

# INDEPENDENT COMMISSION AGAINST CORRUPTION AWARD 2017

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Independent Commission Against Corruption.

(No. 2017/176033)

Before Chief Commissioner Kite

14 June 2017

## AWARD

Clause No.	Subject Matter
1.	Title of Award
2.	Dictionary of Terms
3.	Aims of the Award
4.	Communication and Consultation
5.	ICAC Officer Classification and Salary Structure
6.	Basis of Employment
7.	Performance Management and Salary Increments
8.	Training and Development
9.	Redundancy and Redeployment
10.	Conditions of Employment
11.	Hours of Employment - Flexible Working Hours Scheme (FWHS)
12.	Flexible Work Arrangements (FWA)
12A.	Lactation Breaks
13.	Annual Leave
14.	Concessional Leave and Easter Thursday
15.	Long Service Leave (Extended Leave)
16.	Family and Community Service Leave and Carer's Leave
17.	Holy Days and Essential Religious Duties
18.	Leave Without Pay
19.	Military Leave
20.	Parental Leave
21.	Public Holidays
22.	Sick Leave
23.	Special Leave
23A.	Leave for Matters Arising from Domestic Violence
24.	Study Time and Examination Leave
25.	Travelling Time Compensation
26.	Overtime
27.	Performing Higher Duties
28.	Allowances and Loadings
29.	Investigators, Surveillance Officers and Technical Services Officers
30.	Secure Employment Test Case WHS Obligations
31.	Grievance and Dispute Resolution
32.	No Extra Claims
33.	Anti-Discrimination
34.	Salary Packaging
35.	Area, Incidence and Duration

Schedule 1 - ICAC Officer Classification Salary Rates  
Schedule 2 - Allowance Rates  
Schedule 3 - Casual Employees Entitlements

### **1. Title of Award**

This Award will be known as the Independent Commission Against Corruption Award 2017.

### **2. Dictionary of Terms**

Commission - the Independent Commission Against Corruption

ICAC - the Independent Commission Against Corruption

PSA - the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales

Executive - the ICAC's statutory officers and Executive Directors

Commissioner - the Commissioner of the ICAC

Domestic Violence - means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*

### **3. Aims of the Award**

The Commission is a statutory body set up under the *Independent Commission Against Corruption Act 1988* to expose and minimise corruption in the NSW public sector. This Award documents the conditions of employment and the rights and obligations of management and staff that will help to achieve this objective.

This Award was negotiated by the ICAC Award Negotiation Committee comprised three staff, a Public Service Association industrial officer and three management representatives. Staff were consulted throughout the development of the Award and have agreed to this Award.

The Award aims to achieve the following outcomes:

- to improve the efficiency and productivity of the ICAC
- to enhance our culture of consultation
- to provide equitable remuneration and conditions of employment
- to provide information on conditions of employment in plain English
- to improve the development and utilisation of staff

We are committed to certain fundamental values in all our interactions with public sector agencies, other organisations, individuals and our staff. We will:

- advance the public interest at all times
- always act ethically and with integrity
- be fair, impartial and accountable in all our work
- strive for excellence in everything we do
- be tenacious and professional in pursuing our aim

respect each other and work collaboratively

preserve the ICAC's independence.

This Award rescinds and replaces all other industrial instruments except as referred to in this document.

#### **4. Communication and Consultation**

The Commission Consultative Group (CCG) is the formal mechanism for consultation and communication between staff and management on matters of policy and procedure.

Purpose - to improve performance through consultation leading to informed decision making.

Role - to consider issues of policy or procedure, with Commission-wide significance to staff, as referred by staff and management. Generally, the CCG provides a consultative forum for developing or reviewing policies, procedures, and/or recommendations as to final policy or procedure to the Commissioner or manager with delegated authority. Delegation to the CCG of decision-making power in suitable matters will also be an option for the Executive.

PSA representation - a PSA industrial staff representative.

Staff representation - there are five staff representatives, at least one of whom is a delegate of the PSA. Representatives are elected by secret ballot and are appointed for a period of two years.

The Executive representation - three Executive representatives are appointed by the Commissioner for a period of two years.

Operation - The CCG determines its own meeting procedure and charter of operation.

Other committees - The Access and Equity Committee, the Occupational Health and Safety Committee and the Classification Committee report to the Commissioner through the CCG. The CCG will ensure that these committees are appropriately structured and operate in accordance with relevant legislation, including that election procedures are appropriate, and that membership is balanced by gender and is representative of the staff

#### **5. ICAC Officer Classification and Salary Structure**

- (1) The ICAC Officer classification Grades 1 - 8 have regard to the following principles:
  - (a) work of equal value attracts equal remuneration a structure reflecting a composite weighting of the markets from which the Commission recruits its employees
  - (b) a structure which supports improved performance.
- (2) The ICAC Officer salary rates appear in Schedule 1 of this Award.
- (3) The salary structure has regard for equivalent work value and salaries in the following markets:

NSW public sector (Administrative & Clerical and Legal), Police/Investigator (NSW, Federal, Australian Crime Commission)

Private sector (Information Technology)
- (4) The CCG will examine the ICAC Officer classification system in order to consider the benefits of reducing the number of grades and salary points, improve opportunities for progression to positions at higher grades through the introduction of "soft barriers" or other measures, and other changes suggested by the Executive or staff.

- (5) The annual salaries of ICAC staff covered by this Award shall be adjusted by an increase of 2.5% from the first full pay period on or after 1 July 2017.

## **6. Basis of Employment**

- (1) The employment of members of staff of the Commission is subject to s.104 of the *Independent Commission Against Corruption Act 1988*.
- (2) Members of staff of the Commission are appointed by the Commissioner and are taken to be employed by the Government of New South Wales in the service of the Crown but the Commissioner is, for the purposes of any proceedings relating to staff employed under s.104 held before a competent tribunal having jurisdiction to deal with such matters, taken to be the employer of the staff.
- (3) Persons employed under s.104 are appointed as a member of staff of the Commission at the discretion of the Commissioner and are subject to the control and direction of the Commissioner.
- (4) The basis of employment in the Commission is permanent (either full-time or part-time), that is, continuing employment subject to satisfactory work performance and conduct.
- (5) The Commission may engage employees other than permanent employees. These employees may be part-time, casual, fixed term or secondees and will be engaged when:
- (a) additional skills, expertise or experience in the current workforce are required and the position will not be required on an ongoing basis.
  - (b) a position is vacant because an employee is on approved leave of absence.
- (6) It is the intention of the parties that the Commission's recruitment policy will indicate the steps to be taken to determine the availability of skills, expertise or experience within the Commission prior to the initiation of any external action. Appointment to a position at the ICAC will involve a six months probationary period or such period as the Commissioner directs. The probationary period applies to permanent employees and non permanent employees who are employed for periods of greater than six months.
- (7) Satisfactory performance encompasses, but is not limited to:
- (a) satisfactory discharge of duties as incorporated in the individual performance agreement
  - (b) participation in corporate activities
  - (c) commitment to and participation in training and development opportunities.
- (8) Satisfactory conduct encompasses, but is not limited to:
- (a) observing the law
  - (b) observing Commission policies and procedures
  - (c) observing ethical standards of behaviour as set out in the Commission's Code of Conduct.
- (9) Subject to section 104 of *Independent Commission Against Corruption Act 1988*, the Commission will, wherever possible, follow the management practices relating to termination and dismissal prescribed in legislation that affects NSW employers.
- (10) Recruits may decide to be seconded to a permanent position or come to the Commission on Leave Without Pay from their substantive employer. Where a recruit decides to do this, the Commission requires a minimum period of employment of two years. Further extensions of no less than one year, provided performance and conduct are satisfactory, will be considered. Staff currently on secondment or leave without pay may apply to resign from their substantive employment and join the Commission as a

permanent member of staff in their current job, provided performance and conduct are satisfactory and, where possible, three months' notice is given. This opportunity is not available to temporary employees.

