

**MUSEUM OF CONTEMPORARY ART CONDITIONS OF
EMPLOYMENT AWARD 2009**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(No. IRC 1677 of 2008)

Before Commissioner Ritchie

13 August 2009

REVIEWED AWARD

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1. Title

This Award shall be referred to as the Museum of Contemporary Art Conditions of Employment Award 2009.

2. Parties to the Award

The parties to this Award are the Museum of Contemporary Art Limited and the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

3. Definitions

"Accident Pay" means a weekly amount equal to the difference between workers' compensation payments and the employee's normal rate of pay.

"Approved Course" shall mean a course approved by the Director.

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

"Birth" includes Stillbirth.

"Director" means the Chief Executive Officer of the Museum holding the title of Director, or such officer of the Museum duly delegated in writing by the Director in the event of the absence of the Director from time to time.

"Employee Development and Training" shall mean short educational and professional training courses, conducted by either the Museum or an external institution or body recognised by the Director.

"Examination Leave" means time allowed off from normal duties granted on full pay to employees undertaking examinations in an approved part time course.

"Expected date of birth" means a date specified by a Medical Practitioner to be the date on which the Medical Practitioner expects the employee to give birth as a result of pregnancy, in relation to a female employee who is pregnant, or, in the case of adoption, to the date that the employee takes custody of the child concerned

"Full Time Employee" means an employee employed for normal hours.

"Joint Consultative Committee" means a committee formed for the purpose of improving and strengthening communication between management, the Association and employees with reference to industrial issues.

"Museum" means the Museum of Contemporary Art Ltd.

"Normal Hours" means the standard hours worked by employees in a week to a maximum of 38 hours.

"Ordinary rate of pay" means the sum ascertained by dividing the basic annual salary by 52.179 then dividing this figure by the number of ordinary weekly hours specified for that position.

"Overtime" means hours worked in excess of 38 hours per week.

"Part-time Course" shall mean a course undertaken concurrently with employment and shall include courses involving face to face or oral instruction and those conducted externally to the institution through correspondence study.

"Part-time Employee" means an employee employed on an ongoing basis for 13 hours or more per week.

"Preparators" shall also include the position title "Art Installers".

"Study Accumulation" shall mean the aggregation of short periods of study time granted for private study purposes.

"Study Time" shall mean time allowed off from normal duties granted on full pay to employees who are studying in approved part-time courses.

"Time-in-Lieu" means paid time taken off work during ordinary hours, in lieu of payment for overtime worked.

"Week" means Monday to Sunday.

4. Hours of Duty

- (a) Except where otherwise provided in this clause, the normal hours of duty shall be 38 hours per week to be worked between the hours of 8:30am and 7:30pm on Monday to Friday. Which five days of the week employees, including casual employees, shall be required to work shall be determined taking into account the needs of the MCA and the employee.
- (b) A meal break of not less than 45 minutes and not more than one hour shall be taken where possible between noon and 2:00 pm provided that not more than five hours shall elapse between the commencement of work on any one day and the commencement of the meal break. Where work on any day continues beyond the period specified in subclause (a) of this clause, a second meal break shall be taken not less than five hours after the conclusion of the first meal break.
- (c) Notwithstanding subclause (b) of this clause, casual employees may agree to a meal break of 30 minutes only, if it is mutually suitable to the Museum and the employee.

5. Casual Employees

- (a) Casual employees are engaged from day-to-day.
- (b) A casual employee shall be engaged for a minimum period of four hours provided that this minimum period may be reduced to two hours for consultation/planning and training meetings.
- (c) The employment of an employee engaged as a casual may be terminated by either party without notice, subject to the minimum period set out in subclause (b) of this clause being worked. The employee shall have recourse to the dispute settling procedures specified in clause 18, Grievance and Dispute Settling Procedures.

- (d) The hourly rate for employees engaged on a casual basis is calculated by adding twenty percent to the ordinary rate of pay of the relevant classification. This loading is in lieu of payment for recreation leave, sick leave, leave loading, maternity and paternity leave. The *Long Service Leave Act 1955* provides long service leave for casual employees.
- (e) Refer also to 7, 9 and 10(b) of Appendix B, State Personal Carer's Leave Cases 1996 and 1998, Family Provisions Case 2005, of this award.

6. Preparators

- (a) Preparators shall work any hours between 7:00am and 11:00pm.
- (b) Hours worked between 7.00am to 8:30am and 7.30pm to 11:00pm shall accrue an allowance calculated at 15% of the normal hourly rate for the time worked.
- (c) Overtime shall be paid beyond 38 hours per week at the rate of:
 - 38 - 45 hours @ time and a half,
 - 45 hours plus @ double time.
- (d) Preparators shall be paid a meal allowance when working weekend days.
- (e) Subclauses (a) and (b) of clause 4, Hours of Duty shall not apply to Preparators, they may be asked to work any day of the week.
- (f) A Preparator who commences work between 7.00am and 8.30am and works in excess of 10 hours will also be paid a morning meal allowance.
- (g) If a Preparator works after 7.30pm then they are entitled to an evening meal allowance regardless of the length of shift.

7. Fixed Term Employment

An employee may be engaged under the terms of this Award for a period not to exceed 12 months for specific projects, which is renewable at the end of that fixed term.

8. Overtime and Time in Lieu

- (a) Subject to subclause (b) of this clause, the Museum may require an employee to work reasonable overtime at overtime rates.
- (b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (c) For the purposes of subclause (b) what is unreasonable or otherwise will be determined having regard to:
 - (i) any risk to employee health and safety;
 - (ii) the employee's personal circumstances including any family and carer responsibilities;
 - (iii) the needs of the workplace or enterprise;
 - (iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (v) any other relevant matter.

- (d) Subject to the exceptions otherwise provided in this clause, all time worked at the direction of the Museum or in an emergency and which is in excess of the normal hours in the case of an employee, shall be paid at time and a half for the first two hours and double time thereafter.
- (e) When overtime work is necessary, it shall wherever reasonably practicable be so arranged that employees have at least ten consecutive hours off duty between work on successive days.
- (f) An employee who works so much overtime between the termination of their ordinary work on one day and the commencement of work on the following day that the employee has not had at least ten consecutive hours off duty between those times shall be released after the completion of overtime until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (g) If, on the instructions of the Museum, such an employee resumes or continues work without having had ten consecutive hours off duty, the employee shall be paid at time-and-a-half until released from duty, then they shall be entitled to be absent for ten consecutive hours without loss of pay for ordinary working time occurring during such absence.
- (h) Notwithstanding subclauses (a) and (b) of clause 6, Preparators, overtime shall be calculated to the nearest quarter of an hour on each occasion overtime is worked and shall be based upon the ordinary rate of pay the employee is receiving at the time the overtime is worked.
- (i) Time off in lieu shall be taken at such time mutually convenient to the employee and the Museum. Time off in lieu shall be calculated by reference to applicable overtime rates.
- (j) When an employee finishes work after 9:30pm, the Museum shall provide the employee taxi fare or a Cabcharge docket to the employee's place of residence provided that such residence is not situated more than 30 kilometres from the Museum premises. Where the employee's residence is situated more than 30 kilometres from the Museum premises the Museum will provide the employee taxi cab fare or a Cabcharge docket to the public transport station nearest to the Museum premises and a taxi fare or Cabcharge docket from a public transport station nearest the employee's residence to the employee's residence.

