

CROWN EMPLOYEES (PUBLIC SERVICE TRAINING WAGE) REVIEWED AWARD 2008

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(Case No. 2016/00006180)

Before Commissioner Stanton

2 August 2016

REVIEWED AWARD

Arrangement

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PART A

1. Title

This award shall be known as the Crown Employees (Public Service Training Wage) Reviewed Award 2008.

2. Application

- (a) This award applies to persons who are undertaking an approved traineeship and is to be read in conjunction with the *Government Sector Employment Act 2013* and the Government Sector Employment Regulation 2014 and any relevant industrial instrument.

- (b) The terms and conditions of any relevant industrial instrument apply, except where inconsistent with this award.
- (c) This award does not apply to employees who were employed under any industrial instrument prior to the date of approval of a traineeship relevant to the agency, except where agreed upon between the agency head and the relevant union(s).
- (d) This award does not apply to the apprenticeship system.

3. Objective

The objective of this award is to assist with the establishment of a system of approved traineeships that provide nationally recognised training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees, particularly young people, and the long-term unemployed.

The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees will be displaced from employment by trainees.

This award does not replace the prescription of training requirements in any relevant industrial instrument.

4. Definitions

"Agency" means a Public Service agency, as listed in Schedule 1 of the *Government Sector Employment Act 2013*.

"Agency head" means a person who is the Secretary of a Department or the head of a Public Service agency listed in Schedule 1 of the *Government Sector Employment Act 2013*.

"Approved Traineeship" means a traineeship arrangement applicable to a group or class of employees or to an industry or sector of an industry or enterprise by agreement between the parties under the terms of this award. Approved traineeships include full-time, part-time and school-based traineeships and are defined by the provisions of the *Apprenticeship and Traineeship Act 2001*.

"Approved Training Course or Training Program" means the training course or training program identified in the Vocational Training Order of a recognised traineeship vocation.

"Appropriate State Legislation" means the *Apprenticeship and Traineeship Act 2001* or any successor legislation.

"Diploma Level Trainee" means a trainee undertaking a Diploma Level Traineeship under a Vocational Training Order. The trainee will work towards the gaining of a nationally recognised Diploma as identified in the relevant Industry Training Package. Trainees undertaking a Diploma Level Traineeship under the Vocational Training Order of Information Technology should have completed Certificates III and IV of the traineeship vocation of Information Technology before commencing a traineeship at Diploma Level. Trainees undertaking the Diploma Level Traineeship in Information Technology may also be known as Cadets.

"Parties to an Approved Traineeship" means the Industrial Relations Secretary, Secretary and the relevant union involved in the consultation, negotiation and agreement of an approved traineeship arrangement.

"Recognised Traineeship Vocation" means a vocation that is the subject of an order in force under section 5 of the *Apprenticeship and Traineeship Act 2001*.

"Relevant Industrial Instrument" means an award or enterprise agreement that applies to a trainee, or that would have applied but for the operation of this award. The definition also applies to a former industrial agreement or determination made pursuant to section 52 of the *Government Sector Employment Act 2013* or under any relevant provisions of the Act or its predecessors.

"Relevant Union" means a union which is party to a relevant industrial instrument and which is entitled to enrol the trainee as a member.

"School-based Trainee" is a student enrolled in the Higher School Certificate, or equivalent qualification, who is undertaking a traineeship which forms a recognised component of their Higher School Certificate or, where permitted, their School Certificate curriculum, and is endorsed by State Training Services and the New South Wales Board of Studies, Teaching and Educational Standards.

"State Training Services" is the New South Wales Department of Industry.

"Trainee" means an employee who is signatory to the training contract registered with State Training Services. The trainee is bound by the training contract and employed in terms of Part 4, Division , clause 43 of the *Government Sector Employment Act 2013*. The trainee is involved in paid work and structured training that may be on or off the job.

"Training" for the purposes of this award means training directed at the achievement of key competencies required for successful participation in the workplace (e.g. literacy, numeracy, problem-solving, teamwork, using technology) and an Australian Qualification Framework Certificate Level I and/or an Australian Qualification Framework Certificate Level II or above.

"Training Contract" means a contract made subject to the terms of this award between an agency head and the trainee for a traineeship which is registered with State Training Services, under the provisions of the *Apprenticeship and Traineeship Act 2001*. A training contract is made in accordance with the relevant Vocational Training Order and does not operate unless this condition is met.