- (11) A temporary employee may be directly appointed to a permanent position if the employee has filled that position for two years on a temporary basis and was initially recruited under merit selection.
- (12) Resignation - 4 weeks notice in writing is required unless the Commission agrees to a lesser period of notice.
- (13) Termination of employment - 4 weeks notice shall be given by staff; or in lieu of notice, the Commission may grant payment in lieu.
- (14) Casual employees shall receive leave entitlements as referred to in Schedule 3 of this Award.

### **7. Performance Management and Salary Increments**

- (1) The aims of the Commission's performance management system are:
  - (a) to establish a climate of continuous improvement within the Commission
  - (b) to match individual staff performance objectives with Commission performance objectives and Corporate and Strategic Plans
  - (c) to provide a process that ensures honest communication between staff and supervisors about the work they do, how it is done and how performance is measured
  - (d) to ensure the identification of training and development needs are in line with requirements of the individual and the Commission.
- (2) The Commission's performance management system is based on an annual performance agreement between staff and their supervisor. The annual performance agreement sets out the agreed outcomes to be measured and how these outcomes will be measured (i.e. performance measures).
- (3) There are stages to be completed each year for the Commission's performance management system, which will occur at a common time for all employees, these stages are outlined in the Commission's policy on performance management.
- (4) Progression through the salary points in the ICAC Officer range is based on performance under the Commission's performance management system. The Annual Review, which occurs in June each year, includes an overall assessment of performance.
- (5) All staff have a common increment date of 1 July and their increment will be eligible for payment in the first full pay period commencing on or after 1 July each year, subject to satisfactory performance under the Commission's performance management system.
- (6) The minimum period of service required before consideration for an increment would be 4 months subject to completion of a Performance Agreement within 6 weeks of appointment or promotion.
- (7) Procedures for managing poor performance will include:
  - (a) the implementation of a 3 month performance improvement plan, with a further extension of 1 month if performance remains unsatisfactory.
  - (b) the deferral of an increment following unsatisfactory performance will create a new increment anniversary date for that year. If performance is maintained at a satisfactory level for at least a 4 month period, prior to the common increment date of 1 July, the staff member, similar to other staff, may be considered for an increment at that time. If the period of satisfactory performance and issuing of a new increment date is less than four months prior to the common increment date then the staff member will only receive an increment on their new increment date and will not be

entitled to another increment at the common increment date. If performance is maintained at a satisfactory level, it will not be until the subsequent year that the common increment date will once again become applicable.

## **8. Training and Development**

- (1) The Commission is committed to providing training and development activities that aim to increase the skills, knowledge and experience of staff. The activities provided include:
  - (a) job relevant training
  - (b) refresher courses
  - (c) new skills training
  - (d) participation in corporate activities
  - (e) opportunities to do work at a similar or higher grade within the Commission, or on secondment to other agencies
  - (f) transfer, promotion or secondment opportunities
  - (g) training where performance has been identified as inadequate
  - (h) other career development opportunities relevant to the work of the Commission.
- (2) The CCG will oversee the implementation of the Commission's Training and Development Policy, taking into account:
  - (a) the needs of all employees
  - (b) access is fair and in line with EEO principles
  - (c) corporate or Unit planning or training arising out of the Commission's performance management program
  - (d) the level of resources needed in implementing the program and the most effective way of using those resources.

## **9. Redundancy and Redeployment**

Staff and management are covered by the provisions of the NSW Department of Premier and Cabinet's 'Managing Excess Employees' Policy and directions for redundancy and redeployment.

## **10. Conditions of Employment**

- (1) The conditions of employment are set out in this Award and include compliance with the Commission's General Policies and Procedures. The Commission's General Policies and Procedures are to be read as amended and in force at the date under consideration. To the extent of any inconsistency between the Commission's General Policies and Procedures and the Award, the conditions of the Award shall prevail.
- (2) The ICAC's conditions of employment are based on NSW public service conditions at the date of the making of this Award. Changes in public service Awards and/or conditions of employment that occur after the making of this Award will be referred to the CCG for consideration and possible recommendation to the Commissioner. If it is decided they should apply, this Award will be varied in accordance with the *Industrial Relations Act 1996*.

- (3) In setting conditions of service for staff of the Commission regard will be given to the provisions of the current Crown Employees (Public Service Conditions of Employment) Award.
- (4) If conditions of employment for staff of the Commission are not covered by this Award then the provisions of the current Crown Employees (Public Service Conditions of Employment) Award will be referred to. Any changes to conditions of service will be made in consultation with the CCG. Where they differ, for example in relation to Surveillance Officer conditions, they are defined in policy documents held at the ICAC.
- (5) Staff transferring to the Commission from other NSW public sector agencies may be able to transfer some of their existing entitlements to the Commission consistent with NSW public sector mobility provisions. However, the transfer of annual leave entitlements is restricted to a maximum of 5 days. This restriction of a maximum of 5 days of leave does not apply to the transfer of other types of leave entitlements to the Commission.

#### **11. Hours of Employment - Flexible Working Hours Scheme (FWHS)**

- (1) The Commission operates under a Flexible Working Hours Scheme as follows. This clause must be read in conjunction with the Commission's Flexible Working Hours Policy (Policy 31) as is in force at the relevant time. The provisions of this clause prevail to the extent of any inconsistency with the policy.
- (2) Purpose - to improve organisational performance and to provide the Executive and employees with flexibility in arranging working hours.
- (3) Principles - In order that staffing levels are sufficient to meet operational requirements, the Guarantee of Service and performance standards, management and staff are committed to ensuring that:
  - (a) decisions regarding working hours will be made taking into account the requirements of the particular Division, Section or team and the Commission
  - (b) decisions regarding working hours will be made between an employee and their direct supervisor based on consultation and negotiation
  - (c) supervisors will notify staff of the need to change hours as soon as practicable
  - (d) staff will give reasonable notice of request for flex leave.
- (4) The provisions of this clause shall apply to part time staff on a pro rata basis.
- (5) Surveillance Officers - Management recognises the need for greater flexibility in managing the flexible working hours' scheme for Surveillance officers and allows for variations in recognition of the employment situation of surveillance staff, which are referred to in the Flexible Working Hours policy.
- (6) Ordinary hours of work - 7 hours/day, 35 hours/week, Monday to Friday.
- (7) Commission's daily hours of business - 9 am to 5 pm.
- (8) Daily period in which work is to be performed (bandwidth) - 7.30 am to 7.00 pm. This period may be varied with the agreement of staff and their supervisor to meet Commission or staff needs. If the bandwidth is altered, flex is accrued after 7 hours work (excluding meal breaks) and overtime after 11.5 hours from the start of the altered bandwidth.
- (9) Minimum hours to be worked each day - 5 hours. Minimum hours may be varied temporarily by agreement of the staff member and their Executive Director in exceptional circumstances.
- (10) Maximum hours to be worked each day - 10, unless approved otherwise.
- (11) Meal break - Minimum of 30 minutes every 5 hours. Surveillance Officer meal breaks and the payment of meal allowances are defined in a policy document held at the ICAC.

