

**CROWN EMPLOYEES AGEING, DISABILITY AND HOME CARE –  
NSW DEPARTMENT OF FAMILY AND COMMUNITY SERVICES  
(COMMUNITY LIVING AWARD) 2015**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(Case No. 2017/177667)

Before Chief Commissioner Kite

30 August 2017

**VARIATION**

- 1. Delete Part A, Arrangement of award published 15 January 2016 (378 IG 1542) and insert in lieu thereof the following:

**PART A**

**1. Arrangement**

PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Salaries
4.	Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation
5.	Hours
6.	Roster of Hours
7.	Part-time Staff Members
8.	Casual Employees
9.	Temporary Employees
10.	Overtime
11.	Sleepovers
12.	Penalty Rates for Shift Work and Weekend Work and Special Working Conditions
13.	Meals
14.	Recreation Leave
15.	Public Holidays
16.	Paid Special Sick Leave
17.	Paid Union Leave
18.	Payment and Particulars of Salary
19.	Accommodation and Amenities
20.	Uniforms and Protective Clothing
21.	Dispute Resolution Procedures
22.	Anti-Discrimination
23.	Association Representatives
24.	Notice Board
25.	Medical Examinations
26.	Deduction of Union Membership Fees
27.	Mobility of Staff
28.	General Conditions

- 29. No Extra Claims
- 30. Area Incidence and Duration

PART B

- Schedule 1 - Monetary Rates
- Schedule 2 - Transitional Arrangements
- Schedule 3 - Allowances
- Schedule 4 - Rostering Principles

2. Insert after clause 3 Salaries, the following new clause:

**4. Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation**

- (1) The entitlement to salary package in accordance with this clause is available to:
- (i) permanent full-time and part-time employees;
  - (ii) temporary employees, subject to the Department or agency's convenience; and
  - (iii) casual employees, subject to the Department or agency's convenience, and limited to salary sacrifice to superannuation in accordance with sub-clause (7).
- (2) For the purposes of this clause:
- (i) "salary" means the salary or rate of pay prescribed for the employee's classification by clause 3, Salaries of this Award, and any other payment that can be salary packaged in accordance with Australian taxation law.
  - (ii) "post compulsory deduction salary" means the amount of salary available to be packaged after payroll deductions required by legislation or order have been taken into account. Such payroll deductions may include, but are not limited to, taxes, compulsory superannuation payments, HECS payments, child support payments, and judgement debtor/garnishee orders.
- (3) By mutual agreement with the Department Head, an employee may elect to package a part or all of their post compulsory deduction salary in order to obtain:
- (i) a benefit or benefits selected from those approved by the Department Head; and
  - (ii) an amount equal to the difference between the employee's salary, and the amount specified by the Department Head for the benefit provided to or in respect of the employee in accordance with such agreement.
- (4) An election to salary package must be made prior to the commencement of the period of service to which the earnings relate.
- (5) The agreement shall be known as a Salary Packaging Agreement.
- (6) Except in accordance with sub-clause (7), a Salary Packaging Agreement shall be recorded in writing and shall be for a period of time as mutually agreed between the employee and the Department Head at the time of signing the Salary Packaging Agreement.
- (7) Where an employee makes an election to sacrifice a part or all of their post compulsory deduction salary as additional employer superannuation contributions, the employee may elect to have the amount sacrificed:
- (i) paid into the superannuation fund established under the *First State Superannuation Act 1992*; or

- (ii) where the employer is making compulsory employer superannuation contributions to another complying superannuation fund, paid into the same complying fund; or
  - (iii) subject to the Department or agency's agreement, paid into another complying superannuation fund.
- (8) Where the employee makes an election to salary sacrifice, the employer shall pay the amount of post compulsory deduction salary, the subject of election, to the relevant superannuation fund.
- (9) Where the employee makes an election to salary package and where the employee is a member of a superannuation scheme established under the:
- (i) *Police Regulation (Superannuation) Act 1906*;
  - (ii) *Superannuation Act 1916*;
  - (iii) *State Authorities Superannuation Act 1987*; or
  - (iv) *State Authorities Non-contributory Superannuation Act 1987*,

the employee's Department or agency must ensure that the employee's superable salary for the purposes of the above Acts, as notified to the SAS Trustee Corporation, is calculated as if the Salary Packaging Agreement had not been entered into.

