

CROWN EMPLOYEES (NSW DEPARTMENT OF JUSTICE) MUSEUM OF APPLIED ARTS AND SCIENCES - CASUAL GUIDE LECTURERS AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(Case No. 2016/00006949)

Before Commissioner Stanton

2 August 2016

REVIEWED AWARD

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PART A

1. Title

This award shall be known as the Crown Employees (NSW Department of Justice) Museum of Applied Arts and Sciences - Casual Guide Lecturers) Award.

2. Definitions

"Act" means the *Government Sector Employment Act 2013*.

"Award" means Crown Employees (NSW Department of Justice) Museum of Applied Arts and Sciences - Casual Guide Lecturers) Award.

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

"Department" means the NSW Department of Justice.

"Department Head" means the Secretary of the NSW Department of Justice.

"Director" means the Chief Executive Officer of the Museum of Applied Arts and Sciences.

"Employee" means a person employed in casual employment in a Public Service agency in accordance with s3 of the Act and who occupies a role as a Casual Guide Lecturer, covered by this Award.

"Employer" means the Secretary of the Department of Justice.

"Industrial Relations Secretary" means the Secretary of Treasury in accordance with s49 of the Act.

3. Intention

The purpose of this award is to regulate the rates of pay and conditions of employment of Casual Guide Lecturers.

4. Wage Rates and Conditions of Employment

- (i) The casual hourly rate for a Casual Guide Lecturer is set out in Part B, Table 1 - Monetary Rates. This rate is set in accordance with the Crown Employees (Public Sector - Salaries 2016) Award and any variation or replacement award.
- (ii) Casual Guide Lecturers shall also receive the following entitlements in accordance with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009.
 - (a) Unpaid parental leave in accordance with paragraph 12.5.4;
 - (b) Personal Carer's entitlement in accordance with subclause 12.6; and
 - (c) Bereavement entitlement in accordance with subclause 12.7.

This entitlement is also set out at Appendix A of this Award.

5. Deduction of Association Membership Fees

- (i) The Association shall provide the employer with a schedule setting out Association fortnightly membership fees payable by members of the Association in accordance with the Association's rules.
- (ii) The Association shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of Association fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.
- (iii) Subject to (i) and (ii) above, the employer shall deduct Association fortnightly membership fees from the pay of any employee who is a member of the Association in accordance with the Association's rules, provided that the employee has authorised the employer to make such deductions.
- (iv) Monies so deducted from an 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' Association membership accounts.
- (v) Unless other arrangements are agreed to by the employer and the Association, all Association membership fees shall be deducted on a fortnightly basis.
- (vi) Where an employee has already authorised the deduction of Association membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

6. Grievance and Dispute Resolution Procedures

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The Department Head may refer the matter to the Industrial Relations Secretary for consideration.
- (g) 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.
- (h) An employee, at any stage, may request to be represented by the Association.
- (i) The employee or the Association on their behalf or the Department Head may refer the matter to the Industrial Relations Commission of NSW if the matter is unresolved following the use of these procedures.
- (j) The staff member, Association, Department and Industrial Relations Secretary of the shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- (k) Whilst the procedures outlined in subclauses (a) to (j) 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 work 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.

7. 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.
- (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 that, 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 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.
- (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.
 - (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."

8. Parties to the Award

This award is made between the following parties:

Industrial Relations Secretary,

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

9. Area, Incidence and Duration

- (a) This award applies to those staff employed as Casual Guide Lecturers by the Museum of Applied Arts and Sciences.
- (b) 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 the New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 2 August 2016.
- (c) Changes made to this award subsequent to it first being published on 9 November 2007 (364 I.G. 279) have been incorporated into this award as part of the review.
- (d) This award remains in force until varied or rescinded for the period for which it was made already having expired.

PART B
MONETARY RATES

Table 1 - Wages

Crown Employees (NSW Department of Justice) Museum of Applied Arts and Sciences – Casual Guide Lectures Award.

Casual Guide Lecturers - Museum of Applied Arts and Sciences		
Classification		1.7.16 Per hour 2.5% \$
Casual Guide Lecturer		44.52

APPENDIX A

- (i) Casual staff members are entitled to unpaid parental leave under Chapter 2, Part4, Division 1, section 54, Entitlement to Unpaid Parental Leave, in accordance with the Industrial Relations Act 1996. The following provisions shall also apply in addition to those set out in the Industrial Relations Act 1996 (NSW).
- (a) The Department Head must not fail to re-engage a regular casual staff member (see section 53(2) of the *Industrial Relations Act 1996*) because:
- (A) the staff member or staff member's spouse is pregnant; or
- (B) the staff member is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual staff members are not affected, other than in accordance with this clause.

- (ii) Personal Carers entitlement for staff members
- (a) Staff members are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).
- (b) The Department Head and the staff member shall agree on the period for which the staff member will be entitled to not be available to attend work. In the absence of agreement, the staff member is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The staff member is not entitled to any payment for the period of non-attendance.
- (c) A Department Head must not fail to re-engage a staff member because the staff member accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a staff member are otherwise not affected.
- (d) The staff member shall, if required,
- (A) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or

- (B) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the staff member.

In normal circumstances, a staff member must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (e) The staff member must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the staff member will inform the employer within 24 hours of the absence.

(iii) A family member for the purposes of (ii) (a) above is:

- (a) a spouse of the staff member; or
- (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent or legal guardian), grandparent, grandchild or sibling of the staff member or of the spouse or de facto spouse of the staff member; or
- (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

"household" means a family group living in the same domestic dwelling.

(iv) Bereavement entitlements for staff members

- (a) Staff members are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
- (b) The Department Head and the staff member shall agree on the period for which the staff member will be entitled to not be available to attend work. In the absence of agreement, the staff member is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The staff member is not entitled to any payment for the period of non-attendance.
- (c) A Department Head must not fail to re-engage a staff member because the staff member accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a staff member are otherwise not affected.

(d) The staff member must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the staff member will inform the employer within 24 hours of the absence.

J. D. STANTON, Commissioner

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