

**CROWN EMPLOYEES (HEALTH CARE COMPLAINTS COMMISSION, MEDICAL ADVISERS) AWARD 2012**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Australian Salaried Medical Officers' Federation (New South Wales), Industrial Organisation of Employees.

(No. IRC 1016 of 2012)

Before The Honourable Justice Haylen

2 October 2012

**AWARD**

**Arrangement**

**PART A**

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**PART B**

**MONETARY RATES**

Table 1 - Salaries

**PART A**

**1. Title**

This Award shall be known as the Crown Employees (Health Care Complaints Commission, Medical Advisers) Award 2012.

**2. Parties**

This award is made between the Director of Public Employment, the Health Care Complaints Commission and the Australian Salaried Medical Officers' Federation (New South Wales).

**3. Definitions**

"Award" means the Crown Employees (Health Care Complaints Commission, Medical Advisers) Award 2012.

"Department Head" means the Commissioner of the Office of the Health Care Complaints Commission (HCCC).

"Director of Public Employment" or "DPE" means the office established under Chapter 6 of the *Public Sector Employment and Management Act 2002*.

"Federation" or "union" means the Australian Salaried Medical Officers' Federation (New South Wales).

"Medical Adviser" means and includes all persons employed as a Medical Adviser by the HCCC whether employed on a full time or part time basis.

"Agency" or "Department" means the Office of the Health Care Complaints Commission (HCCC).

#### **4. Salaries and Progression**

- 4.1 Hourly rates of pay for Medical Advisers employed by HCCC are as provided in Table 1 - Salaries, of Part B, Monetary Rates.
- 4.2 The hourly rate is payable for all time worked in accordance with clause 6.
- 4.3 Payment of Overtime - additional compensation for overtime and on-call or recall duty is not payable under this Award.
- 4.4 Progression to a higher level is subject to 12 months satisfactory conduct, performance and attendance and the approval of the Commissioner.

#### **5. Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation**

- 5.1 The entitlement to salary package in accordance with this clause is available to:
  - (a) permanent full-time and part-time employees;
  - (b) temporary employees, subject to the Department or agency's convenience; and
  - (c) casual employees, subject to the Department or agency's convenience, and limited to salary sacrifice to superannuation in accordance with subclause 5.7
- 5.2 For the purposes of this clause:
  - (a) "salary" means the salary or rate of pay prescribed for the employee's classification by clause 4, Salaries and Progression, and outlined in Part B of this Award, and any other payment that can be salary packaged in accordance with Australian taxation law.
  - (b) "post compulsory deduction salary" means the amount of salary available to be packaged after payroll deductions required by legislation or order have been taken into account. Such payroll deductions may include, but are not limited to, taxes, compulsory superannuation payments, HECS payments, child support payments, and judgement debtor/garnishee orders.
- 5.3 By mutual agreement with the DPE, an employee may elect to package a part or all of their post compulsory deduction salary in order to obtain:
  - (a) a benefit or benefits selected from those approved by the DPE; and
  - (b) an amount equal to the difference between the employee's salary, and the amount specified by the DPE for the benefit provided to or in respect of the employee in accordance with such agreement.
- 5.4 An election to salary package must be made prior to the commencement of the period of service to which the earnings relate.

- 5.5 The agreement shall be known as a Salary Packaging Agreement.
- 5.6 Except in accordance with subclause 5.7, a Salary Packaging Agreement shall be recorded in writing and shall be for a period of time as mutually agreed between the employee and the Agency at the time of signing the Salary Packaging Agreement.
- 5.7 Where an employee makes an election to sacrifice a part or all of their post compulsory deduction salary as additional employer superannuation contributions, the employee may elect to have the amount sacrificed:
- (a) paid into the superannuation fund established under the *First State Superannuation Act 1992*; or
  - (b) where the employer is making compulsory employer superannuation contributions to another complying superannuation fund, paid into the same complying fund; or
  - (c) subject to the Department or agency's agreement, paid into another complying superannuation fund.
- 5.8 Where the employee makes an election to salary sacrifice, the employer shall pay the amount of post compulsory deduction salary, the subject of election, to the relevant superannuation fund.
- 5.9 Where the employee makes an election to salary package and where the employee is a member of a superannuation scheme established under the:
- (a) *Police Regulation (Superannuation) Act 1906*;
  - (b) *Superannuation Act 1916*;
  - (c) *State Authorities Superannuation Act 1987*; or
  - (d) *State Authorities Non-contributory Superannuation Act 1987*,
- the employee's Department or agency must ensure that the employee's superable salary for the purposes of the above Acts, as notified to the SAS Trustee Corporation, is calculated as if the Salary Packaging Agreement had not been entered into.
- 5.10 Where the employee makes an election to salary package, and where the employee is a member of a superannuation fund other than a fund established under legislation listed in subclause 5.9 of this clause, the employee's Department or agency must continue to base contributions to that fund on the salary payable as if the Salary Packaging Agreement had not been entered into. This clause applies even though the superannuation contributions made by the Department or agency may be in excess of superannuation guarantee requirements after the salary packaging is implemented.
- 5.11 Where the employee makes an election to salary package:
- (a) subject to Australian taxation law, the amount of salary packaged will reduce the salary subject to appropriate PAYG taxation deductions by the amount packaged; and
  - (b) any allowance, penalty rate, payment for unused leave entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an employee is entitled under this Award or any applicable Award, Act or statute which is expressed to be determined by reference to the employee's rate of pay, shall be calculated by reference to the rate of pay which would have applied to the employee under clause 4, Salaries and Progression, or Part B of this Award if the Salary Packaging Agreement had not been entered into.
- 5.12 The DPE may vary the range and type of benefits available from time to time following discussion with the Federation. Such variations shall apply to any existing or future Salary Packaging Agreement from the date of such variation.

