

# **CROWN EMPLOYEES (TRANSFERRED EMPLOYEES COMPENSATION) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(No. IRC 578 of 2015)

Before Commissioner Stanton

17 November 2015

## **REVIEWED AWARD**

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### **2. Parties to the Award**

The parties to this award are:

Industrial Relations Secretary, and

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

### **3. Intent and Application**

3.1 The intent of the parties to this award is to provide reimbursement towards expenses of employees transferred to work in a new location which, by necessity of that transfer, requires them to relocate their principal place of residence in accordance with the decision of Boland J, President of 17 September 2008 in matters nos. IRC 445 and 879 of 2008.

- 3.2 Where an existing or a new employee is otherwise ineligible for the benefits of this award an Agency Head may offer in writing to the new or existing employee any or all of the benefits available under this award on recruitment or appointment as part of an attraction and retention measure. The benefits must be clearly detailed in writing at the time of appointment. Such offers may also be made to temporary employees.
- 3.3 Where two employees who cohabit relocate together to the same location, reimbursement of expenses must not be claimed twice eg conveyance and stamp duty. Where applicable, both may claim the leave concessions.

#### 4. Definitions

- 4.1 "Association" shall mean the Public Service Association and the Professional Officers' Association Amalgamated Union of New South Wales.
- 4.2 "Agency" means a Public Service agency specified in Schedule 1 of the *Government Sector Employment Act 2013*.
- 4.3 "Agency Head" means a person who is the Secretary of a Department or the head of another Public Service agency listed in Schedule 1 of the *Government Sector Employment Act 2013*.
- 4.4 "Dependant" means a person who lives in the principal place of residence of the employee and who is wholly or in part dependent on the employee for support.
- 4.5 "Employee" means a Public Service Senior Executive or Public Service employee employed on an ongoing, term or temporary basis as defined in the *Government Sector Employment Act 2013*.
- 4.6 "Excess rent" is rent which is paid for a private rental property in a new location which is above the affordable rate for the employee as defined in clause 9, Temporary Accommodation Benefits - Privately Rented of this award.
- 4.7 "Family member" is as defined in clause 81, Sick Leave to Care for a Family Member of the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*.
- 4.8 "Industrial Relations Secretary" is the Secretary of the Treasury.
- 4.9 "Reimbursement" or "reimbursed" means payment of an expense by the employer which is actually incurred by the employee, which the Agency Head is satisfied is reasonable, and for which adequate evidence is produced by the employee.
- 4.10 "Transferred Employee" means an employee who has been assigned to a new location and who, as a consequence of such assignment, finds it necessary to leave their existing residence and seek or take up a new residence, but shall not include an employee transferred:
- (a) at own request;
  - (b) who has applied for a role and obtained it through a merit selection process; or
  - (c) under an arrangement between officers to exchange positions; or
  - (d) who can reasonably commute to the new location; or
  - (e) where the old location and the new location are part of the metropolitan area i.e. the Central Coast on the Northern Line as far as Gosford, the area on the Western Line as far as Mt Victoria and on the Illawarra Line as far as Wollongong; or
  - (f) on account of any misconduct;
- unless the Agency Head otherwise approves.

## **5. Notice of Transfer**

- 5.1 The Agency Head will give, in writing, as long a period of notice of transfer as is practicable. A transferred employee will not be transferred with less than ten working days notice in writing except in special or urgent circumstances.

## **6. Leave**

- 6.1 Transferred employees will be given special leave of up to five working days as necessary to carry out any of the following activities:
- 6.1.1 Visit the new location to obtain accommodation
  - 6.1.2 Prepare and pack personal and household effects prior to removal
  - 6.1.3 Arrange storage
  - 6.1.4 Travel to the new location for the purpose of commencing duty
  - 6.1.5 Clean the premises being vacated
  - 6.1.6 Occupy and settle into the new premises.
- 6.2 If satisfied that the activities referred to above cannot be completed within five working days, the Agency Head may grant additional special leave, as considered necessary.
- 6.3 Subject to operational requirements, where a transferred employee has not been able to secure permanent accommodation at the new location, the transferred employee will be entitled to special leave for the amount of time required to travel to and from their home to enable the transferred employee to spend two consecutive days and nights at home each four weeks. Where a public holiday occurs immediately before or after such leave, the leave will be extended by a day and a night for each such public holiday.
- 6.4 Where this is not practical due to the distance home, a transferred employee will accumulate two days special leave per four weeks until a return home is practical. This leave will be taken at a time suitable to the Agency Head and the transferred employee.