9. Payment of Salaries and Wages

Salaries shall be paid weekly or fortnightly or as otherwise agreed with the written consent of Joint Consultative Committee.

10. Call Back

- (a) An employee or casual employee recalled to work overtime, whether notified before or after leaving the Museum's premises, shall be paid for a minimum of four hours work.
- (b) Notwithstanding subclause (d) of clause 8, Overtime and Time in Lieu, an employee or casual employee recalled to work emergency duty shall not be obliged to work the minimum period provided by subclause (a) of this clause if the work is performed and completed in less time.

11. Meal Allowance

- (a) An employee who is required to work overtime covering a period between the hours of 7:30pm and 8:30am, shall either be supplied with a meal by the Museum or be paid a meal allowance. Such meal allowance shall be equivalent to the meal allowance which would be payable in equivalent circumstances under the provisions relating to meal allowances contained in the then current Crown Employees (Public Service Conditions of Employment) Award.
- (b) If a meal break is taken, the time involved shall not be regarded as time worked.

12. Public Holidays

- (a) Employees shall be entitled to the following public holidays without loss of pay: New Year's Day, Australia Day, Good Friday, Easter Sunday, Easter Monday, Labour Day, Anzac Day, Queen's Birthday, Christmas Day, Boxing Day, Museum Holiday and any other day or days which are proclaimed as public holidays throughout the State of New South Wales.

For the purpose of this subclause:

- (i) Where Christmas Day falls on a Saturday or a Sunday the following Monday or Tuesday shall be observed as a public holiday.
- (ii) Where Boxing Day falls on a Saturday or Sunday, the following Monday or Tuesday shall be observed as a public holiday.
- (iii) When New Year's Day falls on a Saturday or on a Sunday, the following Monday shall be observed as New Year's Day and the said Saturday and/or Sunday shall be deemed not to be holidays.
- (b) 'Museum Holiday' means a day in place of a Union Picnic Day, taken at a day to be set by the Museum during one of the working days between Boxing Day and New Year's Day.
- (c) Other days may be added to any of the abovementioned public holidays at the Museum's discretion, for example where an employee is of another religious denomination or ethnic background.
- (d) An employee who is required to work on any of the public holidays in subclause (a) of this clause will be paid for the day at the rate of double time.

13. First Aid, Uniforms, Protective Clothing Allowances

- (a) First Aid Allowance

Standard First Aid Kits shall be provided and maintained by the Museum in accordance with the *Occupational Health & Safety Act* or Regulation. In the event of any serious accident happening to any employee or casual employee whilst at work the Museum, at its own expense, shall provide transport facilities to the nearest hospital or doctor.

- (b) Uniforms

The Museum will provide Museum Employees with MCA T-shirts, sweatshirts and jackets, where these are required to be worn as part of a uniform. The Museum will also provide MCA labels that may be sewn on to any clothing belonging to an employee that they are required to wear as part of a uniform.

The Museum will provide overalls and steel cap boots which must be worn at all times for Museum employees working in the construction of exhibitions or any other activity that is subject to wet or dusty conditions or chemical conditions. The cost of any laundering or dry cleaning of such T-shirts or overalls shall be borne by the Museum if left on the Museum's premises for cleaning.

14. Travelling Compensation

The Museum shall consider the convenience of the employee when such employee is required to travel to a temporary work location.

14.1 Excess Travelling Time

When an employee, in order to perform official duties, is required to travel, the employee may, if the employee so desires, apply to the Museum for compensation. If it is convenient to the Museum, equivalent time off in lieu or payment shall be granted for excess time occupied in so travelling, or payment shall be made. Time off in lieu, or payment, shall be granted subject to:

- (a) where travel is on a non-working day for the employee concerned, travel was undertaken by direction of the Museum.
- (b) where travel is on a working day only, and is at the direction of the Museum, the time spent in travelling before or after the employee's ordinary hours of work shall count.
- (c)
 - (i) There shall be deducted from an employee's total travelling time on any one day, other than a non-working day, the time normally taken for the periodic journey from home to headquarters and return;
 - (ii) claims of less than one-quarter of an hour on any one day shall be disregarded;
 - (iii) travelling time shall not include any period of travel between 11:00 pm on any one day and 7:30 am on the following day where the employee has travelled overnight and sleeping facilities have been provided for the employee by the Museum;
- (d) compensation for excess travelling time shall not apply in respect of overseas travel.

14.2 Calculation and Method of Payment

- (a) Payment for travelling time shall be at the employee's ordinary rate of pay on an hourly basis calculated as follows:
 - (i) For employees employed on a 5 day basis

$$\frac{\text{Annual Salary}}{1} \times \frac{1}{52.179} \times \frac{1}{\text{no of ordinary hours of work per week}}$$
- (b) Employees who are in receipt of a salary in excess of the rate applicable to the maximum rate for Grade 5, shall be paid travelling time or waiting time calculated at the rate applicable to the maximum rate for Grade 5.
- (c) Time off in lieu or payment, as the case may be, for excess travelling time will not be granted or made for more than eight hours in any period of 24 consecutive hours.

14.3 Meal Allowances on Journeys Not Requiring Temporary Residence

An employee who makes a journey on official business and who is not, by reason of that journey, required to reside temporarily at a place other than the employee's residence, and who must purchase a meal, shall be paid a meal allowance in accordance with the current Australian Taxation Reporter.

14.4 Accommodation Allowances

An employee who performs official duty at or from a temporary work location; and is thereby compelled to reside temporarily at a place other than the employee's residence; and is not provided with accommodation by the Museum shall, subject to this clause, be paid an allowance for the expenses properly and reasonably incurred during the time actually spent away from the employee's residence in order to perform that duty.

14.5 Claims for Payment

- (a) Payment in advance: the Museum may approve applications for advance payments of travelling and sustenance allowances. Such applications should detail the approximate expenditure anticipated.

- (b) Time for submitting claims: claims should be submitted promptly i.e. within one month from the completion of the work or within such time as the Museum determines.

14.6 Table of Allowances

Where an employee travels on company business the allowances set out below represent the maximum refundable expenditure. Any claims must be justified by actual invoices/receipts on return.

14.6.1 Domestic Travelling Allowance Rates for Employees

Allowances for employees include components for: (a) meals; (b) accommodation; and (c) incidentals. When calculating entitlements each of these components must be included.

Domestic travel allowance rates shall be payable at a rate in accordance with the current Australian Taxation Reporter.

