

**CROWN EMPLOYEES (HOME CARE SERVICE OF NEW SOUTH WALES - ADMINISTRATIVE STAFF) AWARD 2012**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(No. IRC 148 of 2012)

Before The Honourable Mr Justice Staff

16 April 2012

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Clause No.      Subject Matter

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### **2. Title**

This award shall be known as the Crown Employees (Home Care Service of New South Wales - Administrative Staff) Award 2007.

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

- (i) This award shall apply to persons employed in the classifications contained in Part G, Monetary Rates.
- (ii) This award rescinds and replaces the Crown Employees (Home Care Service of New South Wales - Administrative Staff) Award 2007 published 30 May 2008 (365 IG 1629) and all variations thereof.
- (iii) 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 16 April 2012.

- (iv) The award remains in force until varied or rescinded, the period for which it was made having already expired.

#### **4. Definitions**

- (i) "Administrative Officer" means and includes all employees of the Home Care Service of New South Wales other than those employed under the Care Worker Employees - Department of Ageing, Disability and Home Care (State) Award 2008 and all variations thereof.
- (ii) "Employee" means a person employed pursuant to this award.
- (iii) "Employer" means the Home Care Service, a division of Ageing Disability and Home Care, Department Of Family And Community Services NSW as constituted by the *Home Care Service Act 1988*.
- (iv) A "Full-time Employee" is one who is appointed to work 35 hours per week.
- (v) A "Part-time Employee" is one who regularly works less than 70 hours per fortnight.
- (vi) A "Casual Employee" means an employee engaged by the hour and paid as such and shall only be used for temporary and relief purposes.
- (vii) "Home Care Service" or "Service" means the body referred to in the *Home Care Service Act 1988*. The Act provides that the Director-General of the Department of Family And Community Services manages the Service.
- (viii) "Trainee" means an employee who is bound by and undertaking an approved traineeship under the *Apprenticeship and Traineeship Act 2001*.
- (ix) "Union" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.
- (x) Domestic Violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

#### **5. Consultation**

The Department of Family And Community Services NSW and the Union agree to continued consultation through the Joint Consultative Committee regarding matters affecting, but not limited to, those that are likely to have a significant effect on employees, such as major changes to organisational structure, programs or technology.

#### **6. Grievance/Dispute Settling Procedures**

When a dispute arises, every effort must be made to resolve the matter with haste and settle it by following the procedure as set out below:

##### **Step 1**

In the first instance the issue should be discussed between the employee(s) concerned and the Supervisor/Branch Manager. If at this stage the parties are unable to discuss the issue, an employee may seek the intervention of a Home Care Union delegate.

##### **Step 2**

If the issue has not been resolved within a reasonable time period, the employee(s) or a Home Care Union delegate may approach the Area/Section Manager to seek resolution of the dispute.

### Step 3

Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti-Discrimination Act 1977*) that makes it impractical for the employee to advise their immediate Manager, the notification may occur to the next appropriate level of management, including, where required, to the Department head or delegate.

### Step 4

The immediate Manager, or other appropriate officer, shall convene a meeting in order to resolve the grievance, dispute or difficulty within 2 working days, or as soon as practicable, of the matter being brought to attention.

### Step 5

Should the parties be unable to resolve the dispute as defined in the steps above, the parties may refer the issue to their respective representatives, i.e. the authorised delegate for Home Care and the General Secretary of the Union or delegate for the employees of the Home Care Service.

### Step 6

If the issue is not resolved by discussion between management and the Union, either party can refer the matter to the General Manager of the Home Care Service for resolution.

Notwithstanding the above, either party still has the option to refer the issue to the relevant industrial tribunal for resolution.

When the dispute relates to more than one branch, the procedure will start at Step 3.

It is agreed that work shall continue during the period of discussion except where there is a bona fide safety matter, in which case employees may be relocated to safe positions.

## **PART B**

### **EMPLOYMENT**

#### **7. Contract of Employment**

- (i) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award, provided that such duties are not designed to promote deskilling.
- (ii) The employer may direct an employee to carry out such duties and use such tools and equipment as may be required, provided that the employee has been properly trained in the use of such tools and equipment.
- (iii) Any direction issued by the employer pursuant to subclauses (i) and (ii) of this clause shall be consistent with the employer's responsibility to provide a safe and healthy working environment.
- (iv) An employee may be engaged as full-time, part-time or casual.
- (v) The engagement of employees other than casuals shall be terminated by 2 weeks' notice on either side to be given at any time during the week or by the payment or forfeiture, as the case may be, of 2 weeks' wages in lieu thereof.
- (vi) Notwithstanding the provisions of this clause, the employer or its representative shall have the right to terminate the services of an employee at any time for refusal of duty, malingering, inefficiency, neglect of duty or misconduct and shall be liable only for payment up to the time of dismissal.

- (vii) The employment of a casual employee may be terminated by one hour's notice.
- (viii) Upon the termination of employment, the employer shall, at the request of the employee, give to such employee a statement signed by the employer stating the period of employment, the class of work for which the employee was engaged and when the employment terminated.

#### **8. Part-Time Employees**

- (i) Part-time employees (see clause 4, Definitions) employed under this clause shall be paid an hourly rate calculated on the basis of 1/35th of the appropriate weekly rate prescribed by Table 1 - Salaries, of Part G, Monetary Rates, with a minimum payment of one hour for each start.
- (ii) Employees engaged as part-time shall be granted leave and other entitlements of this award on a pro rata basis.

#### **9. Casual Employees**

- (i) Casual employees (see clause 4, Definitions) shall receive an hourly rate of 1/35th of the appropriate weekly rate of salary prescribed in Table 1 - Salaries, of Part G, Monetary Rates, plus a casual loading of 15%, for all duties performed in ordinary time on any day, Monday to Friday, inclusive. This amount shall be the ordinary hourly rate of pay for casual employees.
- (ii) The hourly rate of pay prescribed in subclause (i) of this clause shall be calculated to the nearest whole cent, any amount less than a half cent in the result to be disregarded.
- (iii) Casual employees shall receive a minimum payment of one hour for each start.

