

CROWN EMPLOYEES (LAW ENFORCEMENT CONDUCT COMMISSION) AWARD 2018

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Law Enforcement Conduct Commission.

(Case No. 266856 of 2018)

Before Chief Commissioner Kite

19 September 2018

AWARD

Clause No. Subject Matter

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PART A

1. Title of the Award

This Award shall be known as the Crown Employees (Law Enforcement Conduct Commission) Award 2018.

2. Definitions

- 2.1 "Act" means the *Government Sector Employment Act 2013*.
- 2.2 "Association/Union" means the Public Service Association and the Professional Officers' Association Amalgamated Union of New South Wales.
- 2.3 "Chief Executive Officer" means the Chief Executive Officer of the Law Enforcement Conduct Commission.

2.4 "LECC" means the Law Enforcement Conduct Commission.

3. Statement of Intent

3.1 This Award documents the conditions of employment and the rights and obligations of management and staff that will help to achieve this objective.

3.2 The parties agree to progress the interests of the organisation and its staff through consultation, in line with the Premier's Consultative Guidelines of July 1997.

4. Salaries

4.1 Salaries payable to employees covered by this Award shall be in accordance with the Crown Employees (Public Sector - Salaries 2018) Award or any award replacing it.

4.2 Salaries will be paid in accordance with the following classification structures in the Crown Employees (Public Sector - Salaries 2018) Award:

(a) Crown Employees (Administrative and Clerical Officers - Salaries) Award 2007 for employees engaged in non-legal roles;

(b) Crown Employees - Legal Officers (Crown Solicitors Office, Office of Legal Aid Commission, Office of Director of Public Prosecutions and Parliamentary Counsel's Office) Reviewed Award 2012 for employees engaged in legal roles.

4.3 Wage increases granted to public service employees under the Crown Employees (Public Sector - Salaries 2018) Award and its successor/s will apply to non-executive employees of the Law Enforcement Conduct Commission.

5. Savings of Rights

5.1 At the time of the establishment of the LECC, no member of staff previously employed by the Police Integrity Commission or in the Police and Compliance Branch of the Ombudsman's Office will suffer a reduction in their "rate of pay" as a consequence of commencing employment at the LECC in a role with an equivalent classification level and with a substantially similar pattern of work.

5.2 Where such an employee receives a higher salary than provided for by this Award, that salary will be preserved and not increased until such time as the "salary payable pursuant to clause 4" of this Award reaches parity with the preserved salary.

5.3 For the purpose of clauses 5.1 and 5.2 above:

(a) The term "rate of pay" for Police Integrity Commission employees is that established in Part 5 of the Police Integrity Commission, Conditions of Employment Section 52 (1) Determination NO 1/2015 (as at 1 January 2017), being a composite salary absorbing the matters set out in clause 3.3 of that Determination.

(b) The term "salary payable pursuant to clause 4" means the salaries paid pursuant to clause 4 of this Award plus any allowance provided by Table 1 of this Award.

6. Conditions of Employment

6.1 The conditions of employment as set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or any award replacing it shall apply to employees covered by this Award.

- 6.2 In the case of any inconsistency the terms of this Award shall prevail over the terms of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009.

7. Flexible Working Hours Scheme (FWHS)

The LECC operates under a Flexible Working Hours Scheme as follows

- 7.1 Purpose - to improve organisational performance and to provide the Executive and employees with flexibility in arranging working hours. Flexible working arrangements recognise the importance of a work/life balance for employees and their needs and responsibilities outside of work.
- 7.2 Principles - In order that staffing levels are sufficient to meet operational requirements and performance standards, Executive 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 LECC.
 - (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 or ADO.
 - (e) The employer will give due consideration to a request by an employee to access flexibility and flexible working arrangements, and where reasonably practicable, will grant such request.
- 7.3 The provisions of this clause shall apply to part-time staff on a pro rata basis except for in respect of the accrual and use of credit hours. For example, part-time workers will accrue an hour of flex credit for each hour worked in excess of their ordinary hours.
- 7.4 Surveillance operatives including technical surveillance operatives and Electronic Surveillance monitoring staff, in lieu of flexible working hours, are provided with ten (10) accrued days off (ADOs) per annum. ADOs accrue on a monthly basis at the rate of 0.833 of a day per month. In the case of Electronic Surveillance monitoring staff ADOs will accrue on the basis of the standard 10 hour working day in the shift arrangement outlined in clause 9.2 of this Award. Where ADOs accrue to 5 days, the supervisor and staff member shall develop a strategy to ensure the number of days accrued is reduced within 3 months. Accrued ADOs are paid out on termination of employment.
- 7.5 Ordinary hours of work - 7 hours/day, 35 hours/week, Monday to Friday.
- 7.6 Commission's daily hours of business - 8.30 am to 5.00 pm.
- 7.7 Daily period in which work is to be performed (bandwidth):
- (a) For employees employed in the Electronic Collections Unit as Monitor 3/4 and Operations Systems Officer 9/10 (including employees acting in the role of Operations Systems Officer 9/10 on a temporary basis) - 7.00 am to 7.00 pm;
 - (b) Surveillance operatives, including technical surveillance operatives will have a nominal bandwidth of 7.00 am to 7.00 pm, however, the hours and bandwidth worked must necessarily be flexible due to the specialist nature of these roles;
 - (c) For all other employees - 7.30 am to 7.00 pm. Employees will not be rostered to finish their shifts later than 6pm.

