

CROWN EMPLOYEES (INDEPENDENT TRANSPORT SAFETY REGULATOR) AWARD 2016

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(Case No. 2016/00167960)

Before Commissioner Murphy

2 June 2016

AWARD

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PART A

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2. Definitions

- (i) "Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.
- (ii) "ITSR" means the Independent Transport Safety Regulator established by the Transport Administration Act 1988.
- (iii) "Staff" or "staff members" shall mean person(s) employed by ITSR under Section 21 of the Government Sector Employment Act and covered by this Award.
- (iv) "Transferred staff" mean former State Rail Authority staff, former Rail Infrastructure Corporation staff, former Office of Co-ordinator General of Rail staff or former Ministry of Transport staff who were transferred to ITSR on 1 January 2004 under Schedule 6 of the Transport Administration Act 1988.
- (v) Chief Executive means the Chief Executive of ITSR or their nominee.
- (vi) "Domestic Violence" means domestic violence as defined in the Crimes (Domestic and Personal Violence) Act 2007.

3. Intent

This award aims to consolidate, in the one document, the common conditions of employment of staff and to facilitate, as appropriate, greater flexibility in the workplace.

4. Work Environment

ITSR is committed to fostering engagement of staff with the organisation and its values through the provision of:

- (i) interesting work;
- (ii) effective communication that establishes clear performance expectations and feedback on performance;
- (iii) provision of an harassment free, cooperative work environment where staff are treated with dignity and respect;
- (iv) employment conditions that support staff in balancing their work and home commitments;
- (v) support for learning and career development opportunities; and,
- (vi) maintaining accident-free and healthy workplace by:
 - (a) the development of policies and guidelines on occupational health, safety and rehabilitation;
 - (b) pursuing the objectives of the Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2011 by maintaining agreed consultative arrangements to identify and implement safe systems of work, safe work practices, working environments and appropriate risk management strategies and to determine the level of responsibility to achieve these objectives;
 - (c) identifying training strategies for staff members, as appropriate, to assist in the recognition, elimination or control of workplace hazards and the prevention of work related injury and illness;

- (d) developing strategies to assist the rehabilitation of injured staff members.

5. Salaries and Grades

- (i) The salaries payable are prescribed in Part B, Monetary Rates, of this Award.
- (ii) No further staff shall be classified as Grade 9 under this Award.
- (iii) ITSR and staff member(s) can agree to salary sacrifice arrangements.

6. Performance Development and Evaluation Scheme (PDES)

- (i) All staff are required to participate in the PDES.
- (ii) Incremental progression in salary is subject to obtaining a satisfactory rating under the PDES at prior 6 monthly or annual performance feedback session.
- (iii) ITSR is committed to ensuring that PDES is implemented for all staff and that reviews are conducted as scheduled, so that staff are not disadvantaged for incremental progression by any delay.
- (iv) ITSR is committed to supporting learning and development opportunities that are aligned to ITSR's Learning and Development strategies and are agreed and documented through the PDES.

7. Working Hours and Overtime

- (i) Ordinary hours of work are currently determined as 35 hours per week.
- (ii) Where staff work under a flexitime arrangement work hours are averaged over a 4 week period.
- (iii) The Chief Executive may require a staff member to perform duty beyond the hours but only if it is reasonable for the staff member to be required to do so. A staff member may refuse to work additional hours in circumstances where the working of such hours would result in the staff member working unreasonable hours. In determining what is unreasonable the following factors shall be taken into account:
 - (a) the staff member's prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements,
 - (b) any risk to staff member's health and safety,
 - (c) the urgency of the work required to be performed during additional hours, the impact on the operational commitments of the organisation and the effect on client services,
 - (d) the notice (if any) given by the Chief Executive regarding the working of the additional hours, and by the staff member of their intention to refuse the working of additional hours, or
 - (e) any other relevant matter.

8. Overtime

- (i) The overtime provisions as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.
- (ii) Such overtime shall be approved in advance by the Chief Executive Officer.

9. Recreation Leave

The recreation leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.

10. Annual Leave Loading

The annual leave loading provisions as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.

11. Sick Leave

The sick leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.

12. Family and Community Service Leave

The Family and Community Service Leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.

13. Leave Without Pay

The leave without pay provisions as set in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.

14. Military Leave

The military leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.

15. Parental Leave

Parental leave provisions include Maternity leave and Adoption Leave. The parental leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.

16. Religious Or Cultural Obligations

The observance of essential religious or cultural obligations shall be in accordance with provisions in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied.

17. Special Leave

- (i) The Special Leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.
- (ii) When the leave entitlements referred to in clause 29, Leave for Matters Arising From Domestic Violence have been exhausted, the Chief Executive shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

18. Extended Leave

- (i) General

Extended leave for employees is provided for by the Government Sector Employment Act and the Government Sector Employment Regulation 2014.