#### **10. Hours of Work**

- (i) The ordinary hours of work, exclusive of meal times, shall not exceed 7 hours per day or 35 hours per week, to be worked between the hours of 7.00 a.m. and 7.00 p.m., Monday to Friday.
- (ii) The starting and finishing times of an employee once fixed may be altered by the employer only following one month's notice to accommodate a change in office hours but may be altered at any time by agreement between the employer and the employee.
- (iii) Subclauses (i) and (ii) of this clause apply except as provided for in clause 11, Flexi-time.
- (iv) The Home Care Service may require an employee to perform duties beyond the hours determined under this clause but only if it is reasonable for the employee to do so. An employee may refuse to work additional hours in circumstances where the working of such hours would result in the employee working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
  - (a) the employee's prior commitments outside the workplace, particularly the employee's family and carer responsibilities, community obligations or study arrangements;
  - (b) any risk to employee health and safety;
  - (c) the urgency of the work required to be performed during additional hours, the impact on the operational commitments of the organisation and the effect on client services;
  - (d) the notice (if any) given by the Home Care Service regarding the working of the additional hours and by the employee of their intention to refuse the working of additional hours; or
  - (e) any other relevant matter.

## 11. Flexi-Time

(i) Application

The provisions contained in this clause apply to all permanent employees including those employed on a part-time basis.

(ii) Bandwidth

- (a) The Bandwidth is 7.00am to 7.00pm, Monday to Friday, during which time normal work can be undertaken, based on the conditions contained in this clause.
- (b) Time worked outside the Bandwidth will attract overtime in accordance with clause 19, Overtime of this award.
- (c) Alteration to the Bandwidth shall be by agreement.

(iii) Credit/Debit Hours

- (a) Credit/Debit Hours are identified as being the difference between the hours an employee has accumulated in a four weekly period and the ordinary hours of 140.
- (b) Hours in excess of 140 are credit hours, those less than 140 hours are debit hours.

(iv) Coretime and Standard Time

- (a) Coretime is the period during the day within Standard Hours when all employees are required to be on duty, unless on authorised leave.
- (b) Coretime shall be set by each Work Location.
- (c) Coretime shall be of 6 hours duration, exclusive of a meal break.
- (d) Standard time shall be the hours a Work Location is normally open and operating and shall be set by Central Office.

(v) Lunch and Meal Breaks

- (a) Approval may be sought for a Work Location to have a flexible lunch period. The minimum lunch period shall be a half hour. Under normal circumstances the maximum lunch period shall be one hour.
- (b) Lunch periods in excess of one hour shall be determined in consultation with the Authorising Officer, ensuring that such an extension does not prevent the proper functioning of the Section to which the employee is attached.
- (c) An employee shall not be required to be on duty for more than 5 ordinary hours from the time of commencement without a break.

(vi) Accumulation and Carry Over

- (a) An employee may accumulate credit or debit hours throughout a period, provided that at the end of the period the number of credit hours carried forward does not exceed 14 hours and any debit hours carried forward does not exceed 10 hours.
- (b) Where an employee's accumulation of credit hours at the end of a period exceeds 14 hours the excess hours shall be forfeited.

- (c) Authorising Officers shall make every effort to ensure that an employee does not consistently forfeit excess credit hours at the conclusion of periods as a result of requests for flexi leave being refused.
- (d) Where an employee's accumulation of debit hours at the end of a period exceeds 10 hours, the excess hours accumulated shall be taken as annual leave where available or leave without pay where no annual leave exists.

(vii) Flexileave

- (a) An employee may take off in core time a maximum of two (2) full day or four (4) half-days at any time during a period. A half-day is three and a half hours for full-time employees and half the normal hours worked for part-time employees.
- (b) It is not necessary for an employee to have a credit balance when taking flexileave.
- (c) Flexileave may be taken immediately before or after annual leave.
- (d) Flexileave cannot be taken during any period of leave.
- (e) Flexileave may not be taken at the end of a period of leave without pay.
- (f) An employee must obtain the approval of the supervisor prior to proceeding on flexileave.

(viii) Disruption of transport

- (a) Notwithstanding any other provision contained in this clause, where an employee encounters a disruption to the mode of transport normally used in travelling from the employee's place of residence to place of employment and such disruption is caused by a transport strike or other extraordinary condition the following conditions shall apply:
  - (1) The employee may commence duty at any time and where the disruption continues throughout the day, may cease duty at any time.
  - (2) An employee affected by such a disruption will not be debited annual leave if the employee commences duty after the beginning of coretime. Time worked on such days will accumulate in the normal way.
  - (3) The employee may elect to take off the full day as flexileave where the disruption is reasonably likely to continue throughout the day.
  - (4) Flexileave taken during such disruptions shall be recorded as over and above the normal flexileave to which the employee is entitled under this clause.
- (b) Flexileave taken under these conditions shall be at the discretion of the Authorising Officer, provided that all relevant circumstances are considered, including:
  - (1) The delayed employee's usual time of arrival at the employee's place of employment.
  - (2) Where the disruption was foreseeable, the employee made reasonable attempts to arrive at the place of employment prior to the commencement of coretime.

(ix) Travelling on official business

- (a) Any travel on official business during the bandwidth on a working day shall be treated as time worked for the purposes of this clause and in accordance with all other provisions of this award.

- (b) Employees shall be compensated for travelling time excluding time within the flextime time bandwidth in accordance with clause 23, Excess Travel of this award.
- (x) Transfer to other Work Locations
  - (a) An employee transferred from one location to another shall carry credit or debit hours to the new location.
  - (b) Work Locations shall ensure that details of a transferred employee's debit or credit hours are conveyed to the new Work Location at the time of transfer.
  - (c) An employee relieving in another Work Location shall comply with the approved Bandwidth and Coretime applying in that office, branch or section.
- (xi) Where an employee has accrued 8 weeks of annual leave, unless otherwise authorised by their manager, flex leave can only be taken where recreation leave has been applied for and approved. If, however, annual leave has been applied for and declined, access to flex leave is still available.
- (xii) Termination of Service
  - (a) Where an employee gives notice of resignation or retirement the employee shall, during the period of notice, take all reasonable steps to eliminate any accumulated credit or debit hours.
  - (b) Work Locations shall, as far as practicable, facilitate the elimination of accumulated credit or debit hours by such employees.
  - (c) Where an employee has an accumulation of debit hours at the completion of the last day of service, the accumulated annual leave or moneys owing to that employee shall be adjusted accordingly.
  - (d) An employee may receive compensation for accumulated credit hours to 14 hours outstanding on the last day of service:
    - (1) Where an employee's services terminate without notice for reasons other than misconduct.
    - (2) Where an application for a period of flexileave which would have eliminated the accumulated credit hours was made pursuant to this clause during the period of notice or resignation and was refused.
    - (3) In such other circumstances as the Authorising Officer may approve.
- (xiii) Variations

The provisions of this clause shall not be altered without the consent of both parties. Provided that failure to reach mutual consent shall not prevent either party from seeking the assistance of the Industrial Relations Commission of NSW.