The bandwidth may be varied with the agreement of staff and their supervisor to meet LECC or staff needs.

- 7.8 Minimum hours to be worked each day - 5 hours. Minimum hours may be varied temporarily by agreement of the staff member and their Divisional Senior Executive in exceptional circumstances.
- 7.9 Maximum hours to be worked each day - 10 hours, unless agreed otherwise.
- 7.10 Meal break - The standard lunch period shall be 1 hour. With the approval of the supervisor, the lunch period may be extended by the employee up to 2 and 1/2 hours or reduced to not less than 30 minutes.
- 7.11 Flex Period - 140 hours (4 weeks), which are the contract hours for full-time employees.
- 7.12 Maximum Flex Leave that can be taken in any financial year - 26 days (182 hours).
- 7.13 Carry over debit at end of Flex Period - up to 10.5 hours. Debits in excess of 10.5 hours must be offset by an application for Annual Leave.
- 7.14 Maximum Flex Leave that can be taken in a Flex Period - 28 hours. Staff are expected to take Flex Leave either as 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.
- 7.15 Where working hours in excess of 14 hours of credit are accrued, the supervisor and staff member shall develop a strategy to ensure the excess is reduced to 14 hours in the current and/or next settlement period.
- 7.16 Flex Record - staff must maintain current and accurate records of their working hours on the LECC's flex sheet system. Data from the flex sheet records will be analysed from time to time.
- 7.17 Where a staff member has accrued 8 weeks recreation leave (that is, 40 days or more), unless otherwise authorised by their Divisional Senior Executive, flex leave can only be taken in situations where at least one day of annual 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 available.

8. Flexible Work Arrangements (FWA)

- 8.1 This Award aims to provide assistance to staff in balancing their personal and work commitments. This enables the LECC 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. The employer will give due consideration to a request by an employee to access flexibility and flexible working arrangements, and where reasonably practicable, will grant such request.
- 8.2 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 reducing 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 manager. The

documented security policies and procedures relating to this provision must be adhered to at all times.

- 8.3 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.

9. Hours of Work

- 9.1 Part time employees work the pro rata equivalent of the minimum standard hours attached to their respective roles.
- 9.2 Electronic surveillance monitor staff work 280 hours per 8 week cycle on a 365 day per year rotating shift arrangement consisting of 4 x 10 hour days on shift followed by 4 days off shift.

10. Overtime

- 10.1 Staff listed below shall be paid an allowance in lieu of overtime payments for overtime worked on weekdays, weekends and public holidays:
- (a) Manager Investigations (Integrity Division)
 - (b) Investigations Officer (Integrity Division)
 - (c) Investigator (Integrity Division)
 - (d) Financial Investigator (Integrity Division)
 - (e) Senior Investigator (Integrity Division)
 - (f) Senior Technical Operative (Integrity Division)
 - (g) Technical Operative (Integrity Division)
 - (h) Surveillance Operative (Integrity Division)
 - (i) Surveillance Team Leader (Integrity Division)
 - (j) Critical Incidents Operatives (Oversight Division)

The allowance forms part of the overall remuneration and is set out in Table 1 of this Award.

- 10.2 All other non-executive staff shall be paid overtime in accordance with the provisions of the Crown Employees (Public Service Conditions of Employment) Reviewed Award or its replacement.