- (12) Flex Period - 140 hours (4 weeks), which are the contract hours for a full time employee.
- (13) Maximum Flex Leave that can be taken in any financial year - 26 days (182 hours). This includes both flex and banked flex leave.
- (14) Carry over credit at end of Flex Period - up to 21 hours.
- (15) Carry over debit at end of Flex Period - up to 10 hours. Debits in excess of 10 hours must be offset by an application for Annual Leave.
- (16) Flex Leave (FL) and Banked Flex Leave (BFL) that can be taken in a Flex Period - 21 hours. Staff are expected to take Flex leave and or banked flex leave as either a half day (3.5 hours) or a full day (7 hours). Part time employees may take a pro rata amount equivalent to the hours worked on a specific day. Flex Leave may be taken at the beginning and/or end of a period of other leave.
- (17) Banked Flex Leave - Working hours in excess of the 21 hour carry over credit may be banked. The maximum hours to be banked is up to 21 hours. The minimum amount of banked flex leave that can be used is 3.5 hours. BFL may be taken in conjunction with Flex leave and at the beginning and/or end of a period of other leave.
- (18) Flex Record - Staff must maintain current and accurate records of their working hours on the Timekeeper system. Data from the Record will be analysed from time to time.
- (19) Where a staff member has accrued 6 weeks recreation leave (over 30 days), unless otherwise authorised by their Director, flex leave, including banked flex leave can only be taken in situations where at least one day of recreation leave has been applied for and approved within the flex period. If, however recreation leave has been applied for and declined or not actioned by the manager, access to flex leave is still available.

## **12. Flexible Work Arrangements (FWA)**

- (1) This Award aims to provide assistance to staff in balancing their personal and work commitments. This enables the Commission to be more flexible in the delivery of its services and to improve the satisfaction of staff. FWA will only be available with the agreement of management. All conditions of employment in this Award apply to part time staff on a pro-rata basis.
- (2) The following FWA are available:
  - (a) Permanent Part-time Employment - enables staff to permanently work hours which are less than the full-time weekly hours of their position.
  - (b) Part-time Leave Without Pay - enables staff to work on a part-time basis for a period of time, either by cutting hours in their current position or by doing other duties. At the end of the period they return to full-time work.
  - (c) Part Year Employment - enables staff to work for an agreed number of weeks per year, with an agreed number of unpaid weeks.
  - (d) Job Sharing - enables a job to be shared by two or more staff. They may be employed on a part-time basis or may be full-time employees taking part-time leave without pay.
  - (e) Working at home - Staff may work at home from time to time if it is an efficient and effective way of working and the outcomes to be achieved are agreed to by their supervisor. The documented security policies and procedures relating to this provision must be adhered to at all times.
- (3) A permanent member of staff originally employed on a full-time basis and currently working in a FWA has the right to return to full-time employment. In such a case they will be paid at their substantive

salary level but may not be able return to the work carried out before entering the FWA in accordance with the ICAC Policy.

### **12a. Lactation Breaks**

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) The Commission shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- (6) 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.
- (7) 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.
- (8) 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 22, Sick Leave of this award, or access to the flexible working hours scheme provided in clause 11, Hours of Employment - Flexible Working Hours Scheme (FWH) of this award, where applicable.

### **13. Annual Leave**

- (1) Staff are entitled to 20 working days/140 hours of annual leave per year. Annual leave accrues at the rate of 1.67 working days/11.62 hours per month and may be taken in periods of not less than ¼ day. At least 10 days annual leave must be taken each financial year. To enable better planning of annual leave and flex and banked flex leave, and to ensure better availability of staff throughout the year, staff undertake to manage their annual leave to give the Commission maximum notice of their wishes. The Commission, will, wherever possible, meet the leave requirements of staff; however, the taking of annual leave is subject to Commission convenience.
- (2) An annual leave entitlement does not accrue during any periods of unpaid leave except for periods of sick leave without pay.
- (3) Staff annual leave balances at 30 June each year can accrue to a maximum of 30 working days/210 hours unless an approval to conserve annual leave has been granted by the relevant director. The taking of flex leave can be affected by annual leave balance in excess of 30 days. Refer to clause 11, Hours of Employment - Flexible Working Hours Scheme (FWH).

#### **14. Concessional Leave and Easter Thursday**

- (1) Concessional Leave: At Christmas, where the Premier grants concessional leave, the Commissioner may make a similar grant to Commission staff provided that adequate service to the public is maintained. Advice to staff on whether the leave is available, as well as the relevant conditions, will be provided at least two weeks prior to Christmas each year.
- (2) Easter Thursday: The Commissioner may grant access to an additional ½ day flex leave on the afternoon of Easter Thursday in the flex period in which Easter Thursday falls, provided that adequate service to the public is maintained. In order to be able to take the additional ½ day of flex leave the staff member must have enough flex time accrued during the flex period to ensure he/she does not go into debit of more than 10 hours at the end of the flex period.

#### **15. Long Service Leave (Extended Leave)**

- (1) The ICAC long service leave entitlements are:
  - (a) Long Service Leave (LSL) entitlement after 10 years service - 2 months (44 working days) on full pay and 11 working days for every year of service thereafter. LSL may be taken at half pay.
  - (b) LSL entitlement after 7 years service - staff with 7 years or more service will be entitled to take (or be paid out on resignation) LSL in the usual manner. The quantum of leave available is that which would have applied if pro rata leave was granted. No repayment will be required if a staff member does not reach 10 years service.
  - (c) LSL entitlement after 5 years service but less than 7 years service - If the ICAC terminates employment for reasons other than serious and intentional misconduct, or, staff leave on account of illness, incapacity or domestic or other pressing necessity, staff are entitled to 1 month's LSL for 5 years service plus a pro-rata rate for service of between 6 and 7 years.
  - (d) LSL on Double Pay - A staff member with an entitlement to LSL may elect to take leave at double pay. The additional payment will be made as a superable, taxable allowance for employees covered by the *First State Superannuation Act 1992* and members of another complying fund of their choice. The double payment is not superable for members of the closed NSW Public Sector Superannuation Schemes, which are established by the I 1906, the *State Authorities Non-Contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987* and the *Superannuation Act 1916*.

The staff members leave balance will be debited for the actual period of the absence from work and an equivalent number of days as are necessary to pay the allowance. Other leave entitlements, eg recreation leave, sick leave and LSL will accrue at the single time rate where a staff member takes LSL at double time. Superannuation contributions will only be made on the basis of the actual absence from work, i.e. at the single time rate. Where a staff member elects to take LSL at double pay, in most cases a minimum period of absence of one week should be taken, i.e. one week leave utilising two weeks of accrued leave.