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

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



- 11A.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.
- 11A.5 The employer 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 employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- 11A.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.
- 11A.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 29, Sick Leave of this award, or access to the flexible working hours scheme in clause 11, Flexi-time of this award, where applicable.

## **12. Redundancy**

Employees whose positions are made redundant and are declared by the employer to be excess to the needs of the organisation shall be managed in accordance with the Government's policy on Managing Excess Employees, as varied from time to time.

## **13. Deduction of Union Membership Fees**

- (i) The Union shall provide the employer with a schedule setting out Union membership fees payable by members of the Union in accordance with the Union's rules.
- (ii) The Union shall advise the employer of any change to the amount of membership fees made under its rules. Any variation to the schedule of Union membership fees payable shall be provided to the employer at least one month in advance of the variation taking place.
- (iii) Subject to subclauses (i) and (ii) of this clause, the employer shall deduct Union membership fees from the salary of any employee who is a member of the Union in accordance with the Union's rules, provided that the employee has authorised the employer to make such deductions.
- (iv) Moneys so deducted from employees' salary shall be forwarded regularly to the Union together with all necessary information to enable the Union to reconcile and credit subscriptions to employees' Union membership accounts.

## **13A. Secure Employment**

- (i) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (ii) Casual Conversion

- (a) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment

converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.

- (b) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this subclause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (c) Any casual employee who has a right to elect under paragraph (ii)(a), upon receiving notice under paragraph (ii)(b) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (d) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (e) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (f) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (ii)(c), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (ii)(c), discuss and agree upon:

- (1) whether the employee will convert to full-time or part-time employment; and
- (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996 (NSW)*;

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (g) Following an agreement being reached pursuant to paragraph (f), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (h) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

(iii) Occupational Health and Safety

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

- (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
  - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (b) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (c) Nothing in this subclause (iii) 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.
- (iv) Disputes Regarding the Application of this Clause
- Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.
- (v) 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.

## **PART C**

### **REMUNERATION**

#### **14. Salaries**

- (i) Employees will be appointed to one of the grades as outlined in Table 1 - Salaries, of Part G, Monetary Rates.
- (ii) Should there be a variation to the Crown Employees (Public Sector - Salaries 2008) Award, or an award replacing it by way of salary increase, this award shall be varied to give effect to any such salary increase, from the same operative date of the variation of that award, or replacement award, excluding trainees as provided by subclause (iii) of this clause.

- (iii) Trainees appointed under the provisions of clause 36, Traineeships, will be appointed to an applicable rate of pay as outlined in the Crown Employees (Home Care Service of New South Wales - Administrative Staff - Training Wage) Award 2007 or an award replacing it.

### **15. Appointment**

- (i) Except as provided in subclause (ii) of this clause, employees will be appointed to the first salary point in the grade range of the position to which they are appointed.
- (ii) The employer may appoint a person to a higher salary level within the grade range. In determining commencing salary, regard must be given to:
  - (a) the person's skills, experience and qualifications;
  - (b) the rate required to attract the person; and
  - (c) the remuneration of existing employees performing similar work.

### **16. Salary Progression**

Progression within each grade range will be by annual increment, provided that the manager is satisfied with the conduct and manner of performance of duties of the employee concerned.

### **17. Classification Committee**

At the initiative of the employer, or at the request of the Union, a Classification Committee comprised of representatives of the employer, employees and the Union shall be convened to evaluate positions and make recommendations to the Executive Director Home Care Service of NSW about the classification and grading of positions under this award.

### **18. Payment of Salaries**

- (i) All salaries shall be paid fortnightly not later than Thursday in each pay week.
- (ii) Salaries shall be paid by deposit to nominated financial institutions, unless otherwise agreed between the employer and the employee.
- (iii) The employer shall provide to each employee a method for recording the hours worked each day which shall be verified by the employee.
- (iv) Before or at the time of payment of salaries each employee shall be issued with a docket or pay envelope showing the date of payment, period covered by such payment, the amount of salary paid for work at ordinary rate, the amount of salary for overtime, the amount of allowances, the amount and nature of any deduction and any annual leave or other leave payments.

### **19. Overtime**

- (i) For all work directed to be performed outside the ordinary hours of work, the rates of pay shall be time and a half for the first 2 hours and double time thereafter, such double time to continue until the completion of the overtime work.

An employee who is directed to work overtime may elect to take leave in lieu of payment for all or part of his/her entitlement in respect of the time so worked, provided that:

- (a) Leave in lieu of payment shall be taken at the convenience of the Home Care Service.
- (b) The maximum period of leave in lieu that may be taken in respect of any one period of overtime worked shall be one day.

- (c) Any period of leave in excess of one day shall be paid by the employer at the appropriate rate.
- (ii) For the purpose of this clause each day shall stand alone.
- (iii) Provided that employees whose positions are graded at Grade 14 Step 1 and above shall be paid, under the provisions of this clause, overtime based on the ordinary rate of pay for Grade 13 Step 2 as contained in Table 1 - Salaries, of Part G, Monetary Rates.
- (iv) An employee may be directed by the employer to work overtime, provided it is reasonable for the employee to be required to do so. An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
  - (a) the employee's prior commitments outside the workplace, particularly the employee's family and carer responsibilities, community obligations or study arrangements;
  - (b) any risk to employee health and safety;
  - (c) the urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
  - (d) the notice (if any) given by the employer regarding the working of the overtime, and by the employee of their intention to refuse overtime; or any other relevant matter.

## **20. Meal Allowance**

An employee required to work overtime for more than 2 hours, without being notified on the previous day or earlier that he/she will be so required to work, shall be paid for the purchase of a meal.

Provided that the amount paid shall be equal to the overtime meal allowance as determined by the Crown Employees (Public Service Conditions of Employment) Award 2009 and as advised by the Director of Public Employment.

## **21. Higher Duties Or Relief Work**

- (i) An employee, when called upon by the employer to perform work of a classification paid at a higher grade, shall be paid at the higher grade rate of pay for the time so spent.
- (ii) No employee shall suffer a reduction in salary by reason of relieving in a classification paid at a lower grade.