14.6.2 International Travelling Allowance Rates for Employees

Primarily the allowance has two components:

- (a) A daily rate for meals and incidentals. Incidentals include such items as:

- gratuities for personal services

- payments to porters for the handling of personal luggage

- laundry and dry cleaning

- private telephone calls

- newspapers

International travel allowance rates shall be payable at a rate in accordance with the current Australian Taxation Reporter.

- (b) The actual cost of accommodation

In addition to this allowance, other reasonable expenses are claimable, for example:

- land transport costs

- the cost of official telephone calls

- charges for inoculations, health examinations, etc

- fees for passports and visas

- entry and exit fees or other imposts of governments

- costs associated with the purchase or conversion of currency

14.6.3 Allowance Review and Adjustment

The allowance paid under this clause shall be adjusted as prescribed and published in the current Australian Taxation Reporter.

For overseas transfers of longer than one month where an agreement is reached which is to the mutual benefit of the employee and the Museum the provisions of paragraph 14.6.2 may be negotiated on a case-by-case basis.

14.7 Absence on Official Duty

An employee who:

- (a) performs official duty at or from a temporary work location; and
- (b) is thereby compelled to reside temporarily at a place other than the employee's residence shall be paid such allowances for the expenses incurred during the time actually spent away from the employee's residence in order to perform that duty as is prescribed by paragraph 14.6.1 of this Award.

14.8 Use of Private Motor Vehicle

- (a) An employee who, with the approval of the Museum, uses a private motor vehicle or other means of conveyance for the conduct of the Museum's business shall be paid a private motor vehicle allowance. The private motor vehicle allowance shall be payable at a rate in accordance with the current Australian Taxation Reporter.
- (b) An allowance shall not be paid under this clause in respect of a journey if a Museum fleet motor vehicle was available for the journey.
- (c) Where a Museum fleet motor vehicle was not available for a journey but public transport was reasonably available for the journey, the amount of any allowance paid under this clause shall not exceed the cost of the journey by public transport.
- (d) The allowances payable under this clause shall be adjusted as prescribed and published in the current Australian Taxation Reporter.

14.9 Compensation for Loss or Damage to Personal Property

- (a) The Museum shall compensate an employee to the extent of damage sustained to their personal property (but not theft) where such damage is sustained:
 - (i) due to the negligence of the Museum, another employee, or both, in the execution of their duties; or
 - (ii) by a defect in the Museum's material or equipment; or
 - (iii) where an employee has protected or attempted to protect the Museum's property from loss or damage.
- (b) For the purpose of this subclause, personal property means an employee's clothes, spectacles, hearing-aid or tools of trade which are ordinarily required for the performance of their duties.
- (c) Compensation to the extent of damage sustained shall be made where, in the course of work, clothing, spectacles or hearing aids are damaged or destroyed by fire.

15. Leave

15.1 General Provisions

- (a) An application by an employee for leave under this clause shall be made to and dealt with by the Museum.
- (b) The Museum, in dealing with any such application, shall have regard to the exigencies of the Museum, but as far as practical shall deal with the application in accordance with the wishes of the employee.

15.2 Maternity Leave

- (a) For the purposes of this award, Adoption Leave entitlements shall be identical to those for Maternity Leave.
- (b) A female employee who is pregnant and has completed not less than forty (40) weeks continuous service shall, subject to this clause, be entitled to be granted maternity leave for a period of up to 12 months, including 3 months on full pay and the remainder without pay. Having met these conditions once, the employees shall not be required to work the 40 weeks continuous service again to qualify for further periods of Maternity Leave.
- (c) Maternity Leave may commence up to three (3) months prior to the expected date of birth.
- (d) An employee who has been granted Maternity Leave may, with the permission of the Museum, take leave after the actual date of birth on a part-time basis over a period not exceeding two (2) years, or partly full-time and partly part-time over a proportionate period.
- (e) An employee who has applied for or been granted Maternity Leave shall, as soon as practical after the termination of her pregnancy (whether by the birth of a living child or otherwise), notify the Museum of the termination and the date on which it occurred.
- (f) An employee who has been granted Maternity Leave and who gives birth to a living child shall not resume duty, on either a full-time or a part-time basis, before the expiration of six (6) weeks after the birth of the child, unless a medical practitioner states that she is fit to do so.
- (g) An employee who has been granted Maternity Leave and whose child is stillborn may elect to take available Sick Leave instead of Maternity Leave.
- (h) An employee who resumes duty immediately on the expiration of Maternity Leave shall -
 - (i) if the position occupied by her immediately before the commencement of that leave still exists
be entitled to be placed in that position;
 - (ii) if the position so occupied by her has ceased to exist -
be entitled to be appointed (subject to the availability of other suitable positions) to another position at the same graded level or be entitled to a redundancy pay as per the Redundancy Policy.
- (i) Except as otherwise provided by paragraph (b) of this subclause, Maternity Leave shall be granted without pay.
- (j) Applications and Variations
 - (i) An employee shall give written notice of not less than eight (8) weeks prior to the commencement of Maternity Leave, except if the birth is premature. Such notice shall include a Medical Certificate stating the expected date of the birth.

An employee who has so notified the Museum may vary the period of Maternity Leave any number of times before she actually commences that leave. A minimum of four (4) weeks notice of variation shall be given, although the Museum may accept less notice if convenient.
 - (ii) An employee after commencing Maternity Leave may vary the period of her Maternity Leave, once without consent of the Museum, or any number of times with the consent of the Museum. A minimum of four (4) weeks notice must be given, although the Museum may accept less notice if convenient.

(k) Calculation of Leave Credits on Return from Full-time Maternity Leave

Paid Maternity Leave shall be counted as service for the purposes of calculating the Superannuation vestment period or Long Service Leave, Recreation Leave, Sick Leave, and other forms of leave entitlement.

(l) Payment in Advance

Taking into account the wishes of the employee, Maternity Leave, may be paid at the discretion of the Museum:

- (i) on a normal fortnightly basis; or
- (ii) in advance in a lump sum; or
- (iii) at the rate of half pay over a period of 6 months on a regular fortnightly basis.

(m) Transfer to a More Suitable Position

Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, the Museum shall be obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. This obligation arises from section 70, Transfer to a safe job of the NSW *Industrial Relations Act 1996*. A position to which an employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.

(n) Refer also to Appendix B, State Personal Carer's Leave Cases 1996 and 1998, Family Provisions Case 2005, of this award.

15.3 Parental Leave

(a) Subject to such conditions as may from time to time be determined by the Museum, the Museum may grant Parental Leave for a period not exceeding twelve (12) months to an employee who becomes a parent but is not entitled to Maternity Leave or Adoption Leave.

(b) Parental Leave may commence at any time up to two (2) years from the date of birth or adoption of the child.

(c) An employee who has been granted Parental Leave may, with the permission of the Museum, take such leave:

- (i) full-time for a period not exceeding twelve (12) months; or
- (ii) part-time over a period not exceeding two (2) years, or partly full-time and partly part-time over a proportionate period.