- (2) Public holidays that fall whilst a staff member is on a period of LSL will be paid and not debited from a staff member's LSL entitlement. In respect of public holidays that fall during a period of double pay LSL a staff member will not be debited in respect of the leave on a public holiday. The staff member's leave balance will however be reduced by an additional day to fund the non-superable taxable allowance.
- (3) Service for LSL purposes - The following service with public sector agencies may count for LSL purposes, depending on the agency:
  - (a) permanent and temporary work periods of employment with the ICAC under the *Independent Commission Against Corruption Act 1988*.

- (b) continuous service with agencies under the Government Sector Employment Act 2013 and as defined by the Department of Finance, Services and Innovation, NSW Industrial Relations Executive Director. This generally includes service with the NSW public sector, some agencies in the Commonwealth and other states. Where the break in service between a public sector agency and starting work with the ICAC is less than two months, this previous employment may be able to be recognised for LSL purposes providing that the offer of employment with the Commission was accepted with the Commission prior to resignation.

## **16. Family and Community Service Leave and Carer's Leave**

- (1) Family and Community Service Leave (FACSL) - staff may be granted FACSL for reasons relating to unplanned and/or emergency situations associated with:
  - (a) their family responsibilities
  - (b) their performance of community service duties
  - (c) pressing necessity.
- (2) Such unplanned and emergency situations may include, but not be limited to, the following:-
  - (a) Compassionate grounds, such as the death or illness of a close member of the family or a member of the staff member's household including organising and attending to funeral arrangements;
  - (b) Emergency accommodation matters up to one day, such as attendance at court as defendant in an eviction action, arranging accommodation, or when required to remove furniture and effects;
  - (c) Emergency or weather conditions; such as when flood, fire, snow or disruption to utility services etc, threatens a staff member's property and/or prevents a staff member from reporting for duty;
  - (d) Attending to emergency or unplanned or unforeseen family responsibilities, such as attending a child's school for an emergency reason or emergency cancellations by child care providers;
  - (e) Attendance at court by a staff member to answer a charge for a criminal offence, only if the Commissioner considers the granting of family and community service leave to be appropriate in a particular case;
  - (f) Attendance as a competitor in major amateur sport (other than Olympic or Commonwealth Games) for staff members who are selected to represent Australia or the State;
  - (g) Absence during normal working hours to attend meetings, conferences or to perform other duties for staff members holding office in Local Government whose duties necessitate absence during normal working hours for these purposes, provided that the staff member does not hold a position of Mayor of a Municipal Council, President of a Shire Council or Chairperson of a County Council.
- (3) Non-emergency appointments or duties shall be scheduled or performed outside of normal working hours or through approved use of flexible working arrangements or other appropriate leave.
- (4) FACS leave can be used for carer's responsibilities to care for an ill family member as defined below. In this situation, FACS leave does not need to be unplanned or an emergency however, FACS leave needs to be exhausted prior to carer's leave being accessed to care for an ill family member. Refer to carers leave for further explanation.
- (5) A family and relative of a staff member for these purposes is:
  - (a) Your child
  - (b) The child of your current or former husband, wife, de facto opposite or same sex partner

- (c) Any adult who you are the legal guardian of
- (d) Any 'immediate family member'. This means any of the following:
  - (i) Your current or former husband, wife, de facto opposite or same sex partner,
  - (ii) Your grandchild or the grandchild of your current or former husband, wife, de facto opposite or same sex partner,
  - (iii) Your parent or the parent of your current or former husband, wife, de facto opposite or same sex partner,
  - (iv) Your grandparent or the grandparent of your current or former husband, wife, de facto opposite or same sex partner,
  - (v) Your brother or sister or the brother or sister of your current or former husband, wife, de facto opposite or same sex partner.
- (6) Family and Community Service Leave Shall Accrue as Follows:
  - (a) 2-1/2 days in the staff member's first year of service;
  - (b) 2-1/2 days in the staff member's second year of service; and
  - (c) 1 day per year thereafter.
- (7) Part time staff will accrue at a pro-rata amount.
- (8) Where FACSL is exhausted, two additional working days FACSL may be granted on a discrete per occasion basis on the death of a person defined above.
- (9) Carer's Leave (CL) - Where FACSL is exhausted, unused sick leave may be granted to staff responsible for the care of an ill family member using the above definition of family member.
- (10) The sick leave that can be accessed is:
  - (a) unused sick leave from the previous 3 years.
  - (b) access to additional sick leave accumulated from eligible service may be granted in special cases.
- (11) When applying for CL staff must supply:
  - (a) a medical certificate or Statutory Declaration for periods greater than 2 consecutive working days.
  - (b) details of the name of the person being cared for, their relationship with that person, the reason for that period of leave.
  - (c) the exact nature of the illness does not need to be disclosed.
- (12) The use of CL will be managed in the same way as sick leave, with evidence and medical certificates being required when applying for carers leave for takings in excess of two consecutive days.
- (13) Where FACSL and CL are exhausted, time off in lieu of overtime or travelling compensation or flex time, annual, LSL and leave without pay may be granted.

### **17. Holy Days and Essential Religious Duties**

- (1) Staff of any religious faith who need leave for the purpose of observing holy days of that faith may be granted available paid or unpaid leave provided that adequate notice is given.
- (2) Staff of any religious faith who need time off during daily working hours to attend to essential religious duties of that faith may use the provisions of the Flexible Working Hours Scheme.

### **18. Leave Without Pay**

- (1) Staff may be granted periods of leave without pay in excess of 2 months after 2 years employment with the Commission. The maximum period that may be granted in this case is 12 months subject to special approval by the Commissioner. Staff taking 12 months LWOP must return to work for the Commission for a minimum of 2 years before further LWOP is granted.
- (2) A staff member shall not be required to exhaust accrued paid leave before proceeding on leave without pay but, if the staff member elects to combine all or part of accrued paid leave with leave without pay, the paid leave shall be taken before leave without pay.
- (3) No paid leave shall be granted during a period of leave without pay.

### **19. Military Leave**

- (1) Staff who are volunteer, part-time members of the Defence Forces may be granted military leave on full pay to attend training, education, instruction and compulsory parades. The grant each financial year is:
  - (a) Navy Reserve - up to 24 calendar days
  - (b) Army Reserve - up to 24 calendar days
  - (c) Air Force Reserve - up to 28 calendar days
- (2) The Commissioner may grant a staff member special leave of up to 1 day to attend medical examinations and tests required for acceptance as volunteer part time members of the Australian Defence Forces.
- (3) A staff member who is requested by the Australian Defence Forces to provide additional military services requiring leave in excess of the entitlement specified may be granted Military Leave Top up Pay by the Commissioner. Military Leave Top up Pay is calculated as the difference between a staff member's ordinary pay as if they had been at work, and the Reservist's pay which they receive from the Commonwealth Department of Defence.
- (4) During a period of Military Leave Top up Pay, a staff member will continue to accrue sick leave, recreation and extended leave entitlements, and the Commission is to continue to make superannuation contributions at the normal rate.

### **20. Parental Leave**

- (1) Parental leave includes maternity, adoption and "other parent" leave.
- (2) Maternity leave shall apply to a staff member who is pregnant and, subject to this clause the staff member shall be entitled to be granted maternity leave as follows:
  - (a) For a period up to 9 weeks prior to the expected date of birth; and
  - (b) For a further period of up to 12 months after the actual date of birth.
  - (c) A staff member who has been granted maternity leave and whose child is stillborn may elect to take available sick leave instead of maternity leave.