## **22. Travel Allowance**

- (i) Where an employee is required to use his/her motor vehicle on official business, he/she shall be paid at a rate per kilometre as set out Item 1 of Table 2 - Other Rates and Allowances, of Part G, Monetary Rates.
- (ii) The allowance is to be increased in accordance with the motor vehicle allowances for official business in the Crown Employees (Public Service Conditions of Employment) Award 2009 and as advised by the Director of Public Employment.
- (iii) Travel from the employee's home to the work location and return shall be excluded.
- (iv) Where an employee is required to use public transport for travel on official business, such employee is to be reimbursed the actual expenses incurred for such travel.

No payment shall be made under subclauses (i) and (ii) of this clause unless the employer is satisfied that the employee has incurred the expenditure for such travel.

### **23. Excess Travel**

- (i) Excess travel is defined as any travel or waiting time outside the ordinary hours of work, as defined in clause 10, Hours of Work, and subject to the provisions of this clause.
- (ii) Excess travel shall be paid at the single, ordinary rate of pay or an employee may elect to take leave in lieu of such payment to be taken within 1 month of accrual unless otherwise authorised by the employee's manager.
- (iii) Compensation for excess travelling time excludes time within the flexitime bandwidth.
- (iv) The hours of excess travel shall not be regarded as work time for the purposes of leave and other entitlements found in this award or other understandings or agreements reached by the parties to this award.
- (v) No payment shall be made under this clause unless the employer is satisfied the excess travel or waiting time was directed or approved.

### **24. Sustenance Allowance**

- (i) Employees who are authorised to perform duties at a temporary work location necessitating the employee being away from home overnight shall have travel and associated expenses, properly and reasonably incurred met by the employer in accordance with this clause.
- (ii) The employer shall require employees to obtain an authorisation for all official travel prior to incurring any travel expense.
- (iii) Where available at a particular centre or location, the overnight accommodation to be occupied by employees who travel on official business shall be the middle of the range standard, referred to generally as three star or three diamond standard of accommodation.
- (iv) The employer will elect whether to pay the accommodation directly or whether an employee should pay the accommodation and be compensated in accordance with this clause. Employees shall obtain prior approval when making their own arrangements for overnight accommodation.
- (v) Where the employer elects to pay the accommodation provider the employee shall receive:
  - (a) the appropriate meal allowance in accordance with Item 7 of Table 2 - Other Rates and Allowances of Part G, Monetary Rates
  - (b) incidentals as set out in item 6 of table 2- Other Rates and Allowances of Part G, Monetary Rates
- (vi) Where the employer elects not to pay the accommodation provider the employee shall elect to receive either:
  - (a) the appropriate rate of allowance specified in Table 2- Other Rates and Allowances, of Part G, Monetary Rates; or
  - (b) in lieu of subparagraph (a) of this paragraph, payment of the actual expenses properly and reasonably incurred for the whole trip on official business (excluding morning and afternoon teas).
- (vii) The sustenance allowance is to be increased in accordance with the Crown Employees (Public Service Conditions of Employment) Award 2009 and as advised by the Director of Public Employment.

## **PART D**

### **LEAVE PROVISIONS**

#### **25. Public Holidays**

- (i) The days on which the following holidays are observed shall be holidays under this award: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day and the picnic day of the Home Care Service to be held on the first Monday of August each year or on a day determined by the employer.
- (ii) Where in the State an additional holiday is proclaimed or gazetted by the Commonwealth or New South Wales State Government and is to be observed generally by persons throughout the State, then such day shall be deemed to be a holiday for the purposes of this award.
- (iii) Employees directed to work on any of the days prescribed in subclause (i) of this clause shall be paid 150% in addition to ordinary rates for the time so worked.

#### **26. Annual Leave**

- 26.1 See *Annual Holidays Act 1944*.
- 26.2 An employee must take their annual leave to reduce all balances below 8 weeks or its hourly equivalent, and the employer must cooperate in this process. The employer may direct an employee with more than 8 weeks to take their annual leave so that it is reduced to below 8 weeks.

#### **27. Annual Leave Loading**

- (i) Employees, other than casual employees, shall be entitled to an annual leave loading based on the equivalent of 17½% of 4 weeks' ordinary pay.
- (ii) Payment of annual leave loading shall be made on the annual leave accrued during the previous leave year and shall be subject to the following conditions;
  - (a) Annual leave loading shall be paid on the first occasion in a leave year, other than the first leave year of employment, when an employee takes at least two (2) consecutive weeks annual leave. Where an employee does not have at least 2 weeks annual leave available, the employee may use a combination of annual leave and any of the following: public holidays, flex leave, long service leave, leave without pay, time off in lieu. The employee shall be paid the annual leave loading for such period, provided the absence is at least 2 weeks.
  - (b) If at least two weeks leave, as set out in (a) of this subclause, is not taken in a leave year, then the payment of the annual leave loading entitlement for the previous leave year shall be made to the employee as at 30 November of the current year.
  - (c) While annual leave loading shall not be paid in the first leave year of employment, it shall be paid on the first occasion in the second leave year of employment when at least two weeks leave, as specified in subclause (a) is taken.
  - (d) An employee who has not been paid the annual loading for the previous leave year, shall be paid such annual leave loading on resignation, retirement or termination by the employer for any reason other than the employee's serious and intentional misconduct.
- (iii) Annual leave loading shall not apply to proportionate leave on termination.

## **28. Purchased Leave**

- (i) An employee may apply to enter into an agreement with the employer to purchase either 10 days (2 weeks) or 20 days (4 weeks) additional leave in a 12 month period.
  - (a) Each application will be considered subject to operational requirements and personal needs and will take into account the employer's business needs and work demands.
  - (b) The leave must be taken in the 12 month period specified in the Purchased Leave Agreement and will not attract any leave loading.
  - (c) The leave will count as service for all purposes.
- (ii) The purchased leave will be funded through the reduction in the employee's ordinary rate of pay.
  - (a) Purchased leave rate of pay means the rate of pay an employee receives when their ordinary salary rate has been reduced to cover the cost of purchased leave.
  - (b) To calculate the purchased leave rate of pay, the employee's ordinary salary rate will be reduced by the number of weeks of purchased leave and then annualised at a pro rata rate over the 12 month period.
- (iii) Purchased leave is subject to the following provisions:
  - (a) The purchased leave cannot be accrued and will be refunded where it has not been taken in the 12 month period.
  - (b) Other leave taken during the 12 month purchased leave agreement period i.e. sick leave, annual leave, long service leave or leave in lieu will be paid at the purchased leave rate of pay.
  - (c) Sick leave cannot be taken during a period of purchased leave.
  - (d) The purchased leave rate of pay will be the salary for all purposes including superannuation and shift loadings.
  - (e) Overtime and salary related allowances not paid during periods of recreation leave will be calculated using the employees hourly rate based on the ordinary rate of pay.
  - (f) Higher Duties Allowance will not be paid when a period of purchased leave is taken.
- (iv) Specific conditions governing purchased leave may be amended from time to time by the DPE in consultation with the Association. The employer may make adjustments relating to their salary administration arrangements.

