

Vol. 370, Part 3

30 July 2010

Pages 300 - 417



NEW SOUTH WALES  
**INDUSTRIAL GAZETTE**

Printed by the authority of the  
**Industrial Registrar**  
47 Bridge Street, Sydney, N.S.W.

ISSN 0028-677X

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## **BROKEN HILL CITY COUNCIL CONSENT AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Local Government Association of New South Wales, Industrial Organisation of Employers.

(Nos. IRC 1666 of 2008 and 739 of 2009)

Before Commissioner Tabbaa

16 March 2010

### **AWARD**

#### **Arrangement**

This Award is arranged as follows:

#### **PART 1**

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3. Area, incidence and duration
4. Anti-discrimination

#### **PART 2**

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**PART 1****APPLICATION AND OPERATION OF THIS AWARD****1. Title**

This Award is the Broken Hill City Council Consent Award.

**2. Definitions**

In this Award, unless the contrary intention appears:

"Act" means the *Industrial Relations Act 1996* (NSW) as amended.

"Aged and Community care employees" means employees engaged in the performance of all non-nursing work in or in connection with, or incidental to the conduct of Council administered aged and disability care centres and facilities.

"ASA" means Annualised Salary Agreement and operates in accordance with Clause 10 of this Award.

"Award" means the Broken Hill City Council Consent Award.

"Council" means the Broken Hill City Council.

"Employee" means a person employed by Broken Hill City Council.

"Ordinary pay" means remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay. Ordinary pay shall include, and not be limited to the following penalties and allowances where they are regularly received.

Saturday, Sunday and shift penalties;

Tool allowances;

On call allowance;

First Aid allowance; and

Community language and signing work allowances.

Overtime payments and all other allowances shall be excluded from the composition of ordinary pay.

"Salaried Office Employee" means an employee engaged in one of the following functions:

Administration;

Building Surveying;

Engineering (Professional);

Executive Band;

Finance;

Health Surveying;

Library;

Public Relations;

Technical Services;

Tourism; and

Town Planning.

"Union" means the means the Barrier Industrial Council (BIC) and its affiliated unions: the Broken Hill Federated Municipal Employees Union (BHMEU), the Construction, Forestry, Mining, Energy & Union (Mining and General Division) (CFMEU), New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (USU) and The Broken Hill Town Employees Union (BHTEU).

"Wages Employee" means an employee engaged in any functions not otherwise specified in the definition of salaried office employee.

### 3. Area, Incidence and Duration

- 3.1 This Award shall apply to all employees of Broken Hill City Council, excluding those employees defined as senior staff by the *Local Government Act 1993* (NSW).
- 3.2 This Award shall rescind and replace the Broken Hill City Council Consent Award 2005 published 8 September 2006 (360 I.G.1045) and all variations thereof.
- 3.3 The salary system shall operate from the beginning of the first pay period to commence on or after 19 May 2009 in relation to Community and Aged Care Workers, and from the beginning of the first pay period to commence on or after 4 January 2010 in relation to all other employees. All other provisions of the Award will take effect on and from 16 March 2010 and shall remain in force until 31 October 2011.
- 3.4 In Schedule 1 the Award provides for a 4% increase in rates of pay with a minimum payment of \$25 per week to operate from the first full pay period to commence on or after 1 November 2008.
- 3.5 In Schedule 1 the Award provides for a 4% increase in rates of pay with a minimum payment of \$25 per week to operate from the first full pay period to commence on or after 1 November 2009.
- 3.6 In Schedule 1 the Award provides for a 4% increase in rates of pay with a minimum payment of \$25 per week to operate from the first full pay period to commence on or after 1 November 2010.
- 3.7 This award shall be made by the Industrial Relations Commission of New South Wales and be known as the Broken Hill City Council Consent Award. The parties to the Award are as follows:

Broken Hill City Council;

The Barrier Industrial Council;

Broken Hill Federated Municipal Employees Union;

The Construction, Forestry, Mining and Energy Union South Western District

The Broken Hill Town Employees' Union; and

The United Services Union.

#### 4. Anti Discrimination

- 4.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 4.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 4.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 4.4 Nothing in this clause is to be taken to affect:
- (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.
- 4.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### NOTES

(a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

(b) Section 56(d) of the *Anti-Discrimination Act 1977* (NSW) 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."

## PART 2

### TERMS OF ENGAGEMENT, OVERTIME AND RELATED MATTERS

#### 5. Terms of Engagement

##### General Provisions

- 5.1 Employees are engaged on a full time, part time or casual basis.
- 5.2 Employment with Council is subject to the satisfactory completion of a probationary period.
- (a) The probationary period shall be for a duration of three (3) months; however Council may require a maximum period of six (6) months for employees above Grade 19 (Band 4 Level 1).

- (b) During the probation period, employees shall be provided with the appropriate training and instruction to enable them to perform the duties and functions of the position.
  - (c) During the probation period the employee will be advised of any areas of concern and expected performance outcomes.
  - (d) At the successful conclusion of the probation period, the employee shall be offered a permanent position by Council in accordance with the employee's original appointment status, i.e. in a full-time or part-time capacity.
- 5.3 An employee's commencement and/or finishing times may be altered by agreement between the span of hours of 6:00am to 6:00pm. Such an agreement must be in writing and must be genuine with no compulsion to agree. Where Council seeks to vary an employee's commencement and finishing times outside of the span of hours, there must be prior agreement with the employee and Council, in consultation with the Union.
- 5.4 Except as otherwise provided, the ordinary hours for all employees shall be between Monday and Friday.
- 5.5 The ordinary hours for employees engaged in the following functions and positions shall be between Monday and Sunday:
- (a) Council's Visitor Information Centre;
  - (b) The Library;
  - (c) The Entertainment Centre
  - (d) The GeoCentre;
  - (e) The Art Gallery;
  - (f) Waste Services;
  - (g) Aged Care employees employed at Shorty O'Neil Village;
  - (h) Pool Attendants;
  - (i) Pool Cleaners;
  - (j) Airport Reporting Officers;
  - (k) Dog Control Officers; and
  - (l) The Living Desert Ranger;

#### Starting Point

- 5.6 All employees shall start and finish at the various Council depots and facilities. Employees may be required to start and finish at the work site if practical.

Travelling time to the Sanitary or Garbage depots

- 5.7 Employees reporting for work at the Sanitary or Garbage depots shall be allowed one half hour travelling time in Council's time.

#### Garaging

- 5.8 All time necessary in garaging of machines shall be included in Council's time.



## Full-Time Employees

- 5.9 The maximum ordinary hours of work for full time Wages employees shall be no more than 76 hours per fortnight. Wages employees shall commence work at 7:00am and finish at 3:26pm, and work for 8 hours and 26 minutes inclusive of a paid meal break.
- 5.10 The maximum ordinary hours of work for Salaried Office employees shall be 70 hours per fortnight. Salaried Office employees shall commence work at 8:30am and finish at 5:00pm, and work for 7 hours and 46 minutes exclusive of a 44 minute unpaid meal break.
- 5.11 The maximum ordinary hours of work for Aged Care and Community Care employees shall be 76 hours per fortnight, wherein each shift shall consist of 8 ordinary hours of work per day, inclusive of paid meal times.
- 5.12 Employees shall be entitled to a rostered day off once in every two (2) week period.
- (a) It is essential that all employees working a nine (9) day fortnight be aware that the first priority is the maintenance of acceptable work flows. Accordingly there will need to be co-operation between Council employees and managers in the planning of rostered working days so that adequate staff resources are available to all time to service public needs as well as providing interdepartmental office communication and services.
  - (b) Rosters are to be prepared by managers and/or departmental heads at least two weeks in advance.
  - (c) When a public holiday clashes with a rostered day off, the general rule will be to take the next working day as a rostered day off.
  - (d) Approval to accumulate rostered days off may be granted in special circumstances by the employee's manager and/or departmental head.

## Part-Time Employees

- 5.13 A part-time employee shall mean an employee who is engaged on the basis of a regular number of hours which are less than the full-time ordinary hours in accordance with subclauses 5.9, 5.10 and 5.11 of the Award.
- 5.14 Prior to commencing part-time work Council and the employee shall agree upon the conditions of work including:
- (a) The hours to be worked by the employee, the days upon which they shall be worked and the commencing times for the work.
  - (b) The nature of the work to be performed.
  - (c) The rate of pay as paid in accordance with this Award.
- 5.15 The conditions may also stipulate the period of part-time employment and may be varied by consent.
- 5.16 The conditions or any variation to them must be in writing and retained by Council. A copy of the conditions and any variations to them must be provided to the employee by Council.
- 5.17 Unless otherwise provided where a public holiday falls on a day where a part-time employee would have regularly worked the employee shall be paid for the hours normally worked on that day.
- 5.18 By agreement a part-time employee may work more than their regular number of hours at the ordinary hourly rate. The maximum amount of hours that a part-time employee may work at the ordinary hourly rate are the hours prescribed by sub-clauses 5.9, 5.10 and 5.11.

- 5.19 Part-time employees shall receive all conditions prescribed by the Award on a pro rata basis of the regular hours worked. An adjustment to the accrued leave entitlements may be required at the conclusion of each service year based on the proportion of actual hours worked.

#### Casual Employees

- 5.20 A casual employee shall mean an employee engaged on a day to day basis, where each engagement is a minimum of 4 hours.
- 5.21 A casual employee shall be paid the hourly rate for ordinary hours worked.
- 5.22 A casual employee shall be entitled to a 25 per cent loading, calculated on the ordinary hourly rate. This loading shall not attract any penalty. This loading shall be paid in lieu of all leave and severance pay, except paid maternity leave. Casual loading is not payable on overtime.
- 5.23 A casual employee may work a maximum amount of hours as prescribed by sub-clauses 5.9, 5.10 and 5.11 at ordinary time. Overtime shall be paid where a casual employee works outside the ordinary hours for the position. In cases where there are no ordinary hours for the position, overtime shall be paid for the hours worked in excess of those prescribed in sub-clauses 5.9, 5.10 and 5.11.
- 5.24 Subject to the reasonable overtime provisions of sub-clause 8.1 a casual employee will not be offered to work overtime in a position held by an employee of Council, if the employee of Council is available to work that overtime.
- 5.25 Casual employees who work on Saturday and/or Sunday are entitled to the penalty rates prescribed by clause 6. The penalties are calculated on the ordinary hourly rate.
- 5.26 Casual employees who work outside the relevant span of hours are entitled to the relevant shift penalties prescribed by clause 7. The shift penalty is calculated on the ordinary hourly rate.
- 5.27 Casual employees engaged on a regular and systematic basis shall:
- (a) Have access to annual assessment under council's salary system
  - (b) Have their service as a casual counted as service for the purpose of calculating long service leave where the service as a casual employee is continuous with their appointment to a permanent position on council's structure. In calculating the long service leave entitlement of casual employees, there shall be a deduction of the long service leave accrued whilst the employee was employed as a casual and paid the loading identified in sub-clause 5.22.
- 5.28 A casual employee shall not replace an employee of council on a permanent basis.
- 5.29 Carer's entitlements shall be available for casual employees as set out in sub-clause 23.9 of this Award.
- 5.30 Bereavement entitlements shall be available for casual employees as set out in sub-clause 24.2 of this Award.
- 5.31 Parental leave entitlements shall be available for casual employees in accordance with Part 4, Parental Leave, of the *Industrial Relations Act 1996* (NSW).

### **6. Saturday and Sunday Work**

- 6.1 Except as otherwise provided, ordinary hours worked on a Saturday shall attract a 25% penalty in addition to the ordinary hourly rate of pay and ordinary hours worked on a Sunday shall attract a 50% penalty in addition to the ordinary hourly rate of pay.
- 6.2 Sub-clause 6.1 applies to full-time and permanent part-time employees situated at Council's Visitors Information Centre, Library, Entertainment Centre, GeoCentre, and Art Gallery.

- 6.3 Ordinary hours worked on a Saturday or a Sunday by Waste Services employees shall attract a 50% penalty for work between midnight on Friday and midnight on Saturday, and a 100% penalty for work between midnight on Saturday and midnight on Sunday.
- 6.4 Subclause 6.1 does not apply to full-time and permanent part-time employees who work ordinary hours on weekends and currently receive over award payments in the positions of Aged care, Community care, Pool Attendant / Cleaner, Airport Reporting Officer, Dog Control Officer and Living Desert Ranger.
- 6.5 Subclause 6.3 does not apply to Waste Services employees who work ordinary hours on weekends and currently receive over award payments.
- 6.6 Ordinary hours worked on a Saturday or a Sunday by aged care employees shall attract a 50% penalty for work between midnight on Friday and midnight on Saturday and a 100% penalty for work between midnight on Saturday and midnight on Sunday. The weekend penalty rates for the ordinary hours of aged care employees are in substitution for and not cumulative upon the shift penalty prescribed in sub-clause 7.2.
- 6.7 An employee may request to work ordinary hours on a Saturday and/or a Sunday in lieu of the ordinary hours the employee would otherwise be rostered to work.
- (a) An employee's request must be in writing and be forwarded to Council and the Union. In addition the request must outline a period within which the arrangement is to be reviewed by Council and the Union;
  - (b) Council and the Union will not unreasonably withhold agreement to such a request;
  - (c) Any such agreement shall not apply to new or vacant positions;
  - (d) Where an employee requests to work ordinary hours on a Saturday and/or a Sunday under the provisions of this sub-clause, Council shall not be required to pay the penalty rate provided by sub-clauses 6.1, 6.2 or 6.4.

## 7. Shift Work

- 7.1 Except as otherwise provided ordinary hours worked by employees, other than aged and community care employees, outside the span referred to in subclause 5.3 shall attract a 20% shift penalty in addition to the ordinary hourly rate of pay for the actual time worked outside the span.
- 7.2 Aged and community care employees who work ordinary hours outside the span referred to in sub-clause 5.3 shall be entitled to a 15% shift penalty in addition to the ordinary hourly rate of pay for the actual time worked between 6:00pm and 6:00am.
- 7.3 Subclause 7.1 does not apply to full-time and permanent part-time employees who currently receive over award payments in the positions of Pool Attendant / Cleaner, Airport Reporting Officer, Dog Control Officer and Living Desert Ranger.
- 7.4 Employees engaged in the following functions shall be entitled to a 20% shift penalty in addition to the ordinary hourly rate of pay for the actual time worked outside the following times:

Cleaners	5:00am to 9:00pm
Entertainment, Theatres and Hospitality	6:00am to 11:00pm
Libraries	8:00am to 9:00pm

- 7.5 Shift penalties shall be payable for ordinary work performed between Monday and Friday and shall not be paid on weekends.
- 7.6 An employee may request to work ordinary hours outside the span of 6:00am and 6:00pm or any of the other spans detailed in sub-clauses 7.1, 7.2, 7.3, and 7.4, in lieu of the ordinary hours the employee would otherwise be rostered to work.

- (a) An employee's request must be in writing and be forwarded to Council and the Union. In addition the request must outline a period within which the arrangement is to be reviewed by Council and the Union;
- (b) Council and the Union will not unreasonably withhold agreement to such a request;
- (c) Any such agreement shall not apply to new or vacant positions;
- (d) Where an employee requests to work ordinary hours outside the relevant span of hours under the provisions of this sub-clause, Council shall not be required to pay a shift penalty for the actual time worked.

### **8. Employees Entitled to Overtime**

- 8.1 Except where otherwise provided Council may require an employee to work reasonable overtime.
- (a) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
  - (b) What constitutes unreasonable working hours will be determined having regard to:
    - any risk to the employee;
    - the employee's personal circumstances including any family and carer's responsibilities;
    - the needs of the workplace;
    - the notice, if any, given by Council of the overtime and by the employee of their intention to refuse it; and
    - any other matter.
- 8.2 Overtime shall be paid at the rate of double time.
- 8.3 Any employee who has completed normal and regular hours of work whether on or off the premises at the time of request, and is called to work overtime, other than planned overtime, of less than four (4) hours, shall be paid double time for four (4) hours.
- 8.4 Where an employee is required to work after finishing time for a period in excess of 1 ½ hours, then the employee shall be provided with a meal, or alternatively, the employee shall be paid the allowance set out in the Table in Schedule 2.
- If overtime continues beyond 1 ½ hours then, for each additional four hours worked an additional meal shall be provided or, alternatively, the employee shall be paid the allowance set out in the Table in Schedule 2.
- 8.5 Except as otherwise provided, where a meal is due and overtime is to extend beyond that time, a paid break of twenty (20) minutes shall be allowed in which to eat the meal.
- 8.6 Transport shall be provided for all employees required to work on other than planned work which is outside their normal working time.
- 8.7 A wages employee shall receive a paid thirty (30) minute meal break or in lieu, an allowance, as set out in the Table in Schedule 2, after four (4) continuous hours on any or all overtime worked on Saturdays and Sundays.
- 8.8 Council shall keep a record of all overtime worked and shall pay for authorised overtime.

- 8.9 For the purposes of calculating overtime each day shall stand alone, provided however that where any period is continuous and extends beyond midnight, all overtime hours in this period shall be regarded as if they had occurred within the day first occurring.
- 8.10 Consistent with Council's travel policy, the above provisions do not apply to those employees required to travel for work.

#### On-call Allowance

- 8.11 An employee shall be deemed to be on-call if required by Council to be available for duty outside of ordinary hours at all times in order to attend emergency and/or breakdown work.
- 8.12 Employees who are required to be on-call are not required to remain at their usual place of residence or other place appointed by Council. However, an on-call employee must be able to be contacted and be able to respond within a reasonable time.
- 8.13 Employees required to be on-call on days when they would ordinarily work, or would have ordinarily worked but for a public holiday, shall be paid an allowance of \$15.00 per day.
- 8.14 Employees required to be on-call on days other than their ordinary working days shall be paid an on-call allowance of \$30.00 per day.
- 8.15 The on-call allowances in sub-clauses 8.13 and 8.14 shall not total more than \$135.00 for any one week.
- 8.16 Employees on-call who are required to work outside their ordinary hours shall be entitled to be paid overtime at the appropriate rate for hours worked and such rate shall be paid from the time that the employee departs for work. On-call employees are not subject to the minimum payment provisions of sub-clause 30.4 on a public holiday.

#### Call back

- 8.17 Any employee of Council who has completed their normal and regular hours of work whether on or off the premises at the time of request, is called to work overtime, other than planned overtime, of less than four hours, shall be paid overtime at the rate that applies for four hours.

#### Quick shift

- 8.18 An employee who works so much overtime between the completion of ordinary work on one shift and the commencement of ordinary work on the next shift that they have not had at least eight consecutive hours off duty between shall be paid double time if instructed to resume work or released from work and entitled to an eight hour break without loss of pay.

#### Broken shift

- 8.19 A permanent employee called upon to work a broken shift shall be paid the indexed allowance based upon that currently applicable per shift in addition to their ordinary pay. A broken shift shall not exceed a span of twelve (12) hours.

### **9. Meal Breaks**

- 9.1 Council must not require an employee to work for more than 5 hours continuously without an interval of at least 30 minutes for a meal.
- 9.2 Except as otherwise provided, a meal allowance as set out in the Table in Schedule 2 shall be paid to employees instructed to work overtime:
- (a) for 1½ hours or more prior to their agreed commencing time

- (b) for 1½ hours immediately after their agreed finishing time and after subsequent periods of four hours
- (c) after each four hours on days other than ordinary working days.

9.3 Aged Care and Community Care employees shall remain on site for the duration of any meal break.

### **10. Annualised Salary Agreements**

- 10.1 Council, the Union and an employee may enter into an ASA by following the procedures set out in this clause.
- 10.2 An ASA must be committed to writing and signed by both the employee, the Union and Council.
- 10.3 If not specified in the ASA, the maximum term of an ASA shall be the nominal expiry date of the Award.
- 10.4 Either party may terminate an ASA with the provision of one (1) months notice in writing, unless the ASA expressly provides otherwise.
- 10.5 An appropriate annualised rate shall be paid by Council to the employee, in lieu of payment for any or all of the following provisions:
  - Reasonable overtime;
  - Saturday and Sunday work;
  - Shift loading
  - Allowances; and
  - Public Holidays

The ASA must set out those provisions that the annualised rate of pay compensates for.

- 10.6 The ASA shall stipulate the basic rate of pay and the additional annualised component which comprises the entire salary for the ASA.
- 10.7 For the purposes of this Award, the basic rate of pay and the annualised component form the ordinary rate of pay.
- 10.8 An ASA will be reviewed annually (on or after 1 November each year) and the appropriate annualised rate re-assessed to provide for increases to the basic rate of pay and allowances.
- 10.9 At all times the basic rate of pay specified in the ASA shall not be less than the corresponding rate provided by the Award.
- 10.10 Once an ASA has been executed a copy shall be provided to the relevant Union.
- 10.11 Any such ASA that is specific to an individual employee shall not apply to new or vacant positions.

### **11. Council Agreements**

- 11.1 The parties may enter into a council agreement, which may apply to parts of Council's workforce.
- 11.2 The terms of any agreement reached between the parties shall substitute for the provisions of the award provided that:

- (a) the extent of the council agreement shall be limited to:
- Payment of employees;
- Hours of work;
- Overtime;
- Holidays;
- Part-time employment;
- Job share employment;
- Performance, evaluation and reward
- (b) the agreement does not provide less than the entry level rates of pay;
- (c) the agreement is consistent with the *Industrial Relations Act 1996* (NSW) and current wage fixing principles; and
- (d) the agreement shall be processed in accordance with subclause 11.3 of this clause. Provided further that, where the agreement proposes to vary award provisions other than those nominated in paragraph (a) above, the agreement shall be processed in accordance with the Enterprise Arrangement Principle.

11.3 A Council Agreement shall be processed as follows:

- (a) the unions shall be notified prior to the commencement of negotiations;
- (b) the agreement has been genuinely arrived at by negotiation between the Council and the Union;
- (c) the agreement shall be committed to writing and shall include a date of operation and a date of expiration;
- (d) the council and the appropriate union(s) shall sign the agreement; and
- (e) Any party to a Council Agreement may at any stage during the above process refer the matter to the Industrial Relations Commission of NSW.

