

**PUBLIC SERVICE ASSOCIATION OF NEW SOUTH WALES  
INDUSTRIAL AND ASSOCIATED OFFICERS (SECURE  
EMPLOYMENT) AWARD 2009**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(No. IRC 2027 of 2009)

Before Commissioner Bishop

23 December 2009

**AWARD**

**Arrangement**

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**1. Title**

This award shall be known as the Public Service Association of New South Wales Industrial and Associated Officers (Secure Employment) Award 2009.

**2. Commencement Date**

This award commences on 23 December 2009.

**3. Definitions**

3.1 In this award, unless the contrary intention appears:

Act means the *Industrial Relations Act 1996* (NSW).

Agreement has the meaning in the Act.

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

Award has the meaning in the Act.

Breach of discipline means misconduct, serious misconduct or unsatisfactory services as defined in Schedule B, Breach of Discipline of this Award.

General Secretary means the General Secretary of the Association or a nominee of the General Secretary of the Association.

Supervisor means the immediate supervisor or manager of the area in which an employee is employed or any other employee authorised by the General Secretary to fulfil the role of a supervisor or manager, other than a person engaged as a consultant or contractor.

Rate of Pay means the applicable substantive rate or the "Higher Duties" rate in instances where the employee has been acting in a higher graded position for 12 months or more.

Trade Union means the Industrial Staff Union.

Union means the Industrial Staff Union.

Workplace means the whole of the organisation or, as the case may be, a branch or section of the organisation in which the employee is employed.

Workplace Management means the General Secretary or any other person authorised by the General Secretary to assume responsibility for the conduct and effective, efficient and economical management of the functions and activities of the organisation or part of the organisation.

#### **4. Application and Coverage**

- 4.1 This award was negotiated between the Union and the Association.
- 4.2 The provisions of this award shall apply to the Industrial Staff Union, the Association, and all Industrial Staff employed by the Association including: Principal Industrial Officers; Senior Industrial Officers; Industrial Officers; Organisers; Women's Industrial Officers; Regional Organisers; Senior Communications Officers; Information Officers; Aboriginal Liaison Officers; Training Officers, Occupational Health and Safety Education Officer, Special Project Officers and Welfare Officer.

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

- 5.1 This award rescinds and replaces the Public Service Association of New South Wales Industrial and Associated Employees Leave Award published 28 September 2007 (363 I.G.738) and all variations thereof.
- 5.2 This Award will be operative from the 23 December 2009 and will remain in force until varied or rescinded.

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

- 6.1 The Union shall provide the Association with a schedule setting out Union weekly membership fees payable by members of the Union in accordance with the Union's rules.
- 6.2 The Union shall advise the Association of any change to the amount of weekly membership fees made under its rules. Any variation to the schedule of Union weekly membership fees payable shall be provided to the Association at least one month in advance of the variation taking effect.

- 6.3 Subject to subclauses 6.1 and 6.2 of this clause, the Association shall deduct Union weekly membership fees from the pay of any employee who is a member of the Union in accordance with the Union's rules, provided that the employee has authorised the Association to make such deductions.
- 6.4 Monies so deducted from the employee's pay shall be forwarded regularly and promptly to the Union, together with all necessary information to enable the Union to reconcile and credit subscriptions to employee's Union membership accounts.
- 6.5 Unless other arrangements are agreed to by the Association and the Union, all Union membership fees shall be deducted on a weekly basis.
- 6.6 Where an employee has already authorised the deduction of Union membership fees from his or her pay prior to this Award taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deduction to continue.

## **7. Dispute Settlement**

- 7.1 There shall be effective means of consultation, both formal and informal, between the Association and the Union at various levels on all matters of mutual interest and concern, irrespective of whether or not these matters are likely to give rise to a dispute.
- 7.2 Failure to observe this fundamental principle of consultation would be contrary to the intention of these procedures.
- (a) Where a dispute arises in a particular job location which cannot be resolved between the employee or their representative and the supervising staff, it shall be referred to the Association's General Secretary or his/her nominee, who will then arrange for the matter to be discussed with the Union in a timely manner
- (b) If the matter remains unresolved, it should be referred to the NSW Industrial Relations Commission pursuant to the relevant section of the *Industrial Relations Act 1996*.
- (c) Whilst these procedures are continuing, no stoppage of work or any other form of limitation or work shall be applied.
- (d) The Union reserves the right to vary this procedure where a safety factor is involved.

## **8. Consultation and Technological Change**

- 8.1 The Association will consult with the Union about significant workplace change that will affect Union members, prior to its implementation. The term 'consultation' is understood as a process of seeking and giving information and advice, participating in discussions and expressing views to contribute, in a timely fashion, to decision making.
- 8.2 The Association will consult and reach agreement, as far as possible, with the Union about the processes undertaken to implement the change.
- 8.3 The Association will arrange a meeting of directly affected employees to discuss the workplace change. The Union will be invited to attend.