11. Recall to Duty

- 11.1 This clause does not apply to employees paid an overtime allowance in lieu of overtime payments. For all other employees:
- (a) An employee recalled to duty after leaving the LECC premises shall be paid for a minimum of three (3) hours work at the appropriate overtime rates.
 - (b) The employee shall not be required to work the full three (3) hours if the job can be completed within a shorter period.
 - (c) When an employee returns to the place of work on a number of occasions in the same day and the first or subsequent minimum pay period overlap into the next call out period, payment shall be calculated from the commencement of the first recall until either the end of duty or three (3)

hours from the commencement of the last recall, whichever is the greater. Such time shall be calculated as one continuous period.

- (d) When an employee returns to the place of work on a second or subsequent occasion and a period of three (3) hours has elapsed since the employee was last recalled, overtime shall only be paid for the actual time worked in the first and subsequent periods with the minimum payment provision only being applied to the last recall on the day.
- (e) A recall to duty commences when the employee starts the additional period of work and terminates when the work is completed. A recall to duty does not include time spent travelling to and from the place at which work is to be undertaken.
- (f) An employee recalled to duty within three (3) hours of the commencement of usual hours of duty shall be paid at the appropriate overtime rate from the time of recall to the time of commencement of such normal work.
- (g) This clause shall not apply in cases where it is customary for an employee to return to the LECC's premises to perform a specific job outside the employee's ordinary hours of duty, or where overtime is continuous with the completion or commencement of ordinary hours of duty. Overtime worked in these circumstances shall not attract the minimum payment of three (3) hours unless the actual time worked is three (3) or more hours.

12. On-Call (Stand-By) and On-Call Allowance

This clause does not apply to employees paid a composite allowance. For all other employees:

A LECC employee shall be entitled to be paid the on-call allowance set out in Table 1 of this Award when directed by the LECC to be on call or on stand-by for a possible recall to duty outside the employee's working hours.

- (a) if an employee who is on call and is called out by the LECC, the overtime provisions as set out at clause 10, Overtime, shall apply to the time worked,
- (b) where work problems are resolved without travel to the place of work whether on a weekday, weekend or public holiday, work performed shall be compensated at ordinary time for the time actually worked, calculated to the next 15 minutes.

13. Overtime Meal Breaks

- 13.1 Employee working flexible hours - an employee required to work overtime on weekdays beyond the end of their bandwidth as defined at subclause 7.7 above and until or beyond eight and a half hours after commencing duty plus the time taken for lunch, shall be allowed 30 minutes for a meal break and thereafter, 30 minutes for a meal break after every five hours of overtime worked. Overtime is not paid in respect of the time taken for a meal break, however, employees will receive a meal allowance in accordance with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009, where that Award so provides.
- 13.2 Employees generally - an employee required to work overtime on a Saturday, Sunday or Public Holiday, shall be allowed 30 minutes for a meal after every five hours of overtime worked. An employee who is unable to take a meal break and who works for more than five hours shall be given a meal break at the earliest opportunity. Overtime is not paid in respect of the time taken for a meal break, however, employees will receive a meal allowance in accordance with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009, where that Award so provides.

14. Provision of Transport in Conjunction with Working Overtime

- 14.1 For the purpose of this clause, departure or arrival after 8.00 p.m. will determine whether the provisions of this clause apply. Departure or arrival after 8.00 p.m. of an employee on overtime does not in itself warrant the provision of transport. It needs to be demonstrated that the normal means of transport, public

or otherwise, is not reasonably available and/or that travel by such means of transport places the safety of the employee at risk.

- 14.2 The responsibility of deciding whether the provision of assistance with transport is warranted in the circumstances set out above rests with the relevant LECC Unit manager.
- 14.3 Where overtime is required to be performed, it should be arranged, as far as is reasonably possible, so that the employee can use public transport or other normal means of transport to and from work.
- 14.4 Where an employee ceases overtime duty after 8.00 p.m. and public transport or other normal means of transport is not reasonably available, arrangements may be made for transport home or to be provided by way of taxi.

15. Above-Level Allowance

- 15.1 Where employees are temporarily assigned or seconded to a higher grade position for a period of at least 5 days, in addition to the experience gained performing those duties, an above-level allowance will be paid.
- 15.2 The allowance will be calculated as the difference between the employee's current salary and the nearest salary point of the classification of the position temporarily assigned to.

16. Other Allowances

16.1 Composite allowance

A Composite Allowance is paid to staff in compensation for shift work; changes in shift; alteration of bandwidth; on-call allowances for days rostered off; on-call allowances for days rostered on; and public holidays.

Where specified in Table 1 the composite allowance includes overtime worked on weekdays and weekends.