### **PART 3**

#### **RATES OF PAY AND RELATED MATTERS**

##### **12. Skills Based System of Pay and Rates of Pay**

12.1 This Award has adopted a skills based structure consisting of four overlapped bands within which classifications have been broad banded into levels according to six key skill descriptors as defined within clause 13 Skill Descriptors.

The four bands are:

No.	Band	Levels
1	Operational	4
2	Administrative/Technical/Trades	3
3	Professional/Specialist	4
4	Executive	4

- 12.2 The skills based salary structure described above is supported by a 24 grade salary system with each grade comprising of an entry level and three progression steps that are over and above the entry level rates of pay for the grade.
- 12.3 The salary system determines how employees at Council are paid. An employee shall be paid the salary system rate of pay that recognises the skills the employee is required to apply on the job. In relation to employees at Grade 14 and above, when moving from step 3 to step 4, the salary system rate of pay also recognises a performance rating of competent or above.
- 12.4 Positions are assigned a salary grade(s) within the structure. A position may extend across more than one grade in Council's salary system. The rates of pay for each grade are set out in the Table 1 of Schedule 1. The rates of pay in Table 1 of Schedule 1 are rates that have historically absorbed the defunct extra over award payments and the Broken Hill Allowance for all employees, Annual Leave loading for Salaried Office Employees and Wages Employees and the following allowances for Wages Employees:
- Ceiling;
  - Chainsaw;
  - Confined Space;
  - Dead Animal;
  - Dirt;
  - Early Start;
  - Early Start - Pool;
  - Jack Hammer;
  - Laundry;
  - Lead Bonus;
  - Milk;
  - Mowing;
  - Noxious Weeds;
  - Power Implement;
  - Painter's spray;
  - Qualification;
  - Spreader;
  - Trade Certificate;
  - Toilet;
  - Towing;
  - Wet - General; and
  - Wet - Garbage.



- 12.5 The transition to the skills based salary structure by aged and community care employees incorporates and absorbs prior allowances and payments, specifically:

Linen Handling - Nauseous Linen Allowance;

Cardigan Allowance;

Special Shoe Allowance;

Laundry Allowance;

Flexibility Allowance;

Special cleaning allowances associated with cleaning or scraping in confined spaces, inside the gas or water space of any boiler, flue or economiser;

Uniform Allowance; and

Driving Allowance.

Further, this transition takes, incorporates and absorbs the prior payment of Annual Leave Loading.

#### 12.6 Apprenticeships

- (a) The rates of pay set out in Table 2 of Schedule 1 are payable to employees undertaking apprenticeships.
- (b) Upon reaching the age of 21 years and not having completed their apprenticeship, apprentices shall be paid the minimum rate for adults provided under this Award.
- (c) Upon successful completion of the apprenticeship, an employee shall proceed to the appropriate grade in the structure, if the employment is to be continued beyond the apprenticeship period.
- (d) In addition to the vocational training direction, Council shall provide an apprentice with the conditions of the apprenticeship in writing and these conditions shall include:
  - (i) the terms of the apprenticeship;
  - (ii) the course of studies to be undertaken by the apprentice;
  - (iii) the course of on the job training to be undertaken by the apprentice.
- (e) On the production of a letter from the Principal of the TAFE College stating that they have satisfactorily completed a year's work in the trade course appropriate to their apprenticeship, an apprentice shall be refunded the amount of fees paid in respect of that year.
- (f) On the production of a letter from the Principal of the TAFE College stating that they have satisfactorily completed a year's work in the trade course appropriate to their apprenticeship, and receipts for text books prescribed for that year's work, an apprentice shall be paid the cost of the prescribed text books or one hundred and fifty dollars (\$150.00) whichever is the lesser amount.

#### 12.7 Government funded traineeships

- (a) A government funded traineeship is subject to a Traineeship Agreement registered with the relevant State Training Authority.
- (b) The rates of pay payable to a government funded trainee shall be as provided in Table 3 in Schedule 1.

- (c) The rates of pay in Table 3 in Schedule 1 are actual rates and shall only apply to government funded trainees while they are undertaking an approved traineeship.
- (d) Council shall ensure that government funded trainees are permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that trainees receive the appropriate on-the-job training in accordance with the Traineeship Agreement.
- (e) A government funded trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend training in accordance with the Traineeship Agreement.

### 13. Skill Descriptors

The award's skills based bands, levels and grades are defined according to the following skill descriptors:

#### OPERATION BAND

##### Operational Band 1, Level 1

###### Authority and accountability:

Completion of basic tasks with work closely monitored by the team leader or supervisor.

###### Judgement and problem solving:

Judgement is limited and coordinated by other workers.

###### Specialist knowledge and skills:

Specialist knowledge and skills are obtained through on-the-job training and council-based induction training. Off-the-job training may lead to trade, technical or professional qualifications.

###### Management skills:

Not required.

###### Interpersonal skills:

Limited to communications with other staff and possibly, with the public.

###### Qualifications and experience:

Completion of School Certificate or the Higher School Certificate may be sought. Completion of an appropriate labour market program or similar short-term work / skills experience is desirable.

##### Operational Band 1, Level 2 (Grades 1 to 4)

###### Authority and accountability:

Responsible for completion of basic tasks with individual guidance or in a team.

###### Judgement and problem solving:

Applies standard procedures with normally few if any options in the application of skills.

###### Specialist knowledge and skills:

Job specific skills and knowledge would normally be gained through on-the-job training and experience. Short courses may be completed at TAFE.

###### Management skills:

Not required.

###### Interpersonal skills:

Frequent communication with other staff and/or the public common but normally at a routine level.

**Qualifications and experience:**

Incumbents may have attended short courses in specific work areas or be undertaking a technical college certificate as completion of structured training program in work-related area.

**Operational Band 1, Level 3 (Grades 5 to 7)****Authority and accountability:**

Responsible for completion of regularly occurring tasks with general guidance on a daily basis.

**Judgement and problem solving:**

Judgement is required to follow predetermined procedures where a choice between more than two options are present.

**Specialist knowledge and skills:**

Application of skills, including machine-operation skills, following training "on the job" or accredited external training over a number of months.

**Management skills:**

Some guidance/supervision may be required. May assist a co-ordinator / trainer with on-the-job training.

**Interpersonal skills:**

Skills required for exchange of information on straightforward matters.

**Qualifications and experience:**

Suitable experience or qualifications in a number of defined skill areas.

**Operational Band 1, Level 4 (Grades 8 to 10)****Authority and accountability:**

Responsible for supervising staff in operational duties or for work requiring independence in the application of skills, subject to routine supervision. Responsible for quality of work function.

**Judgement and problem solving:**

Option on how to approach tasks requires interpretation of problems and may involve precise judgement in operational areas.

**Specialist knowledge and skills:**

The number of work areas in which the position operates makes the work complicated and a variety of skills are required in its completion. Position may require competence in operation of complex machinery.

**Management skills:**

Supervisory skills in the communication of instructions, training and the checking of work may be required.

**Interpersonal skills:**

Skills are required to convince and explain specific points of view or information to others and to reconcile differences between parties.

**Qualifications and Experience:**

Experience to adapt procedures to suit situations and a thorough knowledge of the most complex operational work procedures to achieve work objectives.

**ADMINISTRATIVE / TECHNICAL / TRADES BAND****Administrative / Technical / Trades Band 2, Level 1 (Grades 8 to 10)****Authority and accountability:**

Responsible for the completion of work requiring the application of trades, administrative or technical skills.

**Judgement and problem solving:**

Skills in assessing situations and in determining processes, tools and solutions to problems. Guidance is available.

**Specialist knowledge and skills:**

Positions will have demonstrated competence in a number of key skill areas related to major elements of the job.

**Management skills:**

Positions may require skills in the supervision or co-ordination of small groups.

**Interpersonal skills:**

Communication skills to explain situations or advise others.

**Qualifications and experience:**

Appropriate work-related trade, technical or administrative qualifications or specialist skills training.

Administrative / Technical / Trades Band 2, Level 2 (Grades 11 to 13)

**Authority and accountability:**

Responsibility as a trainer/co-ordinator for the operation of a small section which uses staff and other resources, or the position completes tasks requiring specialised technical / administrative skills.

**Judgement and problem solving:**

Skills to solve problems which require assessment of options with freedom within procedural limits in changing the way work is done or in the delegation of work. Assistance may be readily available from others in solving problems.

**Specialist knowledge and skills:**

Positions will have specialised knowledge in a number of advanced skill areas relating to the more complex elements of the job.

**Management skills:**

May require skills in supervising a team of staff, to motivate and monitor performance against work outcomes.

**Interpersonal skills:**

In addition to interpersonal skills in managing others, the position may involve explaining issues/policy to the public or others and reconcile different points of view.

**Qualifications and experience:**

Thorough working knowledge and experience of all work procedures for the application of technical / trades or administrative skills, based upon suitable certificate or post-certificate-level qualifications.

Administrative / Technical / Trades Band 2, Level 3 (Grades 14 to 16)

**Authority and accountability:**

May be responsible to provide a specialised / technical service and to complete work which has some elements of complexity. Make recommendations within council and represent council to the public or other organisations.

**Judgement and problem solving:**

Problem solving and judgements are made where there is a lack of definition requiring analysis of a number of options. Typical judgements may require variation of work priorities and approaches.

**Specialist knowledge and skills:**

Positions have advanced knowledge and skills in a number of areas where analysis of complex options is involved.

**Management skills:**

May supervise groups of operational and / or other administrative / trades / technical employees. Employees supervised may be in a number of different work areas, requiring motivation, monitoring and co-ordination to achieve specific outputs.

**Interpersonal skills:**

Skills to communicate with subordinate staff and the public and/or negotiation / persuasive skills to resolve disputes with staff or the public.

**Qualifications and experience:**

An advanced certificate, associate diploma, appropriate in-house training or equivalent combined with extensive experience in the application of skills in the most complex areas of the job.

**PROFESSIONAL / SPECIALIST BAND****Professional / Specialist Band 3, Level 1 (Grades 11 to 13)****Authority and accountability:**

Provides specialised / technical services to complete assignments or projects in consultation with other professional staff. May work with a team of technical or administrative employees requiring the review and approval of more complex elements of the work performed by others.

**Judgement and problem solving:**

Problems require assessment of a range of options having elements of complexity in reaching decisions and making recommendations. Precedent is available from sources within the Council, and assistance is usually available from other professional / specialist staff in the work area.

**Specialist knowledge and skills:**

Positions require considerable knowledge in a specific area with a sufficient level of skills and knowledge to resolve issues having elements of complexity that may not be clearly defined.

**Management skills:**

Positions at this entry level to the Professional / Specialist Band are not required to possess management skills.

**Interpersonal skills:**

Persuasive skills are required to participate in technical discussions to resolve problems, explain policy and reconcile viewpoints.

**Qualifications and experience:**

Professional/specialist positions require professional qualifications to apply theoretical knowledge to practical situations.

**Professional / Specialist Band 3, Level 2 (Grades 14 to 16)****Authority and accountability:**

Provides a specialised/technical service in the completion of work and / or projects which have elements of complexity (composed of many parts that may be more conceptual than definite).

**Judgement and problem solving:**

Positions require the interpretation of information and development of suitable procedures to achieve agreed outcomes. Problem solving and decision making require analysis of data to reach decisions and / or determine progress.

**Specialist knowledge and skills:**

Experience in the application of technical concepts and practices requiring additional training are required at this level.

**Management skills:**

May manage a number of projects involving people and other resources requiring project control and monitoring as well as motivation and co-ordination skills.

**Interpersonal skills:**

Interpersonal skills in leading and motivating staff in different teams / locations may be required, as well as persuasive skills to resolve problems or provide specialised advice.

**Qualifications and experience:**

Positions at this level would have supplemented base level professional qualifications with additional skills training. Considerable practical experience or skills training would be required to effectively control key elements of the job.

**Professional / Specialist Band 3, Level 3 (Grades 17 to 19)****Authority and accountability:**

Provides a professional advisory role to people within or outside council. Such advice may commit the Council and have significant impact upon external parties dealing with council. The position may manage several major projects or sections within a department of the Council.

**Judgement and problem solving:**

Positions have a high level of independence in solving problems and using judgement. Problems can be multi-faceted requiring detailed analysis of available options to solve operational, technical or service problems.

**Specialist knowledge and skills:**

The skills and knowledge to resolve problems where a number of complex alternatives need to be addressed.

**Management skills:**

May be required to manage staff, resolve operational problems and participate in a management team to resolve key problems.

**Interpersonal skills:**

Interpersonal skills in leading and motivating staff may be required. Persuasive skills are used in seeking agreement and discussing issues to resolve problems with people at all levels. Communication skills are required to enable provision of key advice both within and outside council and to liaise with external bodies.

**Qualifications and experience:**

Tertiary qualifications combined with a high level of practical experience and an in-depth knowledge of work.

**Professional / Specialist Band 3, Level 4 (Grades 20 to 21)****Authority and accountability:**

Accountable for the effective management of major sections or projects within their area of expertise. As a specialist, advice would be provided to executive level and to council on major areas of policy or on key issues of significance to the organisation. The position's influence would have an important role in the overall performance of the function.

**Judgement and problem solving:**

Positions would determine the framework for problem solving or set strategic plans with minimal review by senior management. At this level, the position may represent senior management or council in the resolution of problems. The oversight of problem solving and assessment of the quality of judgements made by less qualified staff will apply at this level.

**Specialist knowledge and skills:**

Positions require knowledge and skills for the direction and control of a key function of council or major functions within a department. Positions require expert knowledge and skills involving elements of creativity and innovation in addressing and resolving major issues.

**Management skills:**

Positions may direct professional or other staff in the planning, implementation and review of major programs, as well as participating as a key member of a functional team.

**Interpersonal skills:**

Interpersonal skills in leading and motivating staff will be required at this level. Positions require the ability to negotiate on important matters with a high degree of independence. Positions are required to liaise with the public and external groups and organisations.

**Qualifications and experience:**

Specialist tertiary qualifications in an appropriate field of study combined with extensive practical experience in all relevant areas in order to plan, develop and control major elements of work.

**EXECUTIVE BAND****Executive Band 4 (Grades 22 to 24)****Authority and accountability:**

Accountable for the direction and control of council or a department or the like. Influence and commit council or a department or the like to long-term strategic directions. Lead policy development and implementation.

**Judgement and problem solving:**

Positions solve problems through analytic reasoning and integration of wide-ranging and complex information, and have a high level of independence in determining direction and approach to issues.

**Specialist knowledge and skills:**

The position requires the application of a range of specialist knowledge and skills, including relevant legislation and policies and other areas of precedent. Ability to provide authoritative advice to council.

**Management skills:**

Application of corporate management skills in a diverse organisation to establish goals and objectives. Manage and control staff, budgets and work programs or major projects of council or a department or the like utilising leadership, evaluation and monitoring skills to facilitate achievement of objectives. Ability to generate innovative approaches to more effectively deploy resources, meet changing circumstances and improve service to the Council's clients.

**Interpersonal skills:**

Positions use persuasive skills with external parties on major items of critical importance to council. They motivate managers and staff at all levels by leading and influencing others to achieve complex objectives. They influence the development of the Council.

**Qualifications and experience:**

Positions will have a relevant degree or equivalent and management experience, combined with accredited management qualifications.

**14. Annual Assessment and Progression Rules**

- 14.1 Employees shall be assessed for progression through the salary range for their position annually.
- 14.2 At the time of each annual assessment, Council shall advise the employee of the skills and/or any performance objectives required for the employee to progress to the next salary step and shall review the employee's training needs.
- 14.3 An employee's progression from the entry level (Step 1) to Step 2, Step 3 and Step 4 shall be based upon the acquisition and use of core skills and knowledge as specified in the relevant position description and skills matrix.
- 14.4 Progression through the salary system shall be based on the acquisition and use of skills. Where skills based progression is not reasonably available within the salary range for the position, employees shall

have access to progression based on the achievement of performance objectives relating to the position and communicated to the employee in accordance with subclause 14.2 above.

- 14.5 Progression shall be subject to the employee achieving a skills/performance rating of competent or above, at the time of the annual assessment.
- 14.6 For employees at Grade 14 and above progression from Step 3 to Step 4 is subject to performance. Should an employee's performance be evaluated as marginal or inadequate the employee shall not be eligible to progress to the next salary point.
- 14.7 Employees may appeal against their skills assessment and/or performance evaluation. Such appeals must be in writing to the General Manager within 10 days of the original assessment and/or evaluation. The General Manager may consult with applicable staff members before making a final determination. Employees may access the Dispute Resolution Procedures of clause 36 as a means of resolving concerns in relating to skills assessments and/or performance evaluations.
- 14.8 Employees shall have access to information regarding the grade, salary range and progression step of the position. The guidelines found in Schedule 3 to this Award have been established to assist the parties to the Award in relation to the operation of Council's Salary System and the progression of employees through Council's Salary System.

### **15. Allowances and Reimbursements**

#### 15.1 Expenses

- (a) All reasonable expenses, including out-of-pocket, accommodation and travelling expenses, incurred in connection with an employee's duties shall be paid by Council.
- (b) Where practical the reimbursement be included in the next pay period.
- (c) The method and mode of travelling or the vehicle to be supplied or to be used shall be arranged mutually between the Council and the employee.
- (d) Travel arrangements shall be agreed between the Council and the employee.

#### 15.2 Tools Allowance

- (a) Tradespersons and apprentices shall provide their own tools.
- (b) Tools will be replaced by Council or the cost to replace tools made by Council where:
- tools are worn through proper use;
- tools are stolen and such theft has been reported to the proper local police authority by the employee; and
- where tools are damaged and the employees supervisor has authorised their replacement.
- (c) Otherwise, lost tools shall be replaced by employees at their own expense.
- (d) Tradespersons who are required to work in a second trade shall be supplied with the necessary tools for the second trade.

#### 15.3 Community Language and Signing Work

- (a) Employees using a community language skill as an adjunct to their normal duties to provide services to speakers of a language other than English or to provide signing services to those with hearing difficulties, shall be paid an allowance in addition to the weekly pay. The quantum of the allowance is set out in the Table in Schedule 2.



- (b) The allowance may be paid on a regular or irregular basis, according to when the skills are used.
- (c) Such work involves an employee acting as a first point of contact for non-English speaking residents or residents hearing difficulty. In this regard the employee is limited to identifying the resident's area of concern or inquiry and then providing basic assistance, which may include face-to-face discussion and/or telephone inquiry.
- (d) Such employees convey straightforward information relating to Council services, to the best of their ability. The Employees do not replace or substitute for the role of a professional interpreter or translator.
- (e) Such employees shall record their use of a community language.

#### 15.4 First Aid Work

- (a) Every employee shall be given an opportunity to train in first aid, with the objective being to obtain a first aid certificate. The Council shall pay the fees associated with the attainment of such certificate.
- (b) Council shall provide a sufficient number of properly equipped first aid boxes and one shall be provided for use in cases of accident or sudden illness at each and every workplace where two or more persons are employed.
- (c) Where an employee is required by Council to be in charge of a first aid kit and/or to administer first aid and the use of such adjunct skills are not paid for in accordance with the salary system then the employee shall be paid an allowance as set out in the Table in Schedule 2.
- (d) Employees required by Council to relieve a first aid attendant shall receive an allowance as set out in the Table in Schedule 2.

#### 15.5 Licence fees

The Council shall pay licence fees for all employees who as a requirement of the job must drive motor vehicles or are required by the Council to obtain a specific licence to enable them to do work required by the Council.

### 16. Use of Skills

- 16.1 The use of skills provisions of this clause will only apply when Council direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training. This may result in an employee being required to perform duties which may extend beyond those identified in their position description.
- 16.2 An employee directed to relieve in a position which is at a higher level within the salary system shall be paid for that relief. The rate to be paid shall be determined by considering the skills / experience applied by the employee relieving in the position but shall be at least the minimum rate for that position in accordance with the salary system except where the higher level skills have been taken into account within the salary of the relieving employee.
- 16.3 Except as otherwise provided in sub-clause 16.4 payment for use of skills relieving in a higher paid position shall be made for the time actually spent relieving in the higher position and is not payable when the relieving employee is absent on paid leave or an award holiday. The higher rate is however payable when the employee is directed to relieve during a period which incorporates rostered days off and/or a public holiday.
- 16.4 Where an employee receives a varying rate of pay for 6 months or more in the aggregate in the preceding 12 month period, the employee's ordinary rate of pay shall be deemed to be the average weekly rate of pay earned during the period actually worked over the 12 months immediately preceding the annual leave.

- 16.5 Where practicable, payment for relief work at a higher level must be authorised and determined in advance and the employee explicitly directed to relieve in the higher position.

### 17. Salary Packaging and Sacrifice

Council and the employee may agree on salary packaging and salary sacrifice arrangements with employees. Such arrangements shall be committed to writing and signed by the parties.

### 18. Superannuation

In the absence of an employee electing a superannuation fund, employer superannuation contributions shall be paid into the default fund being the Local Government Superannuation Scheme.

### 19. Payment of Employees

- 19.1 Employees will be paid fortnightly.
- 19.2 Council shall be entitled to deduct from the employee's pay such amounts as the employee authorises in writing.
- 19.3 An employee's ordinary pay shall not be reduced when the employee is prevented from attending work due to bushfire or other climatic circumstances beyond their control.

## PART 4

### LEAVE PROVISIONS

#### 20. Annual Leave

- 20.1 Employees accrue annual leave in a twelve month period as follows,
- (a) Salaried office employees accrue annual leave at the rate of six (6) weeks per annum;
  - (b) Wages employees accrue annual leave at the rate of five (5) weeks per annum;
  - (c) Subject to the additional leave provisions outlined in sub-clause 20.1(d), aged and community care employees accrue annual leave at the rate of five (5) weeks per annum.
  - (d) Aged and community care employees rostered to work ordinary hours on Sundays and/or Public Holidays shall be entitled to receive additional annual leave, if following the qualifying period of employment for annual leave purposes, shifts have been worked in accordance with the following scale:

3 shifts or less	Nil
4 - 10 shifts	1 day
11 - 17 shifts	2 days
18 - 24 shifts	3 days
25 - 31 shifts	4 days
32 or more shifts	1 week

- 20.2 Employees in the sanitary and garbage depot shall be entitled to annual leave on the following basis:
- (a) Five (5) weeks annual leave;
  - (b) A further two weeks in recognition of the time worked on holidays;
  - (c) A total period in the aggregate shall not exceed seven (7) weeks in all but this seven (7) weeks if the employee so desires is to be taken at the one time; and

- (d) As to other time worked on holidays, the employee shall be entitled to be paid for such time pursuant to the provisions of sub-clause 30.3 of this Award.