## **7. Travelling and Meal Expenses**

- 7.1 A transferred employee shall be entitled to an economy air fare or reimbursement for the use of a private vehicle paid at the casual rate for motor vehicle allowances as set out in the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*, on the following basis:
- 7.1.1 For the transferred employee and one member of the household to travel to the new location to seek accommodation.
  - 7.1.2 For the transferred employee and all members of the household to travel to the new location to commence duty. Where the members of the household do not travel with the transferred employee to commence duty the cost of their personal transport will be deferred until such time as they travel to take up residence at the new location.
  - 7.1.3 For the transferred employee proceeding on special leave under subclauses 6.3 and 6.4 of clause 6, Leave of this award.
- 7.2 Where a transferred employee elects to use a private vehicle the motor vehicle allowance shall not exceed the equivalent cost of economy air fares.

- 7.3 Transferred employees travelling to the new location to commence duty who elect to use a private vehicle shall be paid at the official business rate.
- 7.4 When a transferred employee, travels to the new location to seek new accommodation he or she will be reimbursed for overnight accommodation and meals for the journey to and from the new location for two people under clause 26, Travelling Compensation of the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*.

**8. Temporary Accommodation Benefits - Commercially Provided**

- 8.1 Temporary accommodation benefits will be reimbursed for a period of up to four weeks to transferred employees who are relocated and use commercially provided accommodation such as a hotel. Such benefits are available in three forms:
  - 8.1.1 Transferred employees without dependant relatives will be reimbursed up to 50% of the cost of accommodation provided that the total amount to be reimbursed does not exceed \$254 per week.
  - 8.1.2 Transferred employees with dependant relatives will be reimbursed up to a maximum of \$254 per week plus an additional \$27 for each dependant child 6 years and over (max. contribution \$54 per week), where the cost of accommodation exceeds the amount calculated in the following table:

Salary of Transferred Employee and Spouse \$ per annum	Amount \$ per week	Each Dependant Child 6 yrs of age and over (max. contribution \$54 per week) \$ per week
Up to 28,233	218	27
28,234 to 35,980	239	27
35,981 to 46,258	262	27
46,259 to 59,477	324	27
59,478 and over	412	27

- 8.1.3 A transferred employee required to move to the new location ahead of the dependants will be reimbursed up to a maximum of \$254 per week, providing the cost of accommodation is in excess of \$51 per week.
- 8.2 To be eligible for any Temporary Accommodation Benefit a relocated transferred employee is, by necessity, required to vacate the existing residence prior to departure for the new location and secure board and lodging (including for dependants, where applicable) at the new location pending a residence becoming available.
- 8.3 This clause will not apply to Government-owned residences.
- 8.4 Where the period of four weeks referred to in subclause 8.1 of this clause is not sufficient for the transferred employee to obtain suitable permanent accommodation, the Agency Head will consider each case on its merits but will require full particulars to be supplied.
- 8.5 Temporary Accommodation Benefits will not be paid to more than one person per household.
- 8.6 The Agency Head will discontinue payment of Temporary Accommodation Benefits if satisfied the transferred employee has rejected suitable accommodation.

**9. Temporary Accommodation Benefits - Privately Rented**

- 9.1 Where a transferred employee secures privately rented accommodation (eg a private house) at his or her new location and incurs excess rent then the transferred employee shall receive assistance as per the table below:

Employee with 2 or more dependant children	\$68 per week
Employee with 1 dependant child	\$59 per week
Employee without dependant children	\$51 per week

9.2 The formula for excess rent is as follows.

Excess rent in respect of any transferred employee means rent in excess of the employee's weekly contribution calculated as follows:

$$\text{Contribution} = \text{Substantive salary} \times \frac{(\text{Substantive salary} + 2927)}{101,840}$$

"An employee's weekly contribution" shall be the "Contribution" as above multiplied by 7 and divided by 365.25