The composite allowance is set out in Part B, Table 1 of this Award.

16.2 On-Call allowance

An on-call allowance is paid to staff in compensation for being on-call for days rostered off; and on-call for days rostered on.

The on-call allowance is set out in Table 1 of Part B of this Award. This allowance will increase in line with increases in the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009.

16.3 Community language allowance scheme

Staff appointed as language aides under the Community Language Allowance Scheme (CLAS) will be paid the allowance referred to in the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009. The allowance will be increased in line with the salary increases prescribed in that Award. The rate set out in Table 2 of Part B will apply from the first full pay period commencing after 1 July 2018.

An annual review of whether the payment of the allowance is still applicable will occur on the anniversary of receiving the allowance.

16.4 First Aid allowance

Staff appointed as First Aid Officers will be paid the allowances referred to in the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009. The allowance will be increased in

line with the salary increases prescribed in that Award. The rate set out in Table 2 will apply from the first full pay period commencing after 1 July 2018.

The First Aid Allowance shall not be paid during extended leave or any other continuous period of leave which exceeds one week. 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.

16.5 Operational Safety Trainer Allowance

The Operational Safety Trainer Allowance is payable to a nominated Operational Safety Trained officer who is trained and/or qualified to provide operational safety training to other officers of the LECC.

17. Grievance and Dispute Settling Procedures

- 17.1 All grievances and disputes relating to the provisions of this award shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within the Agency, if required.
- 17.2 An employee is required to notify in writing their immediate manager, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- 17.3 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti-Discrimination Act 1977*) that makes it impractical for the employee to advise their immediate manager the notification may occur to the next appropriate level of management, including where required, to the Chief Commissioner or delegate.
- 17.4 The immediate manager, or other appropriate employee, 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.
- 17.5 If the matter remains unresolved with the immediate manager, the employee may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two (2) working days, or as soon as practicable. The employee may pursue the sequence of reference to successive levels of management until the matter is referred to the Chief Executive Officer.
- 17.6 The Chief Executive Officer may refer the matter to the Chief Commissioner for consideration.
- 17.7 If the matter remains unresolved, the Chief Executive Officer 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.
- 17.8 An employee, at any stage, may request to be represented by the Association.
- 17.9 The employee or the Association on their behalf or the Chief Commissioner may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- 17.10 The employee, Association, Agency and Chief Commissioner shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- 17.11 Whilst the procedures outlined in 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.

18. Anti-Discrimination

- 18.1 It is the intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination of the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 18.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of the obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 18.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 18.4 Nothing in this clause is to be taken to affect:
- (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,
- 18.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by 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 this Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

19. Area, Incidence and Duration

- 19.1 The provisions of this award shall apply to all non-executive public service employees as defined in the *Government Sector Employment Act 2013* employed in the Law Enforcement Conduct Commission.
- 19.2 This award will be operative from 1 July 2018 and will remain in force until 30 June 2019.

20. No Extra Claims

- 20.1 The No Extra Claims clause (clause 8) contained in the Crown Employees (Public Sector - Salaries 2018) Award shall apply to employees covered by this award.

PART B

Table of Associates

Table 1

| Allowance | Classification entitled to allowance | FFP 1.7.18 |
|--|--|-----------------|
| Composite allowance (does not cover public holiday shift loadings or overtime) | Electronic surveillance monitoring staff | 22% |
| Composite allowance (includes overtime) | Critical Incident Operative, Surveillance Team Leader, Surveillance Operative, Senior Technical Surveillance Operative, Technical Surveillance Operative | 22% |
| Composite allowance (includes overtime) (Integrity Division only) | Manager Investigations, Senior Investigator, Investigator, Investigations Officer, Senior Financial Investigator | 12.0% |
| Composite allowance (includes overtime) | Systems Administrator ECU, Senior Technical Operative ECU, Technical Operative ECU | 9.0% |
| On-call allowance | Security staff, ICT staff | \$1.10 per hour |
| On-call allowance (stand by) | Other staff as required | \$0.98 per hour |

Table 2

| Allowance | FFP 1.7.18 |
|---|---------------|
| Operational Safety Trainer | \$5,000 pa |
| Community language - base level rate | \$1,413 pa |
| Community language - higher level rate | \$2,124 pa |
| First aid - holders of basic qualifications | \$910.01 pa |
| First aid - holders of current occupational first aid certificate | \$1,367.35 pa |

P. M. KITE, *Chief Commissioner*

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