

CROWN EMPLOYEES (STATE EMERGENCY SERVICE) STATE OPERATIONS CENTRE - CONTINUOUS SHIFT WORKERS AWARD 2017

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by State Emergency Service.

(Case No. 335609 of 2017)

Before Chief Commissioner Kite

1 December 2017

AWARD

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Clause No. Subject Matter

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MONETARY RATES

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2. Title

This award shall be known as the Crown Employees (State Emergency Service) State Operations Centre - Continuous Shift Workers Award 2017.

3. Definitions

Act means the *Government Sector Employment Act 2013*.

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

Award means an award as defined in the *Industrial Relations Act 1996*.

Commissioner means - the Commissioner of the State Emergency Service.

Director means - the Head of a State Emergency Service Directorate.

Casual Employee means any employee engaged in terms of Division 5, Section 43 of the *Government Sector Employment Act 2013* and any guidelines issued thereof or as amended from time to time.

"Industrial Relations Secretary" means the Secretary of the Treasury who is the employer for industrial purposes under the provision of Part 4, *Government Sector Employment Act 2013*.

Full-time employee means an employee whose ordinary hours of duty are specified as such in a formal industrial instrument or whose contract hours are equivalent to the full-time contract hours of 35 hours.

On Duty means the time required to be worked for the Service.

Ordinary Hourly Rate of Pay means the hourly rate equivalent of the annual rate of pay of the classification calculated using the formula set out in clause 12.3.1, Casual Employment, of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009.

Overtime means all time worked, whether before or after the ordinary rostered hours of duty, at the direction of the Director, which, due to its character or special circumstances, cannot be performed during the employees ordinary hours of duty.

Part-time employee means an employee whose ordinary hours of duty are specified as part-time in a formal industrial instrument or whose contract hours are less than the full-time hours.

Public Holiday means a day proclaimed under the *Public Holidays Act 2010* or the *Retail Trading Act 2008*, as a bank or a public holiday.

Service means the NSW State Emergency Service.

Shift Cycle Change means a change from a day shift to a night shift or a night shift to a day shift.

Shift Worker - Continuous Shifts means an employee engaged in work carried out in continuous shifts throughout the 24 hours of each of at least six consecutive days without interruption except during breakdown or meal breaks or due to unavoidable causes beyond the control of the Director.

4. Application

This award was negotiated between the State Emergency Service, the Industrial Relations Secretary and the Public Service Association.

5. Coverage

The provisions of this award shall apply to ongoing, temporary and casual employees (both full-time and part-time), as defined in the *Government Sector Employment Act 2013* who are employed by the State Emergency Service and appointed to roles in the State Operations Centre (formerly known as the Communications Centre or ComCen) classified as Communications Officer, Team Leader, and Duty Operations Officer, and who work continuous shift work.

6. Salaries

- (a) Salaries payable to employees covered by this Award shall be in accordance with the Crown Employees (Public Sector - Salaries 2017) Award or any variation or replacement award.
- (b) Salary Progression shall be by way of annual increment, according to the requirements in the Government Sector Employment Regulation 2014, Division 2, Section 14.

7. Rostering and Shift Arrangements

- (a) The Operations Centre operates on a 24 hours per day, 7 days per week basis across the year.
- (b) Full Time Employees will work the equivalent of 35 hours per week over a roster period.
- (c) Rosters covering a minimum of 5 weeks, and up to a maximum of 16 weeks are to be published with as much notice as possible, but in any case a minimum 2 (two) weeks in advance before commencement of the roster.
- (d) Each roster shall indicate the starting and finishing time of each shift. Where current or proposed shift arrangements are incompatible with the shift worker's family, religious or community responsibilities, every effort to negotiate individual alternative arrangements shall be made by the Director.
- (e) Shifts will generally commence at:

Day Shift 06:30 - 19:00

Night Shift 18:30 - 07:00
- (f) Shifts will be a maximum of 12.5 hours and will be predominantly based on a combination of forward rotating day and night shifts, except where flexible work options are requested and approved, or where operational needs can be demonstrated to require a different attendance mix.
- (g) Shifts of a shorter length will continue in use to provide training and development to employees as well as a means for balancing employees' hours to an average of 35 per week in the roster cycle.
- (h) Where current or proposed shift arrangements are incompatible with the shift worker's family, religious or community responsibilities, every effort to negotiate individual alternative arrangements shall be made by the Director. Where requests are being considered, or where an operational need exists for alternative rostering, agreement will not be unreasonably withheld.
- (i) It is acknowledged that operational needs may require alternative approaches to rostering and the parties commit to undertake consultation should different needs arise.
- (j) Nothing in this award is intended to circumvent subsection (1) of Section 22, Maximum ordinary hours of employment of the NSW *Industrial Relations Act 1996*.