## **29. Long Service Leave**

- (i) Employees accrue long service leave in accordance with the provisions of the *Long Service Leave Act 1955*. Long service leave may be taken at full pay or half pay; or at double pay in accordance with subclause (iv) of this clause.
- (ii) Long Service Leave entitlement after 7 years service -employees with 7 years or more service will be entitled to take (or be paid out on resignation) long service leave in the usual manner. The quantum of leave available is that which would have applied if pro rata leave were granted. No repayment will be required if an employee does not reach 10 years service.
- (iii) Long Service Leave entitlement after 5 years service but less than 7 years service - If the employer terminates employment for reasons other than serious and intentional misconduct, or, an employee leaves on account of illness, incapacity or domestic or other pressing necessity, the employee is entitled



to 1 month's long service leave for 5 years service plus a pro-rata rate for service of between 6 and 7 years.

- (iv) Long Service Leave on Double Pay - An employee with an entitlement to long service leave may elect to take leave at double pay. The additional payment will be made as a taxable allowance payable for the period of the absence from work. The employee's leave balance will be debited for the actual period of the absence from work and an equivalent number of days as are necessary to pay the allowance. Other leave entitlements, eg recreation leave, sick leave and long service leave will accrue at the single time rate where an employee takes long service leave at double time. Superannuation contributions will only be made on the basis of the actual absence from work, ie at the single time rate, except for employees who are members of the First State Super Fund or similar accumulation superannuation fund who will have their superannuation contributions calculated on the double time rate. Where an employee elects to take long service leave at double pay, in most cases a minimum period of absence of one week should be taken, ie one week leave utilising two weeks of accrued leave.
- (v) Public holidays that fall whilst an employee is on a period of long service leave will be paid and not debited from the employee's long service leave entitlement. In respect of public holidays that fall during a period of double pay long service leave an employee will not be debited in respect of the leave on a public holiday. The employee's leave balance will however be reduced by an additional day to fund the taxable allowance.

### **30. Sick Leave**

An employee, other than a casual employee, who is unable to attend for duty during his or her ordinary working hours by reason of personal illness or incapacity not due to his or her own serious or wilful misconduct shall be entitled to be paid at the ordinary-time rates of pay for the time of such non-attendance subject to the following conditions and limitations:

- (i) The employee shall not be entitled to paid leave of absence for any period in respect of which the employee is entitled to payment under the New South Wales workers compensation acts.
- (ii) The employee shall, as soon as reasonably practicable and during the ordinary hours of the first day of such absence, inform the employer of his or her inability to attend for duty because of illness and, as far as possible, state the nature of the injury or illness and the estimated duration of the absence.
- (iii) An employee absent from duty for more than 2 consecutive working days because of illness must furnish evidence of illness to the employer in respect of the absence.
- (iv) Full-time Employees

Sick leave is granted on the basis of 10 days per anniversary year, provided that:

- (a) during the first 3 months' employment, one day only of sick leave be available each month, to be granted to an employee subject to the conditions of this clause; and
  - (b) on the first day of the fourth month of employment, 10 days' sick leave less such sick leave granted under paragraph (a) of this subclause shall be credited to the employee.
- (v) Part-time Employees

Sick leave is granted on a pro rata hourly basis calculated on the number of hours employed per anniversary year, provided that:

- (a) during the first 3 months of employment the equivalent of 1/10th of the pro rata hourly entitlement be available each month to be granted to an employee; and
- (b) on the first day of the fourth month of employment; the pro rata annual entitlement less such sick leave granted under paragraph (a) of this subclause shall be credited to the employee;

- (c) retrospective adjustment to sick leave entitlements will be made where part-time employees work hours in excess of their contract.

Such leave shall accumulate from year to year and may be taken by an employee in addition to the sick leave entitlement available in any one year.

- (vi) If an employee who is absent on annual leave or long service leave, furnishes to the employer a satisfactory medical certificate in respect of an illness which occurred during the leave, the employer may, subject to the provisions of this clause, grant sick leave to the employee as follows:
  - (a) in respect of annual leave, the period set out in the medical certificate;
  - (b) in respect of long service leave, the period set out in the medical certificate if such period is 5 working days or more.

The provisions of this subclause do not apply to employees on leave prior to resignation or termination of services, unless the resignation or termination of services amounts to a retirement.

- (vii) The employer may direct an employee to participate in a return to work program if the employee has been absent on a long period of sick leave.
- (viii) Paid sick leave shall not be granted during a period of unpaid leave.

### **31. Sick Leave - Requirements for Evidence of Illness**

- (i) In addition to the requirements under subclause 30, Sick Leave of this award an employee may absent themselves for a total of 5 working days per annum due to illness without the provision of evidence of illness to the employer. Employees who absent themselves in excess of 5 working days in a year may be required to furnish evidence of illness to the employer for each occasion absent for the balances of the calendar year.
- (ii) As a general practice backdated medical certificates will not be accepted however if an employee provides evidence of illness that only covers the latter part of the absence, they can be granted sick leave for the whole period if the employer is satisfied that the reason is genuine.
- (iii) If an employee is required to provide evidence of illness for an absence of 2 consecutive working days or less, the employer will advise them in advance.
- (iv) If the employer is concerned about the diagnosis described in the evidence of illness produced by the employee, after discussion with the employee, the evidence provided and the employee's application for leave can be referred to the nominated medical assessor for advice.
  - (a) The type of leave granted to the employee will be determined by the employer based on nominated medical assessor's advice.
  - (b) If sick leave is not granted, the employer will, as far as practicable, take into account the wishes of the employee when determining the type of leave granted.
- (v) The granting of paid sick leave shall be subject to the employee providing evidence which indicates the nature of illness or injury and the estimated duration of the absence. If an employee is concerned about the disclosing the nature of the illness to their manager they may elect to have the application for sick leave dealt confidentially by an alternate manager of the human resource section of the employer.
- (vi) The reference in this clause to evidence of illness shall apply, as appropriate:
  - (a) up to one week may be provided by a registered dentist, optometrist, chiropractor, osteopath, physiotherapist, oral and maxillo facial surgeon or, at the employer's discretion another registered health services provider, or

- (b) where the absence exceeds one week, and unless the health provider listed above is also a registered medical practitioner, applications for any further sick leave must be supported by evidence of illness from a registered medical practitioner, or
- (c) at the employer's discretion, other forms of evidence that satisfy the employer that the employee had a genuine illness.

