

**CROWN EMPLOYEES DEPARTMENT OF FAMILY AND
COMMUNITY SERVICES NSW (ABORIGINAL HOUSING AWARD)
2016**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(Case No. 2016/00006270)

Before Commissioner Stanton

2 August 2016

REVIEWED AWARD

Arrangement

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1. Title

This award will be known as the Crown Employees Department of Family and Community Services NSW (Aboriginal Housing Award) 2016.

2. Definitions

"Chief Executive Officer" means the Chief Executive Officer of the Aboriginal Housing Office.

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

"Employees" means all those persons who are permanently or temporarily employed under the *Government Sector Employment Act 2013* and who are employed in a classification under this award, except officers employed in the Senior Executive Service.

3. Statement of Intent

3.1 This award aims to provide appropriate, flexible workplace conditions within the Aboriginal Housing Office (AHO) to ensure that the AHO can:

operate in accord with the provisions of the *Aboriginal Housing Act 1998*;

provide its services efficiently and effectively to meet the diverse interests and needs of its clients and stakeholders; and

ensure that the professionalism, dedication and commitment of management and employees are recognised and valued.

In addition, this award is intended to facilitate and support the employment of Aboriginal people within the AHO.

3.2 This Award should be read in conjunction with the Memorandum of Understanding between the AHO and the Association dated February 2000.

3.3 The Parties to this Award are:

The Director General of the Department of Premier and Cabinet and Chief Executive Officer of the Aboriginal Housing Office, and

The Association on behalf of the employees of the Aboriginal Housing Office.

4. Work Environment

4.1 The AHO will meet its responsibilities with respect to the occupational health and safety of AHO employees in accordance with the *Work Health and Safety Act 2011* and its associated regulations.

4.2 The AHO is committed to equality of opportunity in employment and will seek to ensure that this commitment is reflected in all its operations, within the framework of its policy of seeking to maximise the sustainable employment of Aboriginal people both within the AHO and within the Aboriginal housing sector.

4.3 The AHO will require management and employees to meet their responsibilities under the *Anti-Discrimination Act 1977* to ensure that the AHO is a workplace free from harassment on the grounds of sex, race, marital status, physical or mental disability, sexual preference, transgender, age or responsibilities as a carer.

5. Anti-Discrimination

5.1 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.

5.2 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 that, by its terms or operation, has a direct or indirect discriminatory effect.

5.3 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.

5.4 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.

5.5 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.

5.6

(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."

6. Grievance and Dispute Resolution Procedures

6.1 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.

6.2 An employee 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.

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

6.4 The immediate manager, or other appropriate officer, 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 attention.

6.5 If the matter remains unresolved with the immediate manager, the employee 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 employee may pursue the sequence of reference to successive levels of management until the matter is referred to the Department Head.

6.6 The Department Head may refer the matter to the Director of Public Employment for consideration.

6.7 If the matter remains unresolved, the Department Head shall provide a written response to the employee 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.

6.8 An employee, at any stage, may request to be represented by the Association.

6.9 The employee or the Association on their behalf, or the Department Head may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.

6.10 The employee, Association, department and Director of Public Employment shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.

6.11 Whilst the procedures outlined in subclauses 6.1 to 6.10 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 employee or member of the public.

At any stage of this process either party may request that the situation be referred to an independent mediator. Aboriginal employees have the right to have the matter referred to an Aboriginal mediator if they request this.

7. Classifications and Salary Structures

- 7.1 All AHO employees will be paid in accordance with the salary structures set out in the Crown Employees (Administrative and Clerical Officers - Salaries) Award 2007 and/or the Crown Employees (Public Sector - Salaries 2016) Award or their successors.
- 7.2 AHO trainees will be paid at the levels of salary established by the Clerks General Scale set out in the Crown Employees (Administrative and Clerical Officers - Salaries) Award 2007 or its successors, with previous years of paid employment determining the salary up to a maximum of ten years.
- 7.3 At the time of making this award, all employees are classified as Clerks. However, individual positions (and hence the employees occupying those positions) will have a title which reflects the role and functions of the position and which is meaningful to AHO clients and stakeholders.
- 7.4 Incremental progression for all employees will be subject to a satisfactory performance report recommending progression.

8. Working Hours

- 8.1 Normal business hours of the AHO will be 8.45 am to 5.00 pm.
- 8.2 Normal contract hours for employees are 35 hours per week, Monday to Friday.
- 8.3 The following provisions shall be read and applied in conjunction with clause 11, Working Hours of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009.
 - 8.3.1 A standard working day is 9.00 am to 5.00 pm Monday to Friday
 - 8.3.2 The bandwidth is from 7.30 am to 6.00 pm. Bandwidth hours may be varied to meet the needs of the AHO or the personal needs of the employee by agreement between an employee and their manager, subject to paragraph 8.3.5 and provided that changing the bandwidth does not incur additional payments for overtime or meal allowance.
 - 8.3.3 Coretime is between 9.30 am and 3.30 pm. Coretime is the period during the day when all employees are required to be on duty, unless on authorised leave. The lunch break is not part of coretime.