- (ii) Extended Leave Entitlements

- (a) A staff member who has completed 10 years of continuous service with ITSR or as recognised in accordance with paragraph (e) of this subclause is entitled to extended leave of:
 - (1) 44 working days at full pay, or
 - (2) 88 working days at half pay, or
 - (3) 22 working days at double pay.
 - (b) For each additional calendar year of service completed in excess of 10 years, employees accrue 11 working days extended leave.
 - (c) Staff members who have completed at least 7 years of continuous service are entitled to access the extended leave accrual indicated in paragraph (a) of this subclause on a pro rata basis of 4.4 working days per completed year of service.
 - (d) Staff members who are employed part-time are entitled to extended leave on the same basis as that applying to a full-time employee but payment for the leave is calculated on a pro rata basis.
 - (e) Continuous service with other NSW government bodies will be recognised by ITSR in accordance with Government Sector Regulation 2014 (NSW).
 - (f) Nothing in paragraph (e) of this subclause entitles a staff member to payment for previous service recognised where the accrual for that service has previously been taken as leave or paid out on termination.
- (iii) Payment and Taking of Extended Leave
- (a) Subject to ITSR approval, extended leave may be taken:
 - (1) at a time convenient to ITSR;
 - (2) for a minimum period of one hour;
 - (3) at full pay, half pay or double pay.
 - (b) Payments will be increased to reflect any increment action a staff member becomes eligible for while absent on extended leave.
- (iv) Payment or Transfer of Extended Leave on Termination
- (a) A staff member who is entitled to extended leave on termination of service, including retirement, is paid the monetary value of the leave as a gratuity, in lieu of taking the leave.
 - (b) Staff members who have at least five years' service but less than seven years' service are paid a pro-rata of the extended leave entitlement if employment is terminated:
 - (1) by ITSR for any reason other than serious and intentional misconduct;
 - (2) by the staff member in writing on account of illness, incapacity or domestic or other pressing necessity; or
 - (c) on retirement.

19. Public Holidays

The public holidays provisions as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.

20. Workplace Flexibility

- (i) ITSR is committed to providing flexibility in regard to work hours.
- (ii) Approval can be given by the Chief Executive for staff to change to part-time work hours on a permanent or temporary basis.
- (iii) Approval can be given by the Chief Executive for staff to work from home on a temporary, fixed term or regular basis. Such approval is subject to:
 - (a) appropriate work is available that can be done at home efficiently without supervision and without liaison with other staff;
 - (b) the absence does not adversely affect the performance of the work group or the provision of necessary support services to others;
 - (c) the home environment or circumstances will not prevent staff from completing an amount of work equivalent to what would normally be completed in the office environment; and
 - (d) staff are available for telephone consultation and where possible available to return to the office at short notice.
- (iv) All work from home approvals shall ensure adequate consideration of, and compliance with occupational health and safety, confidentiality and security provisions.
- (v) Where appropriate, facilities and equipment shall be provided to enable staff to work at home.
- (vi) Approval can be given by the Chief Executive for staff to take recreation leave at half pay.
- (vii) Approval can be given by the Chief Executive to staff member requests to purchase additional leave. The purchased leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.
- (viii) Approval can be given for staff to use leave without pay to phase-in their retirement.

21. Learning and Development

Learning and development, including study leave, provisions as set out clause 85, Staff Development and Training Activities and clause 86, Study Assistance of the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.

22. Allowances

Allowances as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, shall apply.

23. Trade Union Activities

The provisions for trade union activities as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award as varied, including consultation and technological change and union deductions, shall apply.

24. Grievance and Dispute Resolution Procedure

- (i) 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, if required.

- (ii) 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.
- (iii) 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 staff member to advise their immediate manager the notification may occur to the next appropriate level of management or the Executive Director Corporate Services and Planning.
- (iv) This 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 attention.
- (v) 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. This sequence of reference to successive levels of management may be pursued by the staff member until the matter is referred to the Chief Executive Officer.
- (vi) The Chief Executive Officer or the Association may refer the matter to mediation.
- (vii) If the matter remains unresolved, the Chief Executive Officer 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.
- (viii) A staff member, at any stage, may request to be represented by the Association.
- (ix) The staff member or the Association on their behalf or the Chief Executive may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- (x) The staff member, the Association and ITSR shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- (xi) Whilst the procedures outlined in subclauses (i) to (x) 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. In a 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.

25. Anti-Discrimination

- (i) 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, including breast feeding.
- (ii) 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.
- (iii) Under the Anti-Discrimination Act 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
 - (a) Any conduct or act which is specifically exempted from anti-discrimination legislation;

- (b) Offering or providing junior rates of pay to person under 21 years of age;
 - (c) Any act or practice of a body established to propagate religion which is exempted under section 56(d) of the Anti-Discrimination Act 1977;
 - (d) A party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTES

- (vi) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (vii) 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’.