- (3) Adoption leave shall apply to a staff member adopting a child and who will be the primary care giver, the staff member shall be granted adoption leave as follows:
- (a) For a period of up to 12 months if the child has not commenced school at the date of the taking of custody; or
  - (b) For such period, not exceeding 12 months on a full-time basis, as the Commissioner may determine, if the child has commenced school at the date of the taking of custody.
  - (c) Special Adoption Leave - A staff member shall be entitled to special adoption leave (without pay) for up to 2 days to attend interviews or examinations for the purposes of adoption. Special adoption leave may be taken as a charge against recreation leave, extended leave, flexitime or family and community service leave.
- (4) Where maternity or adoption leave does not apply, "other parent" leave is available to male and female staff who apply for leave to look after his/her child or children. Other parent leave applies as follows:
- (a) Short other parent leave - an unbroken period of up to 8 weeks at the time of the birth of the child or other termination of the spouse's or partner's pregnancy or, in the case of adoption, from the date of taking custody of the child or children;
  - (b) Extended other parent leave - for a period not exceeding 12 months, less any short other parental leave already taken by the staff member as provided for in paragraph (a) of this subclause. Extended other parental leave may commence at any time up to 2 years from the date of birth of the child or the taking of custody of the child.
- (5) A staff member taking maternity or adoption leave is entitled to payment at the ordinary rate of pay for a period of up to 14 weeks, a staff member entitled to short other parent leave is entitled to payment at the ordinary rate of pay for a period of up to 1 week, provided the staff member:
- (a) Applied for parental leave within the time and in the manner determined set out in subclause (10) of this clause; and
  - (b) Prior to the commencement of parental leave, completed not less than 40 weeks' continuous service.
  - (c) Payment for the maternity, adoption or short other parent leave may be made as follows:
    - (i) in advance as a lump sum; or
    - (ii) fortnightly as normal; or
    - (iii) fortnightly at half pay; or
    - (iv) a combination of full-pay and half pay.
- (6) Payment for parental leave is at the rate applicable when the leave is taken. A staff member holding a full time position who is on part time leave without pay when they start parental leave is paid:
- (a) at the full time rate if they began part time leave 40 weeks or less before starting parental leave;
  - (b) at the part time rate if they began part time leave more than 40 weeks before starting parental leave and have not changed their part time work arrangements for the 40 weeks;
  - (c) at the rate based on the average number of weekly hours worked during the 40 week period if they have been on part time leave for more than 40 weeks but have changed their part time work arrangements during that period.

- (7) A staff member who commences a subsequent period of maternity or adoption leave for another child within 24 months of commencing an initial period of maternity or adoption leave will be paid:
- (a) at the rate (full time or part time) they were paid before commencing the initial leave if they have not returned to work; or
  - (b) at a rate based on the hours worked before the initial leave was taken, where the staff member has returned to work and reduced their hours during the 24 month period; or
  - (c) at a rate based on the hours worked prior to the subsequent period of leave where the staff member has not reduced their hours.
- (8) Except as provided in subclauses (5), (6) and (7) of this clause parental leave shall be granted without pay.
- (9) Right to request
- (a) A staff member who has been granted parental leave in accordance with subclause (2), (3) or (4) of this clause may make a request to the Commissioner to:
    - (i) extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (ii) return from a period of full time parental leave on a part time basis until the child reaches school age (Note: returning to work from parental leave on a part time basis includes the option of returning to work on part time leave without pay);to assist the staff member in reconciling work and parental responsibilities.
  - (b) The Commissioner shall consider the request having regard to the staff member's circumstances and, provided the request is genuinely based on the staff member's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Commissioner's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (10) Notification Requirements
- (a) When the Commission is made aware that a staff member or their spouse is pregnant, or is adopting a child, the Commission must inform the staff member of their entitlements and their obligations under the award.
  - (b) A staff member who wishes to take parental leave must notify the Commission in writing at least 8 weeks (or as soon as practicable) before the expected commencement of parental leave:
    - (i) that she/he intends to take parental leave, and
    - (ii) the expected date of birth or the expected date of placement, and
    - (iii) if she/he is likely to make a request under subclause (9) of this clause.
  - (c) At least 4 weeks before a staff member's expected date of commencing parental leave they must advise:
    - (i) the date on which the parental leave is intended to start, and
    - (ii) the period of leave to be taken.

- (d) Staff member's request and the Commissioner's decision to be in writing

The staff member's request under paragraph (9)(a) and the Commissioner's decision made under paragraph (9)(b) must be recorded in writing.

- (e) A staff member intending to request to return from parental leave on a part time basis or seek an additional period of leave of up to 12 months must notify the Commission in writing as soon as practicable and preferably before beginning parental leave. If the notification is not given before commencing such leave, it may be given at any time up to 4 weeks before the proposed return on a part time basis, or later if the Commissioner agrees.
  - (f) A staff member on maternity leave is to notify the Commission of the date on which she gave birth as soon as she can conveniently do so.
  - (g) A staff member must notify the Commission as soon as practicable of any change in her intentions as a result of premature delivery or miscarriage.
  - (h) A staff member on maternity or adoption leave may change the period of leave or arrangement, once without the consent of the Commission and any number of times with the consent of the Commission. In each case she/he must give the Commission at least 14 days notice of the change unless the Commissioner decides otherwise.
- (11) A staff member has the right to her/his former position if she/he has taken approved leave or part time work in accordance with subclause (9) of this clause, and she/he resumes duty immediately after the approved leave or work on a part time basis.
  - (12) If the position occupied by the staff member immediately prior to the taking of parental leave has ceased to exist, but there are other positions available that the staff member is qualified for and is capable of performing, the staff member shall be appointed to a position of the same grade and classification as the staff member's former position.
  - (13) A staff member does not have a right to her/his former position during a period of return to work on a part time basis. If the Commissioner approves a return to work on a part time basis then the position occupied is to be at the same classification and grade as the former position.
  - (14) A staff member who has returned to full time duty without exhausting their entitlement to 12 months unpaid parental leave is entitled to revert back to such leave. This may be done once only, and a minimum of 4 weeks notice (or less if acceptable to the Commission) must be given.
  - (15) A staff member who is sick during her pregnancy may take available paid sick leave or accrued recreation or extended leave or sick leave without pay. A staff member may apply for accrued recreation leave, extended leave or leave without pay before taking maternity leave. Any leave taken before maternity leave, ceases at the end of the working day immediately preceding the day she starts her nominated period of maternity leave or on the working day immediately preceding the date of birth of the child, whichever is sooner.
  - (16) A staff member may elect to take available recreation leave or extended leave within the period of parental leave provided this does not extend the total period of such leave.
  - (17) A staff member may elect to take available recreation leave at half pay in conjunction with parental leave provided that:
    - (a) accrued recreation leave at the date leave commences is exhausted within the period of parental leave;
    - (b) the total period of parental leave is not extended by the taking of recreation leave at half pay;