(d) An employee who resumes duty immediately on the expiration of Parental Leave shall -

- (i) if the position occupied by him or her immediately before the commencement of that leave still exists - be entitled to be placed in that position; or
- (ii) if the position so occupied by him or her has ceased to exist - be entitled to be appointed (subject to the availability of other suitable positions) to another position for which he or she is qualified or be entitled to a redundancy pay as per the Redundancy Policy.

(e) Parental Leave shall be granted without pay.

(f) Refer also to Appendix B, State Personal Carer's Leave Cases 1996 and 1998, Family Provisions Case 2005, of this award.

15.4 Recreation Leave

- (a) Recreation Leave on full pay accrues to employees at the rate of twenty (20) working days per year.
- (b) Recreation Leave accrues from month to month only, but for the purposes of calculating Recreation Leave which may be due on cessation of employment, credit shall be given for periods of service of less than one (1) month.
- (c) Recreation Leave accrued and not taken by an employee owing to exigencies of the Museum or for any other reason the Museum considers sufficient, accumulates up to a maximum of forty (40) working days.
- (d) The Museum may direct an employee to take accrued Recreation Leave at such time as is convenient to the working of the Museum, but as far as is practical the wishes of the employees concerned are to be taken into consideration in directing the time for the taking of leave.
- (e) If the Museum is satisfied that an employee is prevented from taking an amount of Recreation Leave sufficient to reduce the accrued leave below forty (40) working days, the leave accrued in excess of forty (40) working days shall not be forfeited, however the Museum reserves the right to direct the employee to take leave.

Recreation Leave shall not be granted for a period of less than a half day or in other than multiples of a half day.

- (f) Recreation Leave for which an employee is eligible on cessation of employment shall be calculated to an exact half day, fractions of less than a half day being taken to the next higher half day.
- (g) Recreation Leave does not accrue to an employee in respect of any period of absence from duty without pay or without leave.
- (h) The proportionate deduction to be made in respect of the accrual of Recreation Leave on account of any period of absence referred to in paragraph (g) of this subclause shall be calculated to an exact half day. Fractions of less than a quarter day shall be disregarded and not included in the calculation.
- (i) Recreation Leave accrues in respect of -
 - (i) any period of leave without pay granted on account of incapacity for which compensation has been authorised to be paid under the *Workers Compensation Act 1987*; or
 - (ii) any period of sick leave without pay; or
 - (iii) any other period of leave without pay, not exceeding five (5) working days in any period of twelve (12) months.
- (j) If an employee takes Long Service Leave on half pay, the period of that leave shall be taken into account to the extent of one-half of the leave only in calculating the accrual of Recreation Leave.
- (k) An employee who resigns or retires or whose services are otherwise terminated (except by death) shall, on cessation of employment, be entitled to be paid forthwith in lieu of Recreation Leave accrued and remaining untaken the money value of that leave.
- (l) An employee may elect to take either the whole or part of the Recreation Leave accrued and remaining untaken at cessation of active duty as Recreation Leave on full pay instead of taking the money value of that leave.

- (m) Where an employee has acquired a right to Recreation Leave with pay and dies before entering on it, or after entering on it dies before its termination -
 - (i) the spouse or de facto spouse whether same or opposite sex; or
 - (ii) if there is no such spouse or de facto spouse, the children of the employee; or
 - (iii) if there is no such spouse or de facto spouse or children, the person who, in the opinion of the Museum was, at the time of the death of the employee, a dependent relative of the employee, is entitled to receive the money value of the leave not taken.
- (n) If there is no such person entitled under paragraph (m) of this subclause, the payment to which those children are entitled may be made to that guardian for their maintenance, education and advancement.
- (o) If there is no person entitled under paragraphs (m) or (n) of this subclause to receive the money value of any leave not taken or not completed by an employee or which would have accrued to an employee, the payment shall be made to the personal representative of the employee.
- (p) Where payment of the money value of leave has been made under this clause no proceeding may be brought against the Museum of any amount in respect of that leave.

15.5 Sick Leave

- (a) Sick Leave on full pay accrues to an employee at the rate of ten (10) days each calendar year, and any such accrued leave which is not taken is cumulative to a maximum of forty (40) days, except as provided in paragraph (g) of this subclause.
- (b) Sick Leave on full pay accrues at the beginning of the calendar year, but if an employee is appointed during a calendar year, sick leave on full pay accrues on the date the employee commences duty at the rate of one (1) day for each complete month before the next 1 January up to a maximum of ten (10) days.
- (c) Sick Leave without pay shall not be counted as service for the accrual of Sick Leave.
- (d) For the purposes of determining the amount of Sick Leave accrued where Sick Leave is granted on less than full pay, the amount of Sick Leave granted shall be converted to its full pay equivalent.
- (e) If an employee who is on Recreation Leave or Long Service Leave furnishes to the Museum a satisfactory Medical Certificate in respect of illness occurring during that leave, the Museum may, subject to the provisions of this part relating to Sick Leave, grant Sick leave to the employee for the following period:
 - (i) in the case of an employee on Recreation Leave - the period set out in the Medical Certificate;
 - (ii) in the case of an employee on Long Service Leave - the period set out in the Medical Certificate, except if that period is less than seven (7) calendar days.
- (f) Paragraph (e) of this subclause applies to all employees other than those on leave prior to resignation or termination of services, unless the resignation or termination of services amounts to a retirement.
- (g) The Museum may, at its discretion, grant additional (special) Sick Leave as outlined in paragraph (h) of this subclause to an employee who:
 - (i) has exhausted the Sick Leave entitlement which may be granted under paragraphs (a) and (b) of this subclause;

- (ii) has had ten (10) or more years of service; and
 - (iii) is absent on Sick Leave for a period of at least three (3) months duration.
- (h) Special Sick Leave may be granted as follows:

Completed Years of Service	Number of Working Days (5 Day Week)
10	22
20	44
30	66
40	88
50	110

