government Service Bus Engineering and Maintenance Enterprise (State) Award 2009

State Transit Authority Division of the Government Service Newcastle Ferry Operations, General Purpose Hand Enterprise (State) Agreement 2009

State Transit Division of the Government Service Newcastle Ferry Masters Enterprise Agreement 2009

Port Services Award 1997

State Ferries Award 2001

Western Sydney Buses Bus Operators' Transitway Enterprise (State) Award 2011

## Roads &amp; Traffic Authority of NSW

Crown Employees (Roads and Traffic Authority of New South Wales - Salaried Staff) Award

Crown Employees (Roads and Traffic Authority of New South Wales - Salaried Staff Salaries and Conditions of Employment) Award 2008

Professional Engineers (Roads and Traffic Authority Division of the Government Service of NSW - Salaries) Award 2008

Crown Employees (Roads and Traffic Authority of New South Wales - Traffic Signals Staff) Award 2008

Crown Employees (Roads and Traffic Authority of New South Wales - Wages Staff) Award 2008

Crown Employees (Roads and Traffic Authority of New South Wales - School Crossing Supervisors) Award

## Country Rail Infrastructure Authority

Rail Infrastructure Corporation Enterprise Agreement 2009

## Independent Transport Safety Regulator

The Crown Employees (Independent Transport Safety and Reliability Regulator) Award 2009

Transport Construction Authority

Rail Industry Award 2010

J. P. GRAYSON *D.P.*

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## ZOOLOGICAL PARKS BOARD OF NEW SOUTH WALES SALARIED EMPLOYEES AWARD

### INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 220 of 2011)

Before The Honourable Mr Justice Staff

17 March 2011

### VARIATION

1. In the Arrangement of the award published 11 April 2008 (365 I.G. 633), the following new clause number and subject matter:

13A. Leave for Matters Arising from Domestic Violence

2. Insert after sub clause 2.4, of clause 2 Definitions, the following new sub clause:
- 2.5 Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.
3. Insert after clause 13, Family and Community Service Leave, Personal/Carer's Leave, the following new clause:

#### **13A. Leave for Matters Arising from Domestic Violence**

- 13A.1 The definition of domestic violence is found in sub clause 2.5, of clause 2 Definitions, of this award;
- 13A.2 Leave entitlements provided for in clause 13, Family and Community Service Leave, Personal/Carer's Leave, and sick leave entitlements in clause 12, Leave and Entitlements, may be used by an employee experiencing domestic violence;
- 13A.3 Where the leave entitlements referred to in sub clause 13A.2 are exhausted, the employer 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;
- 13A.4 The employer 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;
- 13A.5 Personal information concerning domestic violence will be kept confidential by the agency;
- 13A.6 The employer, 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.

4. This variation shall take effect on and from 15 February 2011

C.G. STAFF *J*

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**SERIAL C7618**

**AMBULANCE EMPLOYEES(STATE) INDUSTRIAL COMMITTEE**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by HSU east, industrial organisation of employees.

(No. IRC 235 of 2011)

The Honourable Justice Marks

25 March 2011

**ORDER**

The Commission orders that -

1. The duration of the Industrial Committee, known as the Ambulance Employees (State) Industrial Committee published 7 July 2000 (316 I.G.1316), be extended for a further three years to 18 Sept 2012.
2. This order shall take effect on and from 18 September 2009.

F. MARKS *J.*

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**SERIAL C7616**

**CHARITABLE INSTITUTIONS (PROFESSIONAL PARA-MEDICAL  
STAFF) (STATE) INDUSTRIAL COMMITTEE**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by HSU east, industrial organisation of employees.

(No. IRC 233 of 2011)

The Honourable Justice Marks

25 March 2011

**ORDER**

The Commission orders that -

1. The duration of the Industrial Committee, known as the Charitable Institutions (Professional Para-medical Staff) (State) Industrial Committee published 30 June 2000 (316 I.G.1091), be extended for a further three years to 18 Sept 2012.
2. This order shall take effect on and from 18 September 2009.

F. MARKS *J.*

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**SERIAL C7617**

**CHARITABLE INSTITUTIONS (PROFESSIONAL STAFF SOCIAL WORKERS) (STATE) INDUSTRIAL COMMITTEE**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by HSU east, industrial organisation of employees.

(No. IRC 234 of 2011)

The Honourable Justice Marks

25 March 2011

**ORDER**

The Commission orders that -

1. The duration of the Industrial Committee, known as the Charitable Institutions (Professional Staff Social Workers) (State) Industrial Committee published 30 June 2000 (316 I.G.1093), be extended for a further three years to 18 Sept 2012.
2. This order shall take effect on and from 18 September 2009.

F. MARKS *J.*

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**SERIAL C7615**

**PUBLIC HEALTH EMPLOYEES (STATE) INDUSTRIAL  
COMMITTEE**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by HSU east, industrial organisation of employees.

(No. IRC 232 of 2011)

The Honourable Justice Marks

25 March 2011

**ORDER**

The Commission orders that -

1. The duration of the Industrial Committee, known as the Public Health Employees (State) Industrial Committee published 4 August 2000 (317 I.G.767), be extended for a further three years to 18 Sept 2012.
2. This order shall take effect on and from 18 September 2009.

F. MARKS J.

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SERIAL C7621

**ENTERPRISE AGREEMENTS APPROVED  
BY THE INDUSTRIAL RELATIONS COMMISSION**(Published pursuant to s.45(2) of the *Industrial Relations Act 1996*)**EA11/6 - City of Newcastle Enterprise Agreement 2010**

**Made Between:** Newcastle City Council -&- the New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union, The Association of Professional Engineers, Scientists and Managers, Australia (NSW Branch), The Development and Environmental Professionals' Association.

**Variation:** EA10/24

**Approval and Commencement Date:** Approved 28 April 2011 and commenced 1 July 2010.

**Description of Employees:** The agreement applies to employees employed by Newcastle City Council located at 282, King Street, Newcastle, NSW 2300, and except for those employees covered by the Entertainment and Broadcasting Industry - Live Theatre and Concert Award 1998 and Senior Staff as defined in the Local Government Act 1993, who fall within the coverage of the Newcastle City Council Award 2006, and the Local Government (State) Award 2007.

**Nominal Term:** 36 Months.

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