### **32. Personal/Carer's Leave**

(i) Use of Sick Leave

- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph(c)(2) of this subclause 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 in clause 30, Sick Leave of the award, for absences to provide care and support, for such persons when they are ill. Such leave may be taken for part of a single day.
- (b) The employee shall, if required, 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. 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.
- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
  - (1) the employee being responsible for the care of the person concerned; and
  - (2) 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 stepchild, a foster child or an ex nuptial child), parent (including a foster parent or legal guardian), grandparent, grandchild or 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.
- (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(ii) Unpaid Leave for Family Purpose

- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph(i)(c)(2) of this clause who is ill.

(iii) Annual Leave

- (a) An employee may elect with the consent of the employer to take annual leave not exceeding ten days in single-day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single-day absences until at least ten consecutive annual leave days are taken.

(iv) Time Off in Lieu of Payment for Overtime

For the purpose only of providing care and support for a person in accordance with subclause (i) of this clause and, despite the provisions of clause 19, Overtime, the following provisions shall apply:

- (a) Overtime taken as time off during ordinary-time hours shall be taken at the ordinary-time rate, that is, an hour for each hour worked.
- (b) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, and the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
- (c) Where no election is made in accordance with paragraph (i)(a) of this clause, the employee shall be paid overtime rates in accordance with the award.

(v) Make-up Time

- (a) An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.

(vi) Personal Carers Entitlement for casual employees

- (a) Subject to the evidentiary requirements set out in paragraph (i)(b) and the notice requirements set out in paragraph (i)(d) of this clause, casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in subparagraph (i)(c)(2) of this clause who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.
- (b) The employer and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

- (vii) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary requirements set out in paragraph (i)(b) and the notice requirements set out in paragraph (i)(d), casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subparagraph (i)(c)(2) of this clause.
  - (b) The employer and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

### **33. Family and Community Service Leave**

- (i) The employer shall grant to an employee (other than a casual employee) some, or all of their accrued Family and Community Service Leave on full pay, for reasons relating to unplanned and emergency family responsibilities or other emergencies as described in subclause (ii) of this clause. Non-emergency appointments or duties should be scheduled or performed outside of normal working hours or through approved use of flexible working arrangements or other appropriate leave.
- (ii) Such unplanned and emergency situations may include but not be limited to the following:-
  - (a) compassionate grounds - such as the death or illness of a close member of the family or a member of the employee's household;
  - (b) emergency accommodation matters up to one day, such as attendance at court as defendant in an eviction action, arranging accommodation, or when required to remove furniture and effects;
  - (c) emergency or weather conditions - such as when flood, fire, snow or disruption to utility services etc, threatens an employee's property and/or prevents an employee from reporting for duty;
  - (d) attending to unplanned or unforeseen family responsibilities, such as attending child's school for an emergency reason or emergency cancellations by child care providers;
  - (e) attendance at court by an employee to answer a charge for a criminal offence, only if the employer considers the granting of family and community service leave to be appropriate in a particular case;
- (iii) Family and Community Service Leave may also be granted for :
  - (a) An absence during normal working hours to attend meetings, conferences or to perform other duties, for employees holding office in Local Government, and whose duties necessitate absence during normal working hours for these purposes, provided that the employee does not hold a position of Mayor of a Municipal Council, President of a Shire Council or Chairperson of a County Council.
  - (b) Attendance as a competitor in major amateur sport (other than Olympic or Commonwealth Games) for employees who are selected to represent Australia or the State.
- (iv) The definition of "family" or "relative" in this clause is the same as that provided in subparagraph (i) (c) (2) of clause 32, Personal/Carer's Leave.
- (v) Family and Community Service Leave shall accrue as follows:
  - (a) two and a half days in the employees first year of service;

- (b) two and a half days in the employees second year of service ;and
- (c) one day per year thereafter
- (vi) Part-time employees will accrue Family and Community Service Leave on a pro rata basis.
- (vii) If available Family and Community Service Leave is exhausted as a result of natural disasters, the employer shall consider applications for additional Family and Community Service Leave, if some other emergency arises.
- (viii) If available Family and Community Service Leave is exhausted, on the death of a person defined in subparagraph (i)(c)(2) of clause 32, Personal/Carer's Leave, additional paid family and community service leave of up to 2 days may be granted on a discrete, per occasion basis to an employee.
- (ix) In cases of illness of a family member for whose care and support the employee is responsible, paid sick leave in accordance with subparagraph (i)(c)(2) of clause 32, Personal/Carer's Leave, shall be granted when paid Family and Community Service Leave has been exhausted or is unavailable. The employer may also grant employees other forms of leave such as accrued annual leave, time off in lieu, flex leave and so on for family and community service leave purposes.