15.6 Sick Leave - Workers Compensation

- (a) This clause applies where an employee is or becomes unable to attend for duty or to continue on duty in circumstances which may give the employees a right to claim compensation under the *Workers Compensation Act 1987*.
- (b) If an employee has made a claim for any such compensation, the employee may, pending the determination of that claim and subject to the provisions of this clause relating to Sick Leave, be granted by the Museum Sick Leave on full pay for which the employee is eligible, and if that claim is accepted the equivalent period of any Sick Leave shall be restored to the credit of the employee.
- (c) An employee who continues in receipt of compensation after the completion of the period of twenty six (26) weeks referred to in section 36 of the *Workers Compensation Act 1987* may, subject to the provisions of this clause relating to Sick Leave, be paid an amount representing the difference between the amount of compensation payable under that Act and the ordinary rate of pay of the employee but Sick Leave equivalent to the amount of the difference so paid shall be debited against the employee.
- (d) If an employee notifies the Museum that he or she does not intend to make a claim for any such compensation, Sick Leave on full pay may be granted by the Museum.
- (e) If an employee, who is required to submit to a Medical Examination under the *Workers Compensation Act 1987* in relation to a claim for compensation under the Act, refuses to submit to or in any way obstructs any such examination, the employee shall not be granted Sick Leave on full pay until that examination has taken place and a Medical Certificate has been given indicating that the employee is not fit to resume duty.
- (f) If, as a result of any such Medical Examination, a Certificate is given under the *Workers Compensation Act 1987* setting out the condition and fitness for employment of the employee or the kind of employment for which the employee is fit, and the Museum makes available to the employee employment falling within the terms of that certificate and the employee refuses or fails to resume or perform the employment so provided, all payments in accordance with this clause shall cease from the date of that refusal or failure.
- (g) Notwithstanding paragraphs (b) or (c) of this subclause, if there is a commutation of weekly payments of compensation by the payment of a lump sum pursuant to section 51 of the *Workers Compensation Act 1987*, there shall then be no further Sick Leave granted on full pay.

15.7 Sick Leave - Other than Workers Compensation

- (a) If the circumstances of an injury to or illness of an employee may give rise to a claim for damages or to compensation, other than compensation under the *Workers Compensation Act 1987*, Sick Leave on full pay may, subject to an in accordance with this clause, be granted to the employee on completion by the employee of an undertaking in form approved by the Museum that any such claim if made will include a claim for the value of any period of Sick Leave on full

pay granted and that, in the event that the employee receives or recovers damages or compensation pursuant to the claim for loss of salary or wages during any such period of Sick Leave, the employee will repay the Museum such money as is paid by the Museum in respect of any such period of Sick Leave.

- (b) Sick Leave on full pay shall not be granted to an employee who refuses or fails to complete an undertaking referred to in paragraph (a) of this subclause except with the express approval of the Museum given on the grounds that the refusal or failure is unavoidable in the circumstances.
- (c) On repayment made to the Museum pursuant to an undertaking given by an employee, Sick Leave equivalent to that repayment, calculated at the ordinary rate of pay of the employee, shall be restored to the credit of the employee.

15.8 Sick Leave to Care for a Family Member

Refer to 1, Use of Sick Leave, in Appendix B, State Personal Carer's Leave Cases 1996 and 1998, Family Provisions Case 2005, of this award.

15.9 Special Leave

Special Leave may be granted to an employee on a paid or unpaid basis at the discretion of the Museum for the following purposes: Compassionate Leave, Military Leave, Jury Service, attendance in court, emergency volunteer activities, trade union activities, academic study, examination leave, graduation and academic ceremonies, professional meetings, electoral office activities, first aid training, blood donation, Olympic and Commonwealth Games participation, National Aborigines Day celebrations (where an employee identifies as an Aborigine), or in other cases of pressing necessity.

15.10 Long Service Leave

- (a) Full and Part-time employees are entitled after service of ten (10) years, to leave for three (3) months on full pay or six (6) months on half pay, and after ten (10) years service to an amount of leave on a pro rata basis to three (3) months for every additional ten (10) years worked.
- (b) For the purpose of calculating the entitlement of an employee to Long Service Leave under this subclause:
 - (i) service commences from the date of commencement of employment (as a full time or part time employee) with the Museum or the date of the commencement of employment with The University of Sydney if the employee subsequently transferred to the Museum.
 - (ii) Long Service Leave previously taken will be excluded from any calculation of Long Service Leave due.
- (c) If the services of an employee with at least five (5) years service and less than ten (10) years service are terminated:
 - (i) by the Museum for any reason other than the employee's serious and intentional misconduct; or
 - (ii) by the employee on account of illness, incapacity or other exceptional circumstances subject to the discretion of the Museum,

The employee is entitled:
 - (iii) for five (5) years of service, to 1.5 month's leave on full pay; and
 - (iv) for service after five (5) years, to a proportionate amount of leave on full pay calculated on the basis of three (3) month's leave for ten (10) years service.

- (d) For purposes of calculating Long Service Leave "service" does not include any period of Leave Without Pay.
- (e)
 - (i) an employee who has acquired a right to Long Service Leave with pay under paragraph (a) of this subclause is entitled, immediately on the termination of the employee's services, to be paid instead of that leave the money value of the Long Service Leave in addition to any payment to which the employee may be otherwise entitled;
 - (ii) any pension to which such employee is entitled under the *Superannuation Act 1916* commences from and including the date on which the employee's Long Service Leave if taken, would have commenced.
- (f) If an employee has acquired a right under this clause to Long Service Leave with pay and dies before starting it, or after starting it dies, paragraphs (m)-(p) of subclause 15.4, Recreation Leave apply.
- (g) Any payment under this clause is in addition to any payment due under any Act under which superannuation benefits are paid.
- (h) Long Service Leave should be taken at a mutually agreeable time. All efforts will be taken to grant the applicant's Long Service Leave following the giving of reasonable notice. Long Service Leave to be approved no longer than 12 months after receipt of written application except by mutual agreement between the applicant and the Museum.

16. Study Assistance

16.1 Objectives

Study assistance is available to develop the skills and versatility of people working in the Museum. It should be equitably accessible to all employees and should be used to promote a highly trained and skilled workforce.

The objectives of study assistance are:

- (a) to assist employees to undertake study which is relevant to the Museum and which improves their ability to perform their duties;
- (b) to develop the skills, versatility and adaptability of people working in the Museum;
- (c) to provide an opportunity for employees who have suffered education disadvantage to bridge gaps in their educational qualifications;
- (d) to encourage employees to pursue the highest standards in courses of study;
- (e) to provide a tangible expression of the commitment to employee development in a cost effective way.

16.2 Approved Courses and Study Types

Courses and other forms of study for which Study Leave may be granted shall be taken on a part time basis provided that they relate to the student's current employment and meet one or more of the following criteria:

- (a) be administered by a recognised public institution;
- (b) lead to a recognised qualification;

- (c) be a bridging/qualifying course;
- (d) lead to membership of a registered professional organisation;
- (e) contribute to the professional development of the employee;

16.3 Part Time Course

A part time course may be undertaken through correspondence or may require face to face or oral instruction. Study Leave may be granted for an approved course. More than one course may be undertaken at the same time, provided that the two or more courses together result in a part time load.

16.4 Study Time

- (a) Full time or part time employees desiring to undertake study shall make written application to the Course Approval Committee four or more weeks prior to the commencement of the proposed course.
- (b) A maximum of four (4) hours per week paid leave may be granted for attendance at lectures and other appropriate study. Such time shall be considered hours worked for purposes of calculating Sick Leave, Recreational Leave, Long Service Leave, etc. Such time shall include travel to and from the place of study.
- (c) Study Leave may, at the discretion of the Director, be granted in accumulated blocks for the duration of the course.
- (d) Study Leave shall be granted for under-graduate, graduate and post-graduate study. In special circumstances Study Leave may be granted for overseas study, including scholarships and fellowships, where applicant can demonstrate financial need.
- (e) Where study time is refused, the employee shall have recourse to the dispute settling procedures as specified in clause 18, Grievance and Dispute Settling Procedures.