- 5.13 The DPE will determine from time to time the value of the benefits provided following discussion with the Federation. Such variations shall apply to any existing or future Salary Packaging Agreement from the date of such variation. In this circumstance, the employee may elect to terminate the Salary Packaging Agreement.

## **6. Employment Arrangements**

- 6.1 A standard day is 7 hours per day.
- 6.2 Generally Medical Advisers may work their agreed hours between the hours of 7.00 am and 6.00 pm Monday to Friday. In exceptions, work may be performed outside these hours, but will be remunerated at the hourly rate.
- 6.3 Medical Advisers, in agreement with the Commissioner, may nominate the commencing and concluding times of their agreed hours.
- 6.4 A lunch break of at least 30 minutes must be taken after 5 hours continuous work.
- 6.5 Part-time Work - The provision for part-time work as prescribed by the Agency's Flexible Work Practices Policy will apply to Medical Advisers employed under this award.
- 6.6 Private Practice - Medical Advisers may engage in private practice outside their agreed working hours. For Medical Advisers working full time hours, private practice is to be considered as second or other employment and the employees are to obtain permission from their employer pursuant to section 59 of the Public Sector Employment and Management Act 2002.
- 6.7 In accordance with the HCCC's Code of Conduct, there shall be no conflict or incompatibility between personal interests and the impartial fulfilment of public or professional duty. Any private work with or for any person or body with an interest in a proposed or current contract with the HCCC must be disclosed to the Commissioner.

## **7. Leave Arrangements**

The leave provisions of the Crown Employees (Public Service Conditions of Employment) Award 2009, as amended from time to time, apply to Medical Advisers covered by this award.

- 7.1 Medical Advisers will be paid for public holidays or leave taken on days specified as their agreed day of work or a day when they are requested to work.
- 7.2 Part-time Medical Advisers accrue recreation leave on a pro rata basis.
- 7.3 A loading of 1/12th of the hourly rate will apply to payment for additional hours worked in excess of the normal weekly agreed hours.

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

The provisions of the Crown Employees (Public Service Conditions of Employment) Award 2009, as amended from time to time, shall apply.

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

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

- 9.3 Subject to 9.1 and 9.2 above, the employer shall deduct union fortnightly 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 employer in writing to make such deductions.
- 9.4 Monies so deducted from the employee's pay shall be forwarded regularly to the union together with all necessary information to enable the union to reconcile and credit subscriptions to employees' union membership accounts.
- 9.5 Unless other arrangements are agreed to by the employer and the union, all union membership fees shall be deducted on a fortnightly basis.
- 9.6 Where an employee has already authorised the deduction of union membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

### **10. Grievance and Dispute Resolution**

- 10.1 All grievances and disputes relating to the provisions of this award shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within the appropriate department, if required.
- 10.2 A staff member is required to notify in writing their immediate manager, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- 10.3 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti Discrimination Act 1977*) that makes it impractical for the Medical Adviser to advise their immediate manager the notification may occur to the next appropriate level of management, including where required, to the Department Head or delegate.
- 10.4 The immediate manager shall convene a meeting in order to resolve the grievance, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to their attention.
- 10.5 If the matter remains unresolved with the immediate manager, the staff member may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two (2) working days, or as soon as practicable. The staff member may pursue the sequence of reference to successive levels of management until the matter is referred to the Department Head.
- 10.6 The Department Head may refer the matter to the DPE for consideration.
- 10.7 If the matter remains unresolved, the Department Head shall provide a written response to the staff member and any other party involved in the grievance, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- 10.8 A staff member, at any stage, may request to be represented by their union.
- 10.9 Any of the parties may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- 10.10 The staff member, union, department and DPE shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- 10.11 Whilst the procedures outlined in clauses 10.1 to 10.10 of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty 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 staff member or member of the public.

## **11. Anti Discrimination**

- 11.1 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.
- 11.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award, which, by its terms or operation, has a direct or indirect discriminatory effect.
- 11.3 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.
- 11.4 Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 11.5 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.
- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
  - (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:  
  
"Nothing in 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."

## **12. No Further Claims**

- 12.1 During the term of this award, there will be no extra wage claims, claims for improved conditions of employment or demands made with respect to the employees covered by the award and, further, that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the Industrial Relations Commission or any other industrial tribunal.
- 12.2 The terms of the preceding paragraph do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing award provisions.

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

- 13.1 This award shall apply to all classifications contained herein.
- 13.2 The employees covered by this award are employed in terms of the *Public Sector Employment & Management Act 2002*, and to the extent that this award is silent, will be covered by the provisions of that Act and associated Regulations and the Crown Employees (Public Service Conditions of Employment) Award 2009 as varied.

- 13.3 This award rescinds and replaces the Crown Employees (Health Care Complaints Commission, Medical Advisers) Award 2011 published 18 November 2011 (371 I.G. 967), as varied.
- 13.4 This Award will take effect from 1 October 2012. The Award will remain in force for the period to 30 September 2013 or until varied or rescinded in accordance with the provisions of *Industrial Relations Act 1996*.

## **PART B**

### **MONETARY RATES**

**Table 1 - Salaries**

Medical Adviser	1 October 2012 2.5%
Level 1	110.92
Level 2	119.12
Level 3	127.33

W. R. HAYLEN *J*

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