- (10) Where the employee makes an election to salary package, and where the employee is a member of a superannuation fund other than a fund established under legislation listed in sub-clause (9) of this clause, the employee's Department or agency must continue to base contributions to that fund on the salary payable as if the Salary Packaging Agreement had not been entered into. This clause applies even though the superannuation contributions made by the Department or agency may be in excess of superannuation guarantee requirements after the salary packaging is implemented.
- (11) Where the employee makes an election to salary package:
- (i) subject to Australian Taxation law, the amount of salary packaged will reduce the salary subject to appropriate PAYG taxation deductions by the amount packaged; and
  - (ii) any allowance, penalty rate, payment for unused leave entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an employee is entitled under this Award or any applicable Award, Act or statute which is expressed to be determined by reference to the employee's rate of pay, shall be calculated by reference to the rate of pay which would have applied to the employee under clause 3, Salaries of this Award if the Salary Packaging Agreement had not been entered into.
- (12) The Department Head may vary the range and type of benefits available from time to time following discussion with the Association. Such variations shall apply to any existing or future Salary Packaging Agreement from date of such variation.
- (13) The Department Head will determine from time to time the value of the benefits provided following discussion with the Association. Such variations shall apply to any existing or future Salary Packaging Agreement from the date of such variation. In this circumstance, the employee may elect to terminate the Salary Packaging Agreement.
3. Insert after subclause (viii) in clause 6, Roster of Hours, the following new subclause:
- (ix) Rosters shall be developed and implemented in accordance with the 'Rostering Principles' at Schedule 3.

4. Insert after clause 15 Public Holidays, the following new clause:

**16. Paid Special Sick Leave**

- (1) Paid special sick leave shall be granted by the Department if an employee satisfies the following criteria:
- (i) has ten or more years of service
  - (ii) has been or will be absent for a period of at least three months; and
  - (iii) has exhausted or will exhaust, all sick leave entitlements.
- (2) Paid sick leave will be granted in accordance with the following table:

Completed years of service	Number of working days		
	5 day week	6 day week	7 day week
10	22	26	30
20	44	52	60
30	66	78	90
40	88	104	120
50	110	150	150

5. Delete subclause (ii) of clause 28 General Conditions of Employment.
6. Delete clause 27, Extra Claims.
7. Insert after clause 28 General Conditions, the following new clause:

**29. No Extra Claims**

Other than as provided for in the *Industrial Relations Act* 1996 and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the NSW Industrial Relations Commission for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the Employees covered by the Award that take effect prior to 30 June 2018 by a party to this Award.

8. Delete Schedule 1 - Monetary Rates of Part B and insert in lieu thereof the following:

**PART B**

**Schedule 1 - Monetary Rates**

Classification and Grades	Effective from 1.7.17 Per Annum \$
Disability Support Worker	
Year 1	52,320
Year 2	53,241
Year 3	54,635
Year 4	55,697
Year 5	56,749
Year 6	58,312
Year 7	59,325
Year 8	60,368
Year 9	62,390
Year 10	64,418
Team Leader - One Unit	
Year 1	92,470

Year 2	94,327
Team Leader - Two Units	
Year 1	95,235
Year 2	97,126
Community Support Worker	
Year 1	52,320
Year 2	53,241
Year 3	54,635
Year 4	55,697
Year 5	56,749
Community Worker	
Year 1	56,749
Year 2	58,312
Year 3	60,368
Year 4	63,867
Year 5	66,837
Year 6	70,181
Year 7	73,889
Year 8	74,444
Community Consultant	
Year 1	74,713
Year 2	78,437
Year 3	81,369
Year 4	84,605
Year 5	88,851

9. Delete Table 1 of Schedule 2 - Transitional Arrangements in Part B and insert in lieu thereof the following:

**Table 1**

Transitional Arrangements for Residential Support Workers Level 2 with 12 months or more service at their current rate of pay who were prevented from further annual increments due to qualification requirements under previous award provisions.