16.5 Examination Leave

- (a) Examination Leave shall be granted to a maximum of five (5) days per annum, at the normal rate of pay. Such time shall be considered hours worked for the purposes of calculating Sick Leave, etc.
- (b) Pre Examination Leave is also available at the discretion of the Museum.

16.6 Study Leave Without Pay

The Director shall consider requests for Leave Without Pay for the purposes of study in the following instances:

- (a) the applicant is the recipient of a Fellowship or Scholarship which provides its own form of financial support.
- (b) the applicant's proposed course of study is not considered to be of immediate relevance to the applicant's skills for which they are employed by the Museum.
- (c) repeat subjects where evidence can be provided that failure was caused by circumstances beyond their control, such as sickness, domestic circumstances, etc.

Leave Without Pay shall be granted at the discretion of the Director and shall not be considered time worked for the purposes of calculating Sick Leave, etc.

16.7 Refusal of Study Leave

- (a) Sufficient notice must be given of refusal of Study Leave to enable the applicant to consider alternatives. Counselling shall be provided to assist applicants in considering alternatives.
- (b) The employee has recourse to the dispute procedures as specified in clause 18, Grievance and Dispute Settling Procedures.

16.8 Employee Development and Training Opportunities

(a) Definition

For the purpose of this part, the following are regarded as employee development and training 'activities'.

- (i) employee development courses conducted by the Museum;
- (ii) short educational and training courses conducted by generally recognised public or private educational bodies; and
- (iii) conferences, conventions, seminars, or similar activities conducted by professional, learned or other generally recognised societies, including Federal or State Government bodies.

(b) Types of Activities

The activities defined above can be grouped into three types:

- (i) Activities considered by the Museum to be essential for the efficient operation of the Museum.

Such activities would include the attendance at selected employee training sessions on the operations of a new office machine such as a computer which they will be required to use, or attendance at a course which is indirectly related to the work of the employees and is seen as essential for the employees to perform their duties adequately.

- (ii) Activities considered to be developmental and of benefit to the museum profession:

These activities which are developmental and serve to enhance the knowledge and skill of employees, being of clear benefit to the employees both in their work and in their career development as well as having a consequential benefit for the Museum or the museum profession. These activities would comprise the majority of employee development and training courses.

- (iii) Activities considered to be principally of benefit to the person and indirectly of benefit to the museum profession.

Attendance of employees at conferences or professional societies, or a series of lectures conducted by an educational institution, are examples of such activities.

(c) Attendance on duty

Attendance of employees at activities described in paragraphs (b) (i) and (b) (ii) of this subclause would be regarded as on duty. This means that where employees attended such an activity during normal working hours, they would be regarded as on duty for the purposes of payment of salary.

- (d) Conditions for activities considered to be essential for the efficient operation of the Museum. Because the activities described in paragraph (b) (i) of this subclause are seen as essential it is

clear that employees would be entitled to conditions contained in this award on the basis that the employees are performing their normal duties. These conditions would include.

- (i) recognition that the employees are performing normal duties during the course;
 - (ii) adjustment for the hours so worked under flexible working hours;
 - (iii) payment of course fees;
 - (iv) payment of all actual necessary expenses or payment of allowances in accordance with this award, provided that the expenses involved do not form part of the course; and
 - (v) payment of overtime where the activity could not be conducted during the employee's normal hours and the Museum is satisfied that the approval to attend constitutes a direction to work overtime under clause 8, Overtime and Time in Lieu, of this award.
- (e) Conditions for activities considered to be essential for the efficient operation of the Museum

The conditions to apply to the types of activities described in paragraph (b) (ii) of this subclause would be restricted to:

- (i) recognition of the employee as being on duty during normal working hours whilst attending the activity;
 - (ii) payment of course fees;
 - (iii) reimbursement of any actual necessary expenses incurred by the employee for travel costs, meals and accommodation, provided that the expenses involved do not form part of the course fee; and
 - (iv) such other conditions as may be considered appropriate by the Museum given the circumstance of attending at the activity, such as compensatory leave for excess travel or payment of the expenses allowance provided by clause 8, Overtime and Time in Lieu, of this award.
- (f) Conditions for activities considered to be principally of benefit to the employee and indirectly of benefit to the Museum.

The activities described in paragraph (b) (iii) of this subclause would be attended by an employee through the grant of Special Leave up to a maximum of ten (10) days in accordance with subclause 15.9 Special Leave of clause 15, Leave, of this award.

17. Anti-Discrimination

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

- (d) Nothing in this clause is to be taken to affect:
 - (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (ii) offering or providing junior rates of pay to persons under 21 years of age;
 - (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (iv) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (e) 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:

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

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

18. Grievance and Dispute Settling Procedures

Grievance and dispute settling procedures are in Appendix A to this award.

19. Deduction of Union Membership Fees

- (a) The Association shall provide the Museum with a schedule setting out Association fortnightly membership fees payable by members of the Association in accordance with the Association's rules.
- (b) The Association shall advise the Museum of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of Association fortnightly membership fees payable shall be provided to the Museum at least one month in advance of the variation taking effect.
- (c) Subject to subclauses (a) and (b) of this clause, the Museum shall deduct Association fortnightly membership fees from the pay of any employee who is a member of the Association in accordance with the Association's rules, provided that the employee has authorised the Museum to make such deductions.
- (d) Monies so deducted from an employee's pay shall be forwarded regularly to the Association together with all necessary information to enable the Association to reconcile and credit subscriptions to employees' Association membership accounts.
- (e) Unless other arrangements are agreed to by the Museum and the Association, all Association membership fees shall be deducted on a fortnightly basis.
- (f) Where an employee has already authorised the deduction of Association membership fees from their pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deduction to continue.

20. Secure Employment

- (a) 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.

(b) Casual Conversion

- (i) 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.
- (ii) 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.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) 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.
- (iv) 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.
- (v) 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.
- (vi) 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 (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), 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.

- (vii) Following an agreement being reached pursuant to paragraph (vi), 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.

(viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

(c) Occupational Health and Safety

(i) 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.

(ii) 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.

(iii) Nothing in this subclause (c) 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*.

(d) 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.

(e) 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.

(f) The parties agree to negotiate and implement a Memorandum of Understanding (MOU) about the implementation of the Secure Employment Test Case within 12 months (which addresses the concerns raised by the Museum in correspondence of 17 June 2009 to the Association.)

21. Area, Incidence, and Duration

This award shall apply to all employees of the Museum of Contemporary Art and employees of any affiliate of the Museum of Contemporary Art as defined in clause 3, Definitions, of this award.