20.3 Baths/Pool employees shall be entitled to annual leave on the following basis:

- (a) Full-time employees (other than managers) working at the Pools/Baths on a public holiday or prescribed holiday shall be paid ordinary time plus a day added to their annual leave. Where an employee is rostered off, that employee shall have a day added to their annual leave, making a total of seven weeks annual leave per year.
- (b) Part-time or seasonal employees shall be paid or given in lieu pro-rata entitlements as per sub-clause 20.3(a).

20.4 As the pools are closed on Christmas day, those employees usually rostered to work are given the day off on ordinary pay. Those employees rostered off on Christmas day are paid at the ordinary rate with a day, or pro-rata as for seasonal or part-time employees, added to their annual leave.

20.5 Council may direct an employee to take annual leave by giving at least four weeks notice where the employee has accumulated in excess of ten weeks annual leave.

20.6 Council may direct an employee to take annual leave during a shut-down period by giving at least four weeks notice prior to the proposed shut-down. The direction to take annual leave is conditional upon the employee having at least the equivalent amount of annual leave credited to them as the shut-down period. This clause should be read in conjunction with the provisions of the *Annual Holidays Act 1944* (NSW).

#### Option to cash out

20.7 An employee may forgo any accrued annual leave in excess of four (4) weeks, at ordinary pay, that is accrued in the preceding twelve month period, where:

- (a) the employee makes a written application to Council; and
- (b) Council authorises the request.

20.8 Where a request has been authorised, Council shall:

- (a) deduct the equivalent amount of annual leave; and
- (b) make payment for annual leave forgone, at the employees ordinary pay.

### 21. Long Service Leave

21.1 An employee of council, other than aged and community care employees, shall be entitled to Long Service Leave at ordinary pay as follows: -

Length of Service	Entitlement
After 5 years' service	6.5 weeks
After 10 years' service	13 weeks
After 15 years' service	19.5 weeks
After 20 years' service	30.5 weeks
For every completed period of 5 years' service thereafter	11 weeks

21.2 In relation to aged and community care employees long service leave shall from the first pay period commencing on or after 16 March 2010 accrue in accordance with the table at sub-clause 21.1.

21.3 Where an employee has completed more than five years service with Council and is terminated for any cause, long service leave shall be deemed to have accrued for the employee's total length of service and an amount equivalent to such long service leave, less such leave already taken, computed in monthly

- periods and equivalent to 1.3 weeks for each year of service up to 15 years and 2.2 weeks for each year of service from 15 years onwards.
- 21.4 Employees who were in the Council's employ as at 1st January, 1964 and who had at that date completed less than fifteen (15) years' service:
- (a) For the period between 1st January 1964 and the date on which they completed or will complete a total of 15 years' service in all, their long service leave will be calculated on the basis of 13 weeks' long service leave for ten (10) years' service;
  - (b) Thereafter long service leave is to be calculated on the basis of 22 weeks' for ten years' service.
- 21.5 Long service leave shall be taken at a time mutually convenient to Council and the employee in minimum periods of one week provided that all long service leave accruing on or after the first pay period commencing on or after 16 March 2010 shall be taken within five years of it falling due.
- 21.6 Payment to an employee proceeding on long service leave shall be made by Council at the employee's ordinary pay for the period of long service leave either before the commencement of the employee's long service leave, or by agreement through the usual pay periods.
- 21.7 An employee who has become entitled to a period of leave and the employee's employment is terminated by resignation, death or dismissal for any cause shall be deemed to have entered upon leave at the date of termination of the employment and shall be entitled to payment accordingly.
- 21.8 There shall be deducted in the calculation of the employee's service all leave of absence without payment not specifically acknowledged and accepted by Council as service at the time leave was taken.
- 21.9 Long service leave shall be exclusive of annual leave and any other holidays as prescribed by this Award, occurring during the taking of any period of long service leave.
- 21.10 When the service of an employee is terminated by death the council shall pay to the employee's estate the monetary equivalent of any untaken long service leave standing to the employee's credit at the time of the employee's decease.
- 21.11 Where an employee's service is terminated through shortage of work, material or finance or through illness certified by a duly qualified medical practitioner and such employee is re-employed by Broken Hill City Council within 12 months of termination of service, prior service shall be counted for the purpose of this clause.
- 21.12 In calculating the entitlement to long service leave; this Agreement must be read in conjunction with Regulation 406A of the Local Government (General) Regulation 2005 as amended.
- 21.13 In special circumstances Council may dispense with the requirements of sub-clause 21.5 and allow periods of less than one (1) week.

## **22. Sick Leave**

- 22.1 An employee is entitled to three (3) weeks paid sick leave in a twelve (12) month period at ordinary pay. Sick leave shall be cumulative in that it shall accumulate from year to year and may be taken in any subsequent year.
- 22.2 As of the first pay period commencing on or after 16 March 2010, aged and community care employees will begin to accrue three (3) weeks sick leave every twelve (12) months. The entitlement to sick leave will continue to be credited on the anniversary date of commencement of each employee.
- 22.3 Employees who are absent from work due to illness and who submit a medical certificate to that effect shall be entitled to all benefits of this Award until their accumulated sick leave is exhausted. For a period of three months after that they shall be entitled to payment of any public holidays which fall due

but after the elapse of such period of three months they shall cease to be entitled to any benefits under this Award until they return to work.

- 22.4 Sick leave means sick and carer's leave. Specifically, it is leave taken by an employee who is unable to attend work as a result of a personal illness or injury.
- 22.5 As soon as practicable on the first day of any absence under this clause an employee must inform his or her supervisor of his or her inability to attend work and, as far as practical, state the nature of the illness or injury and the estimated duration of the absence.
- 22.6 An employee will provide a medical certificate or, where it is not practical to provide a medical certificate, a statutory declaration in the following circumstances:
- (a) When the employee is or will be absent on sick leave for three (3) or more consecutive working days.
  - (b) If Council has reason to believe that the employee's absence is not consistent with the appropriate use of personal leave.
- 22.7 All employees, other than aged care and community care employees, who have accrued untaken sick leave at the time of retirement or termination of employment shall be paid for such accrued leave, such payment to be calculated at the wage rate applicable at the date of retirement or on termination of employment in accordance with the following:
- (a) One half (1/2) of sick leave accrued between 1 January 1960 and 19 March 1973;
  - (b) Three quarters (3/4) of sick leave accrued between 20 March 1973 and 31 March 1980;
  - (c) The whole of sick leave accrued between 1 April 1980 and 31 January 1985; and
  - (d) The whole of two (2) of the three (3) weeks per annum of the sick leave accrued from 1 February 1985 up until 31 March 1994.

The benefits accruing from this subsection shall be applied to persons employed on a full-time basis by Council as at 31 March 1994 but not to persons employed subsequent to that date.

- 22.8
- (a) Any employee who becomes sick or is injured whilst on annual leave and produces within a reasonable time, no later than the conclusion of the annual leave, a doctor's certificate which satisfactorily indicates to Council that the employee was unable to derive benefit from their annual leave, may be granted, at a time convenient to Council, additional leave equivalent to the period of sickness or injury.
  - (b) The re-crediting of annual leave will only apply in cases where the period which Council is satisfied that the employee was unable to derive benefit from the annual leave was at least seven (7) consecutive days.

### **23. Carers' Leave**

- 23.1 Use of Sick Leave: an employee, other than a casual employee, with responsibilities in relation to a class of person set out in sub-clause 23.6 below who needs the employee's care and support shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 22 of this Award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- 23.2 Carer's leave is not intended to be used for long term, ongoing care. In such cases, the employee is obligated to investigate appropriate care arrangements where these are reasonably available.

- 23.3 Where more than ten days sick leave in any year is to be used for caring purposes the council and employee shall discuss appropriate arrangements which, as far as practicable, take account of Council's and the employee's requirements.
- 23.4 Where the parties are unable to reach agreement the grievance and disputes procedures at clause 36 of this Award should be followed.
- 23.5 The employee shall, if required,
- (a) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care and support by another person; or
  - (b) establish by production of documentation acceptable to the council or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

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

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

23.7 An employee may elect, with the consent of Council, to take unpaid leave for the purpose of providing care and support to a class of person set out in sub-clause 23.6(b) above who is ill or who requires care due to an unexpected emergency.

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

**23.9 Carer's Entitlement for Casual Employees**

- (a) Subject to the evidentiary and notice requirements in sub-clauses 23.5 and 23.8 casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in sub-clause 23.6(b) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (b) Council and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) Council must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of Council to engage or not to engage a casual employee are otherwise not affected.

**23.10 Time off in Lieu of Payment for Overtime:** An employee may, with the consent of Council, elect to take time in lieu of payment of overtime accumulated in accordance with the provisions of clause 8 of this Award for the purpose of providing care and support for a person in accordance with sub-clause 23.6 above.

**23.11 Make-up time:** An employee may elect, with the consent of Council, to work 'make-up time', under which the employee takes time off during ordinary hours, and works those hours at a later time, within the spread of ordinary hours provided in this Award, at the ordinary rate of pay for the purpose of providing care and support for a person in accordance with sub-clause 23.6 above.

**23.12 Annual Leave and Leave Without Pay:** An employee may elect with the consent of Council to take annual leave or leave without pay for the purpose of providing care and support for a person in accordance with sub-clause 23.6 above. Such leave shall be taken in accordance with clause 20, Annual Leave and clause 28, Leave Without Pay of this Award.

**24. Bereavement Leave**

**24.1** Where an employee is absent from duty because of the death of a person in accordance with paragraphs (a)-(e) below and provides satisfactory evidence to Council of such, the employee shall be granted two days leave with pay upon application. Persons in respect of whom bereavement leave may be claimed shall include:

- (a) a spouse of the employee; or
- (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- (c) a child or an adult child (including an adopted child, a step child, foster child or an ex nuptial child), parent (including a foster parent, step parent and legal guardian), parents of spouse, grandparent, grandchild or sibling (including half, foster and step sibling) of the employee or spouse or de facto spouse of the employee; or
- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (e) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
  - (1) 'relative' means a person related by blood, marriage or affinity;
  - (2) 'affinity' means a relationship that one spouse because of marriage has to blood relatives of the other; and

- (3) 'household' means a family group living in the same domestic dwelling.

#### 24.2 Bereavement Entitlements for Casual Employees

- (a) Casual employees who are rostered to work shall provide satisfactory evidence to Council that they are unavailable to attend work as a result of the death in Australia of a person prescribed in subclause 24.1 paragraphs (a)-(e) above.
- (b) Council and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) Council must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of Council to engage or not engage a casual employee are otherwise not affected.

#### 24.3 Representation at Funeral

- (a) Council shall permit two employees selected by the Union of which the deceased was a member to attend an employee's funeral and the two employees shall be entitled to receive payment for reasonable time lost in attending the funeral.

24.4 Employees on a period of annual leave, who would have otherwise qualified for bereavement leave prescribed by this Award, shall be paid bereavement leave in accordance with Clause 24 of this Award and have up to a maximum of two days annual leave re-credited to their accruals.

24.5 In the event that an employee finds it necessary to travel a distance exceeding 200 kilometres from Broken Hill to attend the funeral of person prescribed in subclause 24.1 paragraphs (a)-(e) above, then the two days paid leave provided by sub-clause 24.1 shall be increased to three days.

24.6 Upon receipt of an application by an employee to attend the funeral of a person who is not a person prescribed in sub-clause 24.1 paragraphs (a)-(e) above, Council shall grant two (2) hours leave without pay to the employee to attend the funeral, provided that the leave granted shall commence and terminate at the site of the job upon which the employee is employed.

### 25. Parental Leave

25.1 These provisions shall apply in addition to Part 4, Parental Leave, of the *Industrial Relations Act 1996* (NSW).

#### 25.2 Right to request

- (a) An employee, other than a casual, entitled to parental leave may request Council to allow the employee to return to work from a period of parental leave on a part-time basis, until the child reaches school age, to assist the employee in reconciling work and parental responsibilities.
- (b) An employee entitled to parental leave may request Council to allow the employee:
- (1) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
  - (2) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;

to assist the employee in reconciling work and parental responsibilities.

- (c) Council shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the council's business.



Such grounds may include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- (d) The employee's request and Council's decision made under sub-clauses 25.2(a) and 25.2(b) above must be recorded in writing.
- (e) Where an employee wishes to make a request under sub-clause 25.2(a) above, such a request must be made as soon as possible, but no less than seven weeks prior, to the date upon which the employee is due to return to work from parental leave.

### 25.3 Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, Council shall take reasonable steps to:
  - (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
  - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform Council about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify Council of changes of address or other contact details which might affect the council's capacity to comply with sub-clause 25.3(a) above.

### 25.4 Council must not fail to re-engage a regular casual employee as defined in section 53(2) of the *Industrial Relations Act 1996* (NSW) because:

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

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

## 26. Paid Maternity Leave

- 26.1 This clause applies to all full time and part time female employees who have had 12 months continuous service with council immediately prior to the commencement of maternity leave or special maternity leave and to female casual employees who have worked on a regular and systematic basis with council for at least 12 months prior to the commencement of maternity leave or special maternity leave.
- 26.2 Paid maternity leave shall mean leave taken by a female employee in connection with the pregnancy or the birth of a child of the employee. Paid maternity leave consists of an unbroken period of leave.
- 26.3 Paid special maternity leave shall mean leave taken by an employee where the pregnancy of the employee terminates before the expected date of birth (other than by the birth of a living child), or where she suffers illness related to her pregnancy, and she is not then on paid maternity leave; provided that a medical practitioner certifies such leave to be necessary before her return to work.
- 26.4 An employee shall be entitled to a total of 9 weeks paid maternity leave or special maternity leave on full pay; or 18 weeks maternity leave or special maternity leave on half pay; or maternity leave or

special maternity leave on a combination of full pay or half pay provided the leave does not exceed the equivalent of 9 weeks on full pay.

- 26.5 The employee may choose to commence paid maternity leave before the expected date of the birth.
- 26.6 Annual leave, long service leave, unpaid maternity leave and any accumulated time in lieu may be taken in conjunction with paid maternity leave and special maternity leave, subject to council approval, provided that the total period of leave does not exceed 104 weeks.
- 26.7 Employees may take periods of annual leave and long service leave during unpaid maternity leave at half pay, provided the total period of all leave does not exceed 104 weeks.
- 26.8 The period of paid maternity leave and special maternity leave is taken into account in calculating the employee's long service, annual and sick leave accruals.
- 26.9 Where an employee has completed ten years continuous service, the period of unpaid maternity or adoption leave shall count as service for long service leave purposes, provided that the unpaid maternity or adoption leave does not exceed six months. For employees with less than ten years continuous service periods of unpaid maternity or adoption leave do not count as service for long service leave purposes.
- 26.10 Paid maternity leave may not be extended beyond the first anniversary of the child's birth.
- 26.11 Payment for maternity leave and special maternity leave is at the ordinary rate applicable prior to the commencement of the leave period. Employees working as permanent part time employees will be paid at their ordinary part time rate of pay calculated on the regular number of hours worked. A casual employee's rate of pay will be calculated by averaging the employee's weekly wage in the 12 months immediately prior to the employee commencing paid maternity leave or special maternity leave.
- 26.12 Paid maternity leave and paid special maternity leave shall be exclusive of public holidays. Where a public holiday falls during a period where the employee has taken either paid maternity leave or annual or long service leave on half pay, the public holiday shall also be paid at half pay. Further, all entitlements shall accrue during periods of leave at half pay on a proportionate basis.
- 26.13 Notice of intention to take paid maternity leave the employee must:
- provide council with certification of the expected date of confinement at least 10 weeks before the child is due. This is known as the first notice.
- advise council in writing of her intention to take paid maternity leave and the proposed start date at least 4 weeks prior to that date. This is known as the second notice.
- provide a signed statutory declaration that the employee will be the primary care giver to the child and that the paid maternity leave will not be taken in conjunction with any partner accessing paid parental leave entitlements.
- 26.14 The employee will not engage in any other form of paid work during the period of paid maternity leave without the approval of the general manager.
- 26.15 Subject to an application by the council and further order of the Industrial Relations Commission of New South Wales, a council may pay a lesser amount (or no amount) of maternity leave or special maternity leave than that contained in this clause where council can demonstrate economic hardship.
- 26.16 Paid adoption leave
- (a) This subclause applies to all full time and part time female employees who have had 12 months continuous service with Council immediately prior to the commencement of adoption leave and to female casual employees who have worked on a regular and systematic basis with Council for at least 12 months prior to the commencement of adoption leave.

- (b) An employee entitled to paid adoption leave is entitled to three weeks paid leave from and including the date the employee and his or her spouse takes custody of their child.
- (c) Paid adoption leave may be paid:
  - (i) on a normal fortnightly basis or in advance in a lump sum;
  - (ii) at the rate of half pay over a period of six (6) weeks on a regular fortnightly basis;
  - (iii) Annual leave and/or long service leave may be combined with periods of adoption leave on half pay to enable an employee to remain on full pay for that period.

#### 26.17 Unpaid adoption leave

- (a) An employee who qualifies for paid adoption leave pursuant to the provisions of sub-clause 26.15 is entitled to unpaid adoption leave as follows:
  - (i) where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;
  - (ii) where the child is over the age of 12 months - a period of up to 12 months, such period however is to be agreed upon by the employee and the Council.

### **27. Supporting Parent Leave**

An employee who is a supporting parent shall be entitled to up to 5 days paid leave at ordinary pay taken from their accrued sick leave balance at the time their partner gives birth to a child or at the time the employee adopts a child provided that the employee has had 12 months continuous service with council immediately prior to the commencement of their supporting parent leave.

### **28. Leave Without Pay**

If an employee has exhausted all available relevant leave entitlements then approved leave without pay shall be taken at a time convenient to Council and the employee and shall not be counted as service for holidays, long service leave, sick leave and annual leave. However, leave without pay shall not break continuity of service.

### **29. Flexibility for Work and Family Responsibilities**

- 29.1 An employee, other than a casual employee, may request flexible work and leave arrangements to enable the individual employee to attend to work and family responsibilities.
- 29.2 An employee's request must be in writing and be forwarded to Council and the Union. In addition the request must outline a period within which the arrangement is to be reviewed by Council and the Union.
- 29.3 Council and the Union shall not unreasonably withhold agreement to flexible work and leave arrangements, provided Council's operational needs are met.
- 29.4 Flexible work and leave arrangements include but are not limited to:
  - (a) make up time;
  - (b) flexi time;
  - (c) time in lieu;
  - (d) leave without pay;
  - (e) annual leave;

- (f) part-time work;
  - (g) job share arrangements, and
  - (h) variations to ordinary hours and rosters.
- 29.5 The terms of a flexible work and leave arrangement shall be in writing and may be varied from time to time, by agreement, to suit the specific needs of either party.
- 29.6 Any such agreement shall not apply to new or vacant positions.

### **30. Public Holidays**

- 30.1 Employees shall have holidays without loss of pay on New Years' Day; Australia Day; Good Friday; Easter Saturday; Easter Monday; Anzac Day; Queen's Birthday; Labour Day; Christmas Day; Boxing Day and Picnic Day (which will be held on Melbourne Cup day each year).
- 30.2 In addition to the days provided for in sub-clause 30.1 above employees who are Aboriginal and Torres Straight Islanders shall be entitled to one day during NAIDOC week so that they can participate in National Aboriginal and Islander Day celebrations.
- 30.3 Payment for work that is rostered in advance on a public holiday shall be paid at double time in addition to ordinary rates
- 30.4 If a holiday falls on an employee's rostered day off under a seven day rotating roster, the employee shall be paid an additional ordinary day's pay, or Council may grant a day's leave, without loss of pay, at a mutually convenient time.
- 30.5 Any employee who is called in to work on a public holiday or on Easter Saturday shall be paid a minimum of four (4) hours at the rate of double time and a half, exclusive of payment for the public holiday.
- 30.6 An employee attending a Technical College as an approved student on a public holiday, picnic day or NAIDOC day shall receive a day in lieu.
- 30.7 When any of the holidays identified in sub-clause 30.1 fall on a Saturday or Sunday and the State Government does not gazette another day, the holiday shall be taken on the following Monday.

### **31. Trade Union Training Leave**

Council shall agree to release employees to attend an accredited trade union training course with pay and such agreement shall not be unreasonably withheld, provided that Council will not be required to pay in excess of 10 days leave per annum.

### **32. Trade Union Conference Leave**

An employee of Council who is an accredited delegate to the Union's annual conference shall be entitled to paid leave of absence for the duration of the conference and related travel, provided that should there be more than one accredited delegate per union, such leave with pay is at the discretion of Council.

### **33. Jury Service Leave**

- 33.1 An employee required to attend for jury service during the employee's ordinary working hours shall be reimbursed by the Council an amount equal to the difference between the amount in respect of the employee's attendance for such jury service and the amount of wage the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on jury service.

- 33.2 An employee shall notify the Council as soon as possible of the date upon which the employee is required to attend for jury service. Further the employee shall give council proof of attendance, the duration of such attendance and the amount received in respect of such jury service.

### **34. Army Reserve Training**

Where an employee as a consequence of a written application approved by the Council loses time as a result of attending the annual camp of the Army Reserve the employer shall make up the difference between the payment receivable from the Department of Defence and their wages.

## **PART 5**

### **CONSULTATIVE COMMITTEE**

#### **35. Consultative Committee Aim**

- 35.1 The parties to the award are committed to consultative and participative processes. There shall be a consultative committee at Council which shall:
- (a) provide a forum for consultation between Council and its employees;
  - (b) positively co-operate in workplace reform to enhance the efficiency and productivity of Council and to provide employees with access to career opportunities and more fulfilling, varied and better paid work.

#### **SIZE AND COMPOSITION**

- 35.2 The size and composition of the consultative committee shall be representative of Council's workforce and agreed to by Council and the local representatives from the unions.
- 35.3 The consultative committee shall include but not be limited to employee representatives of each of the unions that are parties to the Consent Award and who have members employed at Council.
- 35.4 Officers of the union(s) or Association(s) may attend and provide input to meetings of the consultative committee, at the invitation of the consultative committee or their respective members.