26. Secure Employment - WHS

- (i) Work Health and Safety
 - (a) For the purposes of this subclause, the following definitions shall apply:
 - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
 - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
 - (b) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
 - (1) consult with employees of the labour hire business and/or contract business regarding the work health and safety consultative arrangements;
 - (2) provide employees of the labour hire business and/or contract business with appropriate work health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
 - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
 - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

- (c) Nothing in this subclause (i) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the Work Health and Safety Act 2011 or the Workplace Injury Management and Workers Compensation Act 1998.

(ii) 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.

- (iii) 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.

27. No Extra Claims

Other than as provided for in the Industrial Relations Act 1996 and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the NSW Industrial Relations Commission for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the Employees covered by the Award that take effect prior to 30 June 2017 by a party to this Award.

28. Lactation Breaks

- (i) This clause applies to staff members who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- (ii) A full time staff member or a part time staff member working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- (iii) A part time staff member working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- (iv) A flexible approach to lactation breaks can be taken by mutual agreement between a staff member and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the staff member.
- (v) The Chief Executive shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- (vi) Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and staff member will take place to attempt to identify reasonable alternative arrangements for the staff member's lactation needs.
- (vii) Staff members experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (viii) Staff members needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 11, Sick Leave of this award, or access to the flexible working hours scheme provided in clause 7, Hours of Work and Overtime of this award, where applicable.

29. Leave for Matters Arising from Domestic Violence

- (i) The definition of domestic violence is found in subclause (vi) of clause 2 Definitions, of this award.

- (ii) Leave entitlements provided for in clause 12, Family and Community Service Leave, clause 11 Sick leave may be used by staff members experiencing domestic violence;
- (iii) Where the leave entitlements referred to in subclause 29(ii) are exhausted, the Chief Executive shall grant Special Leave as per the second paragraph of clause 17.
- (iv) The Chief Executive will need to be satisfied, on reasonable grounds, that domestic violence has occurred and may require proof presented in the form of an agreed document issued by the Police Force, a Court, a Doctor, a Domestic Violence Support Service or Lawyer;
- (v) Personal information concerning domestic violence will be kept confidential by the agency;
- (vi) The Chief Executive where appropriate, may facilitate flexible working arrangements subject to operational requirements, including changes to working times and changes to work location, telephone number and email address.

30. Area, Incidence and Duration

- (i) This Award shall apply to staff of ITSR employed in the classifications set out in Part B, Monetary Rates of this Award.
- (ii) This Award shall apply to the total exclusion of any other industrial instrument, except where specified in this Award.
- (iii) The Award varies all terms and conditions of employment of transferred staff so that the terms and conditions, save and except for any entitlement to travel passes, are limited to those terms and conditions of employment provided in this Award.
- (iv) The award rescinds and replaces the Crown Employees (Independent Transport Safety Regulator) Award 2015 published 3 July 2015 (377 I.G. 908). The Award shall commence on 1 July 2016 and has a nominal expiry date of 30 June 2017.
- (v) This award complies with the requirements of section 19 of the Industrial Relations Act 1996.

PART B

MONETARY RATES

Schedule 1 - ITSR Salaried Officers

GRADE		Rate 01.07.16 \$
1	1st Year	45,733
1	2nd Year	47,330
1	3rd Year	48,986
1	4th Year	50,699
2	1st Year	52,478
2	2nd Year	54,314
2	3rd Year	56,213
2	4th Year	58,189
3	1st Year	60,219
3	2nd Year	62,327
3	3rd Year	64,507
3	4th Year	66,767
4	1st Year	69,107

4	2nd Year	71,520
4	3rd Year	74,028
4	4th Year	76,619
5	1st Year	79,398
5	2nd Year	82,073
5	3rd Year	85,115
5	4th Year	87,921
6	1st Year	91,000
6	2nd Year	94,187
6	3rd Year	97,478
6	4th Year	100,889
7	1st Year	104,421
7	2nd Year	108,076
7	3rd Year	111,859
7	4th Year	115,771
8	1st Year	119,827
8	2nd Year	124,020
8	3rd Year	131,776
8	4th Year	137,579
9*	1st Year	142,396
9*	2nd Year	150,044
9*	3rd Year	157,798
9*	4th Year	163,603

* Grade 9 is only applied to staff members classified in that grade as at 1 July 2008.

Schedule 2 - ITSR Senior Officers

GRADE		Rate 01.07.16 \$
1	1st Year	153,915
1	2nd Year	165,845
2	1st Year	168,650
2	2nd Year	180,545
3	1st Year	186,585
3	2nd Year	204,816

J.V. MURPHY, Commissioner

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