CROWN EMPLOYEES (GENERAL ASSISTANTS IN SCHOOLS - DEPARTMENT OF EDUCATION) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(No. IRC 722 of 2015)

Before Commissioner Stanton 17 November 2015

REVIEWED AWARD

PART A

1. Arrangement

PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Purpose of this Award
3.	Definitions
4.	Anti-Discrimination
5.	Rates of Pay
6.	Hours
7.	Training and Development
8.	Dispute Resolution Procedures
9.	Duties as Directed
10.	Deduction of Union Membership Fees
11.	Entitlements for Short Term Temporary Employees
12.	No Further Claims
13.	Area, Incidence and Duration

PART B

MONETARY RATES

Table 1 - Rates of Pay

2. Purpose of This Award

2.1 This award establishes the rates of pay of General Assistants.

3. Definitions

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

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

3.3 "General assistant" means a person employed as such in a government school by the Secretary under the Act.

3.4 "Department" means the New South Wales Department of Education.

3.5 "Full-time general assistant" means a general assistant employed for 38 hours per week.

3.6 "Industrial Relations Commission" means the Industrial Relations Commission established by the New South Wales *Industrial Relations Act* 1996.

3.7 "Long term temporary general assistant" means a general assistant employed on a temporary basis, either full-time or part-time, under Section 43 of the Act, for a period in excess of one school term.

3.8 "Ongoing general assistant" means any general assistant employed on an ongoing basis, either full-time or part-time, under Section 43 of the Act.

3.9 "Part-time general assistant" means a general assistant who works up to 35.5 hours per week.

3.10 "Parties" means the Secretary of the Department of Education and the Association.

3.11 "Principal" means the principal of a Departmental school.

3.12 "School" means a Department school or other centre where instruction is provided by the Department and includes any place designated as part of, or as an annexe to, such school.

3.13 "Secretary" means the Secretary of the Department of Education.

3.14 "Short term temporary general assistant" means a general assistant employed on a temporary basis, either full-time or part-time, under Section 43 of the Act, for a period of one school term or less.

4. Anti-Discrimination

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

4.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.

4.3 Under the *Anti-Discrimination Act* 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

4.4 Nothing in this clause is to be taken to affect:

4.4.1 any conduct or act which is specifically exempted from anti-discrimination legislation;

4.4.2 offering or providing junior rates of pay to persons under 21 years of age;

4.4.3 any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act* 1977;

4.4.4 a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

4.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

5. Rates of Pay

5.1 The rates of pay that apply to general assistants are set out in Table 1 - Rates of Pay of Part B, Monetary Rates.

5.2 Part-time general assistants who work 35.5 hours per week or less receive the relevant part-time rates of pay as set out in the said Table 1.

5.3 Short term temporary general assistants who work for one term or less receive a loaded rate of pay.

5.4 Long term temporary general assistants who work for more than one school term receive an unloaded rate of pay.

5.5 Salary Packaging Arrangements, including Salary Sacrifice to Superannuation An employee may elect, subject to the agreement of the Department to enter into a Salary Packaging Arrangement in accordance with the provisions of Clause 5 of the Crown Employees (Public Sector - Salaries 2015) Award or any variation or replacement Award.

6. Hours

6.1 The ordinary hours of work for full-time general assistants shall be 38 per week and shall be worked between the hours of 6.00 am and 6.00 pm Monday to Friday (inclusive) for eight hours per day on 19 days of each 20 day cycle.

6.2 A general assistant shall be credited with 0.4 of one hour for each day worked with such time accruing as an entitlement to take one day off duty, with pay, in each four weekly cycle of 20 working days.

6.3 A general assistant who has not worked, or is not regarded by reason of subclauses 6.6 and 6.7 of this clause as having worked a complete four week cycle, shall receive pro-rata accrued entitlements for each day worked (or each fraction of a day worked) or regarded as having been worked in such cycle, payable for the rostered day off or, in the case or termination of employment on termination.

6.4 The general assistant's rostered day off duty prescribed in subclause 6.2 of this clause, shall be determined by mutual agreement between a general assistant and the principal of the school concerned. It may be taken on a rostered basis or accumulated and taken in the school vacation next occurring or such other method as may be agreed upon.