The formula for calculating an employee's weekly contribution is based on:

- (a) 15% of the salary of a General Scale Clerk, Step 10 A&C
- (b) 20% of the salary of Clerk, min. Grade 4 A&C
- (c) 25% of the salary of Clerk, min. Grade 7 A&C

In the event of movement in the salaries for these classifications in the *Crown Employees (Administrative and Clerical Officers - Salaries) Award 2007*, the formula will be varied as follows:

replacing the figure of 101,840 by ten times the difference between the salaries for the Step 10 of the General Scale and for the minimum of Grade 7, A&C and,

replacing the figure of 2,927 by the difference between the salary for the Step 10 of the General scale and 15% of the figure referred above.

9.3 Agency Heads may require transferred employees to show evidence of difficulties in obtaining cheaper private accommodation, including the provision by a transferred employee of a statutory declaration.

9.4 In exceptional circumstances, Agency Heads may extend excess rent payments beyond six months, including in areas where there is an acute shortage of housing of a reasonable standard, and areas experiencing extremely high rents due to conditions which are abnormal compared with those generally in New South Wales.

## **10. Removal and Storage Expenses**

10.1 A transferred employee shall be entitled to reimbursement for the costs incurred in removing personal and household effects to the new location, including:

10.1.1 Expenses reasonably incurred by transferred employees and their families for meals and accommodation during the course of the journey.

10.1.2 Cost of transporting a second vehicle by either rail, road transport or driving (motor vehicle allowance to be paid at the casual rate) to the transferred employee's new location.

10.1.3 Cost of insuring furniture and effects whilst in transit up to an amount of \$38,000. If the insured amount exceeds that amount, the case may be referred to the Agency Head for consideration.

10.1.4 An advance payment to cover the whole or part of the removal expenses provided that the transferred employee repays any unused portion within one month of incurring the cost of removal, unless the Agency Head otherwise approves.

10.1.5 Meal and accommodation expenses reasonably incurred where, due to circumstances beyond the control of the transferred employee, the furniture and household effects arrive late at the new location, or are moved before the transferred employee's departure from the former location.

10.2 Where the Agency Head is satisfied that a transferred employee is unable to secure suitable accommodation at the new location and is required to store furniture, reimbursement for the cost of transport and storage will be made. The transferred employee shall also be allowed the cost of insurance of furniture while in storage on the same basis as prescribed in paragraph 10.1.3 of this clause.

### **11. Depreciation and Disturbance Allowance**

11.1 Where the Agency Head is satisfied that the transferred employee has removed a substantial portion of the household's furniture, furnishings and fittings, the transferred employee will be paid a Depreciation and Disturbance Allowance of \$1,126 compensation for the accelerated depreciation of personal and/or household effects to the value of \$7,037 or pro rata if the value is less.

### **12. Education of Children**

12.1 A transferred employee will be reimbursed for accommodation expenses exceeding \$27 per week, up to a maximum of \$56 per week, for each dependant child undertaking Year 12 where the elected subjects are not available at a school in the transferred employee's new location. The transferred employee will be required to provide a certificate from the Department of Education confirming that the elected subjects are not available at the transferred employee's new location.

12.2 A transferred employee will be reimbursed costs for the replacement of essential school clothing and ancillary items for each dependant child required to change schools as a result of the employee's transfer from the former location to the new location subject to advice from the new school.

### **13. Reimbursement of Transaction Expenses**

13.1 A transferred employee who sells a residence at the former location and buys a residence (or land upon which to build a residence), as a result of the transfer to the new location, will be reimbursed for Transaction Expenses.

13.2 Such Transaction Expenses will include:

13.2.1 Professional costs and disbursements of a solicitor or registered conveyancing company;

13.2.2 Stamp duty on the purchase;

13.2.3 Real estate agent commission on the sale of former residence;

13.2.4 Registration fees on transfers and mortgages on the residence, or the land and a house erected on the land;

13.2.5 Stamp duty paid in respect of any mortgage entered into or the discharge of mortgage in connection with transactions for the sale and purchase.

13.3 Transaction expenses will only be paid where the sale and purchase are completed up to 2 years after any relocation.