### **34. Parental Leave**

(i) **Maternity Leave**

A female employee, other than a casual employee, who has completed at least 40 weeks' continuous service with the employer prior to the commencement of maternity leave shall be granted maternity leave, subject to the following conditions:

A casual employee who has completed at least 2 years' continuous service with the employer prior to the commencement of maternity leave shall be granted unpaid maternity leave subject to the following conditions:

- (a) An employee who wishes to take maternity leave shall, in not less than 10 weeks prior to the expected date of confinement, give her employer notice in writing -
  - (1) stating her intention to take maternity leave; and
  - (2) specifying the period of maternity leave she intends to take and the date of commencement and completion of that period.
- (b) Provided that an employee must give notice in writing not less than 4 weeks prior to the last day of the period of maternity leave confirming her intention to return to work. An employee who fails to comply with this requirement shall be deemed to have terminated her employment on the day after the last day on which the notice is required.
- (c) Such absence shall be supported by a medical certificate from a registered medical practitioner indicating the anticipated date of confinement.
- (d) The total absence on maternity leave shall not exceed 12 months from the date of commencement of such leave subject to the provisions set out in subclause (h) of this clause.
- (e) An employee (other than a casual employee) taking maternity leave shall be entitled to the payment at the ordinary rate of pay for a period of up to 14 weeks, at full pay, half pay or as a lump sum. The balance of the remaining maternity leave shall be unpaid.
- (f) Payment for maternity leave is at the rate applicable when leave is taken. An employee holding a full time position who is on part time leave without pay when they start maternity leave is paid;

- (1) at the full time rate if they began part time leave 40 weeks or less before starting maternity leave;
  - (2) at the part time rate if they began part time leave more than 40 weeks before starting maternity leave and have not changed their part time work arrangements for the 40 weeks;
  - (3) at the rate based on the average number of weekly hours worked during the 40 week period if they have been on part time leave for more than 40 weeks but have changed their part time work arrangements during that period.
- (g) Where an employee elects to return to work within 6 weeks after the birth of the child, the employer may require the employee to provide a medical certificate stating that she is fit to return to her normal duties.
- (h) An employee who commences a subsequent period of maternity leave for another child within 24 months of commencing an initial period of maternity leave within will be paid:
- (1) at the rate (full time or part time) they were paid before commencing the initial leave if they have not returned to work; or
  - (2) at a rate based on the hours worked before the initial leave was taken, where the employee has returned to work and reduced their hours during the 24 month period; or
  - (3) at a rate based on the hours worked prior to the subsequent period of leave where the employee has not reduced their hours.

(ii) Adoption Leave

Any employee, other than a casual employee, who has completed at least 40 weeks' continuous service with the employer prior to the commencement of Adoption Leave, shall be entitled to Adoption Leave under the following conditions:

- (a) up to 14 weeks' paid leave at the time of adoption at the ordinary rate of pay, at full pay, half pay or as a lump sum; and
- (b) where the employee is the primary care-giver and, with the consent of the employer, a further 38 weeks of unpaid leave may be taken.

This entitlement shall be reduced by any period of adoption leave taken by the employee's spouse for the same child.

The total period of leave shall not exceed one year from the time of the child adoption subject to the provisions set out in subclause (g) this clause.

An employee shall be required to:

- (a) give notice of the date of the intent to take Adoption Leave and the proposed length of leave; this must be done -
  - (1) within 2 months of receiving approval for adoption; or
  - (2) if a relative adoption, as soon as the child has been taken into custody pending an adoption order application;
- (b) confirm the date and period of leave by giving at least 14 days' written notice before the adoption date;

- (c)
  - (1) provide certification from an adoption agency or appropriate body of the presumed date of adoption;
  - (2) provide a statement from a government authority stating that the employee has custody of a child pending an adoption order.
- (d) make a statutory declaration stating:
  - (1) that the employee is seeking Adoption Leave to become the primary care-giver of a child;
  - (2) details of any Adoption Leave sought or taken by the employee's spouse for the same child;
  - (3) the employee will not take another job or contravene his/her employment contract while on Adoption Leave.
- (e) Payment for Adoption Leave is at the rate applicable when leave is taken. An employee holding a full time position who is on part time leave without pay when they start Adoption Leave is paid;
  - (1) at the full time rate if they began part time leave 40 weeks or less before starting Adoption Leave;
  - (2) at the part time rate if they began part time leave more than 40 weeks before starting Adoption Leave and have not changed their part time work arrangements for the 40 weeks;
  - (3) at the rate based on the average number of weekly hours worked during the 40 week period if they have been on part time leave for more than 40 weeks but have changed their part time work arrangements during that period.
- (f) employee returning to work from Adoption Leave:
  - (1) shall confirm in writing their intention of returning to work not less than 4 weeks before the adoption leave expires;
  - (2) is entitled to return to the position held immediately before taking Adoption Leave. Where the position no longer exists, but there are other positions for which the employee is qualified and capable of performing, the employee is entitled to a position comparable in status and pay to that of the former position.
- (g) An employee who commences a subsequent period of Adoption Leave for another child within 24 months of commencing an initial period of Adoption Leave will be paid:
  - (1) at the rate (full time or part time) they were paid before commencing the initial leave if they have not returned to work; or
  - (2) at a rate based on the hours worked before the initial leave was taken, where the employee has returned to work and reduced their hours during the 24 month period; or
  - (3) at a rate based on the hours worked prior to the subsequent period of leave where the employee has not reduced their hours



(iii) Other Parent Leave

An employee, other than a casual employee, who has completed at least 40 weeks' continuous service with the employer prior to the commencement of 'other parent' leave, shall be entitled to 'other parent' leave under the following conditions:

- (a) Up to one week's short 'other parent' leave at full pay or two weeks' leave at half pay at the time of birth or taking custody of a child in the case of adoption may be taken.
- (b) Where the employee is the primary care-giver and with the consent of the employer, a further period not exceeding 12 months, less any short 'other parent' leave in paragraph (a) of this subclause, may be taken.
- (c) The employee shall give 10 weeks' notice of their intention to take 'other parent' leave and provide satisfactory proof of the spouse's pregnancy or of the anticipated adoption.
- (d) An employee returning to work from 'other parent' leave:
  - (1) shall confirm in writing their intention of returning to work not less than 4 weeks before the 'other parent' leave expires;
  - (2) is entitled to return to the position they held immediately before taking 'other parent' leave. Where the position no longer exists, but there are other positions for which the employee is qualified and capable of performing, they are entitled to a position comparable in status and pay to that of the former position.

(iv) Right to Request

- (a) An employee entitled to either maternity, adoption or 'other parent' leave, other than a casual employee, may request the employer to allow the employee:
  - (1) to extend the period of unpaid maternity, adoption or 'other parent' leave for a further continuous period of leave not exceeding 12 months;
  - (2) to return from a period of maternity, adoption or 'other parent' leave on a part-time basis until the child reaches school age to assist the employee in reconciling work and parental responsibilities.
- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency, and the impact on customer service.
- (c) Employee's request and the employer's decision to be in writing.

The employee's request under paragraph (iv)(a) and the employer's decision made under paragraph (iv)(b) of this subclause must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under (iv)(a)(2) of this subclause, 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.