- (c) when calculating other leave accruing during the period of recreation leave at half pay, the recreation leave at half pay shall be converted to the full time equivalent and treated as full pay leave for accrual of further recreation, extended and other leave at the full time rate.
- (18) If, for any reason, a pregnant staff member is having difficulty in performing her normal duties or there is a risk to her health or to that of her unborn child the Commission, should, in consultation with the staff member, take all reasonable measures to arrange for safer alternative duties. This may include, but is not limited to greater flexibility in when and where duties are carried out, a temporary change in duties, retraining, multi-skilling, teleworking and job redesign.
- (19) If such adjustments cannot reasonably be made, the Commissioner must grant the staff member maternity leave, or any available sick leave, for as long as it is necessary to avoid exposure to that risk as certified by a medical practitioner, or until the child is born which ever is the earlier.
- (20) Communication during parental leave
- (a) Where a staff member is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Commission shall take reasonable steps to:
    - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the staff member held before commencing parental leave; and
    - (ii) provide an opportunity for the staff member to discuss any significant effect the change will have on the status or responsibility level of the position the staff member held before commencing parental leave.
  - (b) The staff member shall take reasonable steps to inform the Commissioner about any significant matter that will affect the staff member's decision regarding the duration of parental leave to be taken, whether the staff member intends to return to work and whether the staff member intends to request to return to work on a part time basis.
  - (c) The staff member shall also notify the Commissioner of changes of address or other contact details which might affect the Commission's capacity to comply with paragraph (a) of this subclause.

## **21. Public Holidays**

The provisions of the Banks and Banks Holidays Act 1912 apply and provide for the following public holidays: New Years Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Christmas Day, Boxing Day or such other public holidays that are proclaimed. The Public Service Holiday is to be taken on a day determined by the Commissioner between Christmas Day and New Year's Day.

## **22. Sick Leave**

- (1) Staff members at the time of the Award variation will accrue sick leave in accordance with this clause from 1 January 2009 onwards.
- (a) At the commencement of employment with the Public Sector, a full time staff member is granted an accrual of 5 days sick leave providing this does not exceed the amount that would normally accrue over their period of employment. This also applies to temporary employees.
  - (b) After the first four months of employment, a full time staff member shall accrue sick leave on a daily basis at the rate of 1.25 working days per month for the balance of the first year of service.
  - (c) After the first year of service, the staff member shall accrue sick leave on a daily basis at the rate of 15 working days per year of service.

- (2) Payment during the initial 3 months of employment with the Commission - Paid sick leave which may be granted to a staff member, in the first 3 months of employment shall be limited to 5 days paid sick leave, unless the Executive Director approves otherwise. Paid sick leave in excess of 5 days granted in the first 3 months of employment shall be supported by a satisfactory medical certificate.
- (3) Paid sick leave shall not be granted during a period of unpaid leave.
- (4) Any leave not taken is accumulated. Once sick leave with pay is exhausted, sick leave without pay may be granted.
- (5) Medical certificates must be provided for periods of sick leave in excess of 2 consecutive working days, taken on a strike day, consecutively with a public holiday and any time after giving notice of resignation or termination. If a staff member is required to provide evidence of illness for an absence of 2 consecutive working days or less, the Executive Director will advise them in advance.
- (6) A staff member may absent themselves for a total of 5 working days due to illness without the provision of evidence of illness/medical certificate to their Manager. Staff members who absent themselves in excess of 5 working days in a calendar year may be required to furnish evidence of illness to their manager for each occasion absent for the balance of the calendar year.
- (7) As a general practice backdated medical certificates will not be accepted. However if a staff member provides evidence of illness/medical certificate that only covers the latter part of the absence, they can be granted sick leave for the whole period if the manager is satisfied that the reason for the absence is genuine.
- (8) The granting of paid sick leave shall be subject to the staff member providing evidence which indicates the nature of illness or injury and the estimated duration of the absence. If a staff member is concerned about disclosing the nature of the illness to their manager they may elect to have the application for sick leave dealt with confidentially by an alternate manager or by the Human Resources Section.
- (9) If a staff member who is absent on recreation leave and/or extended leave, furnishes to their manager a satisfactory medical certificate in respect of an illness of five or more than five working days in duration, which occurred during the period of leave, their manager may, subject to the provisions of this clause, grant sick leave to the staff member.
- (10) Normal sick leave conditions, such as the requirement to furnish medical certificates pertain to sick leave without pay. Sick leave without pay will count as service for the accrual of paid sick leave and recreation leave otherwise it is treated similar to LWOP.

### **23. Special Leave**

- (1) Special leave is paid leave, which applies to activities regarded as for Commission purposes and which are not covered by other forms of leave. Examples of when special leave may be granted are:
  - (a) for jury service, subject to the provision of a certificate of attendance,
  - (b) where staff are subpoenaed or called as a witness by the State, Territory or Commonwealth,
  - (c) some trade union activities with the prior approval of the Commissioner,
  - (d) other instances determined by the Commissioner.

#### **23A. Leave for Matters Arising from Domestic Violence**

- (1) The definition of domestic violence is found in clause 2 of this award.
- (2) Leave entitlements provided for, Family and Community Service Leave, Sick Leave and Sick Leave to Care for a Family Member, may be used by staff members experiencing domestic violence.

- (3) Where the leave entitlements referred to in subclause 23.2 are exhausted, Department Heads shall grant Special Leave .
- (4) The Department Head 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.(5)Personal information concerning domestic violence will be kept confidential by the agency.
- (6) The Department Head, 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.

#### **24. Study. Time and Examination Leave**

- (1) The Commission encourages staff to undertake further study to enhance their skills and provides assistance in the form of study time and examination leave for approved part-time courses of study. An approved course is one that develops or enhances a staff member's skills and assists them to carry out their duties in the Commission.
- (2) Study Time - Is available for: attendance at lectures, tutorials, residential schools, field days etc, where these are held during working hours; necessary travel during working hours to attend lectures, tutorials etc., held during or outside working hours; and private study.
- (3) 30 minutes study time is granted for each hour of lecture and/or tutorial attendance, up to a maximum of four hours per week (inclusive of travel time). The grant is the same for correspondence courses for which time granted will be calculated on the basis of the equivalent face-to-face course.
- (4) Block periods of study time may be granted for the research and thesis component of higher degrees, qualifying studies for admission to higher degrees, or honours studies on the following basis:
  - (a) where a course at any level involves a thesis or major project as well as course work, the usual study time would be granted for the course work, and ten days study time for the thesis/major project component;
  - (b) for qualifying studies entirely by thesis the grant is 10 days;
  - (c) for masters degree studies by research and thesis only, the total grant is:
    - (i) 25 days for courses of 2 years minimum duration;
    - (ii) 35 days for courses of 3 years minimum duration.
  - (d) for doctoral studies, the total grant for the full duration of the course is 45 days.
- (5) Examination Leave - Up to 5 days per year is available for the time actually involved in attending an examination as well as necessary travelling time during working hours. It is not available where an examination is conducted within normal class timetables during the term/semester and study time has already been granted.

#### **25. Travelling Time Compensation**

- (1) Staff, except Surveillance Operatives, who undertake approved travel to a location other than the Commission's head office to perform their work, may be compensated for the travelling time involved if it is additional to their normal travel time to and/or from head office:
  - (a) Travel during bandwidth: is regarded as normal working hours, less normal travelling time.
  - (b) Travel outside bandwidth: is paid at the normal hourly rate, less normal travelling time.