"Training Plan" means a plan prepared in accordance with the relevant Vocational Training Order indicating the arrangements for the provision of training agreed to by the agency head and the registered training organisation, and the qualification to be awarded to the trainee. The training plan is lodged with the training contract and the application to establish the traineeship with State Training Services.

"Vocational Training Order" means an order in force under section 6 of the *Apprenticeship and Traineeship Act 2001* that sets out the terms and conditions of a recognised traineeship vocation. The Vocational Training Order includes details of the term, probationary period, qualifications and other training as appropriate. State Training Services must consult with the relevant union(s) before making a Vocational Training Order.

5. Training Conditions

- (a) The trainee must undertake an approved training course or training program prescribed in the training contract and training plan and outlined in the Vocational Training Order or as notified to the trainee by State Training Services.
- (b) Prior to the commencement of the trainee, the relevant training contract, made in accordance with a relevant Vocational Training Order, must be signed by the agency head and the trainee and lodged, with the training plan, for registration with State Training Services. If the training contract is not in a standard format, the trainee cannot commence until the training contract has been registered with State Training Services.
- (c) The agency head must ensure that the trainee is permitted to attend the approved course or program provided for in the training contract and training plan and must ensure that the trainee receives the appropriate on-the-job training.
- (d) The agency head must provide a level of supervision in accordance with the training contract and training plan during the traineeship period.
- (e) The agency head agrees that officers of State Training Services will monitor the training contract and training plan and that training records or workbooks may be utilised as part of this monitoring process.
- (f) Training is directed at the achievement of competencies as specified in the relevant vocational training order.

6. Employment Conditions

- (a)
 - (i) A trainee is engaged as a full-time employee for a maximum of two years' duration, subject to a satisfactory probation period of up to one month that may be reduced at the discretion of the agency head.
 - (ii) A trainee/cadet undertaking a traineeship at Diploma Level is engaged as a full-time employee for a nominal period of 12 months, or until achievement of the relevant competencies that will qualify the trainee/cadet for specialist qualifications established at Diploma Level by the relevant training package.
 - (iii) By agreement in writing, and with the consent of State Training Services, the agency head and the trainee may vary the duration of the traineeship and the extent of approved training, provided that any agreement to vary is in accordance with the Vocational Training Order.
 - (iv) If the trainee completes the approved training course or training program earlier than the time specified in the training contract, then the traineeship may be concluded by mutual agreement by application to State Training Services under the provisions of the *Apprenticeship and Traineeship Act 2001*.
 - (v) Unless State Training Services otherwise directs, the maximum duration for a part-time traineeship is 36 months.
- (b) The training contract can only be terminated by application to State Training Services under the provisions of the *Apprenticeship and Traineeship Act 2001*.
- (c) The trainee will be permitted to be absent from work without loss of continuity of employment or wages to attend the training in accordance with the training contract and training plan.
- (d) If the employment of a trainee by an agency head is continued after the completion of the period, such period is counted as service for the purposes of any relevant industrial instrument or any other legislative entitlements.
- (e)
 - (i) The training contract may restrict the circumstances under which the trainee may work overtime and shift work in order to ensure that the training program is successfully completed.
 - (ii) A trainee is not to work overtime or shift work on their own unless consistent with the provisions of the relevant industrial instrument.
 - (iii) A trainee is not to work shift work unless the parties to an approved traineeship are satisfied that shift work makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shift work trainees.
 - (iv) The trainee wage is the basis for the calculation of overtime or shift penalty rates prescribed by the relevant industrial instrument, unless otherwise agreed by the parties to an approved traineeship. If the relevant industrial instrument makes specific provision for a trainee to be paid at a higher rate, then the higher rate applies.
- (f) All other terms and conditions of the relevant industrial instruments apply unless specifically varied by this award.
- (g) All conditions of employment applying to temporary employees under the *Government Sector Employment Act 2013*, other than those specified in this award, apply to trainees.

- (h) A trainee who fails to either complete the traineeship or who cannot for any reason be placed in full-time employment with the agency on successful completion of the traineeship is not entitled to any severance payments.