#### **SCOPE OF CONSULTATIVE COMMITTEES**

- 35.5 The functions of the consultative committee shall include:
- (a) award implementation
  - (b) training
  - (c) consultation with regard to organisation restructure
  - (d) job redesign
  - (e) salary systems
  - (f) communication and education mechanisms
  - (g) performance management systems
  - (h) changes to variable working hours arrangements for new or vacant positions
  - (i) local government reform.

- 35.6 The consultative committee shall not consider matters which are being or should be processed in accordance with clause 36 of the Award, Dispute Resolution Procedure.

#### MEETINGS AND SUPPORT SERVICES

- 35.7 The consultative committee will make recommendations based upon consensus. Where there is no consensus on a particular item, the recommendation to council should note the dissenting views.
- 35.8 The consultative committee shall meet as required.

### PART 6

#### DISPUTE RESOLUTION

##### 36. Dispute Resolution Procedure

- 36.1 At any stage of the procedure, the employee(s) may be represented by their union or its local representative/delegate and the Council represented by the Association.
- 36.2 The union delegate shall have reasonable time, without loss of pay, to discuss a grievance or dispute with management at the local level where prior approval is sought. Such approval shall not be unreasonably withheld.
- 36.3 A grievance or dispute shall be dealt with as follows:
- (a) The employee(s) shall notify the supervisor, or other authorised officers of any grievance or dispute and the remedy sought, in writing.
  - (b) A meeting shall be held between the employee(s) and the supervisor to discuss the grievance or dispute and the remedy sought within two working days of notification.
  - (c) If the matter remains unresolved, the employee(s) may request the matter be referred to the head of the department or other authorised officer for discussion. A further meeting between all parties shall be held as soon as practicable.
  - (d) If the matter remains unresolved the general manager shall provide the employee(s) with a written response. The response shall include the reasons for not implementing any proposed remedy.
  - (e) Where the matter remains unresolved, it may be referred to the employee's union or representative and by the general manager or other authorised officer to the Association for further discussion between the parties.
  - (f) If a dispute arises steps shall be taken immediately to arrange a conference between Council and the Union or Unions concerned and the Barrier Industrial Council if necessary. No further action on the matter shall be taken until the conference has been held and at least two ordinary working days have elapsed subsequent to the holding of such a conference.
- 36.4 The Industrial Registrar may be advised of the existence of a dispute at any stage of this procedure.
- 36.5 During this procedure and while the matter is in the course of negotiation, conciliation and/or arbitration, the work practices existing prior to the dispute shall as far as practicable proceed as normal.

**PART 7****TERMINATION OF EMPLOYMENT AND REDUNDANCY****37. Termination of Employment**

- 37.1 An employee shall give two (2) weeks notice of intention to terminate employment, or a shorter period of notice agreed in special circumstances.
- 37.2 Council shall give a period of notice of intention to terminate employment in accordance with the following scale or by payment in lieu thereof:

LENGTH OF SERVICE	PERIOD OF NOTICE
Less than 2 years	2 weeks
2 years and less than 3 years	3 weeks
3 years and less than 5 years	4 weeks
5 years and beyond	5 weeks

- 37.3 The period of notice in the table in sub-clause 37.2 must be increased by one (1) week if the employee is over forty five (45) years old and has completed at least two (2) years of continuous service with Council.
- 37.4 In cases of serious misconduct, Council may summarily dismiss an employee following a proper investigation and provided the employee is afforded procedural fairness. Where an employee is summarily dismissed clauses 37.2 and 38.14 shall not apply.
- 37.5 Except where otherwise provided, the above requirements do not apply when Clause 38 Redundancy applies.

**38. Redundancy**

- 38.1 Aged and community care employees employed by Council prior to 16 March 2010 shall have their redundancy entitlements as of 16 March 2010 frozen. In this instance a reference to a redundancy entitlement is a reference to the entitlement that the employee would have had had the employee's employment been terminated by way of a redundancy on 16 March 2010.
- 38.2 As of 16 March 2010 should the need arise to calculate the redundancy entitlements of aged and community care employees this will be done by referring to the entitlement identified at clause 38.1 above that being the entitlement as of 16 March 2010 in addition to any further entitlements accrued from 16 March 2010 to the date of the proposed termination in accordance with the table at sub-clause 38.15.
- 38.3 It is agreed that the inclusion of this clause in the Award does nothing whatsoever to vary or influence the understanding that the strongest endeavours of the Council, the Barrier Industrial Council and/or Affiliates and the employees affected will be directed to ensuring that all employees are placed in alternative permanent employment and that the implementation of this clause shall not in any manner be used to influence or encourage any employee to terminate employment before every practical effort has been made by all parties to have an employee who may otherwise be deemed redundant, placed in an alternative job.
- 38.4 A "redundant employee" means a person who is employed on a permanent basis by Broken Hill City Council whose services will become redundant on account of the introduction or proposed introduction by the Council of mechanisation or technological changes or the reorganisation of the Council's structure, systems or methods of operation and when the Council concludes that in co-operation with the Unions and the employee it has been unsuccessful in providing alternative employment.

This definition shall not apply to any person engaged by the Council on a temporary, casual or short term basis or to any person engaged to work on special employment projects such as government funded unemployment relief programmes or the like.

- 38.5 In every case potentially redundant employees shall be retrained to fill permanent position which are available or about to become available in the Council's work forces in any of the Council's various departments.
- 38.6 The Council shall retrain the employee for a reasonable period, at all times receiving the earnest co-operation of the employee in acquiring the new skills intended to be achieved by the training.
- 38.7 Whenever practicable and in accordance with normal practice the necessary retraining shall be carried out by the Council in its time and at its expense. If the Council considers that "in house" training should be supplemented by training at an outside institution (e.g., the Broken Hill Technical College), all reasonable costs of such additional training shall be met by the employer. If the training at the outside institution is available in "out of normal work hours" the employee shall be required to attend that training in their own time without additional payment of time off in lieu. The costs of training shall in such circumstances be met by the Council.
- 38.8 In the event of a potentially redundant employee transferring to new duties for which there is prescribed a rate of pay higher than that previously paid to them, such rate of pay shall apply from the date of that employee's transfer.
- 38.9 In the event of a potentially redundant employee transferring to new duties for which there is prescribed a rate of pay lower than that previously paid to them, such lower rate shall not apply until 13 weeks after the date of the employee's transfer.
- 38.10 Shift allowances shall not be taken into account when comparing the rates of pay for the purposes of sub-clause 38.8 and 38.9.
- 38.11 Having regard to the intention of all parties that no person shall become redundant, if it is not possible to retrain a potentially redundant employee to new duties, an employee shall become redundant and the Council shall give such employee four (4) weeks' notice of the termination of their employment.
- 38.12 If the Council fails to give any such notice in full:

it shall pay the employee at the ordinary rate of pay applicable to them for a period equal to the difference between the full period of notice and the period of notice actually given; and

the period of notice required by this sub-clause to be given shall be deemed to be service with the Council for the purposes of calculating long service leave and annual leave entitlements (but not sick leave).

- 38.13 Council may summarily dismiss an employee without notice for neglect of duty or misconduct in which case wages shall be paid up to the time of dismissal only. The rights of the Council shall not be prejudiced by the fact that the employee has been given notice of the termination of their employment pursuant to sub-clause 38.10.

In the event of dispute arising over the Council's action with regard to summary dismissal, the Barrier Industrial Council and/or an affiliate of the Barrier Industrial Council shall on submission of a request to that effect in writing be entitled to seek a meeting with the Council at the earliest practicable date to discuss the matter.

- 38.14 This sub-clause shall apply to redundant employees as defined in sub-clause 38.3. Nothing contained in this clause shall be construed to mean that the Council shall not be entitled to dismiss an employee in the ordinary course of its business without being required to give the notice mentioned in sub-clause 38.10 and 38.11, or to make the severance payments mentioned in sub-clause 38.14.



38.15 A redundant employee shall be entitled to severance allowances calculated as follows:

All such redundant employees shall receive a minimum of six weeks' pay.

All such redundant employees shall receive an additional payment at the rate of three (3) weeks' pay for each completed year of service, plus a pro-rata payment for each additional completed month of service. The number of weeks pay due to any such redundant employee in respect of completed years of service shall be:

Completed Year of Service	Scale of Payments (Weeks)	Completed Year of Service	Scale of Payments (Weeks)
1	9	26	84
2	12	27	87
3	15	28	90
4	18	29	93
5	21	30	96
6	24	31	99
7	27	32	102
8	30	33	105
9	33	34	108
10	36	35	111
11	39	36	114
12	42	37	117
13	45	38	120
14	48	39	123
15	51	40	126
16	54	41	129
17	57	42	132
18	60	43	135
19	63	44	138
20	66	45	141
21	69	46	144
22	72	47	147
23	75	48	150
24	78	49	153
25	79	50	156

38.16 For the purposes of this sub-clause "a week's pay" shall be deemed to be the week's pay presently used as the basis for calculation of annual leave entitlements.

38.17 All such redundant employees shall be paid the value of their accrued sick leave calculated in accordance with the terms of this Award together with the value of all payments legally due to them in respect of annual leave and/or long service leave entitlements.

38.18 Whenever a redundant employee whose services have been terminated shall be re-employed by the Council, the period of their employment shall thereafter be deemed for all purposes to have commenced on the date of their re-employment.

38.19 A redundant employee who is a contributor to the Local Government Superannuation Scheme may anticipate Council's assistance in completing documentation for submission to the Local Government Superannuation Board.

### **39. Redundancy - Application, Process and Consultation Provisions**

39.1 Notwithstanding anything contained elsewhere in this clause, this clause shall not apply to employees with less than one year's continuous service and the general obligation on Council shall be not more than to give such employees an indication of the impending redundancy at the first reasonable

- opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.
- 39.2 Notwithstanding anything contained elsewhere in this clause, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.
- 39.3 Where Council has made a definite decision to introduce changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, Council shall notify the employees who may be affected by the proposed changes and the union to which they belong.
- 39.4 Council's duty to discuss change-
- (i) Council shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
  - (ii) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes.
  - (iii) For the purpose of such discussion, Council shall provide to the employees concerned and the union to which they belong all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that Council shall not be required to disclose confidential information the disclosure of which would adversely affect Council.
- 39.5 Council shall, upon receipt of a request from an employee whose employment has been terminated, provided to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.
- 39.6 Where a decision has been made to terminate the employment of 15 or more employees, Council shall notify Centrelink as soon as possible giving the relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out. Council shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by Centrelink.
- 39.7 Where an employee is transferred to lower paid duties as a result of the introduction of changes in production, program, organisation, structure or technology, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, and Council may at its own discretion make payment in lieu thereof, an amount equal to the difference between the former ordinary time rate of pay and the new ordinary time rate for the number of weeks of notice still owing.
- 39.8 Subject to an application by Council and further order of the Industrial Relations Commission, Council may pay a lesser amount (or no amount) of severance pay than that contained in sub-clause 38.15. The Industrial Relations Commission shall have regard to such financial and other resources of Council as the Commission thinks relevant, and the probable effect paying the amount of severance pay in sub-clause 38.15 will have on Council.
- 39.9 Subject to an application by Council and further order of the Industrial Relations Commission, Council may pay a lesser amount (or no amount) of severance pay than that contained in sub-clause 38.15 if Council obtains acceptable alternative employment for an employee.

**PART 8****MISCELLANEOUS****40. Occupational Health and Safety**

- 40.1 Council shall provide a safe place of work and work practices in accordance with the provisions of the *Occupational Health and Safety Act 2000* (NSW).
- 40.2 Council shall make appropriate provision for employees with regard to accommodation and shelter and shall satisfy the provisions of the *Occupational Health and Safety Act and Regulations*
- 40.3 Council shall supply employees with protective clothing and equipment suitable to the nature of the work performed and the work environment and that shall satisfy the relevant legislation. Safety footwear and leather boot laces shall be replaced by Council on a sharp for blunt basis.
- 40.4 All new graders, loaders, backhoes, trucks and rollers shall be fitted with air conditioning where practicable.
- 40.5 Vehicles and plant used in the collection, transportation and disposal of waste, tar patching, patrol grading or like duties shall be of high visibility and fitted with a flashing light or a light visible from all points around the vehicle.
- 40.6 Council shall provide oil or other suitable solvents to employees for the removal of creosote, tar, bitumen emulsions or similar preparations.
- 40.7 Where any acidic or caustic products are used by employees, adequate facilities shall be provided to enable them to wash any affected areas and an adequate quantity of barrier cream shall be provided.
- 40.8 Employees shall be supplied cool drinking water throughout the day.
- 40.9 No employee shall be required to work alone outside of built-up areas without all available communications to allow continuous contact in all conditions.
- 40.10 Where an employee during the course of work, sustains damage to clothing by fire, molten metal, tar or any corrosive substances which is not attributable to the employee's negligence, the employee shall be compensated by Council to an agreed amount.

**41. Labour Hire and Contract Businesses**

- 41.1 For the purposes of this subclause, the following definitions shall apply:
- (a) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to a council for the purpose of such staff performing work or services for that other council.
- (a) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by a council to provide a specified service or services or to produce a specific outcome or result for that council which might otherwise have been carried out by that council's own employees.
- 41.2 If Council engages a labour hire business and/or a contract business to perform work wholly or partially on Council's premises then Council shall do the following (either directly, or through the agency of the labour hire or contract business):
- (a) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;

- (b) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (c) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (d) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- 41.3 Nothing in this sub-clause of the Award is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the Occupational Health and Safety Act 2000 or the Workplace Injury Management and Workers Compensation Act 1998.
- 41.4 Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.
- 41.5 This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the Apprenticeship and Traineeship Act 2001 (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

#### **42. Outsourcing**

- 42.1 When considering contracting out or outsourcing, Council will take into account the following:
- (a) Whether there are insufficient overall resources available to meet the current Council work commitment and timetable; or
  - (b) Whether the failure to complete work in a reasonable time jeopardises the safety of the public or adversely impacts upon system performance; or
  - (c) Whether the use of outsourced or contract work is commercially the most advantageous option taking into account: the quality, safety, performance, cost and overall strategic direction of Council.
  - (d) If after this process has been conducted a decision to outsource has been made, the Contractor engaged to perform the work must provide written undertakings to comply and conform with:
    - (i) Council's safety, environmental and quality standards; and
    - (ii) all Acts, Awards and Agreements affecting the employees of the Contractor.

#### **43. Accident Pay**

- 43.1 An employee of Council shall be entitled to receive accident pay in accordance with this subclause.
- 43.2 "Accident pay" means the difference between the weekly amount of compensation paid to an employee pursuant to the *Worker's Compensation Act 1987 (NSW)* (as amended from time to time) and the employee's rate of pay.
- 43.3 Accident pay under these provisions shall be payable for a maximum period or an aggregate of periods that in no case exceed 39 weeks for any incapacity in respect of and resulting from any one accident suffered by an employee.
- 43.4 In the event that an employee receives a lump sum in redemption of weekly payments under the *Worker's Compensation Act 1987 (NSW)*, the liability of Council to pay accident pay shall cease from the date of such redemption.

- 43.5 Where an employee recovers damages for an injury from Council for from a third independently of the provisions of the Worker's Compensation Act 1987 (NSW) then the employee shall be liable to repay Council the amount of accident pay which Council has paid under this clause and the employee shall not be entitled to any further accident pay thereafter.
- 43.6 Nothing in this clause shall in any way be taken as restricting or removing Council's right under the *Worker's Compensation Act 1987 (NSW)* to require the employee to submit themselves to examination by a qualified medical practitioner, provided and paid for by Council. If the employee refuses to submit themselves to such an examination or in any way obstructs such an examination, then the employee's right to receive or continue to receive accident pay will be suspended until such an examination has taken place.
- 43.7 Where a medical referee or Board gives a certificate as to the condition of an employee and their fitness for employment or specifies the kind of employment for which they are fit and Council duly makes available to the employee the kind of employment falling within the terms of such a certificate and the employee refuses or fails to resume or perform the proposed employment, then all payments in accordance with this Award shall cease and terminate from the date of such refusal or failure to commence such duties.
- 43.8 An employee who sustains an accident at work shall complete an injury report as soon as practicable after the accident. Council shall give an employee a copy of the injury report when it is completed.

#### 44. Further Education

- 44.1 Apprentices and employees deemed to be approved students undertaking trades courses or certificate courses, part-time diploma or degree courses (including librarians) shall be allowed time off to attend during working hours. The entitlement to time off is subject to the following conditions:
- (a) That period which are allowed shall be limited to eight hours per week and shall in no case exceed the lesson time needed to undertake the subjects set down in the syllabus for the course studied.
  - (b) A time sheet signed by the lecturer or the instructor covering these attendances shall be produced by the student.
  - (c) All courses and awards required for continuing employment and advancement in career paths are to be paid for by Council upon successful completion.
- 44.2 On the production of a letter from the Principal of the institution concerned stating that they have satisfactorily completed a year's work in any subject of an approved course which is appropriate to their work a clerical employee shall be refunded the fees paid in respect of that year.
- 44.3 On the production of a letter from the Principal of the institution concerned stating that they have satisfactorily completed a year's work in any subject of an approved course which is appropriate to their work, and receipts for text books prescribed for that year's work, a clerical employee shall be paid the cost of the prescribed text books or fifty dollars (\$50.00), whichever is the lesser amount.
- 44.4 One set of the current S.A.A. Wiring Rules shall be supplied to all electrical technicians.
- 44.5 Where, with the approval of Council, an employee undertakes a TAFE College, College of Advanced Education or University Course by correspondence and it is necessary in order to qualify under such course to undergo practical training or examination outside Broken Hill, the Council shall reimburse travelling expenses incurred which do not exceed the cost of a first class return rail fare.

**PART 9****SAVINGS AND TRANSITIONAL****45. Leave Reserved and No Further Claims**

45.1 Leave is reserved for the parties to this Award to make application to the Industrial Relations Commission of New South Wales to amend this Award with provisions that facilitate:

The buy out of paid meal breaks currently afforded to Wages Employees;

The reduction of overtime at Council; and

The payment for rostered work on a public holiday at the rates provided for in clause 30 of this Award

The allocation of a public holiday where this falls on a Saturday or Sunday and the Government does not gazette another day.

Rates of pay for weekend work for community care employees.

45.2 Except as otherwise provided in sub-clause 45.1, it is a term of this Award that the Union undertakes not to pursue any extra claims, Award or over Award, of a general nature, for the duration of the Award.

**PART 10****SCHEDULES****Schedule 1 - WEEKLY RATES OF PAY AND ALLOWANCES****Table 1 - Weekly Rates of Pay For Entry Level**

Grades	Step	At 31/10/08	ffpp on or after 1/11/08	ffpp on or after 1/11/09	ffpp on or after 1/11/10
1	1	\$701.01	\$729.05	\$758.21	\$788.54
	2	\$715.09	\$743.69	\$773.44	\$804.38
	3	\$729.52	\$758.70	\$789.05	\$820.61
	4	\$744.32	\$774.09	\$805.06	\$837.26
2	1	\$721.05	\$749.89	\$779.89	\$811.09
	2	\$735.61	\$765.03	\$795.64	\$827.46
	3	\$750.53	\$780.55	\$811.77	\$844.24
	4	\$765.93	\$796.57	\$828.43	\$861.57
3	1	\$740.86	\$770.49	\$801.31	\$833.36
	2	\$755.90	\$786.14	\$817.58	\$850.28
	3	\$771.41	\$802.27	\$834.36	\$867.73
	4	\$787.29	\$818.78	\$851.53	\$885.59
4	1	\$760.79	\$791.22	\$822.87	\$855.78
	2	\$776.43	\$807.49	\$839.79	\$873.38
	3	\$792.30	\$823.99	\$856.95	\$891.23
	4	\$808.65	\$841.00	\$874.64	\$909.62
5	1	\$783.58	\$814.92	\$847.52	\$881.42
	2	\$799.69	\$831.68	\$864.94	\$899.54
	3	\$816.29	\$848.94	\$882.90	\$918.22
	4	\$833.23	\$866.56	\$901.22	\$937.27

6	1	\$806.38	\$838.64	\$872.19	\$907.08
	2	\$823.08	\$856.00	\$890.24	\$925.85
	3	\$840.27	\$873.88	\$908.84	\$945.19
	4	\$858.12	\$892.44	\$928.14	\$965.27
7	1	\$829.05	\$862.21	\$896.70	\$932.57
	2	\$846.36	\$880.21	\$915.42	\$952.04
	3	\$864.53	\$899.11	\$935.08	\$972.48
	4	\$883.59	\$918.93	\$955.69	\$993.92
8	1	\$857.51	\$891.81	\$927.48	\$964.58
	2	\$876.23	\$911.28	\$947.73	\$985.64
	3	\$895.82	\$931.65	\$968.92	\$1,007.68
	4	\$916.04	\$952.68	\$990.79	\$1,030.42
Grades	Step	At 31/10/08	ffpp on or after 1/11/08	ffpp on or after 1/11/09	ffpp on or after 1/11/10
9	1	\$887.03	\$922.51	\$959.41	\$997.79
	2	\$907.00	\$943.28	\$981.01	\$1,020.25
	3	\$927.36	\$964.45	\$1,003.03	\$1,043.15
	4	\$948.36	\$986.29	\$1,025.75	\$1,066.78
10	1	\$917.06	\$953.74	\$991.89	\$1,031.57
	2	\$937.80	\$975.31	\$1,014.32	\$1,054.90
	3	\$958.91	\$997.27	\$1,037.16	\$1,078.64
	4	\$980.66	\$1,019.89	\$1,060.68	\$1,103.11
11	1	\$967.18	\$1,005.87	\$1,046.10	\$1,087.94
	2	\$989.07	\$1,028.63	\$1,069.78	\$1,112.57
	3	\$1,011.58	\$1,052.04	\$1,094.12	\$1,137.89
	4	\$1,034.61	\$1,075.99	\$1,119.03	\$1,163.80
12	1	\$1,017.31	\$1,058.00	\$1,100.32	\$1,144.33
	2	\$1,040.46	\$1,082.08	\$1,125.36	\$1,170.38
	3	\$1,064.25	\$1,106.82	\$1,151.09	\$1,197.14
	4	\$1,088.55	\$1,132.09	\$1,177.38	\$1,224.47
13	1	\$1,067.43	\$1,110.13	\$1,154.54	\$1,200.72
	2	\$1,091.85	\$1,135.52	\$1,180.94	\$1,228.18
	3	\$1,116.91	\$1,161.59	\$1,208.05	\$1,256.37
	4	\$1,142.62	\$1,188.32	\$1,235.86	\$1,285.29
14	1	\$1,119.61	\$1,164.39	\$1,210.97	\$1,259.41
	2	\$1,143.26	\$1,188.99	\$1,236.55	\$1,286.01
	3	\$1,169.59	\$1,216.37	\$1,265.03	\$1,315.63
	4	\$1,196.56	\$1,244.42	\$1,294.20	\$1,345.97
15	1	\$1,167.68	\$1,214.39	\$1,262.97	\$1,313.49
	2	\$1,194.65	\$1,242.44	\$1,292.13	\$1,343.82
	3	\$1,222.26	\$1,271.15	\$1,322.00	\$1,374.88
	4	\$1,250.50	\$1,300.52	\$1,352.54	\$1,406.64
16	1	\$1,217.68	\$1,266.39	\$1,317.05	\$1,369.73
	2	\$1,245.92	\$1,295.76	\$1,347.59	\$1,401.49