This award is made following a review under section 19 of the *Industrial Relations Act* 1996 and rescinds and replaces the Museum of Contemporary Art Conditions of Employment Award 2005 published 31 March 2006 (358 I.G. 580) and all variations thereof.

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 13 August 2009.

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

APPENDIX A

Grievance/Dispute Procedure

Grievance resolution

The grievance resolution process

Who is responsible for implementing this Policy?

Principles of grievance resolution

- (i) What is a grievance?
- (ii) Why raise and resolve a grievance?
- (iii) Grievance resolution
- (iv) Documentation
- (v) Natural justice
- (vi) The support/information role for some grievances
- (vii) The mediator role for some grievances
- (viii) The advocate role for some grievances

Grievance resolution:

All employees are entitled to express a grievance and have that issue or concern examined and resolved.

The intent of the Museum's grievance resolution policy is that grievances are managed effectively and in a timely manner in the local workplace, consistent with award and legislative requirements.

The grievance resolution process

A grievance occurs in the workplace

Is the grievance resolved by discussion in the local workplace?

Yes

No

Write to immediate supervisor documenting
- the grievance
- the remedy sought

Hold a meeting to discuss the matter (within 2 days)

Is the matter resolved Yes

No

The employee or Department Manager/Team Leader may refer to General Manager

As soon as practical, hold a meeting to Discuss/investigate the matter

No

The General Manager may authorise a separate investigation

Yes

Is the matter resolved?

Ensure all relevant Parties are informed of the outcome; document and follow up as needed

The General Manager (or delegate) responds in writing to the employee, including any reasons for not implementing any proposed remedy

Yes

Stop

Note 1: 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 Director or delegate.

Note 2: The employee may be represented by the Association at any stage. The grievance or dispute may be referred to the NSW Industrial Relations Commission by the Association or the Museum if the matter is unresolved following the use of these procedures. The employee, Association and Museum shall be bound by any order or determination by the NSW Industrial Relations Commission in relation to the dispute.

Note 3: Whilst the procedures outlined in this clause are being followed, normal work undertaken prior to notification of the grievance or dispute shall continue unless otherwise agreed between the parties, or, in the case involving occupational health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any employee or member of the public.

Note 4: This is a general summary only.

Who is responsible for implementing this policy?

All grievances brought to the attention of a Supervisor or Manager must be investigated. Resolution is sought which is most satisfactory to all parties concerned and is consistent with any legislative or Award requirements.

For some grievances it may be essential that additional corrective action is undertaken. This could include change in policy or systems to ensure that the grievance does not recur. The management of

follow-up, implementation and corrective actions is essential. This is the responsibility of the relevant Supervisor or Manager.

Within the confines of law, decisions regarding workplace conditions, relationships and flow and type of work lie with management. Management also has a responsibility for effectively managing grievances.

Principles of grievance resolution

(i) What is a Grievance?

A grievance is a work related problem, concern or complaint which could be about issues such as:

distribution of work

work relationships

working conditions

access to opportunities for training, equipment, promotion or higher duties.

In this policy, the following terms are used:

grievant - the person who has the grievance

respondent - any person against whom a grievance is brought is referred to as the respondent, for example if the grievance is about harassment, the alleged harasser is the respondent

supervisor - this includes the immediate manager or team leader.

(ii) Why raise and resolve a grievance?

Effective grievance management resolves conflict quickly and effectively, decreasing distractions and improving morale. Grievances may also help identify if legislative and Award requirements are not being complied with, for example grievances related to occupational health and safety.

(iii) Grievance resolution

Reporting a grievance

If you have a grievance you may choose to handle the matter in a number of ways. The Museum encourages its employees to resolve grievances at the local workplace level.

The first step is to discuss the grievance with your supervisor, work colleague/s or other relevant employees associated with grievance. For example, if the grievance is related to work allocation, it is appropriate to discuss the matter with your supervisor. If the grievance is about your work relationship with a colleague, it is appropriate to discuss the matter with the colleague direct.

Discussing the matter with the parties directly involved may be very effective, particularly if they are unaware of the impact of their behaviour or your concerns.

You have the right to make a formal written complaint at any time. This Policy provides that an employee should first document the grievance and the remedy sought, for their supervisor. A meeting must be held within two days to aim to resolve the matter.

The following stages are implemented in the process of resolving a grievance. The depth and thoroughness of each stage will depend on the gravity of the situation. Confidentiality is to be maintained at all times. For most grievances it will be the supervisor who is most directly involved in this process. If the supervisor is the respondent in the grievance, the grievant should seek the assistance of the supervisor's manager.

Supervisors receiving a grievance should:

always take the grievance seriously

ask the grievant what remedy they are seeking

discuss the grievance and help the grievant to decide if the situation can be resolved at the local workplace level

reassure the grievant that their grievance will remain confidential and will not be disclosed outside the investigation process

assist the grievant in understanding options and steps in the grievance process

listening to the grievant's concern or distress.

In conjunction with these responsibilities, the key stages in the grievance process include the Supervisor:

clarifying the facts and separating these from opinion and emotion

assessing the seriousness of the matter and involving expert advice where appropriate

considering if particular formal policies are relevant to the matters raised

exploring possible options and considering their likely consequences

considering if it is necessary to investigate the facts further by interviewing witnesses gathering evidence etc

agreeing on appropriate actions and who will take them

setting completion and review dates

initiating or recommending actions to prevent the grievance recurring

ensuring that the grievant is informed of the outcome of the investigation and decision making process.

Investigating a grievance

Grievances may be investigated within the Museum by a single officer or a panel. The Director or the General Manager will determine the membership of a panel. For example, a panel may consist of the Team Leader responsible for the grievant and an independent employee.

Investigations should be fully completed, including the sign-off of any reports, as quickly as possible and ideally within five working days. The level of investigation will relate in part to the seriousness of the grievance.

In carrying out an investigation, the panel must:

be fair and impartial

discuss the grievance with the grievant and obtain as much information as possible including a description of the events, times/dates and the names of any witnesses

advise the respondent (if there is one) that a grievance has been made, describe the nature of it and also obtain a full description of the events and the names of any witnesses

explain the investigative process to the grievant and respondent (if there is one)

establish the facts by interviewing any witnesses or other relevant parties, (taking written statements as required), referring to file documentation and/or using other appropriate methods

remind all parties not to discuss the matter and assure them that confidentiality will be maintained

keep factual notes on all discussions, meetings and interviews

assess whether or not the grievance is substantiated.

Depending on the nature of the grievance, an investigating officer or panel should consider whether one or more parties should be given alternative work arrangements for the duration of the investigation. In most instances this will not be necessary.

In some cases an independent and external investigation process may be established by the Museum and/or agencies such as the Anti-Discrimination Board

The outcome of the investigation process is usually a report which summarises the key events and issues and recommends a course of action to resolve the complaint.

Resolving informal grievances

It is often possible to resolve informal grievances at the local workplace level.