8. Shift Work

- (a) Shift Loadings - A shift worker employed on a shift shall be paid, for work performed during the ordinary hours of any such shift, ordinary rates plus the following additional shift loadings depending on the commencing times of shifts:

Day - at or after 6am and before 10am	5% shift loading applies to a minimum 7 hour shift
Afternoon - at or after 10am and before 4pm	12.5%
Night - at or after 4pm and before 6am	15.0%

- (b) The loadings specified in subclause (a) of this clause shall only apply to shifts where the majority of the shift occurs on a weekday, Monday to Friday.
- (c) Weekends and Public Holidays - For the purpose of this clause any shift, the major portion of which is worked on a Saturday, Sunday or Public Holiday shall be deemed to have been worked on a Saturday, Sunday or Public Holiday and shall be paid as such.
- (d) Saturday Shifts - Shift workers working on an ordinary rostered shift where the majority of that shift falls between midnight on Friday and midnight on Saturday which is not a public holiday, shall be paid for such shifts at ordinary time and one half.
- (e) Sunday Shifts - Shift workers working on an ordinary rostered shift where the majority of that shift between midnight on Saturday and midnight on Sunday which is not a public holiday, shall be paid for such shifts at ordinary time and three quarters.
- (f) Public Holidays -
 - (1) Where a shift worker is required to and does work the majority of shift on a Public Holiday, the shift worker shall be paid at two and a half times the rate for the whole shift worked. Such payment shall be in lieu of weekend or shift allowances which would have been payable if the day had not been a Public Holiday;
 - (2) A shift worker rostered off duty on a Public Holiday, or who does not work the majority of a shift on a Public Holiday shall elect to be paid one day's pay for that Public Holiday or to have 7 (seven) hours added to his/her annual holidays for each such day;
- (g) Annual leave - will accrue at the rate of four weeks per year for a full time staff member, that is, 140 hours plus their normal rest days.
- (h) Additional leave - will accrue for a full time staff member on the following basis:

Number of ordinary shifts worked where the majority of that shift occurs on Sunday and/or public holiday during a qualifying period of 12 months from 1 December one year to 30 November the next year	Additional leave
4-10	1 additional day
11-17	2 additional day
18-24	3 additional day
25-31	4 additional day
32 or more	5 additional day

9. Maximum Hours

- (a) The maximum hours to be worked in a day or a week (7 days) should not exceed the following, other than in emergency circumstances, or other negotiated circumstances
 - (1) Maximum of 4 consecutive shifts;
 - (2) Maximum of 3 consecutive night shifts;
 - (3) Maximum 50 hours rostered per week.

10. Meal Breaks

- (a) During a 12.5 (twelve and a half) hour shift, staff members as a minimum must take at least one unpaid meal break of 30 minutes, one paid meal break of 30 minutes plus two paid breaks totalling 30 minutes. The 30 minute unpaid meal break must be taken not later than five hours after commencing work.
- (b) Meal breaks must be given to and taken by staff members. No staff member shall be required to work continuously for more than 5 hours without a meal break.

11. Breaks Between Shifts and Shift Cycle Changes

- (a) Breaks between shifts should not be less than 11.5 consecutive hours.
- (b) There should be a minimum of 2 (two) days (48 hours) off between shift cycle changes other than in emergency or operational circumstances..
- (c) In emergencies where a shift worker needs to remain on duty after a shift, the minimum break between shifts should never be less than 10 (ten) hours and should be compensated as soon as possible with a longer break.
- (d) If a shift worker resumes or continues to work without having had ten (10) consecutive hours off duty, the shift worker shall be paid overtime in accordance with clause 89, Overtime Worked by Shift Workers, in the Crown Employees (Public Service Conditions of Employment) Award 2009, until released from duty for ten (10) consecutive hours. The shift worker will then be entitled to be off duty for at least ten (10) consecutive hours without loss of pay for ordinary working time which falls during such absence.
- (e) Time spent off duty may be calculated by determining the amount of time elapsed after:
 - (1) The completion of an ordinary rostered shift; or
 - (2) The completion of authorised overtime; or
 - (3) The completion of additional travelling time, if travelling on duty, but shall not include time spent travelling to and from the workplace.

12. Daylight Saving

For work performed which spans the time of introduction or cessation of a system of daylight saving as prescribed by relevant State legislation, a shift worker shall be paid according to the actual hours worked. Rostering arrangements will ensure that at least the minimum working hours are maintained.

13. Alteration to Hours of Work

- (a) Rosters once determined and made available may be altered by:
 - (1) The Service by giving two week's notice of the requirement to change the arrangements of hours or the shift roster under normal circumstances; or
 - (2) By mutual agreement between the Service and the shift worker.
- (b) The Service reserves the right to change shift rosters in accordance with operational imperatives.
- (c) Provided that where the Service receives a significant concern about the alteration to the shift worker's family, religious or community responsibilities, every effort to negotiate individual alternative arrangements shall be made by the Service.