7. Wages

- (a)
 - (i) The weekly wages payable to trainees are as provided in Table 1 - Full-time Weekly Wage Rates, of Part B, Monetary Rates.
 - (ii) These wage rates will only apply to trainees while they are undertaking an approved traineeship which includes an approved training course or training program as defined in this award.
 - (iii) The wage rates prescribed by this clause do not apply to complete trade level training covered by the apprenticeship system.
 - (iv) The rates of pay in this award include the adjustments payable under the State Wage Case 2015. These adjustments may be offset against any equivalent over-award payments and/or award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.
 - (v) The rates in this award recognise the 2015 Fair Work Commission's Annual Wage Review Decision and are paid in settlement of any claim for increased wages should these Decisions be adopted for the purposes of this award under the Industrial Relations Act 1996.
- (b) Appendix A to Part B, Monetary Rates, sets out the general skill levels for traineeships. The determination of the appropriate skill level for each approved traineeship is based on the following criteria:
 - (i) any agreement of the parties;
 - (ii) the nature of the industry;
 - (iii) the total training plan;
 - (iv) recognition that training can be undertaken in stages; and
 - (v) the exit skill level in the relevant industrial instrument contemplated by the training contract.

If the parties disagree with such determination, any party to the award may seek to have the matters in dispute determined by the Industrial Relations Commission of New South Wales.

- (c) For the purposes of this award, "out of school" refers only to periods out of school beyond Year 10, and is deemed to:
 - (i) include any period of schooling beyond Year 10 which was not part of nor contributed to a completed year of schooling;
 - (ii) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and
 - (iii) not include any period during a calendar year in which a year of schooling is completed;
 - (iv) have effect on an anniversary date, being 1 January in every year.
- (d) For the purposes of this award, any person leaving school before completing Year 10 is deemed to have completed Year 10.

- (e) At the conclusion of the traineeship, this award ceases to apply to the employment of the trainee and the relevant industrial instrument applies to the former trainee.

8. Part-Time Traineeships

- (a) Trainees who undertake traineeships on a part-time basis work less than full-time ordinary hours and undertake the approved training course or training program at the same or lesser training time than a full-time trainee.
- (b) A part-time trainee receives, on a pro rata basis, all employment conditions applicable to a full-time trainee. All the provisions of this award apply to part-time trainees except as specified in this clause.
- (c) A part-time trainee may, by agreement, transfer to a full-time traineeship position if one becomes available.
- (d) The minimum daily engagement periods specified in the relevant industrial instrument are also applicable to part-time trainees.

If there is no provision for a minimum daily engagement period in the relevant industrial instrument applying to part-time employees, then the minimum start is three continuous hours. By agreement, a part-time trainee may work a minimum start of two continuous hours, on two or more days per week, provided that:

- (i) a two-hour start is sought by the trainee to accommodate the trainee's personal circumstances; or
- (ii) the place of work is within a distance of five kilometres from the trainee's place of residence.

9. School-Based Traineeships

- (a) School-based trainees undertake traineeships on a part-time basis in accordance with the requirement to balance their school and work commitments. The agency head must set hours of work consistent with the trainee's obligation to attend school.
- (b) School-based trainees are not required to attend work during the interval starting four weeks prior to the commencement of the final year Higher School Certificate Examination period and ending upon the completion of the trainee's last HSC examination paper.
- (c) School-based trainees must not work on their own.
- (d) For the purposes of this award, a school-based trainee becomes either a full-time or part-time trainee as at 1 January of the year following the year in which they ceased to be a school student.

10. Wage Rates for Part-Time and School-Based Trainees

Weekly Wage Rates

- (a) The wage rate calculation is based on the full-time wage rate varied by the amount of training and/or the amount of work over the period of the training contract. The formula is:

$$\text{Weekly Wage} = \frac{\text{Full-time wage rate} \times (\text{trainee hours} - \text{average weekly training time})}{28}$$

Note: 28 in the above average formula represents 35 ordinary full-time hours minus the average training time for full-time trainees (i.e. 20%). The formula will be adjusted if the relevant industrial instrument specifies different ordinary full-time hours. For example, if the ordinary weekly hours are 38, 30.4 will replace 28.

- (b) "Full-time wage rate" means the appropriate rate as set out in Table 1 - Full-time Weekly Wage Rates, of Part B, Monetary Rates.
- (c) "Trainee hours" are the hours worked per week including the time spent in the approved course or program. For the purposes of this definition, the time spent in the approved course or program may be taken as an average for that particular year of the traineeship.
- (d) "Average weekly training time" is based upon the length of the traineeship specified in the training contract. The formula is:

$$\text{Average weekly training time} = \frac{7 \times 12}{\text{Length of the traineeship in months}}$$

Note 1: 7 in the above formula represents the average weekly training time for a full-time trainee whose ordinary hours are 35 per week. The formula will be adjusted if the relevant industrial instrument specifies different ordinary weekly hours. For example, where the ordinary weekly hours are 38, 7.6 will replace 7.

Note 2: The parties note that the training contract will require a trainee to be employed for sufficient hours to complete all requirements of the recognised traineeship vocation, including the on-the-job work component and demonstration of competencies. The parties also note that this would normally result in the equivalent of a full day's on-the-job work per week.