13.4 Other than for stamp duty as detailed in subclause 13.5 of this clause, a maximum property value of \$520,000 per property for sale and purchase will determine the limit of Transaction Expenses paid to a transferred employee.

13.5 Stamp duty will be paid in full where occupation of the residence occurs within fifteen months from the date of commencement at the new location. Where occupation of the residence occurs after 15 months but within 2 years from the date of commencement at the new location, reimbursement of stamp duty will not exceed the property value of \$520,000.

- 13.6 Transaction Expenses will be paid where the sale and purchase transactions are completed no earlier than 6 months prior to commencing work at the new location.
- 13.7 The Agency Head may consider payment of transaction expenses on a sale and/or purchase of a residence more than 2 years after relocation, if satisfied there is good reason. The transferred employee must provide full details of why the sale and/or purchase could not be completed within the 2 year period.
- 13.8 A transferred employee who does not sell a residence at the former location, but buys a residence at the new location (or land upon which to build a residence), shall be entitled to reimbursement for Transaction Expenses outlined in this clause, provided the transferred employee enters into occupation within 15 months of transfer to the new location.

#### **14. Reimbursement of Incidental Costs**

- 14.1 The transferred employee will receive reimbursement for the following Incidental Costs of relocation:
- 14.1.1 Council rates and charges levied upon an unsold former residence for any period during which the former residence remains untenanted to allow the sale of the property of the relocating transferred employee;
- 14.1.2 Gas and electricity connection costs to the new residence, and telephone connection provided the telephone was connected at the transferred employee's former residence;
- 14.1.3 Survey certificates and pest inspection costs for the new residence;
- 14.1.4 Mail re-direction from the former residence to the new residence for 1 month.

#### **15. Retirement and Death**

- 15.1 Upon retirement from the Public Service the transferred employee will enjoy the benefits of clause 10, Removal and Storage Expenses of this award for relocation to a place of their choice within the State of NSW provided the transferred employee's relocation is effected within 12 months following the date of retirement.
- 15.2 In the event a transferred employee dies, the partner and dependant children or dependant relatives will receive the benefits of clause 10, Removal and Storage Expenses of this award for relocation to a single place of their choice within the State of NSW. Claims under this subclause may be made up to 12 months after the death of the transferred employee.
- 15.3 For retirement and death the maximum amount of reimbursement will be limited to that payable had the transferred employee moved to the place of original recruitment to the Public Service.
- 15.4 "The place of original recruitment" means the address of the workplace where the transferred employee first began duty with the NSW Public Service.

#### **16. Additional Benefits**

- 16.1 Subject to approval from the Industrial Relations Secretary, an Agency Head may offer additional support or benefits not specifically referred to in this award to assist in the attraction, recruitment or relocation of an employee to a location. For example this may include assistance with housing, education or career development expenses.

#### **17. Existing Entitlements**

- 17.1 This award shall not operate to deprive a transferred employee assigned to work at a new location, prior to the making of this award, of any existing entitlements to compensation.

## **18. Anti-Discrimination**

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 Nothing in this clause is to be taken to affect:
- 18.4.1 any conduct or act which is specifically exempted from anti-discrimination legislation;
- 18.4.2 offering or providing junior rates of pay to persons under 21 years of age;
- 18.4.3 any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
- 18.4.4 a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 18.5 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.
- 18.5.1 Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- 18.5.2 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."

## **19. Grievance and Dispute Settling Procedures**

- 19.1 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 Division, if required.
- 19.2 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.
- 19.3 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 Agency Head or delegate.
- 19.4 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.

- 19.5 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 Agency Head.
- 19.6 The Agency Head may refer the matter to the Industrial Relations Secretary for consideration.
- 19.7 If the matter remains unresolved, the Agency 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.
- 19.8 An employee, at any stage, may request to be represented by the Association.
- 19.9 The employee or the Association on their behalf, or the Agency Head may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- 19.10 The employee, Association, Agency and Industrial Relations Secretary shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- 19.11 Whilst the procedures outlined in subclauses 19.1 to 19.10 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.

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

- 20.1 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 and from 17 November 2015.
- 20.2 Changes made to this award subsequent to it first being published on 28 August 2009 (368 I.G.1521) have been incorporated into this award as part of the review.
- 20.3 This 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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