	3	\$1,274.80	\$1,325.79	\$1,378.82	\$1,433.98
	4	\$1,304.43	\$1,356.61	\$1,410.87	\$1,467.31
17	1	\$1,292.87	\$1,344.58	\$1,398.36	\$1,454.29
	2	\$1,322.89	\$1,375.81	\$1,430.84	\$1,488.07
	3	\$1,353.81	\$1,407.96	\$1,464.28	\$1,522.85
	4	\$1,385.35	\$1,440.76	\$1,498.39	\$1,558.33
18	1	\$1,368.05	\$1,422.77	\$1,479.68	\$1,538.87
	2	\$1,399.99	\$1,455.99	\$1,514.23	\$1,574.80
	3	\$1,432.80	\$1,490.11	\$1,549.72	\$1,611.71
	4	\$1,466.26	\$1,524.91	\$1,585.91	\$1,649.34
19	1	\$1,443.36	\$1,501.09	\$1,561.13	\$1,623.58
	2	\$1,477.21	\$1,536.30	\$1,597.75	\$1,661.66
	3	\$1,511.80	\$1,572.27	\$1,635.16	\$1,700.57
	4	\$1,547.43	\$1,609.33	\$1,673.70	\$1,740.65
20	1	\$1,518.42	\$1,579.16	\$1,642.33	\$1,708.02
	2	\$1,554.17	\$1,616.34	\$1,680.99	\$1,748.23
	3	\$1,590.69	\$1,654.32	\$1,720.49	\$1,789.31
	4	\$1,628.22	\$1,693.35	\$1,761.08	\$1,831.53
21	1	\$1,593.61	\$1,657.35	\$1,723.64	\$1,792.59
	2	\$1,631.14	\$1,696.39	\$1,764.24	\$1,834.81
	3	\$1,669.69	\$1,736.48	\$1,805.94	\$1,878.17
	4	\$1,709.26	\$1,777.63	\$1,848.74	\$1,922.69
22	1	\$1,668.79	\$1,735.54	\$1,804.96	\$1,877.16
	2	\$1,708.23	\$1,776.56	\$1,847.62	\$1,921.53
	3	\$1,748.69	\$1,818.64	\$1,891.38	\$1,967.04
	4	\$1,790.16	\$1,861.77	\$1,936.24	\$2,013.69
23	1	\$2,044.60	\$2,126.38	\$2,211.44	\$2,299.90
	2	\$2,093.46	\$2,177.20	\$2,264.29	\$2,354.86
	3	\$2,143.58	\$2,229.32	\$2,318.50	\$2,411.24
	4	\$2,194.85	\$2,282.64	\$2,373.95	\$2,468.91
24	1	\$2,420.16	\$2,516.97	\$2,617.65	\$2,722.36
	2	\$2,478.43	\$2,577.57	\$2,680.67	\$2,787.90
	3	\$2,538.09	\$2,639.61	\$2,745.20	\$2,855.01
	4	\$2,599.28	\$2,703.25	\$2,811.38	\$2,923.84

Tradesmen	At 31/10/08	ffpp on or after 1/11/08	ffpp on or after 1/11/09	ffpp on or after 1/11/10
Leading Hand Technician	\$1053.29	\$1095.42	\$1139.24	\$1184.81
Technician	\$997.84	\$1037.75	\$1079.26	\$1122.43

Note: The Tradesmen rates will cease to apply once the relevant employees are placed within the salary system. Existing employees paid the above Tradesmen rates shall be regraded into the new Salary System at which date their rates of pay shall be not less than their current rate of pay, i.e. Personal Occupant Only (POO).



**Table 2 - Weekly Rates of Pay For Apprentices**

	At 31/10/08	ffpp on or after 1/11/08	ffpp on or after 1/11/09	ffpp on or after 1/11/10
Electrical Fitters - Year 1	601.26	625.31	650.32	676.34
Year 2/HSC Year 1	687.34	714.83	743.43	773.16
Year 3/HSC Year 2	773.29	804.22	836.39	869.85
Year 4/HSC Year 3	859.72	894.11	929.87	967.07
HSC Year 4	951.43	989.49	1029.07	1070.23
Plumbers - Year 1	598.11	622.03	646.92	672.79
Year 2/HSC Year 1	683.50	710.84	739.27	768.84
Year 3/HSC Year 2	768.75	799.50	831.48	864.74
Year 4/HSC Year 3	854.34	888.51	924.05	961.02
HSC Year 4	944.83	982.62	1021.93	1062.81
Carpenters - Year 1	598.11	622.03	646.92	672.79
Year 2/HSC Year 1	683.50	710.84	739.27	768.84
Year 3/HSC Year 2	768.75	799.50	831.48	864.74
Year 4/HSC Year 3	854.34	888.51	924.05	961.02
HSC Year 4	944.83	982.62	1021.93	1062.81
Motor Mechanics - Year 1	598.52	622.46	647.36	673.25
Year 2/HSC Year 1	683.90	711.26	739.71	769.29
Year 3/HSC Year 2	769.30	800.07	832.07	865.36
Year 4/HSC Year 3	854.91	889.11	924.67	961.66
HSC Year 4	945.60	983.42	1022.76	1063.67
Gardeners - Year 1	512.59	533.09	554.42	576.59
Year 2/HSC Year 1	583.63	606.98	631.25	656.50
Year 3/HSC Year 2	654.66	680.85	708.08	736.40
Year 4/HSC Year 3	725.70	754.73	784.92	816.31
HSC Year 4	796.73	828.60	861.74	896.21

**Table 3 - Traineeship Wage Rates**

	At 31/10/08 \$	ffpp on or after 1/11/08 \$	ffpp on or after 1/11/09 \$	ffpp on or after 1/11/10 \$
Year 1	622.00	646.88	672.76	699.67
Year 2	689.43	717.01	745.69	775.51
Year 3	731.91	761.19	791.63	823.30
Year 4	760.31	790.72	822.35	855.25
Year 5	789.31	820.88	853.72	887.87
Year 6	818.31	851.04	885.08	920.49
Year 7	847.67	881.58	916.84	953.51

**Schedule 2 - ALLOWANCES****ALLOWANCES**

	ffpp on or after 1/11/08 \$	ffpp on or after 1/11/09 \$	ffpp on or after 1/11/10 \$
Meal allowance (clause 9.2)	9.30	9.70	10.10
Community Language and Signing Work (clause 15.3) p/w	17.10	17.80	18.50
First aid allowance (clause 15.4(c)) p/w	15.00	15.60	16.20
Broken shift allowance (clause 8.19) per shift	5.00	5.25	5.41

**Schedule 3 - PROGRESSION GUIDELINES**

The progression rules detailed below have been established to assist the industry parties to the Broken Hill City Council Consent Award, regarding the operation of Council Salary Systems. At the local level where significant issues are identified in relation to the operation of the Salary System the matter shall be referred to Council's Consultative Committee for consideration and where appropriate for recommendation to the General Manager for decision. In the event that a dispute arises the rules detailed below shall be used by the industry parties to assist in the resolution of such disputes.

## 1. Banding

The appropriate Band for each position shall be determined by reference to the Qualifications and Experience descriptor as provided by Clause 12 Rates of Pay and Related Matters and clause 13 Skill Descriptors of the Broken Hill City Council Award.

## 2. Levelling and Grades

The Level and Grade of the position shall be established through the evaluation of the position using the Council's endorsed Job Evaluation System. This evaluation shall occur consistent with the Job Evaluation Policy as adopted by Council.

Positions shall be re-evaluated in the following circumstances:

If the position is newly created.

If a significant change has occurred in the duties and responsibilities of the position, which is confirmed by the relevant (Director/Officer).

If an evaluation has been conducted and has resulted in an apparent anomaly.

Where an existing position has been re-evaluated and where the outcome is a different grade, such re-evaluation shall be referred to the consultative committee for consideration and the current positions incumbent shall be advised accordingly.

## 3. Position Descriptions

The position description identifies the range of skills, responsibilities, duties and qualifications in order of priority from the essential criteria to the most desirable.

These criteria are detailed in each of the skills steps to facilitate the assessment of skill at the time of the salary review, and to avoid disputes regarding the movement through the skill steps.

Position descriptions shall not impose artificial barriers that will prohibit individual salary progression through the full range of skill steps.

4. Skills Assessment

Council shall adopt a consistent and objective method for assessing skills.

An assessment of the skills acquired and used shall be undertaken on an annual basis and in those cases where the employee has acquired new skills that would lead to progression under the salary system.

New employees shall be paid at the Skill Level rate of pay consistent with the skills they bring to Council. Placement at a Skill Level higher than the entry level shall occur when the new employee meets the required skills for the position.

5. Salary Review

Annual salary reviews shall require the Manager of the position to determine whether the employee has acquired and is using the skills necessary to progress to the next step, or steps.

In the event that there is a dispute between the employee and the Manager on the outcome of the skills review the assessment shall be referred to an appeal panel. In the event that the employee does not agree with the decision of the appeal panel the matter shall be referred to the Director. The employee may have access to the grievance and disputes procedure at any point of the appeal process.

6. Other matters relating to the Implementation of the Salary System.

(a) Training

Employees shall be provided with reasonable and equitable access to the training which will facilitate progression.

(b) Allowances - (Former Award Allowances Only)

Except where allowances have been incorporated into rates of pay, award allowances shall be paid in addition to the rates established within the salary ranges.

(c) Council's Budget

Council shall in considering the budget each year ensure that the skill progression detailed in these rules is properly funded and that employees shall move through the skill steps based assessment against the criteria detailed in the position descriptions.

(d) Award Variations

The Grades and Salary Steps, as contained within the salary structure of the salary system shall be increased by the same quantum, and be operative from the same date as variations in the Broken Hill City Council Award.

(e) Dispute Procedure

Disputes which arise through the operation of Council's Salary System shall be handled consistent with Clause 36, dispute Resolution Procedures of the Broken Hill City Council Award.

(f) Publication

Copies of the Salary System shall be published by Council and made available to all employees. The published document shall contain copies of the current salary structure and the progression rules. Each individual shall be provided with a copy of their Position Description.

**Schedule 4 - PROVISIONS OF HISTORICAL RELEVANCE**

The following provisions shall apply until such time as a new salary system agreed by the Barrier Industrial Council, the Unions and Council is introduced:

(a) Driver

An employee who has been required by his supervisor to drive a particular truck for at least six (6) consecutive weeks shall be paid the margin applicable to the driving of that truck for a period not exceeding one (1) week during which the employee is allocated work by his supervisor which attracts a margin which is less than the margin applicable to the particular truck which the employee has been required to drive for the preceding six (6) weeks

- (i) An employee who is classified as a regular driver or plant operator by his supervisor and who is 'stood down' through no fault of the employee shall be paid the margin that would normally have been paid had the employee been driving the truck or plant.
- (ii) The above specific provision relating to drivers and plant operators will be held to overrule the more general scheme based on seniority.
- (iii) That leave be reserved to apply to the New South Wales Industrial Commission within the currency of this Award with respect to the following:

Tradespersons Driving

All tradespersons in the Technical Services' division shall drive themselves where assistance is not required, that is, where a plant operator or driver is available, if required, at the site of an item of plant or a vehicle requiring attention of where the building maintenance tradesperson is required to repair door locks or cupboard etc.

Apprentice Tradespersons Driving

Third and fourth year apprentice tradespersons shall drive themselves to jobs of a minor nature where assistance is not required, that is, apprentice painter to bus seats, litter bins etc apprentice automotive mechanic to lawnmowers, sedans etc.

I. TABBAA, Commissioner

## **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 374 of 2010)

Before Commissioner Bishop

31 May 2010

### **VARIATION**

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

#### 11A. Lactation Breaks

2. Insert after clause 11, Flexi-time, the following new clause:

#### **11A. Lactation Breaks**

- (i) This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- (ii) A full time employee or a part time employee working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- (iii) A part time employee working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- (iv) A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.
- (v) The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- (vi) Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- (vii) Employees experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (viii) Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 29, Sick Leave of this award, or access to the flexible working hours scheme provided in clause 11, Flexi-time of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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Printed by the authority of the Industrial Registrar.

## **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 374 of 2010)

Before Commissioner Bishop

31 May 2010

### **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:

#### **8A. Lactation Breaks**

2. Insert after clause 8, Hours of Work the following new clause:

#### **8A. Lactation Breaks**

- 8A.1 This clause applies to staff members who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- 8A.2 A full time staff member or a part time staff member working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- 8A.3 A part time staff member working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- 8A.4 A flexible approach to lactation breaks can be taken by mutual agreement between a staff member and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the staff member.
- 8A.5 The Chief Executive Officer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- 8A.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and staff member will take place to attempt to identify reasonable alternative arrangements for the staff member's lactation needs.
- 8A.7 Staff members experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- 8A.8 Staff members needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 28, Sick Leave of this award, or access to the flexible working hours scheme provided in clause 9, Flexible Work Hours of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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Printed by the authority of the Industrial Registrar.



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

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Independent Pricing and Regulatory Tribunal of New South Wales.

(No. IRC 449 of 2010)

Before The Honourable Mr Justice Staff

18 June 2010

### **VARIATION**

1. Delete clause 46, Relationship to Other Awards of the award published 28 August 2009 (368 I.G. 1388) and insert in lieu thereof the following:

#### **46. Relationship to Other Awards**

- 46.1 The Tribunal will, subject to approved parameters within Government wages policy, negotiate with the Association the full quantum of future salary increase or other benefits.
  - 46.2 The Tribunal will use the outcomes achieved between the Association and Director of Public Employment, Public Sector Workforce Office to inform its negotiations with the intent of varying this Award to give effect to those salary increases and other benefits.
  - 46.3 The method of achieving salary increases negotiated between the Tribunal and the Association shall be at the local level and not necessarily determined by the same outcomes as the Crown Employees (Public Sector - Salaries 2008) Award or an award replacing it.
  - 46.4 Where there may be inconsistencies between this award and the Crown Employees (Public Service Conditions of Employment) Award 2009 as varied, the arrangements in this award shall prevail.
2. This variation shall take effect from 1 July 2010.

C.G. STAFF *J*

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Printed by the authority of the Industrial Registrar.

## **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 374 of 2010)

Before Commissioner Bishop

31 May 2010

### **VARIATION**

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

#### **7A. Lactation Breaks**

2. Insert after clause 7, Working Hours and Overtime the following new clause:

#### **7A. Lactation Breaks**

- (i) This clause applies to staff members who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- (ii) A full time staff member or a part time staff member working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- (iii) A part time staff member working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- (iv) A flexible approach to lactation breaks can be taken by mutual agreement between a staff member and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the staff member.
- (v) The Chief Executive shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- (vi) Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and staff member will take place to attempt to identify reasonable alternative arrangements for the staff member's lactation needs.
- (vii) Staff members experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (viii) Staff members needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 11, Sick Leave of this award, or access to the flexible working hours scheme provided in clause 7, Hours of Work and Overtime of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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Printed by the authority of the Industrial Registrar.

**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 374 of 2010)

Before Commissioner Bishop

31 May 2010

**VARIATION**

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

4A. Lactation Breaks

2. Insert after clause 4, Hours of Work the following new clause:

**4A. Lactation Breaks**

- 4A.1 This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- 4A.2 A full time employee or a part time employee working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- 4A.3 A part time employee working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- 4A.4 A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.
- 4A.5 The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- 4A.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- 4A.7 Employees experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- 4A.8 Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with subclause 15.3, Sick Leave of this award, or access to the flexible working hours scheme provided in clause 4, Hours of Work of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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## **CROWN EMPLOYEES (NSW POLICE FORCE ADMINISTRATIVE OFFICERS AND TEMPORARY EMPLOYEES) 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 374 of 2010)

Before Commissioner Bishop

31 May 2010

### **VARIATION**

1. Insert in clause 1, Arrangement of the award, published 28 August 2009 (368 I.G. 1421), the following new clause number and subject matter:

#### **16A. Lactation Breaks**

2. Insert after clause 16, Meal Breaks, the following new clause:

#### **16A. Lactation Breaks**

- 16A.1 This clause applies to staff members who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- 16A.2 A full time staff member or a part time staff member working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- 16A.3 A part time staff member working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- 16A.4 A flexible approach to lactation breaks can be taken by mutual agreement between a staff member and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the staff member.
- 16A.5 The Commissioner shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- 16A.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and staff member will take place to attempt to identify reasonable alternative arrangements for the staff member's lactation needs.
- 16A.7 Staff members experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- 16A.8 Staff members needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 79, Sick Leave of this award, or access to the flexible working hours scheme provided in clause 22, Flexible Working Hours of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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## **CROWN EMPLOYEES (NSW POLICE FORCE SPECIAL CONSTABLES) (POLICE BAND) 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 374 of 2010)

Before Commissioner Bishop

31 May 2010

### **VARIATION**

1. Insert in the Arrangement of the award, published 11 July 2008 (366 I.G. 175), the following new clause number and subject matter:

#### **11A. Lactation Breaks**

2. Insert after clause 11, Meals, the following new clause:

#### **11A. Lactation Breaks**

11A.1 This clause applies to officers who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.

11A.2 A full time officer or a part time officer working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.

11A.3 A part time officer working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.

11A.4 A flexible approach to lactation breaks can be taken by mutual agreement between a officer and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the officer.

11A.5 The Commissioner shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.

11A.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and officer will take place to attempt to identify reasonable alternative arrangements for the officer's lactation needs.

11A.7 Officers experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.

11A.8 Officers needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 3 Sick Leave of Uniform Leave Conditions for Ministerial Employees in Government Departments and Equivalent Employees in Corporate Bodies, or access to the flexible working hours scheme provided in clauses 10, Hours and 13, Flexible Rosters of this award, where applicable.



3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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## **CROWN EMPLOYEES (NSW POLICE FORCE SPECIAL CONSTABLES) (SECURITY) 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 374 of 2010)

Before Commissioner Bishop

31 May 2010

### **VARIATION**

1. Insert in the Arrangement of the award, published 11 July 2008 (366 I.G. 190), the following new clause number and subject matter:

#### **12A. Lactation Breaks**

2. Insert after clause 12, Flexible Rosters, the following new clause:

#### **12A. Lactation Breaks**

12A.1 This clause applies to officers who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.

12A.2 A full time officer or a part time officer working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.

12A.3 A part time officer working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.

12A.4 A flexible approach to lactation breaks can be taken by mutual agreement between a officer and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the officer.

12A.5 The Commissioner shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.

12A.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and officer will take place to attempt to identify reasonable alternative arrangements for the officer's lactation needs.

12A.7 Officers experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.

12A.8 Officers needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 3 Sick Leave of Uniform Leave Conditions for Ministerial Employees in Government Departments and Equivalent Employees in Corporate Bodies, or access to the flexible working hours scheme provided in clauses 9, Hours and 12, Flexible Rosters of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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Printed by the authority of the Industrial Registrar.

**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 374 of 2010)

Before Commissioner Bishop

31 May 2010

**VARIATION**

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

11A. Lactation Breaks

2. Insert after clause 11, Meal Breaks the following new clause:

**11A. Lactation Breaks**

- (a) This clause applies to staff members who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- (b) A full time staff member or a part time staff member working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- (c) A part time staff member working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- (d) A flexible approach to lactation breaks can be taken by mutual agreement between a staff member and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the staff member.
- (e) The Managing Director shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- (f) Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and staff member will take place to attempt to identify reasonable alternative arrangements for the staff member's lactation needs.
- (g) Staff members experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (h) Staff members needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 75, Sick Leave of this award, or access to the flexible working hours scheme provide in clause 18, Flexible Working Hours of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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Printed by the authority of the Industrial Registrar.

## **CROWN EMPLOYEES (PARLIAMENT HOUSE CONDITIONS OF EMPLOYMENT) 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 374 of 2010)

Before Commissioner Bishop

31 May 2010

### **VARIATION**

1. Insert in clause 1, Arrangement of the award, published 9 May 2008 365 (I.G. 1337), the following new clause number and subject matter:

#### **10A. Lactation Breaks**

2. Insert after clause 10, Flexible Working Hours Scheme, the following new clause:

#### **10A. Lactation Breaks**

- (i) This clause applies to staff members who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- (ii) A full time staff member or a part time staff member working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- (iii) A part time staff member working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- (iv) A flexible approach to lactation breaks can be taken by mutual agreement between a staff member and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the staff member.
- (v) The Clerk(s) shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- (vi) Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and staff member will take place to attempt to identify reasonable alternative arrangements for the staff member's lactation needs.
- (vii) Staff members experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (viii) Staff members needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 32, Sick Leave of this award, or access to the flexible working hours scheme provided in clause 10, Flexible Working Hours Scheme of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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

(No. IRC 374 of 2010)

Before Commissioner Bishop

31 May 2010

### **VARIATION**

1. Insert in clause 1, Arrangement of the award, published 28 September 2007 (363 I.G. 752), the following new clause number and subject matter:

#### **8A. Lactation Breaks**

2. Insert after clause 8, Hours of Work the following new clause:

#### **8A. Lactation Breaks**

- (a) This clause applies to officers who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- (b) A full time officer or a part time officer working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- (c) A part time officer working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- (d) A flexible approach to lactation breaks can be taken by mutual agreement between an officer and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the officer.
- (e) The Speaker shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- (f) Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and officer will take place to attempt to identify reasonable alternative arrangements for the officer's lactation needs.
- (g) Officers experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (h) Officers needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 14, Sick Leave of this award, or access to the flexible working hours scheme provided in clause 8, Hours of Work of this award, where applicable.