Example of the calculation for the wage rate for a part-time traineeship:

A school student commences a traineeship in Year 10. The ordinary hours of work in the relevant industrial instrument are 35. The training contract specifies two years (24 months) as the length of the traineeship.

$$\text{Average weekly training time is therefore} \quad \frac{7 \times 12}{24} = 3.5 \text{ hours}$$

"Trainee hours" total 15 hours, made up of 11 hours work over two days of the week plus 1½ hours on-the-job training plus 2½ hours off-the-job approved training at school and at TAFE.

So the wage rate in Year 10 is:

$$\frac{\$290.80 \times (15 - 3.5)}{28} = \$119.44 \text{ plus any applicable penalty rates under the relevant industrial instrument}$$

The wage rate varies when the student completes Year 10 and passes the anniversary date of 1 January the following year to begin Year 11 and/or if "trainee hours" changes.

Hourly Wage Rates

Due to the variation in hours worked each week for some part-time trainees, especially school-based trainees, it may be appropriate to pay an hourly wage rate as provided in Table 2 - Hourly Wage Rates, of Part B, Monetary Rates. The hourly rates as set out in Table 2 are based on a 35-hour week. If the ordinary full-time weekly hours are not 35, the rate in the table should be multiplied by 35 and then divided by the ordinary full-time hours to obtain the correct hourly rate.

The hours for which payment is made are determined as follows:

- (a) Where the approved training for a traineeship (including a school-based traineeship) is provided off the job by a registered training organisation, for example, at school or at TAFE, these rates only apply to the total hours worked by the part-time trainee on the job.

- (b) Where the approved training is undertaken on the job or in a combination of on the job and off the job, and the average proportion of time to be spent in approved training is 20% (i.e. the same as for the equivalent full time traineeship):
 - (i) if the training is solely on the job, then the total hours on the job are multiplied by the applicable hourly rate, and then 20% is deducted.
 - (ii) if the training is partly on the job and partly off the job, then the total of all hours spent in work and training are multiplied by the applicable hourly rate, and then 20% is deducted.

Note: 20% is the average proportion of time spent in approved training which has been taken into account in setting the wage rates for most full-time traineeships.

11. Grievance and Dispute Settling Procedures

- (a) In general, matters relating to trainees are dealt with under the provisions of the *Apprenticeship and Traineeship Act 2001*.
- (b) In accordance with the grievance and dispute settling procedures, the trainee notifies the supervisor of the substance of any grievance or dispute and requests a meeting with the supervisor to discuss the matter and, if possible, states the remedy sought.

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 trainee to advise their immediate manager the notification may occur to the next appropriate level of management, including where required, to the agency head or delegate.

- (c) If no remedy is found, the trainee seeks further discussions and attempts to resolve the grievance or dispute at a higher level of authority, where appropriate.
- (d) Reasonable time limits must be allowed for discussion at each level of authority, having regard to the nature of the grievance or dispute.
- (e) At the conclusion of the discussion, the trainee must be provided with a response to their grievance or dispute if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- (f) Any party to the traineeship can refer the matter to the New South Wales Vocational Training Tribunal under the provisions of the *Apprenticeship and Traineeship Act 2001*.
- (g) If no resolution can be found, any party to the grievance or dispute or their representatives may refer the matter to the Industrial Relations Commission of New South Wales.
- (h) The trainee may involve a representative, including a union, and the agency may be represented by more senior management or other appropriate person or body for the purposes of each procedure.
- (i) While the dispute procedure is being followed, normal work continues.

12. 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 identify, age and responsibilities as a carer.
- (b) It follows that, in fulfilling their obligations under clause 11, Grievance and Dispute Settling Procedures, 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:
 - (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.
- (e) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

Notes:

- (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 this 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."

13. Area, Incidence and Duration

This award applies to all classes of trainees within organisations listed in Schedule 1 Public Service agencies of the *Government Sector Employment Act 2013*.

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 2 August 2016.

Changes made to this award subsequent to it first being published on 24 April 2009 (367 I.G. 1047) have been incorporated into this award as part of the review.