6.5 Once set the rostered day off duty may not be changed in a current cycle unless there are genuine unforeseen circumstances prevailing. Where such circumstances exist and the rostered day off is changed, another day shall be substituted in the current cycle. Should this not be practicable the day must be given and taken in the next cycle immediately following.

6.6 A general assistant entitled to rostered days off duty in accordance with subclause 6.2 of this clause, shall continue to accumulate credit towards their rostered day off duty whilst on recreation, military, short, study, special and sick leave. Where a general assistant's rostered day off duty falls during a period of sick leave, the general assistant's available sick leave shall not be debited for that day.

6.7 Where a general assistant is absent on extended leave and/or workers' compensation during a cycle and returns prior to or on the rostered day off, time absent during that cycle shall be regarded as accruing 0.4 of one hour as prescribed in subclause 6.2 for each day towards the next rostered day off (pro-rata for part of a day). A general assistant who is absent on extended leave and/or workers' compensation for a full cycle shall not be entitled to an allocated day off.

6.8 Part-time general assistants shall not be entitled to a rostered day off but have ordinary daily hours of 7.6 or pro-rata for part of a day.

7. Training and Development

7.1 The Department confirms its commitment to training and development for general assistants.

7.2 Where required by the Department, general assistants will be provided with opportunities for training and development so that they will form a highly skilled, competent and committed workforce, experiencing job satisfaction and providing high quality service.

7.3 General assistants will be entitled to reimbursement of any necessary expenses, as determined by the Department, regarding travel, meals and accommodation in attending training and development activities.

8. Dispute Resolution Procedures

8.1 Subject to the provisions of the *Industrial Relations Act* 1996, should any dispute (including a question or difficulty) about an industrial matter arise, then the following procedures shall apply.

8.1.1 Should any dispute, or question or difficulty arise as to matters occurring in a particular workplace, then the employee and/or Association workplace representative will raise the dispute, question or difficulty with the principal or supervisor as soon as practicable.

8.1.2 The principal or supervisor will discuss the matter with the employee and/or Association representative within two working days with a view to resolving the dispute, question or difficulty or by negotiating an agreed method and time frame for proceeding.

8.1.3 Should the above procedure be unsuccessful in producing a resolution of the dispute, question or difficulty or should the matter be of a nature which involves multiple workplaces, then the individual employee or the Association may raise the matter with an appropriate officer of the Department with a view to resolving the dispute, question or difficulty or negotiating an agreed method and time frame for proceeding.

8.1.4 Where the procedures in paragraph 8.1.3 of this subclause do not lead to resolution of the dispute, question or difficulty, the matter will be referred to the Director, Industrial Relations of the Department and the General Secretary of the Association. They or their nominees will discuss the dispute, question or difficulty with a view to resolving the matter or by negotiating an agreed method and time frame for proceeding.

8.1.5 Should the above procedures not lead to resolution then either party may make application to the Industrial Relations Commission of New South Wales.

9. Duties as Directed

9.1 The Secretary, delegate, nominee or representative may direct a general assistant to carry out such duties as are within the limits of the general assistant's skills, competence and training.

9.2 Any directions issued by the Secretary pursuant to subclause 9.1 of this clause shall be consistent with the Secretary’s responsibility to provide a safe, healthy working environment.

10. Deduction of Union Membership Fees

10.1 The Association shall provide the employer with a schedule setting out the Association’s fortnightly membership fees payable by members of the Association in accordance with the Association’s rules.

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

10.3 Subject to 10.1 and 10.2 above, the employer shall deduct Association fortnightly membership fees from the pay of any employee who is a member of the Association in accordance with the Association’s rules, provided that the employee has authorised the employer to make such deductions.

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

10.5 Unless other arrangements are agreed to by the Department and the Association, all Association membership fees shall be deducted on a fortnightly basis.

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

11. Entitlements for Short Term Temporary Employees

11.1 Other than as described under subclauses 11.3, 11.4, 11.5 and 11.6 of this clause, short term temporary employees are not entitled to any other paid or unpaid leave.

11.2 As set out in subclause 5.3, the short term temporary rates of pay incorporate a payment in lieu of a recreation leave entitlement.