Classification and Grades	1.7.17 Per annum 2.50% \$
Residential Support Worker Level 2	
Year 1	55,697
Year 2	56,749
Year 3	58,312
Year 4	59,325
Year 5	60,368
Year 6	62,390
Disability Support Worker	
Year 5	56,749
Year 6	58,312
Year 7	59,325
Year 8	60,368
Year 9	62,390
Year 10	64,418

10. Delete Schedule 3 - Allowances of Part B and insert in lieu thereof the following:

**Schedule 3 - Allowances**

Allowances	1.7.17 Per annum 2.50% \$
(i) An officer who is required by the Department to accompany clients on excursions, etc, which necessitate overnight stays shall be paid in allowance equivalent to eight hours at ordinary rates for each overnight stay (ii) An officer who is nominated to supervise a team in a community based service, other than in a residential setting, shall be paid a Team Leader Allowance as follows	
No of staff Supervised 5 to 10	4,021
No of staff Supervised 11 to 25	6,714
No of staff supervised 26 to 40	9,411
No of staff Supervised 40 +	10,736

11. Insert after Schedule 3 - Allowances of Part B, the following new Schedule:

**Schedule 4 - Rostering Principles**

- (1) Statement of Intent

These principles are to be adopted by Regions in rostering Disability Support Workers and Team Leaders within Ageing, Disability and Home Care (ADHC). They are to be read in conjunction with the Crown Employees Ageing, Disability and Home Care - Department of Human Services NSW (Community Living Award) 2016 (hereafter referred to as the Award).

ADHC is responsible for the delivery of client services in the accommodation and respite business stream. In determining rostering requirements line managers must have regard to the identified client needs requiring staff support, OH&S obligations, management of risk and the allocated budget.

This document set outs the principles to be applied in the rostering of staff in line with the Award provisions.

- (2) Award and General Parameters

- (i) Rosters must meet the needs of ADHC and its clients. In this context ADHC is committed to maximising the flexibility available to employees to balance their work and personal/family obligations.
- (ii) Requests for roster changes due to personal/family obligations should be given favourable consideration where the request can be practicably and reasonably facilitated. So far as possible, reasonable notice should be provided by the employee. In this context Team Leaders need to consider NSW Government policy and legislative requirements regarding accommodating personal and family obligations, and may need to balance competing and/or conflicting requests from staff. The Business link Human Resources section in each Region are available to provide advice to Team Leaders when making rostering decisions.
- (iii) Shifts may be swapped by mutual agreement with the prior approval of the Team Leader.
- (iv) The requirements of Clause 5 "Hours" and Clause 6 "Rosters of Hours" of the Award are to be met. Rosters are to be for a period of 28 calendar days.
- (v) Standard shift lengths for full time employees are 8 or 10 hours.

- (vi) The minimum ordinary hours that may be rostered for permanent/temporary part time or casual employees is 3 hours and ordinary shift lengths will otherwise not exceed normal full time hours.
  - (vii) Clause 6 "Roster of Hours" of the Award sets out the terms and conditions of payment to staff, including the payment of overtime, where alterations are made to a roster.
  - (viii) Where a change in roster occurs within less than 24 hours' notice to the affected staff member all time worked outside that shown on the roster shall be paid at overtime rates.
- (3) Master and Operational Rosters
- (i) Master rosters are developed by Team Leaders in consultation with staff and provided to Coordinators Accommodation and Respite for approval.
  - (ii) Operational rosters are developed by Team Leaders in consultation with staff.
  - (iii) Rosters are not to be used as a mechanism to inappropriately advantage or disadvantage any staff member.
  - (iv) The development of master rosters and any changes to them are to be the subject of consultation with all permanent and temporary staff.
  - (v) Operational rosters are developed from the master roster in consultation with staff. Operational rosters will reflect deviations from the master roster.
  - (vi) An operational roster may be changed at any time to enable the operation of the service to be carried on. Long term or anticipated changes to client needs will be reflected as a change to the master roster.
  - (vii) Operational rosters are to be displayed two weeks in advance of the rostering commencing.
  - (viii) Any change in the displayed operational roster must be notified verbally and in writing, where practical, to the staff member concerned. In all cases a written record of the decision must be kept. Any change to the operational roster which exceeds the cost of the roster budgeted for that location is subject to approval.
- (4) Needs Based Rostering
- (i) All full-time and part-time employees are employed as shift workers on a 24/7 basis in accordance with the Award subject to any part-time work agreements.
  - (ii) The rostering arrangements should be appropriate to the client needs and the staffs' skills.
  - (iii) All staff should be rostered in a way that:
    - (a) is based on rostering need such as capacity for supervision (informal/formal); ability to perform key worker role; and opportunity to work alongside other colleagues.
    - (b) facilitates their attendance at staff meetings and approved professional development and training. Every endeavour is to be made to ensure all staff can attend staff meetings e.g. the immediately prior rostered night shift to be arranged for a person outside the unit.
  - (iv) All employees who have not previously worked in a ADHC Group Home or Respite Unit where they will be required to work are to receive 3 hours of orientation to the unit or more if necessary. The hours for the orientation are to be supernumery for the employee being inducted into the unit.