3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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Printed by the authority of the Industrial Registrar.

**CROWN EMPLOYEES (TEACHERS IN TAFE AND RELATED  
EMPLOYEES, BRADFIELD COLLEGE AND TAFE CHILDREN'S  
CENTRES) (VARIATION NO. 1) AWARD 2009**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Notification under s.130 by Director General, NSW Department of Education and Training of a dispute with NSW Teachers Federation.

(No. IRC 513 of 2009)

Before The Honourable Justice Boland, President  
Mr Deputy President Sams  
Mr Deputy President Grayson

15 October and 13 November 2009

**AWARD**

The Crown Employees (Teachers in TAFE and Related Employees, Bradfield College and TAFE Children's Centres) Award 2009, published 27 November 2009 (369 I.G. 750) is varied as follows:

1. Delete Clause 1, Arrangement, of the award published 27 November 2009 (369 I.G. 750), and insert in lieu thereof the following:

**1. Arrangement**

Clause No.	Subject Matter
1.	Arrangement
2.	Dictionary

TAFE SECTION

3.	Salaries
4.	Allowances
5.	Salary Progression and Maintenance
6.	Teacher Quality
7.	Salary Packaging
8.	Initial Appointments
9.	Teaching in More Than One Location
10.	Deferred Salary Scheme
11.	Compensation for Travel on TAFE Business
12.	Contribution to Institute Output Requirements
13.	Attendance - Teachers and Counsellors
14.	Duties of Teachers
15.	Allocation of Duties
16.	Approved Program
17.	Administrative Duties
18.	Deleted
19.	Deleted
20.	Professional Development - Teachers
21.	TAFE Year
22.	Additional One Week
23.	Evening Work - Counsellors
24.	Time Credit
25.	Excess Teaching Hours
26.	Sunday Work/Night Work

27. Qualifications for Appointment
28. Working Conditions - Education Officers and Related Employees
29. Professional Development - Education Officers, Related Employees and Counsellors
30. Leave for Teachers and Related Employees
31. Calculation of Service
32. Training and Development
33. Multi-skilling
34. Working Conditions - Part time Casual Teachers, Coordinators and Counsellors
35. Contract Teachers (OTEN)
36. Provision for Positions which Are Hard To Fill
37. Industrial Rights
38. Quality Improvement Program
39. Pilot Schemes
40. Principles of Restructuring

#### TAFE CHILDREN'S CENTRES SECTION

1. Salaries and Allowances
2. Hours of Work
3. Non Contact Time
4. Shift Work
5. Public Holidays
6. Leave
7. Overtime and Time Off in Lieu for Payment of Overtime
8. Job Share
9. Duties of Teachers
10. Crib Breaks
11. First-aid Certificate

#### BRADFIELD COLLEGE SECTION

1. Introduction
2. Employment Arrangements and Right of Return
3. Types of Employment
4. Full time Employees
5. Part-time Employees
6. Casual Employees
7. Payment for Related Duties - Casual Employees
8. Learning Co-ordinators
9. Teacher Quality
10. Training and Professional Development
11. Qualification and Experience Requirements
12. Remuneration
13. Salary packaging
14. Travelling Time and Travelling Expenses
15. College Year
16. Hours of Work
17. Annual Leave
18. Extended Leave and Long Service Leave
19. Sick Leave
20. Family and Community Service Leave
21. Personal Carers Leave
22. Adoption, Maternity and Parental Leave
23. Other Leave
24. Occupational Health and Safety

25. Educational Initiatives
26. Industrial Rights

#### GENERAL SECTION

1. Dispute Resolution Procedures
2. No Further Claims
3. Anti-discrimination
4. Secure Employment Test Case - OHS Obligations
5. Area, Incidence and Duration
6. Further Employee Related Reform Measures and Cost Savings
7. Employment under Two or More Sections of this Award
8. Deduction of Union Membership Fees

#### SCHEDULES

- Schedule 1 - Common Incremental Salary Scale - TAFE
- Schedule 2 - Allowances - TAFE
- Schedule 3 - Locality Allowances
- Schedule 4 - Salary Scales - Promotion Classifications - TAFE
- Schedule 5 - TAFE Excess Travel and Compensation for Travel on Official Business
- Schedule 6 - Strategies for Maximising Annual Student Hours in TAFE
- Schedule 7 - Rates of Pay - Part time Casual Teachers, Coordinators and Counsellors in TAFE and Contract Teachers (OTEN)
- Schedule 8- Early Childhood Teachers - Salaries
- Schedule 9 - Early Childhood Directors - Allowances
- Schedule 10 - Early Childhood Teachers in Charge - Allowances
- Schedule 11 - Bradfield College Annual Salaries
- Schedule 12 - Hourly Rates for Casual Teachers and Coordinators - Bradfield College
- Schedule 13 - Bradfield College Team Leader Allowance
- Schedule 14 - Bradfield College Excess Travel and Compensation for Travel on Official Business

2. Delete subclause 2.3 from clause 2, Dictionary and insert in lieu thereof the following:
- 2.3 "Approved Program" means a teaching program comprising direct teaching and other duties as approved by the employee's line manager to be performed across the Standard Educational and/ or TAFE year to meet the Institute's needs.
3. Delete subclause 2.30 from the said clause 2 and insert in lieu thereof the following:
- 2.30 "Excess Teaching Hours" in the TAFE section of the Award means the actual teaching hours in excess of a teacher's annual teaching component as specified in sub-clause 16.2, that a teacher is required to teach.
4. Delete clause 13, Attendance - Teachers and Counsellors, and insert in lieu thereof the following:

#### **13. Attendance - Teachers and Counsellors**

- 13.1 The standard attendance hours of teachers, head teachers, special program coordinators, adult literacy officers, counsellors, advanced skills counsellors and senior counsellors shall be 35 hours per week.

- 13.2 The daily span of working hours in colleges/campuses for officers and employees under this Award is between 6.00am and 10.00pm on Monday to Saturday, inclusive. Teaching and related duties hours worked by teachers should, unless otherwise unavoidable or by agreement between a teacher and their immediate manager, be continuous.
- 13.3 All full time officers shall be required to attend work five days per week on Monday to Friday, inclusive. However, where the course program requires, teachers, head teachers, special program coordinators, adult literacy officers, counsellors, senior counsellors and advanced skills counsellors:
- 13.3.1 may be required to work on any five days from Monday to Saturday inclusive as part of their normal program, although they may meet weekly attendance requirements in four days per week;
- 13.3.2 who are required as part of their normal program to work on a Saturday shall, if they so request, be entitled to have two consecutive days off in the following week.
5. Delete clause 15, Allocation of Duties, and insert in lieu thereof the following:

### **15. Allocation of Duties**

- 15.1 The direct teaching or counselling component of:
- 15.1.1 full time teachers shall be 720 hours per annum.
- 15.1.2 head teachers shall be 360 or 504 hours per annum as determined by the employer;
- 15.1.3 adult literacy officers shall be 324 hours per annum;
- 15.1.4 special program coordinators and assistant outreach coordinators shall be 216 hours per annum;
- 15.1.5 counsellors and advanced skills counsellors shall be 20 hours per week;
- 15.1.6 senior counsellors shall be 14 hours per week;
- provided that new teachers within the meaning of subclauses 20.3.1 and 20.3.2, pursuant to Clause 20, Professional Development - Teachers, are entitled to a reduction in their direct teaching time by half the requisite amount of professional development time specified in those subclauses.
- 15.2 Teachers shall be required to undertake direct teaching including face to face teaching in any environment or setting including, but not limited to, classrooms, workshops, industry, in the field, by distance mode and online, and including workplace training and assessment.
- 15.3 Only at the discretion of the institute director (or nominee) shall any reduction in the teaching load be permitted. If any such reduction is permitted, the teacher shall not be paid for excess teaching hours, except as otherwise approved by the institute director.
- 15.4 Those teachers whose classes finish prior to the end of the TAFE Year, semester or term due to final examination shall continue to perform other duties. Such duties are to be determined between the teacher and their immediate manager in accordance with sub-clause 16.3.
6. Delete clause 16, Duties Related to Teaching, and insert in lieu thereof the following:

### **16. Approved Program**

- 16.1 This clause shall apply to teachers, head teachers, adult literacy officers and special program coordinators.
- 16.2 All teachers, head teachers, adult literacy officers and special program coordinators will have an approved program to meet the Institute's needs. The approved program will comprise the total annual hours as detailed in the following table:

Classification	Direct teaching	Duties related to teaching, professional development, and coordination duties	Administrative duties	Duties related to teaching, during the five non-teaching weeks	Total annual hours
Teachers	720	540		175	1435
Adult Literacy Officers	324	936	-	175	1435
Special Program Coordinators, other than consultants for students with a disability Assistant Outreach Coordinators	216	1079	-	175	1470
Special Program Coordinators for students with a disability	216	1044	-	175	1435
Head Teacher Band 1	504	432	324	175	1435
Head Teacher Band 2 (*)	360	360	540	175	1435

(\*) Includes a head teacher Band 1 supervising > 150 weighted hours per week

- 16.3 Within the approved program, teachers, head teachers, adult literacy officers and special program coordinators may flexibly undertake their direct teaching and the non-teaching components provided under sub-clause 16.2 over a period of up to twelve months. Managers will, in consultation with teachers, determine the duties related to teaching that shall be conducted as part of an approved program. An approved program developed under this sub-clause shall be reviewed on a semester basis.
- 16.4 In developing an approved program, employees are not restricted as to the number of hours they may undertake direct teaching in any week, provided that the total number of hours meets the annual totals provided in sub-clause 16.2 and that the requirements of 16.5 are met.
- 16.5 An approved program will not require an employee to work unreasonable hours. In determining what is unreasonable the following factors will be considered:
- 16.5.1 The staff members prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements,
- 16.5.2 Any risk to staff member health and safety
- 16.5.3 The urgency of the work required to be performed, the impact on the operational commitments of the organisation and the effect of client services
- 16.5.4 Any other relevant matter.
- 16.6 Where a teacher is required to teach hours in excess of the annual direct teaching component specified in sub-clause 16.2, the provisions of Clause 25, Excess Teaching Hours will apply.
7. Delete Clause 18, Averaging.
8. Delete Clause 19, Accumulating Program.

9. Delete Clause 20, Professional Development - Teachers, and insert in lieu thereof the following:

**20. Professional Development - Teachers**

- 20.1 For the purposes of this clause, teacher includes head teachers, special program coordinators and adult literacy officers.
- 20.2 Discussions are to occur between the teacher and their appropriate head teacher/supervisor for an agreed professional development plan that meets the development needs of the teacher and the section/faculty/unit. The plan will be developed as part of the Annual Teacher Review process and will guide the professional development plan over the year.
- 20.3 An approved program for all teachers shall include professional development on the following basis:
  - 20.3.1 teachers undertaking teacher training shall have 72 hours per annum professional development in their first two years of service;
  - 20.3.2 teachers who are teacher trained on recruitment shall have 72 hours professional development per annum in their first year of service; and
  - 20.3.3 all other teachers shall have 20 hours of professional development per annum to undertake activities related to their current and medium term individual development needs as identified in consultation with their line manager. This does not preclude access to other professional development opportunities provided by the employer.

10. Delete clause 24, Time Credit and insert in lieu thereof the following:

**24. Time Credit**

- 24.1 For the purpose of this clause, teacher includes head teacher and adult literacy officer.
  - 24.2 Teachers who are required to perform direct teaching activities between 6.30pm and 10.00pm Monday to Friday and 6.00am and 10.00pm on Saturday as part of their approved program and not part of excess teaching hours, shall have their direct teaching activities reduced by one hour for every four hours of such teaching or pro rata, provided that
    - 24.2.1 where, as a consequence of the operation of this sub-clause, a teachers’ teaching load is reduced by their attendance, the said teaching load shall be reduced by an equivalent time but the teacher’s total related duties shall remain unaltered.
  - 24.3 Teachers who are required to work during the hours prescribed at subclause 24.2, other than direct teaching, including the following circumstances:
    - 24.3.1 Related duties (excluding meal breaks) which in one continuous period of time, extend beyond 6.30pm and 10.00pm Monday to Friday and or between 6.00am and 10.00pm Saturday, where a teacher is required to teach two teaching sessions that are part of their approved program;
    - 24.3.2 where head teachers are directed to perform supervisory duties;
    - 24.3.3 enrolment duties;
- as part of their approved program and not as part of excess teaching hours, shall be paid at a rate of 1.25 times the hourly rate for the teacher so engaged. The formula for calculating the hourly rate of the teacher shall be:

$$\frac{\text{Annual Salary}}{1} \times \frac{5}{260.8929} \times \frac{1}{30}$$

11. Delete clause 25, Excess Teaching Hours, and insert in lieu thereof the following:

**25. Excess Teaching Hours**

- 25.1 For the purpose of this clause, teacher includes head teacher and adult literacy officer.
- 25.2 Subject to the provisions in clause 16, Approved Program, excess teaching hours worked above the direct teaching hours set out in clause 16.2 shall be paid at a rate known as the excess teaching rate.
- 25.3 The formula for calculating the excess teaching hourly rate for hours described in subclause 25.2 shall be:

$$\frac{\text{Maximum TAFE Teacher Salary}}{1} \times \frac{5}{260.8929} \times \frac{1}{30} \times 1.3475$$

- 25.4 Where as a consequence of the operation of clause 24, Time Credit a teacher's standard teaching load is reduced, the excess teaching hourly rate will only be payable to:

25.4.1 a teacher, if, subject to the provisions of clause 16, Approved Program, they have performed direct teaching duties of 720 hours.

25.4.2 a head teacher, if, subject to the provisions of clause 16, Approved Program, they have performed direct teaching duties of 360 or 504 hours as determined by the employer.

25.4.3 an adult literacy officer, if, subject to the provisions of clause 16, Approved Program, they have performed direct teaching duties of 324 hours.

- 25.5 Emergency Hours -

25.5.1 Emergency excess teaching hours occur when an unplanned absence of a teacher leads to another teacher being given less than 24 hours notice to take a class.

25.5.2 Payment for emergency excess teaching hours shall be made fortnightly at the appropriate rate for the hours worked.

25.5.3 Emergency excess teaching hours cannot be included in determining the direct teaching hours of an approved program.

- 25.6 The parties agree that the use of excess teaching hours shall be discouraged.

12. Delete clause 29, Professional Development - Education Officers, Related Employees and Counsellors, and insert in lieu thereof the following:

**29. Professional Development - Related Employees**

- 29.1 For the purpose of this clause related employees includes permanent and temporary education officers, counsellors, cluster managers, managers education and training resource centre, principal education officers, program managers, curriculum managers, quality assurance coordinators, chief education officers, and senior education officers.
- 29.2 Related employees shall have 20 hours of professional development per annum to undertake activities related to their current and medium term individual development needs as identified in consultation with their line manager. This does not preclude access to other professional development opportunities provided by the employer.
- 29.3 Related employees employed as at the making of this award with an existing balance of professional development time may utilise that time in accordance with 29.2, with the approval of their line manager.



13. In Clause 30. Leave for Teachers and Related Employees, insert new subclause 30.6.3 as follows:

30.6.3 Where an officer takes a period of extended leave that spans a vacation, the vacation will be deemed to form part of the extended leave.

**Area, Incidence and Duration**

1. The Crown Employees (Teachers in TAFE and Related Employees, Bradfield College and TAFE Children's Centres) (Variation No. 1) Award 2009 ("Variation No.1 Award") covers all teachers and related employees of TAFE the classifications of which are set out in Schedules 1 and 4 of the Crown Employees (Teachers in TAFE and Related Employees, Bradfield College and TAFE Children's Centres) Salaries and Conditions Award 2009. This award does not cover educational staff employed at the TAFE NSW – Riverina Institute National Aerospace Training Centre of Excellence (NATCOE) based at the RAAF base Wagga Wagga.
2. The Variation No.1 Award varies the Crown Employees (Teachers in TAFE and Related Employees, Bradfield College and TAFE Children's Centres) Salaries and Conditions Award 2009 and shall commence on and from 25 January 2010 and remain in force until 31 December 2011.

R. P. BOLAND *J, President.*

P. J. SAMS *D.P.*

J. P. GRAYSON *D.P.*

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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 374 of 2010)

Before Commissioner Bishop

31 May 2010

**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:

**12A. Lactation Breaks**

2. Insert after clause 12, Parental leave the following new clause:

**12A. Lactation Breaks**

12A.1 This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.

12A.2 A full time employee or a part time employee working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.

12A.3 A part time employee working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.

12A.4 A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.

12A.5 The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.

12A.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.

12A.7 Employees experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.

12A.8 Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 7, Sick Leave of this award, or access to flexible working hours, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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**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 462 of 2010)

Before Commissioner Bishop

30 June 2010

**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:

21A. Lactation Breaks

2. Insert after clause 21, Parental Leave, the following new clause:

**21A. Lactation Breaks**

- 21A.1 This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- 21A.2 A full time employee or a part time staff member working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- 21A.3 A part time employee working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- 21A.4 A flexible approach to lactation breaks can be taken by mutual agreement between a employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the staff member.
- 21A.5 The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- 21A.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and staff member will take place to attempt to identify reasonable alternative arrangements for the staff member's lactation needs.
- 21A.7 Staff members experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- 21A.8 Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave or access to flexible working hours or make up time in their workplace, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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**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 374 of 2010)

Before Commissioner Bishop

31 May 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:

7A. Lactation Breaks

2. Insert after clause 7, Hours the following new clause:

**7A. Lactation Breaks**

- (a) This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- (b) A full time employee or a part time employee working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- (c) A part time employee working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- (d) A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.
- (e) The Chief Executive shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- (f) Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- (g) Employees experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (h) Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 4, Leave of this award, or access to the flexible working hours scheme provided in clause 7, Hours of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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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 374 of 2010)

Before Commissioner Bishop

31 May 2010

**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:

**12A. Lactation Breaks**

2. Insert after clause 12, Flexible Work Arrangements the following new clause:

**12A. Lactation Breaks**

- (1) This clause applies to staff members who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- (2) A full time staff member or a part time staff member working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- (3) A part time staff member working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- (4) A flexible approach to lactation breaks can be taken by mutual agreement between a staff member and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the staff member.
- (5) The Commissioner shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- (6) Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and staff member will take place to attempt to identify reasonable alternative arrangements for the staff member's lactation needs.
- (7) Staff members experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (8) Staff members needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 22, Sick Leave of this award, or access to the flexible working hours scheme provided in clause 11, Hours of Employment - Flexible Working Hours Scheme (FWH) of this award, where applicable.



3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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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 463 of 2010)

Before Commissioner Bishop

30 June 2010

### 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:

#### 16A. Lactation Breaks

2. Insert after clause 16, Parental Leave, the following new clause:

#### 16A. Lactation Breaks

16A.1 This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.

16A.2 A full time employee or a part time staff member working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.

16A.3 A part time employee working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.

16A.4 A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.

16A.5 The Board shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.

16A.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.

16A.7 Employees experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.

16A.8 Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 15, Sick Leave of this award, or access to time off in lieu as provided for in clause 7, Hours of Work of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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## SYDNEY OLYMPIC PARK AQUATIC, ATHLETICS AND ARCHERY CENTRES (STATE) AWARD 2008

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Sydney Olympic Park Authority.

(No. IRC 567 of 2010)

Before The Honourable Justice Boland, President

21 July 2010

### VARIATION

1. Delete clause 2, Parties to the Award and Employee Defined, of the award published 28 November 2008 (366 I.G. 1387), and insert in lieu thereof the following:

#### 2. Parties to the Award and Employee Defined

- 2.1 The parties to this award are:

- (i) The Division Head of Communities NSW, being the Director-General, Communities NSW, exercising on behalf of the Government of NSW the employer functions of the Government in relation to those members of staff within the Sydney Olympic Park Authority Branch of Communities NSW, under Schedule 1, Part 1, Division 1 of the *Public Sector Employment and Management Act 2002*, undertaking work at the Aquatic, Athletics and Archery Centres within the classifications prescribed in this Award ("the Employer"); and
- (ii) The Australian Workers' Union, New South Wales ("the AWU").

- 2.2 Employee means a person employed by the Government of NSW in the service of the Crown under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Sydney Olympic Park Authority Branch of Communities NSW, at the Aquatic, Athletics and Archery Centres, in the classifications prescribed by this Award.

2. Delete subclause 34.1 of clause 34, Area, Incidence and Duration, and insert in lieu thereof the following:

34.1 This award shall regulate the terms and conditions of employment of employees:

- (a) of the Government of NSW employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Sydney Olympic Park Authority Branch of Communities NSW, working at the Aquatic, Athletic and Archery Centres, in the classifications prescribed by this Award; and
- (b) not classified as staff members of the management team.

3. Delete Part B and insert in lieu thereof the following:

### PART B

**Table 1 - Rates of Pay for Full-Time Classifications**

Classification Level	Salary from the first pay period on or after 1 July 2010 \$	Salary from the first pay period on or after 1 July 2011 \$
Level I	35,393	36,278

Level II	39,808	40,803
Level III	44,239	45,345
Level IV	53,072	54,399

**Table 2 - Hourly Rates of Pay for Casual Employees**

Classification Level	Hourly Rates from the first pay period on or after 1 July 2010 \$	Hourly Rates from the first pay period on or after 1 July 2011 \$
Level A	20.70	21.20
Level B	22.15	22.70
Level C	23.40	24.00

4. This variation shall take effect from 21 July 2010.

R. P. BOLAND J , *President*

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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 374 of 2010)

Before Commissioner Bishop

31 May 2010

### VARIATION

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

#### 7A. Lactation Breaks

2. Insert after clause 7, Hours of Work the following new clause:

#### **7A. Lactation Breaks**

- 7A.1 This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- 7A.2 A full time employee or a part time employee working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- 7A.3 A part time employee working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- 7A.4 A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.
- 7A.5 The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- 7A.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- 7A.7 Employees experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- 7A.8 Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 12, Leave Conditions and Entitlements of this award, or access to the flexible working hours scheme provided in clause 7, Hours of Work of this award, where applicable.