11.3 Short term temporary employees will be entitled to Long Service Leave in accordance with the provisions of the *Long Service Leave Act* 1955.

11.4 Short term temporary employees will be entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, Section 54 Entitlement to Unpaid Parental leave, *Industrial Relations Act* 1996, if they meet the definition of a regular casual employee (see section 53(2) of the *Industrial Relations Act* 1996). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act* 1996 (NSW).

11.4.1 The Secretary must not fail to re-engage a short term temporary employee who meets the definition of a regular casual employee because:

(i) the employee or employee's spouse is pregnant; or

(ii) the employee is or has been immediately absent on parental leave.

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

11.5 Personal Carers entitlement for short term temporary employees

11.5.1 Short term temporary employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in 11.8.2 of the award who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in 11.5.4, and the notice requirements set out in 11.5.5.

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

11.5.3 The Secretary must not fail to re-engage a short term temporary employee because the employee accessed the entitlements provided for in this clause. The rights of the Secretary to engage or not to engage a short term temporary employee are otherwise not affected.

11.5.4 The short term temporary employee shall, if required,

(i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or

(ii) establish by production of documentation acceptable to the Secretary or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

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

11.5.5 The short term temporary employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Secretary of their inability to attend for duty. If it is not reasonably practicable to inform the Secretary during the ordinary hours of the first day or shift of such absence, the employee will inform the Secretary within 24 hours of the absence.

11.6 Bereavement entitlements for short term temporary employees

11.6.1 Short term temporary employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the Secretary).

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

11.6.3 The Secretary must not fail to re-engage a short term temporary employee because the employee accessed the entitlements provided for in this clause. The rights of the Secretary to engage or not engage a short term temporary employee are otherwise not affected.

11.6.4 The short term temporary employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Secretary of their inability to attend for duty. If it is not reasonably practicable to inform the Secretary during the ordinary hours of the first day or shift of such absence, the employee will inform the Secretary within 24 hours of the absence.

11.7 The entitlement in accordance with this clause is subject to:

11.7.1 the employee being responsible for the care and support of the person concerned; and

11.7.2 the person concerned being:

(i) a spouse of the employee; or

(ii) a de facto spouse, being a person of the opposite sex to the employee who lives with the employee as her husband or his wife on a bona fide domestic basis although not legally married to that employee; or

(iii) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or of the spouse or of the de facto spouse of the employee; or

(iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or

(v) a relative of the employee who is a member of the same household where, for the purposes of this definition:

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

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

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

12. No Further Claims

12.1 The no extra claims clause (clause 8) contained in the *Crown Employees (Public Sector – Salaries 2015) Award* shall apply to employees covered by this award.

13. Area, Incidence and Duration

13.1 This award shall apply to all General Assistants as defined in clause 3 Definitions above.

13.2 The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 17 November 2015.

13.3 Changes made to this award subsequent to it first being published on 17 August 2012 (374I.G. 26) have been incorporated into this award as part of the review.

13.4 This award remains in force until varied or rescinded, the period for which it was made having already expired.

PART B

MONETARY RATES

Table 1 - Rates of Pay

Effective from the beginning of the first pay period to commence on or after 1.7.15

General Assistant		$
Full-time Ongoing		
Junior	On employment	31,861
	After 12 months or at age 20	40,963
Adult	1st year	45,516
	2nd year	45,901
	3rd year	46,771
	4th year	47,843
	5th year	48,711
Part-time (Up to 35.5 HPW) Ongoing		
Junior	On employment	17.68
	After 12 months or at age 20	22.72
Adult		25.95

Full-time (38 HPW) Temporary		
Unloaded Junior Adult	 On employment After 12 months or at age 20	 16.09 20.66 22.94
Loaded Junior Adult	 On employment After 12 months or at age 20	 17.41 22.36 24.90
Part-time (Up to 35.5 HPW) Temporary		
Unloaded Junior Adult Loaded Junior Adult	 On employment After 12 months or at age 20 On employment After 12 months or at age 20	 17.68 22.72 25.95 19.16 24.62 28.10

J. D. STANTON, Commissioner

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