## **9. Salaries and Related Matters**

- 9.1 The salaries and conditions of employees covered by this Award shall be in accordance with the Crown Employees (Public Sector - Salaries 2008) Award and the Crown Employees (Public Service Conditions of Employment) Award 2009 or any replacement awards.
- 9.2 Salaries for employees covered by this Award are set out in Schedule A - Rates of Pay of this Award.

## 10. Separation from Service Provisions

- 10.1 At a general election of the Association, or when there is a change in the leadership of the Association, every endeavour will be made to retain the services of currently employed employees having regard to the wishes of the incoming leadership.
- 10.2 If the Association at any time has sound grounds for believing that the employee's views and attitudes are such that he/she will not give loyal and co-operative service to the current executive and where the employee/employer working relationship is irreparable then provisions within both this clause and clause 11, Redundancy Provisions of this Award will apply.
- 10.3 Where an employee's services are terminated the following arrangements are to apply.

(a) Basis of entitlement

Where the elected leadership of the Association changes for any reason, an employee whose services are terminated shall be entitled to a separation of services payment under clause 11, Redundancy Provisions provided that:

- (i) the employee continues to work for the Association; and
- (ii) the incoming leadership of the Association notifies the employee of his/her intention not to continue with the existing staffing arrangements.

(b) Exclusions

Excluded from the entitlement to separation payments are:

- (i) employees on workers' compensation whose claim is based on compensation for termination or employees awaiting determination of claims against the employer for termination of services;
- (ii) employees subject to termination on the grounds of misconduct, serious misconduct, or unsatisfactory services;
- (iii) employees who resign for any reason other than in circumstances envisaged in subparagraph (i) or (ii) of this paragraph; and
- (iv) employees whose appointments were facilitated by way of leave without pay from the Public Service (on the basis that they will return to employment in the Public Service upon displacement).

(c) Superannuation Fund entitlements

The Fund entitlements for contributors under these provisions will be as follows:

- (i) Employees who are contributors to either the State Authorities Superannuation Scheme (SASS), First State Super (FSS) or the State Superannuation Fund (SSF) who are eligible for separation payments in accordance with this clause shall be regarded as having been retrenched, as defined in the *State Authorities Superannuation Act 1987*, for the purpose of determining their entitlements to benefits under those schemes;
- (ii) Employees who are contributors to either of those schemes who are not eligible for separation payments in accordance with this clause shall be regarded as having resigned for the purpose of determining their entitlements benefits under those schemes.

## 11. Redundancy Provisions

- 11.1 An employee who accepts voluntary redundancy, or is eligible under the provision of clause 10, Separation from Service Provisions, will receive the following redundancy entitlements:
- (a) Four (4) weeks notice or pay in lieu; and
  - (b) an additional one week's notice or pay in lieu for employees aged 45 years and over with 5 or more years of completed service; and
  - (c) severance pay at the rate of three (3) weeks per year of continuous service up to a maximum of thirty nine (39) weeks, with pro-rata payments for incomplete years of service to be on a quarterly basis; and
  - (d) benefit allowable as a contributor to a superannuation or retirement fund; and
  - (e) pro-rata annual leave loading in respect of leave accrued at the date of termination.
  - (f) All annual and long service leave accrued at the date of termination.
- 11.2 Those employees who accept an offer of redundancy within 2 weeks of the offer being made and terminate employment within the time nominated by the Association will be entitled to the following additional payments:
- (a) less than 1 year of service 2 weeks pay
  - (b) 1 year and less than 2 years of service 4 weeks pay
  - (c) 2 years and less than 3 years of service 6 weeks pay
  - (d) 3 years of service and over 8 weeks pay

Note: Reference to service in calculating entitlement to redundancy is based on a continuous period of employment with the Association. As with standard leave provisions, periods of leave without pay, secondments or similar are not considered as service for these purposes (nor are they considered a break in employment) and periods of part-time employment will accrue pro-rata entitlements.

## 12. Recognition of Service

- 12.1 For the purpose of calculating a redundancy payment and the accrual of Long Service Leave an employee's service with the Association is taken to include his or her recognised service.
- 12.2 The employee's employment in a public sector agency or a Commonwealth or interstate agency, a Trade Union either within Australia or overseas ("former agency") is "recognised service" in relation to their subsequent employment in the Association if:
- (a) the period of employment in the former agency has been continuous and
  - (b) the employee's employment in the Association has immediately followed the employee's employment in the former agency.

## 13. Anti-Discrimination

- 13.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 13.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be

consistent with the fulfilment of these obligations for the parties to make application to vary any provision of this Award which, by its terms of operation, has a direct or indirect discriminatory effect.

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

13.4 Nothing in the 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 pursuing matters or unlawful discrimination in any State or federal jurisdiction.