(5) Filling of Vacant Shifts - Where the Vacancy Will Not Exceed 5 Working Days

- (i) For vacancies not exceeding 5 working days there is usually a need to supplement the workforce as a consequence of:
  - (a) changing client needs
  - (b) the absence of another employee
  - (c) an emergency.
- (ii) Vacancies not exceeding 5 working days are to be filled in the following order:
  - (a) Additional hours offered to permanent and/or temporary part-time employees.
  - (b) Engagement of casual employees at ordinary rates i.e. not overtime work.
  - (c) Overtime.
  - (d) Agency staff.
- (iii) In the filling of vacancies not exceeding 5 working days regions should explore options for using existing staff from within the Cluster and also within Region.
- (iv) Provided that in making the offer of additional, casual or overtime hours, the total number of hours which will be worked by the employee in the fortnight period is taken into account. This is necessary to meet OH&S responsibilities in relation to fatigue management. The working of a maximum of 96 hours per fortnight is considered reasonable
- (v) All employees are expected to take reasonable steps to fill immediate short term vacancies. The filling of all other vacancies will be the responsibility of the line manager responsible for rostering of that Unit.
- (vi) Disability Support Workers need not seek the approval of the Team Leader or the on-call officer in filling a short-term vacancy, provided that the offer of hours or work is line with these principles and follows the order set out in (ii) above. However, in emergency situations, particularly in instances where the immediate health and safety of a client or employee is seriously at risk and the Team Leader is not rostered to work, employees may directly contact employees to attend work in the absence of an approval from a manager to do so. Contact is to be made with the line manager responsible for rostering of that Unit as soon as practicable after the engagement has been made.

(6) Filling of Vacant Shifts - Vacancies Exceeding 5 Days

- (i) Where it is known in advance that there will be a vacant line on a roster and the vacancy is not short term, ADHC's preference is to fill the entire line wherever practicable. The order outlined below will be applied in the first instance to the entire vacancy. If it is found that the vacancy can not be filled by a single staff member, then the vacant shifts will be offered to staff in the following order;
  - (a) Permanent part-time staff to be offered a temporary increase in hours.
  - (b) New temporary contract of employment or variation of contract for existing temporary staff. Where appropriate may also be administered by way of payment of additional hours.
  - (c) Engagement of casual employees at ordinary rates i.e. not overtime work.
  - (d) Overtime.



- (e) Engagement of agency staff.
  - (ii) The Guidelines for the Engagement of Agency staff in Group Homes and Respite Centres are to be consulted where it is proposed to engage agency staff.
- (7) Dispute Resolution
- (i) In the first instance concerns about rostering should be the subject of discussion between the staff members involved and their immediate supervisor. Team meetings or supervision sessions may be the appropriate forum for these discussions. In the case that the matter remains unresolved, the matter should be raised with the Coordinator Accommodation and Respite who will address the issue if necessary with the Manager, Accommodation and Respite.
  - (ii) ADHC will monitor the application of these principles by Regions through the localised joint consultative committees between ADHC and the PSA. Where issues remain unresolved they may be referred to ADHC's Central Office for assistance.
12. This variation shall take effect on and from 1 July 2017.

P. KITE, Chief Commissioner

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