Coretime may be varied by agreement between an employee and their manager, subject to paragraph 8.3.5. Where the bandwidth is substantially varied in accordance with paragraph 8.3.2, coretime should likewise be varied.
 - 8.3.4 The lunch break may be taken within the period between 11.30 am and 2.30 pm.

The minimum lunch period is 30 minutes, and the normal lunch period is one hour.

An employee may, with the approval of their manager, extend the lunch period up to 2½ hours, provided that this longer lunch break does not prevent the proper functioning of their section.
 - 8.3.5 A flexible and adaptable approach to working hours will be adopted to meet peak work demands, service delivery requirements, and the personal circumstances of AHO employees.

Flexible working hours will only be available on the condition that an adequate service is maintained at all times. Services provided by the AHO will not be withdrawn to accommodate the absence of employees under any flexible working hours arrangements.

Flexible working hours arrangements are subject to organisational requirements. An employee's attendance outside the hours of a standard work day, but within the bandwidth shall be subject to the availability of work.

9. Leave

- 9.1 Support will be provided to Aboriginal employees with respect to their extended family, cultural and ceremonial obligations and their involvement in their communities through the approval of flex and other appropriate leave.
- 9.2 Leave will be authorised and supported in accordance with clauses 67 to 84 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or its replacement.
- 9.3 Flex leave entitlements will be extended to accommodate and recognise additional hours which may be required to be worked to meet the needs of the AHO, and to provide greater flexibility to meet the personal needs of individual employees.
- 9.4 Flexible working hours as defined in clause 21 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 are varied as follows:

A maximum of 18 flex days may be taken in a year. The year will commence with the first flex period in July each year, and conclude at the end of the last flex period commencing in June each year.

Up to 2 flex days may be taken in any flex period, subject to paragraph 8.3.5 and the approval of the manager.

Flexitime credits in excess of 10 hours at the end of each flex period may be saved up to a limit of 42 hours (6 days) being held at any one time.

On one occasion in a year between 1 and 5 consecutive days may be taken in addition to the 2 day/s available in the flex period, subject to paragraph 8.3.5 and the approval of the manager.

Approval is required prior to granting any flex leave. Five working days notice is required when 2 or more flex days are requested. This requirement may be waived for exceptional circumstances.

10. Travel Passes

The AHO will fund an up front payment on behalf of interested permanent employees to purchase an annual public transport travel pass (either rail, bus, ferry or a combination of these). Employees in turn will agree to repay this up front payment over 12 months through regular fortnightly deductions from after tax salary. This offer must be taken up by a date to be stipulated for a minimum period of 12 months. The cost of any Fringe Benefit Tax (FBT) implications for employees taking up this offer must be met by the relevant individual employee.

11. Deduction of Association Membership Fees

- 11.1 The Association shall provide the AHO with a schedule setting out union fortnightly membership fees payable by members of the Association in accordance with the union's rules.
- 11.2 The Association shall advise the AHO 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 AHO at least one month in advance of the variation taking effect.

- 11.3 Subject to subclauses 11.1 and 11.2 of this clause, the AHO shall deduct union fortnightly membership fees from the pay of any employee who is a member of the Association in accordance with the union's rules, provided that the employee has authorised the AHO to make such deductions.
- 11.4 Monies so deducted from the 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' union membership accounts.
- 11.5 Unless other arrangements are agreed to by the AHO and the Association, all union membership fees shall be deducted on a fortnightly basis.
- 11.6 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 deduction to continue.

12. Review Clause

Should there be any variation to the Crown Employees (Public Sector – Salaries 2016) Award, or an Award replacing it, during the term of this Award, by way of salary increase, or other benefit to the public service, this award shall be varied to give effect to any such salary increase, or other benefit from the operative date of the variation of the former award, or replacement award.

Employees are entitled to the conditions of employment provided by this Award and by the *Government Sector Employment Act 2013* and its Regulation and Rules. The provisions of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or any replacement award, also apply to employees covered by this Award, except where specifically varied by this Award.

13. Area, Incidence and Duration

This Award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees Department of Family and Community Services NSW (Aboriginal Housing Award) 2012 published 17 August 2012 (374 IG 314) 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 IG 359) take effect on 2 August 2016.

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

J. D. STANTON, Commissioner

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