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

Notes - Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects any other act or practise 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."

## **14. Secure Employment**

14.1 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 casuals and temporary employees have an opportunity to elect to become permanent full-time or part-time employees.

14.2 Casual and Temporary Conversion

- (a) A casual or temporary employee engaged by the Association 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 sub clause.
- (b) The Association shall give the employee notice in writing of the provisions of this subclause within four weeks of the employee having been employed for such a six months period. 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 or temporary employee who has a right to elect under paragraph 14.2(a), upon receiving notice under paragraph 14.2(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 permanent 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 the Association 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 or temporary employee who does not, within four weeks of receiving written notice from the Association, elect to convert his or her ongoing contract of employment to permanent full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (e) Once a casual or temporary employee has elected to become, and has been converted to, a permanent full-time employee or a permanent part-time employee, the employee may only revert to casual or temporary employment by written agreement with the Association.
- (f) If an employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with this clause the Association and employee shall discuss and agree upon:
  - (i) whether the employee will convert to permanent full-time or part-time employment; and
  - (ii) if it is agreed that the employee will become a permanent 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 or 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 or temporary employment has the right to elect to convert his or her contract of employment to permanent full-time employment and an employee who has worked on a part-time basis during the period of casual or temporary employment has the right to elect to convert his or her contract of employment to permanent 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 Association and the employee.

- (g) Following an agreement being reached pursuant to paragraph 14.2(f), the employee shall convert to permanent full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual or temporary employment to permanent 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 sub clause.

### 14.3 Exclusions

The Association can refuse an application for conversion of a temporary or casual employee on the following grounds. Where the contract is for:

- (a) a specific task or project of a short-term nature; or
- (b) the purpose of filling a temporary vacancy that is the result of parental, or other extended leave;
- (c) the abovementioned reasons will be provided to the employee in writing.

### 14.4 Occupational Health and Safety

- (a) For the purposes of this sub clause, the following definitions shall apply:
  - (i) A "labour hire business" is a business (whether on 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 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) If the Association engages a labour hire business and/or 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):
- (i) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (ii) 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;
  - (iii) 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
  - (iv) 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 subclause 14.4 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*.

#### 14.5 Disputes Regarding the Application of the 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 the Award.

- 14.6 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.

### **15. Existing Entitlements**

- 15.1 The provisions of this Award shall not affect any entitlements existing in the Association or a section of the Association at the time this Award is made, if such provisions are better than the provisions contained in this Award. Such entitlements are hereby expressly preserved until renegotiated with the Union.
- 15.2 The following Award, or its replacement, insofar as they fix conditions of employment applying to employees covered by this Award, which are not fixed by this Award, including subclause 14(1), shall continue to apply:

Crown Employees (Public Service Conditions of Employment) Award 2009



## SCHEDULE A

### Rates of Pay

Classification and Grades	Salary Point	Common Salary Point (Crown Employees Salaries Award)
Organiser	1	61
	2	67
	3	75
	4	82
	5	85
Industrial Officer / Regional Organiser	1	82
	2	85
	3	88
	4	91
	5	95
	6	98
	7	101
	8	104
Senior Industrial Officer	1	108
	2	111
Principal Industrial Officer	1	116
	2	120
Welfare Officer	1	52
	2	55
	3	58
	4	61
	5	67
	6	75
	7	82
Information Officer	1	58
	2	61
	3	64
	4	67
	5	75
	6	78
	7	82
	8	85
Senior Communication Officer	1	82
	2	85
	3	88
	4	91
	5	95
	6	98
	7	101
	8	104

## SCHEDULE B

### Breach of Discipline

B.1 Breach of discipline means misconduct, serious misconduct or unsatisfactory services.

B.1.1 Misconduct includes, but is not limited to, behaviour that is unsatisfactory.

B.1.2 Serious misconduct includes but is not limited to:

- (a) serious misbehaviour of a kind which constitutes a serious impediment to the carrying out of a employee's duties or to an employee's colleagues carrying out their duties;

(b) conviction by a Court of competent jurisdiction of an offence of a kind that may be reasonably regarded as constituting a serious impediment to the discharge by the employee of their functions or duties, or to the employee's colleagues carrying out their functions or duties; and.

(c) serious dereliction of duties.

B.1.3 Examples of serious misconduct in the course of employment include: theft; fraud; misappropriation of funds; assault; serious harassment (including sexual harassment); a serious breach of the Association's policies, rules or regulations; or repeated actions of misconduct.

B.1.4 Unsatisfactory services means an employee is not performing duties in a satisfactory manner.

## B.2 Procedural Fairness

Basic principles of procedural fairness should be afforded to all parties in dealing with matters of misconduct, serious misconduct, and unsatisfactory services.

E. A. R. BISHOP, Commissioner.

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