3. This variation shall take effect from 31 May 2010.

E. A. R. BISHOP, Commissioner

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## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

**PRACTICE NOTE NO. 22**

Issue Date:

1 July 2010

Pursuant to Section 185A of the *Industrial Relations Act* 1996, Section 11 of the *Transport Appeal Boards Act* 1980 and Section 15 of the *Civil Procedure Act* 2005

**PROCEDURES BEFORE THE TRANSPORT APPEAL BOARDS**

1. The Practice Note applies to proceedings before the Transport Appeal Boards.
2. This Practice Note shall come into force on 1 July 2010.
3. The purpose of this Practice Note is to facilitate the resolution of matters before the Transport Appeal Boards of New South Wales (the Board) by ensuring that such proceedings are conducted in an efficient and expeditious manner and that all those who appear before the Board do all they can to facilitate the just, quick and cost effective disposal of proceedings before the Board.

**PROMOTIONAL APPEALS****4. Procedure generally**

- 4.1 Unless the Board otherwise orders, on good and sufficient reason, the hearing of a promotional appeal is to be informal.
- 4.2 Informal proceedings before the Board shall not be conducted in an adversarial manner.
- 4.3 The persons entitled to be present at an informal proceeding are:
  - (a) the appellant whose appeal is being heard,
  - (b) a person appointed by the employer against whose decision the promotional appeal is brought, being a person appointed generally or in respect of a particular appeal or class of appeal,
  - (c) the employee in whose favour the decision referred to in paragraph (b) has been made, and
  - (d) where, in the opinion of the Board, the appeal requires the attendance of a person having specialised knowledge of matters relevant to the appeal, a person nominated or directed by the Board to appear.
- 4.4 A person entitled to be present at an informal proceeding before the Board is not entitled to be represented by any person.
- 4.5 A person who is entitled to be present at an informal proceeding:
  - a) under clause 4.3(a) or (c) - may adduce, orally and in writing, to the Board such matters, and address the Board on such matters, as are relevant to the appeal, and
  - b) under clause 4.3(b) or (d) - may adduce in writing to the Board such matters as are relevant to the appeal and may, at the request of the Board, address the Board, otherwise than in writing, on any matter, and
  - c) may produce documents to the Board.



- 4.6 A person who is entitled to be present at an informal proceeding cannot:
- a) call or examine any witness, or
  - b) cross-examine any other such person.
- 4.7 Informal proceedings of the Board are not to be recorded.
- 4.8 Despite the provisions of clause 4.1, where a jurisdictional issue is raised in relation to a promotional appeal, the hearing of such an issue shall determined by way of a formal hearing (as provided for in clause 7) and the following standard directions will apply:
- a) the employer to prepare and lodge a written case outlining the jurisdictional argument and their reasons why they believe the Board cannot proceed to hear and determine the promotional appeal,
  - b) such written case is to be filed with the Registrar and served on the employees who are parties to the case on a specified date, such date not being less than 7 days prior to the date fixed for the hearing,
  - c) the appellant to file submissions in response with the Board, such additional material must be filed with the Registrar and served on the employer and the other parties to the case on a specified date, such date not being less than 3 days prior to the hearing.

## 5. Listing

- 5.1 Upon filing of a promotional appeal the Secretary shall cause, within a period of not more than seven days from the date when the time for lodging appeals appears to have expired, a date to be fixed for the matter to be called over before the Secretary.
- 5.2 At the call-over the Secretary is to:
- a) ascertain that the employer, having made a decision to appoint or recommend the appointment of a person or persons to fill a vacant office or position in the establishment of the employer has:
    - i. notified all affected employees of the employers decision to appoint or recommend the appointment of a person or persons to fill a vacant office or position within the establishment of the employer, and
    - ii. that the time for filing an appeal under Section 13 of the *Transport Appeal Boards Act* 1980 for all affected employees has, in fact, expired.

(for the purpose of this sub-clause an ‘affected employee’ is an employee who has a right of appeal under the *Transport Administration Staff (Regulation)* 2005)

- (b) list the matter for informal hearing before the Board, and
- (c) make the following directions:
  - i. the employer to prepare and lodge a written case outlining the selection process and the reasons for the decision the subject of the appeal. The case must include a copy of the applications for appointment to the position submitted by the appellant and the appointee. All documents are to be numbered, tabulated and indexed.
  - ii. the written case is to be filed with the Secretary and served on the employees who are parties to the case on a specified date, such date not being less than 7 days prior to the date fixed for the hearing,

- iii. if the appellant or appointee propose to file additional material with the Board, that such additional material must be filed with the Secretary and served on the employer and the other parties to the case on a specified date, such date not being less than 3 days prior to the hearing.

## 6. Informal Hearing

6.1 The procedure for the hearing of a promotional appeal is a matter for the Board to determine as the presiding member thinks fit, however, as a general rule the following procedure will be followed:

- a) The presiding member will briefly outline the procedure to be followed and will formally admit into evidence the Employer's Case and any other additional material filed by the appellant or appointee.
- b) The person representing the employer (generally, the Convenor or a member of the Section Committee) is a resource to the Board and is not an advocate for any party to the appeal. The Board will look to that person to clarify any matter of fact that may be subject to dispute that arises during the hearing.
- c) The appellant will be called to address the Board as to his/her grounds of appeal and substantiate their claim for having greater merit for appointment to the position. On completion the Board may ask questions of the appellant.
- d) The appointee will then be given the opportunity to respond to the appellant's ground of appeal and present his/her case. On completion the Board may ask questions of the appointee.
- e) The appellant will then be given the right of reply. On completion the Commission may ask further questions of the appellant.
- f) The presiding member may then ask questions of or seek clarification from the person representing the employer.
- g) Where, pursuant to clause 4.3(d) the Board has nominated or directed that a person with specialised knowledge appear, the Board may ask questions or seek clarification of that person.
- h) The appellant or the appointee may be given the opportunity to respond to any **new** matter raised by the appointee or appellant respectively and will be given an opportunity to respond to **any** matter put to the Board by the person representing the employer or, where applicable, of a person with specialised knowledge who has been nominated or directed to appear by the Board.

6.2 At the conclusion of the hearing the Board will make an order that the parties to the appeal are to return any documents received from another party to that other party, including the documents prepared by the employer.

## DISCIPLINARY APPEALS

### 7. Procedure generally

7.1 The hearing of a disciplinary appeal is to be formal.

7.2 A person who is entitled to be present at a formal hearing of the Board is:

- a) the appellant whose appeal is being heard
- b) the employer, either in person or by their nominee,

and is entitled to representation in accordance with Section 166 of the *Industrial Relations Act 1996*.

- 7.3 In relation to the production of documents or the attendance of witnesses before the Board the provisions of Section 165 of the *Industrial Relations Act 1996* and Part 33 of the *Uniform Civil Procedure Rules 2005* apply.
- 7.4 A formal hearing of the Board is to be recorded.
- 7.5 In accordance with section 16 of the *Transport Appeal Boards Act 1980* the employer's case is to be presented first.
- 7.6 Except as may be otherwise determined by the presiding member, the documentary material provided by the parties will be examined by the Board prior to the hearing and admitted into evidence at the commencement of the hearing.

## 8. Allocation of Listing Date

- 8.1 Upon filing of a disciplinary appeal the Secretary shall cause, within a period of not more than seven days from the date when the time for lodging an appeal has expired, a date to be fixed for the matter to be conciliated by the Board and notify the parties accordingly. The standard or usual time to the first listing for Conciliation and Directions shall be a period of 21 days from the final date available for the filing of an appeal.
- 8.2 The employer will cause, not later than 7 days before the first listing, to be lodged with the Board and a copy served on the appellant, if this has not already occurred, a copy of their written case and relevant documents.

## 9. Conciliation

- 9.1 Parties who appear before the Board should do all they can to facilitate the fair and prompt disposal of matters before the Board. Ways in which this should occur include:
- a) ready identification of the issues in dispute,
  - b) ensuring readiness for the conciliation hearing,
  - c) using their best endeavours to resolve the issues in dispute.
- 9.2 Ordinarily there should be only one conciliation; however, the Board may permit a further conciliation.
- 9.3 If the appellant fails to appear at a conciliation conference, and has not provided a clear and compelling reason for non-attendance, this may result in the appeal being dismissed.
- 9.4 If the conciliation is not successful any objection by a party to the member who conducted the conciliation sitting as the Board for the purpose of hearing the appeal must be lodged within 7 days of the date of such conciliation.
- 9.5 For the purposes of this clause, a member sitting as the Board is not taken to have attempted conciliation merely because:
- a) the member attempted conciliation after commencing the hearing; or
  - b) the member arranged or gave directions for a conference of the parties involved in the matter, or their representatives, to be presided over by the member, but the conference did not take place or was not presided over by the member; or
  - c) the member arranged or gave directions for those parties or their representative to confer among themselves at a conference at which the member was not present.

**10. Preliminary issues**

- 10.1 If a preliminary issue for example, a jurisdictional challenge is raised at the conciliation conference, the Board shall determine whether the matter shall be heard as a threshold issue or be dealt with after conciliation.
- 10.2 If the Board determines that the issue should be heard before conciliation then the Board shall make appropriate directions and list the matter for determination.
- 10.3 In cases where the Member conducts conciliation and the conciliation fails, the Member shall then forward the matter to the Secretary for allocation to another member of the Board for hearing of the threshold issue.
- 10.4 Directions will be made by the Board which may be a modified form of the usual directions if the matter is to be set down to hear a threshold issue.
- 10.5 The Secretary will subsequently advise the parties of a date or dates for hearing and the court location for the hearing of the matter.

**11. Listed for Hearing**

- 11.1 When conciliation before the Board is unsuccessful, the usual directions in Paragraph 12 of this Practice Note shall operate unless, after application by a party to the appeal, the Board considers that the "usual directions" should be modified or alternative directions made.
- 11.2 The Board shall also ascertain a reasonable estimate of the time required for the hearing of the appeal, specify in the Board's opinion the time required for hearing and make any other appropriate directions having regard to paragraphs 12 and 13 of this Practice Note.
- 11.3 The Board shall, forthwith, refer the parties to the List Office of the Industrial Registry for the purpose of obtaining a hearing date(s) in accordance with the Board's opinion of the amount of time required for hearing and directions which are made.

**12. Usual Directions**

For the purpose of this Practice Note "usual directions" shall mean directions in the following terms or to the following effect:-

- 12.1 All evidence shall be in the form of signed written statements.
- 12.2 The respondent shall file and serve any material relevant to the employer's case (in addition to that previously served on the appellant pursuant to clause 8.2) upon which they will seek to rely within 21 days. Where the employer has not previously filed the Investigation Report that should comprise part of the additional documentation filed by the employer. The respondent's case shall include all signed written statements (typed with numbered paragraphs and pages) of the intended evidence of each witness upon which they rely.
- 12.3 The appellant shall file and serve signed written statements (typed with numbered paragraphs and pages) of the intended evidence of each witness together with any other relevant documentation within 21 days of the date fixed for the filing and service of the respondent's additional documents.
- 12.4 The respondent may file and serve any reply to the appellant's documents within 7 days of the date fixed for the filing and service of the appellant's documents.
- 12.5 The parties shall include in or with their written witness statements all matters and documents upon which they rely or they allege are relevant to the proceedings.

- 12.6 Parties shall file and serve at the same time as they file their written statements and any other relevant documentation - a short summary of their case.
- 12.7 Without leave of the Board, written statements and other documentation filed and served later than the time specified by the Board in its directions may not be relied upon by the party.
- 12.8 At the conclusion of any failed conciliation, the Board shall determine any issues of leave having regard to the provisions of Part 7.3 of the *Uniform Civil Procedure Rules 2005* (Issue of summons in certain circumstances requires leave) and make such directions as are necessary in that regard.
- 12.9 Summonses for production of documents may be made returnable before the Secretary upon any date that the Secretary conducts a list. Where orders are sought other than for photocopy access for both parties or if a claim for privilege or the like is made, those matters will be referred by the Secretary to the Board to be dealt with on an interlocutory basis. Under these arrangements summonses will be returnable before the Secretary, not the Board.
- 12.10 If, in the opinion of the Commission, the appeal is a matter that requires attendance by a person with specialised knowledge of issues relevant to the disciplinary appeal, make such directions as are necessary in that respect or, alternatively, apply such provisions of *Practice Note 21* as may be appropriate to the proceedings.

### 13. Other Directions

- 13.1 The Board may make such other directions as it considers appropriate for the just resolution of the issues between the parties.
- 13.2 Such other directions may include directions that:-
- a) Without leave of the Board, a party cannot rely on any matter that is not contained within the documentation filed and served by that party.
  - b) Proceedings shall be conducted on the written statements and other relevant documentation filed and served by a party except where reasonable notice is given to the other party that a witness is required for cross-examination
  - c) In the absence of any period of reasonable notice being fixed by the Board, cross-examination of a witness shall not be allowed unless at least 7 days prior to the hearing notice has been given to the opposing party that a witness is required for cross-examination.

### 14. Compliance with Directions

- 14.1 Any directions made under paragraphs 5,8,12 & 13 of this Practice Note **must** be complied with and will apply unless:
- (a) an application is made after the completion of conciliation;
  - (b) where applicable, the direction is varied during the course of the hearing of the matter;
  - (c) any application to vary directions after the conciliation conference must be made in writing and contain full supporting grounds (unless made during the course of the hearing of the matter).

### 15. Adjournment Policy - Promotional and Disciplinary proceedings

- 15.1 In accordance with the Board's function to provide a forum for the resolution of Appeal matters in a fair and prompt manner, as a general rule, an adjournment of the date that is allocated for

Conciliation or Hearing, whether informal or formal, will not be granted *unless* there are clear and compelling reasons for the adjournment to occur.

15.2 The time fixed for the hearing of the appeal is definite. Any applications for adjournment of must be made in a timely way, be in writing and contain full grounds. Such applications will be considered and determined by the Board. It should be understood that adjournment applications will be granted only on clear and compelling grounds.

15.3 An application for an adjournment during the course of an Appeal is a matter for the Board hearing the matter in the proper exercise of his/her discretion. It should be clearly understood that such applications will be granted only on clear and compelling grounds.

15.4 In the event that a party fails to attend at an appeal hearing, the appeal may, in appropriate circumstances, be heard and determined in the absence of that party.

16. **Lodgement of Appeal - Promotional or Disciplinary**

16.1 A *Notice of Appeal* may be lodged personally or by post or by facsimile.

R. P. Boland J, President  
30 June 2010

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## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

**PRACTICE NOTE NO. 23**

Issue Date:

1 July 2010

Pursuant to Section 185A of the *Industrial Relations Act 1996* and Section 15 of the *Civil Procedure Act 2005***PROCEDURES - PUBLIC SECTOR PROMOTION AND DISCIPLINARY APPEALS**

1. The Practice Note applies to proceedings before the Commission under Part 7, Chapter 2 of the *Industrial Relations Act 1996*.
2. This Practice Note shall come into force on 1 July 2010.
3. The purpose of this Practice Note is to facilitate the resolution of public sector promotion and disciplinary appeal matters before the Commission by ensuring that such proceedings are conducted in an efficient and expeditious manner and that all those who appear before the Commission do all they can to facilitate the just, quick and cost effective disposal of proceedings before the Commission.

**PROMOTIONAL APPEALS****4. Procedure generally**

- 4.1 Unless the Commission otherwise orders, on good and sufficient reason, the hearing of a promotional appeal is to be informal.
- 4.2 Informal proceedings before the Commission shall not be conducted in an adversarial manner.
- 4.3 The persons entitled to be present at an informal proceeding are:
  - (a) the appellant whose appeal is being heard,
  - (b) a person appointed by the employer against whose decision the promotional appeal is brought, being a person appointed generally or in respect of a particular appeal or class of appeal,
  - (c) where the appeal is an appeal under section 94, the employee in whose favour the decision referred to in paragraph (b) has been made, and
  - (d) where, in the opinion of the Commission, the appeal requires the attendance of a person having specialised knowledge of matters relevant to the appeal, a person nominated or directed by the Commission to appear.
- 4.4 A person entitled to be present at an informal proceeding before the Commission is not entitled to be represented by any person.
- 4.5 A person who is entitled to be present at an informal proceeding:
  - a) under clause 4.3(a) or (c) - may adduce, orally and in writing, to the Commission such matters, and address the Commission on such matters, as are relevant to the appeal, and
  - b) under clause 4.3(b) or (d)- may adduce in writing to the Commission such matters as are relevant to the appeal and may, at the request of the Commission, address the Commission, otherwise than in writing, on any matter, and
  - c) may produce documents to the Commission.

- 4.6 A person who is entitled to be present at an informal proceeding cannot:
- a) call or examine any witness, or
  - b) cross-examine any other such person.
- 4.7 Informal proceedings of the Commission are not to be recorded.
- 4.8 Despite the provisions of clause 4.1, where a jurisdictional issue is raised in relation to a promotional appeal, the hearing of such an issue shall be determined by way of a formal hearing (as provided for in clause 7) and the following standard directions will apply:
- a) the employer to prepare and lodge a written case outlining the jurisdictional argument and their reasons why they believe the Commission cannot proceed to hear and determine the promotional appeal,
  - b) such written case is to be filed with the Registrar and served on the employees who are parties to the case on a specified date, such date not being less than 7 days prior to the date fixed for the hearing,
  - c) the appellant to file submissions in response with the Commission, such additional material must be filed with the Registrar and served on the employer and the other parties to the case on a specified date, such date not being less than 3 days prior to the hearing .

## 5. Listing

- 5.1 Upon filing of a promotional appeal the Registrar shall cause, within a period of not more than seven days from when the time limited for lodging appeals expires, a date to be fixed for the informal hearing of the matter.
- 5.2 At the time of fixing the matter for hearing the Registrar will make the following directions:
- a) the employer to prepare and lodge a written case outlining the selection process and the reasons for the decision the subject of the appeal (the 'Employer's Case'). The case must include a copy of the applications for appointment to the position submitted by the appellant and the appointee.
  - b) the Employer's Case is to be filed with the Registrar and served on the employees who are parties to the case on a specified date, such date not being less than 7 days prior to the date fixed for the hearing,
  - c) if the appellant or appointee propose to file additional material with the Commission, that such additional material must be filed with the Registrar and served on the employer and the other parties to the case on a specified date, such date not being less than 3 days prior to the hearing.

## 6. Informal Hearing

- 6.1 The procedure for the hearing of a promotional appeal is a matter for the Commission to determine as the presiding officer thinks fit, however, as a general rule the following procedure will be followed:
- a) The presiding member will briefly outline the procedure to be followed and will formally admit into evidence the Employer's Case and any other additional material filed by the appellant or appointee.
  - b) The person representing the employer (generally, the Convenor or a member of the Section Committee) is a resource to the Commission and is not an advocate for any party



- to the appeal. The Commission will look to that person to clarify any matter of fact that may be subject to dispute that arises during the hearing.
- c) The appellant will be called to address the Commission as to his/her grounds of appeal and substantiate their claim for having greater merit for appointment to the position. On completion the Commission may ask questions of the appellant.
  - d) The appointee will then be given the opportunity to respond to the appellant's ground of appeal and present his/her case. On completion the Commission may ask questions of the appointee.
  - e) The appellant will then be given the right of reply. On completion the Commission may ask further questions of the appellant.
  - f) The presiding member may then ask questions of or seek clarification from the person representing the employer.
  - g) Where, pursuant to clause 4.3(d) the Commission has nominated or directed that a person with specialised knowledge appear, the Commission may ask questions or seek clarification of that person.
  - h) The appellant or the appointee may be given the opportunity to respond to any **new** matter raised by the appointee or appellant respectively and will be given an opportunity to respond to **any** matter put to the Commission by the person representing the employer or, where applicable, of a person with specialised knowledge who has been nominated or directed to appear by the Commission.
- 6.2 At the conclusion of the hearing the Commission will make an order that the parties to the appeal are to return any documents received from another party to that other party, including the documents prepared by the employer.

## DISCIPLINARY APPEALS

### 7. Procedure generally

- 7.1 The hearing of a disciplinary appeal is to be formal.
- 7.2 A person who is entitled to be present at a formal hearing of the Commission is:
- a) the appellant whose appeal is being heard,
  - b) the employer, either in person or by their nominee
- and is entitled to representation in accordance with Section 166 of the *Industrial Relations Act 1996*.
- 7.3 In relation to the production of documents or the attendance of witnesses before the Commission the provisions of Section 165 of the *Industrial Relations Act 1996* and Part 33 of the *Uniform Civil Procedure Rules 2005* apply.
- 7.4 A formal hearing of the Commission is to be recorded.
- 7.5 In accordance with section 100G(2) of the *Industrial Relations Act 1996* the employer's case is to be presented first.
- 7.6 Except as may be otherwise determined by the presiding member, the documentary material provided by the parties will be examined by the Commission prior to the hearing and admitted into evidence at the commencement of the hearing.

## 8. Allocation of Listing Date

- 8.1 Upon filing of a disciplinary appeal the Registrar shall cause, within a period of not more than seven days from when the time limited for lodging an appeal expires, a date to be fixed for the matter to be conciliated by the Commission and notify the parties accordingly. The standard or usual time from filing to the first listing for Conciliation and Directions shall be a period of 21 days.
- 8.2 At the time of fixing the date for Conciliation the Registrar shall also require the parties to lodge and serve a written case setting out the arguments on which the person relies in relation to the Conciliation hearing on a date being not less than one week prior to the date fixed for the Conciliation. All documents are to be numbered, tabulated and indexed.