If the grievance is minor and all parties are satisfied with the outcome, formal documentation on the grievant's and respondent's personal file may not be required.

Resolving formal grievances

The investigating officer or panel asks the grievant to describe any actions that the respondent and/or the organisation should carry out before the grievant is satisfied. The panel takes these suggestions into account when it recommends a course of action for approval and adoption. The relevant Manager, General Manager or Director makes the final decision on the recommendation.

In those cases which involve breaches of policy, any disciplinary action which is recommended should be appropriate to the nature of the offence - consider whether it is a first or a repeated offence, the severity of the behaviour and so on.

If the grievance was substantiated, appropriate actions may include one or a combination of:

a verbal or written apology from the respondent

mediation between the parties

skills development for one or both parties

moving the respondent to other work assignments so that the respondent no longer works with the grievant

a formal warning

temporary or permanent demotion

termination of employment, in serious instances.

It is essential that the relevant Manager co-ordinates any follow-up action and to ensure that decisions are fully implemented. Advice to unions may be necessary.

The formal grievance and its outcome should be documented with copies placed on the appropriate employees' files.

Employees who have a grievance may also obtain confidential, personal counselling through the Museum's Employee Assistance Program (EAP).

(iv) Documentation

Documentation is to be maintained, including copies of the grievance (if it is in writing) and response. It should also summarise the actions taken to resolve the matter and include details such as:

dates

times

location

the names of the relevant parties.

The level of documentation will reflect the gravity of the grievance. Confidentiality needs to be maintained with all the documentation. It is usually filed on the personnel files of the grievant and respondent.

(v) Natural Justice

It is sometimes alleged that the respondent behaved in an unacceptable or inappropriate manner, causing the grievance. It is also important to protect this person's rights, for example the respondent needs to be informed of the alleged grievance and be given a right of reply.

The principles of natural justice and procedural fairness must be adhered to throughout, requiring that:

an impartial and proper investigation of facts and circumstances is conducted, taking into account any mitigating circumstances

the respondent is given the opportunity and sufficient notice to present their response to allegations and/or decisions made

all employees are made aware of their right to use the Museum's grievance resolution procedures and/or to seek a union representative at any stage

any penalties imposed are lawful.

(vi) The Support/Information role for some grievances

In some grievances, the grievant or respondent may wish to obtain support or information from a third party on a confidential basis. This may be the case, for example, in harassment cases if an employee is harassed by their supervisor and is not sure who they should talk to or the options available to deal with the issue.

Providers of this support or information may include:

Human resource specialists

Other managers and employees

External providers, such as EAP provider - Davidson Trehaire

External agencies if relevant (eg. Anti-Discrimination Board).

People providing support or information in this way must ensure that they are impartial and do not prejudice any matter.

(vii) The Mediator role for some grievances

In some cases the resolution of a grievance may require a mediator who, as an independent third party, can assist the grievant and respondent to resolve the grievance.

The mediator is someone both the grievant and respondent agree to. The mediator has an important role in actively resolving the issue in a fair and equitable manner and cannot dismiss it without clarifying and evaluating it.

The mediator does not have to take responsibility for someone else's issues, rather their role is to support and assist the parties involved. The role of mediator is impartial and judgments of issues and people are to be avoided.

Mediators may include:

- human resource specialists
- other managers or employees
- external individuals with experience in this role
- their Union

At any stage in the process the grievant, respondent and supervisor may choose to obtain advice from an external mediator such as an employee assistance program provider.

(viii) The Advocate role for some grievances

In some grievances, the grievant or respondent may seek another person to act as an advocate and support them. Advocates may participate directly in discussions to try to deal with the grievances.

Employees' advocates usually include:

- union delegates or officials
- co-workers.

In practice, most grievances do not require the participation of advocates, particularly if it is effectively managed to the satisfaction of all parties in the local workplace.

Advocates are most typically involved if a grievance is of such a serious matter that it may result in formal disciplinary action or an industrial dispute.

APPENDIX B

State Personal Carer's Leave Cases 1996 and 1998, Family Provisions Case 2005

1. Use of Sick Leave

- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 1(c)(ii) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at subclause 15.5, Sick Leave of this award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

- (b) The employee shall, if required,
 - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

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

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being:
 - (A) a spouse of the employee; or
 - (B) a de facto spouse who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (C) a child or an adult child (including an adopted child, a 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 the spouse or de facto spouse of the employee; or
 - (D) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
 - (E) a relative of the employee who is a member of the same household where, for the purposes of this subparagraph:
 - (1) "relative" means a person related by blood, marriage or affinity;
 - (2) "affinity" means a relationship that one spouse, because of marriage, has to blood relatives of the other; and
 - (3) "household" means a family group living in the same domestic dwelling.

- (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.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the Grievance/Disputes Procedure at Appendix A of this award should be followed.

2. Unpaid Leave for Family Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 1(c)(ii) above who is ill or who requires care due to an unexpected emergency.

3. 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 3(a) above shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
- (d) An employee and employer may agree to defer payment of the annual leave loading in respect of single-day absences until at least five consecutive annual leave days are taken.

4. Time Off in Lieu of Payment for Overtime

- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
- (b) 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.
- (c) If, having elected to take time as leave in accordance with 4(a) above, 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.
- (d) Where no election is made in accordance with the said 4(a), the employee shall be paid overtime rates in accordance with the award.

5. 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.
- (b) An employee on shift work 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), at the shift work rate which would have been applicable to the hours taken off.

6 Rostered Days Off [not applicable to Museum]

7 Personal Carers Entitlement for casual employees -

- (a) Subject to the evidentiary and notice requirements in 1(b) and 1(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in 1(c)(ii) who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (b) The employer and the 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.

8. Bereavement Leave

- (a) An employee other than a casual employee shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in 8(c) below.
- (b) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- (c) Bereavement leave shall be available to the employee in respect to the death of a person prescribed in 1(c)(ii), provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (d) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (e) Bereavement leave may be taken in conjunction with other leave available under 2, 3, 4, 5 and 6 above. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

9. Bereavement entitlements for casual employees

- (a) Subject to the evidentiary and notice requirements in 1(b) and 1(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 1(c)(ii) above.
- (b) The employer and the 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.

10. Parental Leave - Family Provisions Case 2005

- (a) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW)
- (b) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (i) the employee or employee's spouse is pregnant; or
 - (ii) the employee is or has been immediately absent on parental leave.

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

(c) Right to request

- (i) An employee entitled to parental leave may request the employer to allow the employee:

- (A) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (B) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (C) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (ii) 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.

- (iii) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 10(c)(i)(B) and 10(c)(i)(C) must be recorded in writing.

- (iv) Request to return to work part-time

Where an employee wishes to make a request under 10(c)(i)(B), 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.

- (d) Communication during parental leave

- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (A) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

- (B) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (ii) 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 parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- (iii) 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 10(d)(i) above.

D.W. RITCHIE, Commissioner