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

PART B

MONETARY RATES

Table 1 - Full-Time Weekly Wage Rates

Effective from the first full pay period to commence on or after 1 July 2016

Diploma

Where the accredited training courses and work performance are for the purposes of generating skills that have been defined for work at Diploma level

Classification	1.7.16 Per week 2.50% \$
Trainee Diploma Level	690.50

Skill Level A

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at Skill Level A:

Highest Year of Schooling Completed			
	Year 10 1.7.2016	Year 11 1.7.2016	Year 12 1.7.2016
School leaver	304.80	336.00	402.80
Plus 1 year out of school	336.00	402.80	469.90
Plus 2 years	402.80	469.90	545.00
Plus 3 years	469.90	545.00	623.40
Plus 4 years	545.00	623.40	623.40
Plus 5 years or more	623.40	623.40	623.40

Skill Level B

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at Skill Level B:

Highest Year of Schooling Completed			
	Year 10 1.7.2016	Year 11 1.7.2016	Year 12 1.7.2016
School leaver	304.80	335.90	390.30
Plus 1 year out of school	336.00	390.30	449.20
Plus 2 years	390.30	449.20	527.60
Plus 3 years	449.20	527.60	601.50
Plus 4 years	527.60	601.50	601.50
Plus 5 years or more	601.50	601.50	601.50

Skill Level C

Where the accredited training course and work performed are for the purpose for generating skills which have been defined for work at Skill Level C:

Highest Year of Schooling Completed			
	Year 10 1.7.2016	Year 11 1.7.2016	Year 12 1.7.2016
School leaver	304.80	335.90	386.80
Plus 1 year out of school	335.90	386.80	435.30

Plus 2 years	386.80	435.30	484.80
Plus 3 years	435.30	484.80	542.60
Plus 4 years	484.80	542.60	542.60
Plus 5 years or more	542.60	542.60	542.60

The average proportion of time spent in structured training that has been taken into account in setting the rate is 20%.

School-Based Traineeships -		
	Year 11 1.7.2016	Year 12 1.7.2016
Year of Schooling	2.5%	2.5%
School based traineeships Skill Levels A, B and C	304.80	339.90

The average proportion of time spent in structured training that has been taken into account in setting the rate is 20%.

Table 2 – Hourly Wage Rates

Set out below are the hourly rates of pay for part-time or school-based trainees where the training is either fully off-the-job or where 20% of time is spent in approved training. These rates are derived from a 35 hour week. If the ordinary full-time weekly hours are not 35, the appropriate hourly rate may be obtained by multiplying the rate in the table by 35 and then dividing by the ordinary full time hours.

Trainees who have left school:

Diploma

Where the accredited training courses and work performance are for the purposes of generating skills that have been defined for work at Diploma level:

Classification	1.7.16 Per hour 2.50% \$
Trainee Diploma Level – part-time	24.70

Skill Level A

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at Skill Level A:

Highest Year of Schooling Completed			
	Year 10 1.7.2016	Year 11 1.7.2016	Year 12 1.7.2016
School leaver	10.90	12.00	14.40
Plus 1 year out of school	12.00	14.40	16.80
Plus 2 years	14.40	16.80	19.50
Plus 3 years	16.80	19.50	22.20
Plus 4 years	19.50	22.20	22.20
Plus 5 years or more	22.20	22.20	22.20

Skill Level B

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at Skill Level B:

Highest Year of Schooling Completed			
	Year 10 1.7.2016	Year 11 1.7.2016	Year 12 1.7.2016
School leaver	10.90	12.00	13.90
Plus 1 year out of school	12.00	13.90	16.10
Plus 2 years	13.90	16.10	18.90
Plus 3 years	16.10	18.90	21.50
Plus 4 years	18.90	21.50	21.50
Plus 5 years or more	21.50	21.50	21.50

Skill Level C

Where the accredited training course and work performed are for the purpose for generating skills which have been defined for work at Skill Level C:

Highest Year of Schooling Completed			
	Year 10 1.7.2016	Year 11 1.7.2016	Year 12 1.7.2016
School leaver	10.90	12.00	13.80
Plus 1 year out of school	12.00	13.80	15.60
Plus 2 years	13.80	15.60	17.30
Plus 3 years	15.60	17.30	19.40
Plus 4 years	17.30	19.40	19.40
Plus 5 years or more	19.40	19.40	19.40

	Year 11 1.7.2016	Year 12 1.7.2016
School Based Trainees	2.5%	2.5%
Wage Levels A, B and C	10.90	12.00

Skill Levels

Diploma	Skill Level A	Skill Level B	Skill Level C
	Arts Administration Business (Office Administration) Clerical Administrative Skills Communications (Call Centres) Financial Services Information Technology Public Administration Sport and Recreation	Laboratory Operations Horticulture Tourism Operations Retail Operations Hospitality Operations	Rural Skills

J. D. STANTON, Commissioner

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