## 9. Conciliation

- 9.1 Parties who appear before the Commission should do all they can to facilitate the fair and prompt disposal of matters before the Commission. Ways in which this should occur include:
- a) ready identification of the issues in dispute,
  - b) ensuring readiness for the conciliation hearing,
  - c) using their best endeavours to resolve the issues in dispute.
- 9.2 Ordinarily, there should be only one conciliation; however, the Commission may permit a further conciliation.
- 9.3 If the appellant fails to appear at a conciliation conference, and has not provided a clear and compelling reason for non-attendance, this may result in the appeal being dismissed.
- 9.4 For the purposes of section 100E(2) of the *Industrial Relations Act 1996* any objection to the member who conducted a conciliation pursuant to section 100E(1) sitting as a member to hear the appeal must be lodged within 7 days of the date of such conciliation.
- 9.5 For the purposes of section 100E(2) of the *Industrial Relations Act 1996* a member of the Commission is not taken to have attempted conciliation merely because:
- a) the member attempted conciliation after commencing the hearing; or
  - b) the member arranged or gave directions for a conference of the parties involved in the matter, or their representatives, to be presided over by the member, but the conference did not take place or was not presided over by the member; or
  - c) the member arranged or gave directions for those parties or their representative to confer among themselves at a conference at which the member was not present.

## 10. Preliminary issues

- 10.1 If a preliminary issue for example, a jurisdictional challenge is raised at the conciliation conference, the Member shall determine whether the matter shall be heard as a threshold issue or be dealt with after conciliation.
- 10.2 If the Member determines that the issue should be heard before conciliation then the matter shall be referred to the Registrar for allocation to a Member for hearing after appropriate directions are made and the Member has established the time required to hear the issue.
- 10.3 In cases where the Member conducts conciliation and the conciliation fails, the Member shall then forward the matter to the Industrial Registrar for allocation to a Member for hearing.

- 10.4 Directions will be made by the Member which may be a modified form of the usual directions if the matter is to be set down to hear a threshold issue.
- 10.5 The Registrar will subsequently advise the parties of a date or dates for hearing and the court location for the hearing of the matter.

#### 11. **Listed for Hearing**

- 11.1 When conciliation before the Commission is unsuccessful, the usual directions in Paragraph 12 of this Practice Note shall operate unless, after application by a party to the appeal, the Commission considers that the "usual directions" should be modified or alternative directions made.
- 11.2 The Commission shall also ascertain a reasonable estimate of the time required for the hearing of the appeal, specify in the Commission's opinion the time required for hearing and make any other appropriate directions having regard to paragraphs 12 and 13 of this Practice Note.
- 11.3 The Commission shall, forthwith, refer the parties to the List Office of the Industrial Registry for the purpose of obtaining a hearing date(s) in accordance with the Commission's opinion of the time required for hearing and directions which are made.

#### 12. **Usual Directions**

For the purpose of this Practice Note "usual directions" shall mean directions in the following terms or to the following effect:-

- 12.1 All evidence shall be in the form of signed written statements.
- 12.2 The respondent shall file and serve any material relevant to the employer's case (in addition to that previously served on the appellant pursuant to clause 8.2) upon which they will seek to rely within 21 days. Where the employer has not previously filed the Investigation Report that should comprise part of the additional documentation filed by the employer. The respondent's case shall include all signed written statements (typed with numbered paragraphs and pages) of the intended evidence of each witness upon which they rely.
- 12.3 The appellant shall file and serve signed written statements (typed with numbered paragraphs and pages) of the intended evidence of each witness together with any other relevant documentation within 21 days of the date fixed for the filing and service of the respondent's documents.
- 12.4 The respondent shall file and serve any reply to the appellant's documents within 7 days of the date fixed for the filing and service of the appellant's documents.
- 12.5 The parties shall include in or with their written witness statements all matters and documents upon which they rely or they allege are relevant to the proceedings.
- 12.6 Parties shall file and serve at the same time as they file their written statements and any other relevant documentation - a short summary of their case.
- 12.7 Without leave of the Commission, written statements and other documentation filed and served later than the time specified by the Commission in its directions may not be relied upon by the party.
- 12.8 At the conclusion of any failed conciliation, the Commission shall determine any issues of leave having regard to the provisions of Part 7.3 of the *Uniform Civil Procedure Rules 2005* (Issue of summons in certain circumstances requires leave) and make such directions as are necessary in that regard.
- 12.9 Summonses for production of documents may be made returnable before the Registrar upon any date that the Registrar conducts a list. Where orders are sought other than for photocopy access

for both parties or if a claim for privilege or the like is made, those matters will be referred by the Registrar to the Commission to be dealt with on an interlocutory basis. Under these arrangements summonses will be returnable before the Registrar, not the Commission.

12.10 If, in the opinion of the Commission, the appeal is a matter that requires attendance by a person with specialised knowledge of issues relevant to the disciplinary appeal, make such directions as are necessary in that respect or, alternatively, apply such provisions of *Practice Note 21* as may be appropriate to the proceedings.

### 13. Other Directions

13.1 The Commission may make such other directions as it considers appropriate for the just resolution of the issues between the parties.

13.2 Such other directions may include directions that:

- a) without leave of the Commission, a party cannot rely on any matter that is not contained within the documentation filed and served by that party.
- b) proceedings shall be conducted on the written statements and other relevant documentation filed and served by a party except where reasonable notice is given to the other party that a witness is required for cross-examination
- c) in the absence of any period of reasonable notice being fixed by the Commission, cross-examination of a witness shall not be allowed unless at least 7 days prior to the hearing notice has been given to the opposing party that a witness is required for cross-examination.

### 14. Compliance with Directions

14.1 Any directions made under paragraphs 5,8,12 & 13 of this Practice Note **must** be complied with and will apply unless:

- (a) an application is made after the completion of conciliation and prior to the hearing
- (b) where applicable, the direction is varied during the course of the hearing of the matter;
- (c) any application to vary directions after the conciliation conference must be made as soon as possible, in writing and contain full supporting grounds (unless made during the course of the hearing of the matter).

### 15. Adjournment Policy - Promotional or Disciplinary Proceedings

15.1 In accordance with the Commission's function to provide a forum for the resolution of Appeal matters in a fair and prompt manner, as a general rule, an adjournment of the date that is allocated for an Conciliation or Hearing, whether informal or formal, will not be granted unless there are clear and compelling reasons for the adjournment to occur.

15.2 The time fixed for the hearing of an appeal is definite. Any applications for adjournment must be made in a timely way, be in writing and contain full grounds. Such applications will be considered and determined by the Commission. It should be understood that adjournment applications will be granted only on clear and compelling grounds.

15.3 An application for an adjournment during the course of an Appeal is a matter for the member hearing the matter in the proper exercise of his/her discretion. It should be clearly understood that such applications will be granted only on clear and compelling grounds.

15.4 In the event that a party fails to attend at an appeal hearing, the appeal may, in appropriate circumstances, be heard and determined in the absence of that party.

**16. Lodgement of Appeals - Promotional or Disciplinary Proceedings**

16.1 A *Notice of Appeal* may be lodged personally or by post or by facsimile.

**17. Lapsing of Appeal and Dismissal - Promotional and Disciplinary Proceedings**

17.1 An appeal lapses if:

- (a) the appellant withdraws the appeal by notifying the Registrar in writing or, if the Commission has commenced to consider the appeal, by informing the Commission, or
- (b) in the case of a promotional appeal:
  - i. the position no longer exists, or
  - ii. the appointment against which the appeal is made lapses for any reason.

17.2 Proceedings in relation to a promotional appeal may be dismissed at any time by the Commission if:

- a) the Commission considers the appeal to be frivolous or vexatious, or
- b) the appellant is, in the opinion of the Commission, not able to put forward an arguable case in favour of his or her appointment to the position concerned.

17.3 The Commission is to give the appellant an opportunity to respond to the proposed dismissal of proceedings.

R. P. Boland *J*, President  
30 June 2010

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Printed by the authority of the Industrial Registrar.

## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

**PRACTICE NOTE NO. 24**

Issue Date:

1 July 2010

Pursuant to Section 185A of the *Industrial Relations Act* 1996 and Section 15 of the *Civil Procedure Act* 2005**PROCEDURES - POLICE HURT ON DUTY APPEALS**

1. The Practice Note applies to proceedings before the Commission under section 186 of the *Police Act* 1990.
2. This Practice Note shall come into force on 1 July 2010
3. The purpose of this Practice Note is to facilitate the resolution of appeal matters brought before the Commission pursuant to section 186 of the *Police Act* 1990 (known as Hurt on Duty appeals) by ensuring that such proceedings are conducted in an efficient and expeditious manner and that all those who appear before the Commission do all they can to facilitate the just, quick and cost effective disposal of proceedings before the Commission.

**HURT ON DUTY APPEALS****4. Procedure generally**

- 4.1 The hearing of an appeal is to be formal.
- 4.2 A person who is entitled to be present at a formal hearing of the Commission is:
  - a) the appellant whose appeal is being heard,
  - b) the Commissioner of Police or delegate

and is entitled to representation in accordance with Section 166 of the *Industrial Relations Act* 1996.

- 4.3 In relation to the production of documents or the attendance of witnesses before the Commission the provisions of Section 165 of the *Industrial Relations Act* 1996 and Part 33 of the Uniform Civil Procedure Rules 2005 apply.

- 4.4 A formal hearing of the Commission is to be recorded.

**5. Allocation of Listing Date**

- 5.1 Upon filing of a Hurt on Duty appeal the Registrar shall cause, within a period of not more than seven days from when the time limited for lodging an appeal expires, a date to be fixed for the matter to be conciliated by the Commission and notify the parties accordingly. The standard or usual time from filing to the first listing for Conciliation and Directions shall be a period of 21 days.
- 5.2 At the time of fixing the date for Conciliation the Registrar shall also require the parties to lodge and serve a written case setting out the arguments on which the person relies in relation to the Conciliation hearing on a date being not less than one week prior to the date fixed for the Conciliation. All documents are to be numbered, tabulated and indexed.

**6. Conciliation**

- 6.1 Parties who appear before the Commission should do all they can to facilitate the fair and prompt disposal of matters before the Commission. Ways in which this should occur include:
- a) ready identification of the issues in dispute,
  - b) ensuring readiness for the conciliation hearing,
  - c) using their best endeavours to resolve the issues in dispute.
- 6.2 Ordinarily there should be only one conciliation; however, the Commission may permit a further conciliation.
- 6.3 If the appellant fails to appear at a conciliation conference, and has not provided a clear and compelling reason for non-attendance, this may result in the appeal being dismissed.
- 6.4 For the purposes of section 100E(2) of the *Industrial Relations Act* 1996 any objection to the member who conducted a conciliation pursuant to section 100E(1) sitting as a member to hear the appeal must be lodged within 7 days of the date of such conciliation.
- 6.5 For the purposes of section 100E(2) of the *Industrial Relations Act* 1996 a member of the commission is not taken to have commenced conciliation merely because:
- a) the member attempted conciliation after commencing the hearing; or
  - b) the member arranged or gave directions for a conference of the parties involved in the industrial dispute or other matter, or their representatives, to be presided over by the member, but the conference did not take place or was not presided over by the member; or
  - c) the member arranged or gave directions for those parties or their representative to confer among themselves at a conference at which the member was not present.

**7. Preliminary issues**

- 7.1 If a preliminary issue for example, a jurisdictional challenge is raised at the conciliation conference, the Member shall determine whether the matter shall be heard as a threshold issue or be dealt with after conciliation.
- 7.2 If the Member determines that the issue should be heard before conciliation then the matter shall be referred to the Registrar for allocation to a Member for hearing after appropriate directions are made and the Member has established the time required to hear the issue.
- 7.3 If the Member determines that the issue should be heard before conciliation then the matter shall be referred to the Registrar for allocation to a Member for hearing after appropriate directions are made and the Member has established the time required to hear the issue.
- 7.4 In cases where the Member conducts conciliation and the conciliation fails the Member shall then forward the matter to the Industrial Registrar for allocation to a Member for hearing.
- 7.5 Directions will be made by the Member which may be a modified form of the usual directions if the matter is to be set down to hear a threshold issue.
- 7.6 The Registrar will subsequently advise the parties of a date or dates for hearing and the court location for the hearing of the matter.

**8. Listed for Hearing**

- 8.1 When conciliation before the Commission is unsuccessful, the usual directions in Paragraph 9 of this Practice Note shall operate unless, after application by a party to the appeal, the Commission considers that the "usual directions" should be modified or alternative directions made.
- 8.2 The Commission shall also ascertain a reasonable estimate of the time required for the hearing of the appeal, specify in the Commission's opinion the time required for hearing and make any other appropriate directions having regard to paragraphs 9 and 10 of this Practice Note.
- 8.3 The Commission shall, forthwith, refer the parties to the List Office of the Industrial Registry for the purpose of obtaining a hearing date(s) in accordance with the Commission's opinion of the time required for hearing and directions which are made.

**9. Usual Directions**

For the purpose of this Practice Note "usual directions" shall mean directions in the following terms or to the following effect:-

- 9.1 All evidence shall be in the form of signed written statements.
- 9.2 The respondent shall file and serve any material relevant to the employer's case (in addition to that previously served on the appellant pursuant to clause 5.2) upon which they will seek to rely within 21 days. The respondent's case shall include all signed written statements (typed with numbered paragraphs and pages) of the intended evidence of each witness upon which they rely
- 9.3 The appellant shall file and serve signed written statements (typed with numbered paragraphs and pages) of the intended evidence of each witness together with any other relevant documentation within 21 days of the date fixed for the filing and service of the respondent's documents.
- 9.4 The respondent shall file and serve any reply to the appellant's documents within 7 days of the date fixed for the filing and service of the appellant's documents.
- 9.5 The parties shall include in or with their written witness statements all matters and documents upon which they rely or they allege are relevant to the proceedings.
- 9.6 Parties shall file and serve at the same time as they file their written statements and any other relevant documentation - a short summary of their case.
- 9.7 Without leave of the Commission, written statements and other documentation filed and served later than the time specified by the Commission in its directions may not be relied upon by the party.
- 9.8 At the conclusion of any failed conciliation, the Commission shall determine any issues of leave having regard to the provisions of Part 7.3 of the *Uniform Civil Procedure Rules 2005* (issue of summons in certain circumstances requires leave) and make such directions as are necessary in that regard.
- 9.9 Summonses for production of documents may be made returnable before the Registrar upon any date that the Registrar conducts a list. Where orders are sought other than for photocopy access for both parties or if a claim for privilege or the like is made, those matters will be referred by the Registrar to the Commission to be dealt with on an interlocutory basis. Under these arrangements summonses will be returnable before the Registrar, not the Commission.
- 9.10 If, in the opinion of the Commission, the appeal is a matter that requires attendance by a person with specialised knowledge of issues relevant to the Hurt on Duty appeal, make such directions as are necessary in that respect or, alternatively, apply such provisions of *Practice Note 21* as may be appropriate to the proceedings



## 10. Other Directions

- 10.1 The Commission may make such other directions as it considers appropriate for the just resolution of the issues between the parties.
- 10.2 Such other directions may include directions that:
- a) without leave of the Commission, a party cannot rely on any matter that is not contained within the documentation filed and served by that party.
  - b) proceedings shall be conducted on the written statements and other relevant documentation filed and served by a party except where reasonable notice is given to the other party that a witness is required for cross-examination.
  - c) in the absence of any period of reasonable notice being fixed by the Commission, cross-examination of a witness shall not be allowed unless at least 7 days prior to the hearing notice has been given to the opposing party that a witness is required for cross-examination.

## 11. Compliance with Directions

- 11.1 Any directions made under paragraphs 5,7,9,10 of this Practice Note **must** be complied with and will apply unless:
- (a) an application is made after the completion of conciliation and prior to the hearing;
  - (b) where applicable, the direction is varied during the course of the hearing of the matter;
  - (c) any application to vary directions after the conciliation conference must be made as soon as possible, in writing and contain full supporting grounds (unless made during the course of the hearing of the matter).

## 12. Adjournment Policy

- 12.1 In accordance with the Commission's function to provide a forum for the resolution of Appeal matters in a fair and prompt manner, as a general rule, an adjournment of the date that is allocated for an Conciliation or Hearing will not be granted *unless* there are clear and compelling reasons for the adjournment to occur.
- 12.2 The time fixed for the hearing of an appeal is definite. Any applications for adjournment must be made in a timely way, be in writing and contain full grounds. Such applications will be considered and determined by the Commission. It should be understood that adjournment applications will be granted only on clear and compelling grounds.
- 12.3 An application for an adjournment during the course of an Appeal is a matter for the member hearing the matter in the proper exercise of his/her discretion. It should be clearly understood that such applications will be granted only on clear and compelling grounds.
- 12.4 In the event that a party fails to attend at an appeal hearing, the appeal may, in appropriate circumstances, be heard and determined in the absence of that party.

13. **Lodgement of Appeals**

13.1 *A Notice of Appeal* may be lodged personally or by post or by facsimile.

R. P. Boland *J*, President  
30 June 2010

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## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

**PRACTICE NOTE NO. 25**

Issue Date:

1 July 2010

Pursuant to Section 185A of the *Industrial Relations Act* 1996 and Section 15 of the *Civil Procedure Act* 2005**PRE-JUDGMENT INTEREST RATES****Commencement**

1. This Practice Note commences on 1 July 2010.

**Application**

2. This Practice note applies to new and existing civil proceedings in the Court.

**Introduction**

3. The purpose of this Practice Note is to set the rate of pre-judgment interest that may be awarded under s.100(1) and (2) of the *Civil Procedure Act* 2005.

**Calculating pre-judgment interest**

4. Section 100 of the *Civil Procedure Act* 2005 provides for the making of orders for the inclusion of interest in judgments.
5. Practitioners and litigants should expect that where, pursuant to s 100 (1) and (2) of the *Civil Procedure Act* 2005, interest in respect of a pre-judgment period is to be included in a judgment, the Court will have regard to the following rates, being rates agreed upon by the Discount and Interest Rate Harmonisation Committee established following a referral by the Council of Chief Justices:
  - (a) in respect of the period from 1 January to 30 June in any year - the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced, and
  - (b) in respect of the period from 1 July to 31 December in any year - the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced.

R. P. Boland *J*, President  
30 June 2010

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## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

**PRACTICE NOTE NO. 26**

Issue Date:

30 July 2010

Pursuant to Section 185A of the *Industrial Relations Act 1996* and Section 15 of the *Civil Procedure Act 2005*

1. The purpose of this Practice Direction is to facilitate the resolution of section 146B matters brought before the Industrial Relations Commission of New South Wales by ensuring that such proceedings are conducted before the Commission in an efficient and expeditious manner and that practitioners and others who appear before the Commission do all they can to facilitate the just, quick and cost effective disposal of such proceedings.
2. This Practice Direction will become effective on the date of issue.

**Manner of bringing a s146B Dispute Settlement Procedure before the Commission.**

3. Parties who wish to bring a Dispute Settlement Procedure before the Commission under s146B shall do so by means of a dispute notification as provided by Form 2x - Application to have a Dispute Settlement Procedure Conducted. A copy of Form 2x is annexed.

**Standard Directions**

4. The following standard directions apply in respect of matters listed pursuant to a s146B Dispute Settlement Procedure:
  - a. The notifier will ensure that a copy of the Dispute Settlement Procedure is provided when the matter comes before the Commission, if a copy has not already been annexed to the dispute settlement procedure notification.
  - b. Each party will have a representative attending the Commission who is fully conversant with the matter and who has full authority in relation to the settlement of the matter.
  - c. If the parties have agreed that the Commission is to exercise functions in respect of which standard directions or procedures have been established by the Commission (by *Practice Direction* or otherwise) those directions or procedures will apply to the proceedings.

R. P. Boland *J*, President  
30 June 2010

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**Form 2x—Application to have a Dispute Settlement Procedure conducted****BEFORE THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES****IRC MATTER NO:  
2010/****APPLICATION FOR IRC OF NSW TO DEAL WITH A DISPUTE IN ACCORDANCE WITH A DISPUTE SETTLEMENT PROCEDURE***Industrial Relations Act 1996, section 146B***Applicant****Name:****Address:****Suburb:****State:****Postcode:****Contact person:****ABN:****Title:** Mr [ ] Mrs [ ] Ms [ ] Other [ ] specify:

Contact details for the Applicant or contact person (if one is specified):

**Telephone:****Mobile:****Facsimile:****Email:****Applicant's representative (if any)****Name:****ABN:** *[If applicable]***Address:****Suburb:****State:****Postcode:****Contact person:****Telephone:****Mobile:****Facsimile:****Email:**

## Respondent(s) (Party/Parties with whom the Applicant is in dispute)

<b>Name:</b>		
	<b>ABN:</b> <i>[If known]</i>	
<b>Address:</b>		
<b>Suburb:</b>	<b>State:</b>	<b>Postcode:</b>
<b>Contact person:</b> <i>[If known]</i>		
<b>Telephone:</b>	<b>Mobile:</b>	
<b>Facsimile:</b>	<b>Email:</b>	

**1. What is the industry of the employer?**

*[Specify industry.]*

**2. Relevant instrument:**

The dispute is referred to **IRC of NSW** pursuant to a dispute settlement procedure in:

- **Name of instrument:**

- **Type of instrument:**

*[Tick the appropriate box.]*

- enterprise agreement (made under the *Fair Work Act 2009* after 1 July 2009);
- workplace agreement (made under the *Workplace Relations Act 1996* after 26 March 2006);
- certified agreement (made under the *Workplace Relations Act 1996* on or before 26 March 2006);
- AWA, ITEA or an individual preserved state agreement;
- contract of employment or other written agreement with a procedure for dealing with disputes in relation to the NES or a safety net contractual entitlement;
- other (please specify):

Please **attach** a copy of the dispute settlement procedure.

**3. Clauses to which the dispute relates:**

*[List the clause(s) in the relevant instrument (and, if also relevant, the NES) to which the dispute relates.]*

**4. What is the dispute about?**

*[Using numbered paragraphs, set out a description of what the dispute is about, including by reference to the clauses set out above.]*

**5. Relief sought:**

*[If IRC of NSW has a power of arbitration, specify the determination(s) sought.]*

**6. Steps already taken under dispute settlement procedure:**

*[Set out, in chronological order, the steps already taken (if any) under the dispute settlement procedure.]*

**Date:**

**Signature:**

**Name:**

**Capacity/Position:**

### **Service requirements**

**This application must be served on the named Respondent(s) to the dispute as soon as practicable after the document is lodged with the NSW IRC.**

Note: Part 10 of the *Uniform Civil Procedure Rules 2005* (NSW) outlines the requirements of service.