14. Requirement to Work Additional Hours

- (a) The Commissioner may require a staff member to perform duty beyond the hours determined under this award but only if it is reasonable for the staff member to be required to do so.
- (b) A staff member may refuse to work additional hours in circumstances where the working of such hours would result in the staff member working unreasonable hours.
- (c) In determining what is unreasonable, the following factors shall be taken into account:
 - (1) the staff member's prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements,
 - (2) any risk to staff member health and safety,
 - (3) the urgency of the work required to be performed during additional hours, the impact on the operational commitments of the organisation and the effect on client services,
 - (4) the notice (if any) given by the Commissioner or delegated authority regarding the working of the additional hours, and by the staff member of their intention to refuse the working of additional hours, or
 - (5) any other relevant matter

15. Exchange of Shifts

- (a) Exchange of shifts will be allowed for special reasons provided the change does not result in excessive daily or weekly hours for any shift worker.
- (b) An exchange of shifts should not occur if it results in overtime being payable or if it results in hours that creates fatigue management issues.
- (c) All requests for shift exchange by employees are to be submitted in writing to the most senior officer on duty.

16. Hearing and Eye Sight Testing

- (a) Employees will be required to undergo hearing and eye sight testing prior to commencing employment.
- (b) Any further tests will be conducted in accordance with medical advice or at the request of the employee or the Manager Operations.

17. Higher Duties Shift

Operations staff members, when required to provide relief in a higher level position for the whole shift or a minimum of two hours of the shift, will be compensated by way of Higher Duties Allowance at the rate of salary for the higher position plus any applicable allowances for the whole shift.

18. Work Health and Safety

The Service is committed to the safety and welfare of staff and will consider Work Health and Safety issues in planning rosters and working arrangements, in compliance with its WHS, fatigue management policies.

19. Representation

Shift workers are to be adequately represented on any committees with a consultative or decision making function regarding their work. If they attend relevant meetings outside shift arrangements they will be considered at work and rosters are to be adjusted accordingly.

20. Anti-Discrimination

- (a) It is the intention of the parties bound by this Award to seek to achieve the objective 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.
- (b) It follows that in fulfilling their obligations the parties have an obligation to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award, which, by its terms or operation, has a direct or indirect discriminatory effect.
- (c) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimize an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (d) Nothing in this clause is to be taken to affect:
 - (1) Any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (2) Offering or providing junior rates of pay to persons under 21 years of age;
 - (3) Any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (4) A party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (e) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.
 - (1) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
 - (2) Section 56 (d) of the *Anti-Discrimination Act 1977* provides: "Nothing in the Act affects....any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to religious susceptibilities of the adherents of that religion."

21. Grievance and Dispute Settling 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 Agency, 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 Commissioner or delegate.
- (d) The immediate manager, or other appropriate officer, should 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 Commissioner.

- (f) The Commissioner may refer the matter to the Industrial Relations Secretary for consideration.
- (g) If the matter remains unresolved, the Commissioner 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 Commissioner may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- (j) The employee, Association, and the Agency 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 (i) to (x) of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties, 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.

22. Conditions Fixed By Other Instruments of Employment

Conditions of employment for employees shall be in accordance with the provisions of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 except where varied by this Award.

The provisions of this Award are to apply to part-time employees on a pro-rata basis.

23. Existing Entitlements

The provisions of this award shall not affect any entitlements existing in another award which covers Service staff other than specified in clause 23 of this award.

24. Area, Incidence and Duration

- (a) This Award rescinds and replaces the Crown Employees (NSW State Emergency Service) Communication Centre - Continuous Shift Workers Award, and all variations thereof.
- (b) This Award was made on 1 December 2017 and shall remain in force for twelve months.
- (c) The provisions of this award shall apply to employees as described in clause 5 Coverage of this Award.

25. No Extra Claims

The parties agree that, during the term of this award, there will be no extra wage claims, claims for improved conditions of employment or demands made with respect to the employees covered by the award and, further, that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the Industrial Relations Commission or any other industrial tribunal. The terms of the preceding paragraph do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing award provisions.

PART B

MONETARY RATES

Table 1 - Salary Schedule

State Operations Centre employees will be paid in accordance with the Crown Employees (Public Sector - Salaries 2017) Award as varied or an award replacing it.

Classifications and Grades	Common Salary Point	1.7.17 Per annum +2.5% \$
Duty Operations Officers Clerk Grade 7/8		
1st year of service	88	92,470
2nd year of service	91	95,235
3rd year of service	95	99,204
Thereafter	98	102,359
State Operations Centre Team Leader, Clerk Grade 3/4		
1st year of service	58	68,929
2nd year of service	61	71,008
3rd year of service	64	73,224
Thereafter	67	75,476
State Operations Centre Communications Officers, Clerk Grade 1/2		
1st year of service	46	61,658
2nd year of service	49	63,469
3rd year of service	52	65,240
Thereafter	55	67,031

P. KITE, Chief Commissioner

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