(v) Communication during maternity, adoption or 'other parent' leave

(a) Where an employee is on maternity, adoption or 'other parent' leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

(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 maternity, adoption or 'other parent' leave; and

(2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility of the position he or she held before commencing maternity, adoption or 'other parent' leave.

(b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of maternity, adoption or 'other parent' leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

(c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a) of this subclause.

(vi) Casual Employees

(a) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*) because:

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

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

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

### 35. Jury Service

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

### 36. Study Leave

(i) Study leave shall be paid leave subject to the terms and conditions set out below:

(a) Study leave applies to all permanent employees including those employed on a part-time basis.

(b) The course of study must be work-related.

- (c) Decisions regarding the approval or otherwise for study leave shall not be the subject of an appeal to any service tribunal or any other industrial and/or lawful tribunal, commission or court.
  - (d) Study leave shall be granted and taken at the convenience of the Home Care Service. Such convenience shall take into consideration such factors as the necessity of an employee to be at work on specific days or times, availability of relief staff and service requirements concerning training or other requirements.
- (ii) Study leave shall be granted subject to the following criteria and conditions:
- (a) Study leave is granted on the basis of half an hour of leave for each hour of face-to-face lectures, or equivalent, up to a maximum of 4 hours.
  - (b) Such leave shall be cumulative and may be taken as examination leave or for field work purposes following approval.
  - (c) Study leave shall not accumulate from year to year. Each academic year shall stand alone.
  - (d) No travel time or travel allowance is payable.
  - (e) All payment for study leave shall be at the ordinary rate of pay.

### **36A. Leave for Matters Arising from Domestic Violence**

- (i) The definition of domestic violence is found in clause 4 (x), Definitions, of this award;
- (ii) Leave entitlements provided for in clause 33, Family and Community Service Leave, clause 30, Sick Leave and clause 32, Personal/Carer's Leave, may be used by an employee experiencing domestic violence;
- (iii) Where the leave entitlements referred to in subclause 34(ii) are exhausted, the employer shall grant up to five days special leave per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations;
- (iv) The employer will need to be satisfied, on reasonable grounds, that domestic violence has occurred and may require proof presented in the form of an agreed document issued by the Police Force, a Court, a Doctor, a Domestic Violence Support Service or Lawyer;
- (v) Personal information concerning domestic violence will be kept confidential by the Service;
- (vi) The employer, where appropriate, may facilitate flexible working arrangements subject to operational requirements, including changes to working times and changes to work location, telephone number and email address.

## **PART E**

### **TRAINING**

#### **37. Trade Union Training**

Employees nominated by the Union to attend during ordinary working hours a course recognised by the Trade Union Training Authority in the State shall do so without loss of ordinary pay, subject to the following:

- (i) that the employer receive not less than 4 weeks' written notice of nomination from the Union, setting out the time, dates, content and venues of the course;
- (ii) that not more than one person at any one time from a branch is nominated, with no individual receiving more than 5 days' training per year;

- (iii) that a maximum of 100 days per financial year, non-cumulative, be available for trade union training each year;
- (iv) that the employer is satisfied that the course will assist in reducing work place disputes and in advancing industrial harmony within the organisation.

### **38. Traineeships**

The rates of pay and conditions of employment of trainees (see clause 4, Definitions) will be the Crown Employees (Home Care Service of New South Wales - Administrative Staff - Training Wage) Award 2007 as varied from time to time. Variations to the Crown Employees (Home Care Service of New South Wales - Administrative Staff - Training Wage) Award 2007 will be in accordance with the Crown Employees (Public Service Training Wage) Award 2008 as varied from time to time.

## **PART F**

### **ANTI-DISCRIMINATION**

#### **39. Anti-Discrimination**

- (i) It is the intention of the parties bound by this award to seek to achieve the objective in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that, in fulfilling their obligations under the grievance procedure prescribed by this award, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provisions of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

Notes:

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

**PART G**  
**MONETARY RATES**

**Table 1 - Salaries**

Effective from the first pay period to commence on or after the date in the column heading:

Classification and Grades	Common Salary Point	1.07.11 +2.5% Per annum \$
Home Care Gradings and Pay Scales -		
Grade 1 -		
Step 1	29	45,896
Step 2	33	47,490
Grade 2 -		
Step 1	35	48,324
Step 2	38	49,693
Grade 3 -		
Step 1	40	50,619
Step 2	43	52,102
Grade 4 -		
Step 1	45	53,000
Step 2	49	54,977
Grade 5 -		
Step 1	52	56,509
Step 2	56	58,604
Grade 6 -		
Step 1	58	59,705
Step 2	62	62,085
Grade 7 -		
Step 1	64	63,425
Step 2	68	65,855
Grade 8 -		
Step 1	70	67,267
Step 2	74	69,777
Grade 9 -		
Step 1	76	71,256
Step 2	79	73,284
Grade 10 -		
Step 1	81	74,745
Step 2	84	76,961
Grade 11 -		
Step 1	86	78,462
Step 2	89	80,902
Grade 12 -		
Step 1	90	81,703
Step 2	94	85,033
Grade 13 -		
Step 1	96	86,829
Step 2	100	90,426
Grade 14 -		
Step 1	102	92,178
Step 2	105	94,826

Grade 15 - Step 1	107	96,742
Step 2	110	99,640
Grade 16 - Step 1	112	101,594
Step 2	115	104,575
Grade 17 - Step 1	117	106,651
Step 2	120	110,079
Grade 18 - Step 1	121	111,025
Step 2	124	114,457
Grade 19 - Step 1	126	116,974
Step 2	130	122,128

**Table 2 - Other Rates and Allowances**

Item No.	Clause No.	Brief Description	Amount \$
1	22	Travel Allowance - use of own vehicle	Cents per km
		Engine Capacity -	
		2601cc and over	75.0
		1600cc - 2600cc	74.0
		1600cc or less	63.0
2	24	Sustenance Allowance - Capital City (Sydney)	296.10 per day
3	24	Sustenance Allowance - Tier 1 Country Centre	
		Maitland	244.60 per day
		Newcastle	255.60 per day
		Port Macquarie	224.30 per day
		Wagga Wagga	224.30 per day
4	24	Sustenance Allowance - Tier 2 Country Centre	
		Bathurst	224.30 per day
		Broken Hill	224.30 per day
		Dubbo	224.30 per day
		Orange	224.30 per day
		Wollongong	241.10 per day
5	24	Sustenance Allowance - Tier 3 Other Country Centres	204.30 per day

C. G. STAFF J.