- (c) Waiting time: will be paid, less one hour, unless overnight accommodation is involved.
- (2) Periods of travelling time of less than 15 minutes; where sleeping facilities are provided; and where staff stop travelling for meal breaks, are not eligible for compensation.
- (3) At the Executive Director's discretion, a staff member may be compensated for such time either by:
  - (a) Payment calculated at staff's current rate of pay with a maximum rate of the 1st Year Rate of ICAC Officer Grade 3; or
  - (b) If it is operationally convenient, by taking equivalent time off in lieu to be granted for excess time spent in travelling on official business. Such time in lieu must be taken within 1 month of accrual unless otherwise authorised by the staff member's manager.
- (4) Time in Lieu is Calculated at the Same Rate as Payment.

## **26. Overtime**

- (1) ICAC Officers Grade 1-6 - who are directed to work outside of the Flex Bandwidth shall be paid overtime at the rate of:
  - (a) Monday to Saturday
    - 150% (time and a half) for the first 2 hours and
    - 200% every hour thereafter.
  - (b) Sunday
    - 200% (double time)
  - (c) Public Holidays
    - (i) Monday to Friday:
      - 250% (double time and a half - includes normal salary rate) during bandwidth
      - 250% (double time and a half) after bandwidth
    - (ii) Saturday and Sunday:
      - 250% (double time and a half)
- (2) Overtime is paid at staff's current rate of pay up to a maximum rate of Grade 5, Level 5. A minimum of 3 hours payment will be paid for overtime worked on weekends and public holidays or when staff are called back to duty. Time in lieu may be granted instead of payment. Time in lieu is calculated at the same rate as payment.
- (3) A Meal Allowance may be paid when an expense is actually incurred in obtaining a meal and staff ceased work for at least 30 minutes before or during the period of overtime (meal breaks during overtime are not to be counted as overtime). The Meal Allowances rates are those set from time to time by the Australian Taxation Office as the reasonable limits for the payment of overtime meal allowances.
  - (a) Breakfast, when required to start work at or before 6 am
  - (b) Lunch, on any Saturday, Sunday or Public Holiday when required to start before or at 8.30 am and until 1.30 pm or later; or, at or after 8.30 am and until 2 pm or later
  - (c) Dinner, when required to work beyond 7.30 pm.

- (4) ICAC Officers Grade 7-8 - are not entitled to the payment of overtime. However, where, in the opinion of the staff member's manager, ICAC Officers Grade 7-8 work excessive additional hours, their manager may approve compensation of not more than 7 hours leave in lieu to be taken within three months of the leave being granted.
- (5) Investigations Staff Overtime Allowance - Investigators, Financial Investigators, Senior Investigators, Special Investigators (Financial and also Technical), Technical Operative, Surveillance Operatives and Surveillance Team Leader are paid an Overtime Allowance in lieu of overtime payments for overtime worked on weekdays. Overtime will be paid as per this clause for work on weekends and public holidays (including those which fall on weekdays). The allowance forms part of overall remuneration and is:
  - (a) Investigators/Financial Investigators/Surveillance Operatives 9.1%
  - (b) Senior Investigators/Special Financial/Technical Investigators/Surveillance Team Leader 8.7%

### **27. Performing Higher Duties**

- (1) Where staff are directed to perform the duties of a higher grade position, in addition to the experience gained performing those duties, an allowance will be paid in the circumstances described here.
- (2) The allowance will be calculated by the difference between staff member's current salary and the nearest salary point of the ICAC Officer Grade of the position being acted in. Payment of the allowance will be as follows:
  - (a) 10 working days or less - No payment
  - (b) 11 or more working days - 100% difference for the full period, except if the staff member does not undertake all the duties and responsibilities of the higher position, a percentage of the difference is paid as agreed between the staff member and his/her manager.

### **28. Allowances and Loadings**

- (1) Annual Leave Loading (ALL)
  - (a) Each year, in the first pay period in December, staff will be eligible to be paid an ALL of 17.5% of the monetary value of up to four weeks Annual Leave accrued in the prior period of 1 December to 30 November. New staff will be paid a pro-rata allowance based on Annual Leave accrued from their entry on duty to 30 November.
  - (b) The maximum rate at which ALL is calculated is the 5th Year rate of ICAC Officer Grade 7. ALL is not paid on resignation or dismissal but is paid on retirement and redundancy.

#### (2) Associate's Allowance

Staff trained to be Associates will receive the allowance referred to in Schedule 2 of this Award. The allowance will be paid fortnightly to Associates for recognition of annual training and being available to work as an Associate. A daily sitting fee will also be paid for each day of hearings. The allowance will be increased in line with the salary increases prescribed in this Award.

#### (3) Community Language Allowance

Staff appointed as language aides under the Community Language Allowance Scheme (CLAS) will be paid the allowance referred to in Schedule 2 of this Award. An annual review of whether the payment of the allowance is still applicable will occur on the anniversary of receiving the allowance. The allowance will be increased in line with the salary increases prescribed in this Award.

(4) First Aid Allowance

- (a) Staff appointed as First Aid Officers will be paid the allowances appearing in Schedule 2 of this Award. These allowances will increase in line with the salary increases prescribed in this Award. The First Aid Allowance shall not be paid during extended leave or any other continuous period of leave which exceeds one week.
- (b) When the First Aid Officer is absent on leave for more than one week and another qualified staff member is selected to relieve in the First Aid Officer's position, such staff members shall be paid a pro rata first aid allowance for assuming the duties of a First Aid Officer.

(5) Incidents Allowance

A 12.2% Incidents Allowance is payable to Surveillance Officers and Surveillance Team Leader in compensation for change of shift; alteration of bandwidth; shift allowance; on-call allowance for days rostered off; and, on-call allowance for days rostered days on.

(6) Travel Allowances - Accommodation, Meals and Incidentals

- (a) The parties agree that the arrangements for travel and meal allowances provided in this clause are to apply to ICAC staff only and do not constitute a precedent for any other department or agency.
- (b) Staff who undertake approved travel to perform their work are entitled to payment of a Travel Allowance to cover costs of accommodation, meals and incidentals, where such expenses are reasonably and necessarily incurred. The Allowance rates are those set from time to time by the Australian Taxation Office as the reasonable limits for the payment of these allowances. The Commission, rather than the staff member, will book and pay for the accommodation in lieu of paying an allowance to the staff member unless it is not conducive to the conduct of a particular investigation.
- (c) When it is necessary for a staff member to make his/her own arrangements for accommodation, where practicable, he/she shall obtain prior approval for such arrangements and the Commission may elect to pay the provider directly. Surveillance Operatives are exempt from this rule and would have their own policy.
- (d) Travel involving an overnight stay when accommodation is provided free of charge, a daily allowance for incidentals as set by the Australian Taxation Office will be paid.
- (e) For travel involving no overnight stay no meal allowance will be paid. Surveillance Operatives are excluded from this clause and have their own policy regarding the payment of meal allowances for one day journeys. If an exception is made by the Commissioner or his/her delegate due to operational considerations, then meals only may be paid at the rate set from time to time by the Australian Taxation Office.
  - (i) Breakfast, when required to commence travel at or before 6.00 am
  - (ii) Lunch when required to travel a total distance on the day of at least 100 kilometres and, as a result, is located at a distance of at least 50 kilometres from the Commission's office at the time of taking the normal lunch break
  - (iii) Dinner, when required to travel after 7.30 pm.
- (f) Overseas Travel will be at the rate specified from time to time by the Australian Taxation Office as the reasonable limit.

(7) Motor Car allowances

- (a) Where ICAC motor cars are not available, there is no convenient public transport and a car is necessary, approval may be given to staff to use their own motor car for official business. The allowance rates are determined by the Department of Premier and Cabinet. Current allowances appear in Schedule 2 of this Award.
- (b) Where other transport is available but staff elect and the ICAC authorises, staff may use their own car. The specified journey rate applies up to the cost of the public transport alternative.

**29. Investigators, Surveillance Officers and Technical Services Officers**

- (1) An investigator, financial investigator, senior investigator, special investigator (financial), education, training and project officer, special investigator (technical), surveillance operative, the surveillance team leader and the technical operative employed by the ICAC at the time of making this award shall retain all entitlements under the award.
- (2) The parties agree to consider the role and work of investigators, financial investigators, senior investigators, special investigators (financial) special investigator (technical), surveillance operatives, the surveillance team leader and technical operatives and the manner of their remuneration.

**30. Secure Employment Test Case - WHS Obligations**

- (1) For the purposes of this clause, the following definitions shall apply:
  - (a) 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.
  - (b) 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.
- (2) If the employer engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises, the employer shall do the following (either directly, or through the agency of the labour hire or contract business).
  - (a) consult with employees of the labour hire business and/or contract business regarding the work health and safety consultative arrangements;
  - (b) 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.
  - (c) 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
  - (d) 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.
- (3) Nothing in this clause 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*.

- (4) 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 procedures of this Award.

- (5) This clause has no application in respect to 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.

### **31. Grievance and Dispute Resolution**

- (1) These procedures are separate to the ICAC Grievance Policy for matters not related to this Award.
- (2) 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.
- (3) A staff member or persons engaged under clause 30 may notify verbally or in writing their immediate supervisor, manager, grievance officer or union, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- (4) The immediate 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.
- (5) If the matter remains unresolved with the immediate manager, the staff member or persons engaged under clause 30 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 Commissioner.
- (6) If the matter remains unresolved, the Commissioner 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.
- (7) A staff member, at any stage, may request to be represented by their union.
- (8) The staff member, or persons engaged under clause 30 or the union on their behalf, or the Commission may refer the matter to the New South Wales Industrial Relations Commission or another appropriate external agency if the matter is unresolved following the use of these procedures.
- (9) The staff member, union, and the Independent Commission Against Corruption shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.

### **32. 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 2018 by a party to this Award.

### **33. Anti-Discrimination**

- (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, pregnancy or potential pregnancy, disability, homosexuality or other sexual orientation, transgender identity, age, carer's or family responsibilities.

- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award that, by its terms or operation, has a direct or indirect discriminatory effect.
- (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.
- (4) Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti- discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (5) 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."

### **34. Salary Packaging**

The Commission supports the provision of salary packaging for non-SES staff. The range of items and the terms of salary packaging is in accordance with the Department of Premier and Cabinet's Guidelines and are set out in the ICAC Salary Sacrificing Info page located on the ICAC's Intranet.

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

- (a) This Award applies to all employees permanently, casually or temporarily employed under the ICAC Act. The Award does not apply to the ICAC Executive.
- (b) This Award rescinds and replaces the Independent Commission Against Corruption Award published 24 June 2016 (379 I.G. 809) from 1 July 2017 and shall remain in force until 30 June 2018.

**SCHEDULE 1 - ICAC OFFICER CLASSIFICATION SALARY RATES**

ICAC GRADE	FFPP 1.7.17 \$
1A	52,941 54,105 55,970 57,373 58,770
1B	59,706 61,332 63,199 64,833 66,468
1C	66,232 67,864 69,730 71,362 73,693
2	75,096 76,728 78,827 81,389 83,260
3	85,590 87,920 89,788 92,584 94,918
4	97,017 99,349 102,384 105,180 107,984
5	110,073 112,639 115,907 119,638 122,437
6	123,136 126,865 129,438 132,700 136,901
7	135,034 137,129 139,464 141,562 146,925
8	143,896 147,858 151,589 155,319 159,281

## SCHEDULE 2 - ALLOWANCE RATES

(1) Associate's Allowance, Community Language Allowance Scheme and First Aid Allowance

Allowance	FFP 1.7.17 \$
Associate's Allowance subclause 28(2)	
- Total allowance payable in 12 month financial period not to exceed	6,342 pa
- 50% allowance payable to approved staff members on basis of training and availability	3,170 pa
- Daily Rate	79.25 pd
Community Language Allowance Scheme subclause 28(3)	1,379 pa
Alarm Allowance	4,319pa
First Aid Allowance (Senior)	1,334 pa
First Aid Officer Allowance subclause 28(4)	888 pa

(2) Overtime Meal Allowances - subclause 26(3)

Allowances will equal the ATO reasonable limits as set from time to time and as adopted by the ICAC.

(3) Travel Allowances - subclause 28(6)

(a) Involving an overnight stay

Allowances will equal the ATO reasonable limits as set from time to time and as adopted by the ICAC.

(b) Travel of at least 100 kms from head office and involving no overnight stay and approved for reasons relating to operational necessity.

Meals only may be paid at the rate set by the ATO from time to time and as adopted by the ICAC, provided that if there is no set rate, then payment of actuals as per the current policy will be made.

(4) Motor Car Allowances - subclause 28(7)

(a) Official business rate set in line with ATO rates and in future, will vary in line with ATO rates.

(b) Specified journey rate will be 40% of official business rate.

(5) Casual Employees: Persons employed on a casual basis will receive:

(a) Loadings of

(i) 15% for Mondays to Fridays

(ii) 50% for Saturdays

(iii) 75% for Sundays

(iv) 150% for Public Holidays

(b) An additional payment of 1/12th in lieu of annual leave

- (c) Minimum period of engagement of 3 hours
- (d) Maximum period of engagement of 9 hours (excluding meal breaks) without the payment of overtime
- (e) Overtime is paid at the overtime rates set out in clause 26 and based on the ordinary hourly rate plus 15% loading.

### **SCHEDULE 3 - CASUAL EMPLOYEES' ENTITLEMENTS**

(1) Casual employees are entitled to unpaid parental leave under Chapter 2, Part 4, 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 Commission must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (i) the employee or employee's spouse is pregnant; or
  - (ii) the employee is or has been immediately absent on parental leave.

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

(2) Personal Carers entitlement for casual employees

- (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (3) 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 Commissioner and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) The Commissioner must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (d) The casual employee shall, if required,
  - (i) 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
  - (ii) 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 employee.

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

- (e) The casual employee 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 employee will inform the employer within 24 hours of the absence.

(3) A family member for the purposes of (2) (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 of 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.

(4) Bereavement entitlements for casual employees

- (a) Casual employees 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 Commissioner and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) The Commissioner must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (d) The casual employee 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 employee will inform the employer within 24 hours of the absence.

P. KITE, Chief Commissioner

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