

CROWN EMPLOYEES (TIPSTAVES TO JUSTICES) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(Case No. 2019/135312)

Before Chief Commissioner Kite

13 August 2019

REVIEWED AWARD

Arrangement

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APPENDIX B

PART A

1. Title

This award shall be known as Crown Employees (Tipstaves to Justices) Award.

2. Definitions

- 2.1 "Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.
- 2.2 "Employee" means a person employed as a tipstaff.
- 2.3 "Department" means the Department of In this Award, the term "employer" may be used in lieu of "Department" or "Department Head" Communities and Justice (Courts, Tribunals and Services Delivery).
- 2.4 "Service" means continuous service both before and after the commencement of this award as a tipstaff to any Justice of the Supreme Court of New South Wales or the Industrial Relations Commission of New South Wales, or the Land and Environment Court of New South Wales, or as a tipstaff to any Judge of the District Court of New South Wales or the Compensation Court of New South Wales; provided that future entrants shall be deemed to have the years of service indicated by the salary at which they enter.
- 2.5 "Uniform" means a frock coat for court work as provided.
- 2.6 "Domestic Leave" means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.
- 2.7 "Secretary" means the Industrial Relations Secretary

3. Salaries

The rates of pay of employees shall be set by the Crown Employees (Public Sector – Salaries 2019) Award, or any award replacing it. They are duplicated at Table 1 of Part B, Monetary Rates of this award.

4. Recreation Leave

4.1 Accrual and Calculation of Leave -

- (a) Recreation leave accrues at one and two third days per completed month of service, up to a maximum of 20 days per year. Recreation leave does not accrue in respect of unauthorised absences or in respect of authorised periods of leave without pay which, when aggregated, exceed five working days in a leave year unless such leave is taken during Law Vacation - see clause 4.4 Law Vacation below.
- (b) The minimum unit of leave is a quarter of a day and leave may be taken in multiples of a quarter day. Recreation leave entitlements should be balanced at least once per year. When calculating recreation leave, fractions other than an exact quarter day should be rounded off to the nearest quarter day or multiple thereof.
- (c) When calculating the proportionate deduction to be made in respect of leave without pay, fractions other than a quarter day or multiple thereof, should be rounded off to the next lower quarter day or multiple thereof.

4.2 Taking of Leave -

- (a) Recreation leave is to be taken in one consecutive period not later than six months after the completion of each 12 months service, except where the employer and employee agree otherwise.

- (b) An employee may be required by the employer to take accrued recreation leave at a time convenient to the employer but, as far as practicable, the wishes of the employee should be taken into account when fixing the time for the taking of leave, particularly where employees have special needs due to family responsibilities. For example, where employees have school aged children, leave rosters should be arranged in such a way as to allow each person to take leave at some time during school holidays.

4.3 Conservation of Leave -

- (a) Conservation of leave up to a maximum of 40 working days may be permitted by the employer in exceptional circumstances and on the understanding that the leave will be reduced to an acceptable level as soon as possible.
- (b) An employee must take their recreation leave to reduce all balance below 8 weeks, or its hourly equivalent, and the employer must cooperate in this process. The employer may direct an employee with more than 8 weeks to take their recreation leave so that it is reduced to below 8 weeks by school term one 2010.

4.4 Law Vacation -

- (a) Where a court or tribunal or other judicial body is temporarily closed or reduced to a nucleus for the purposes of annual holidays (law vacation), an employee who has not accrued sufficient recreation leave to cover the whole period of such closure or reduction of staff, will be required to take recreation leave to credit followed by leave without pay for the balance of the period.
- (b) Employees who are required to take leave without pay during law vacation are to be paid for all public holidays occurring during such leave. This period of leave without pay is also to count for the accrual of recreation leave in the following year.

4.5 Payment on Termination of Employment -

- (a) On termination of employment, an employee is entitled to be paid the monetary value of recreation leave to credit.
- (b) For the purposes of calculation of leave on termination, credit is to be allowed for periods of employment of less than a month. Leave due is to be calculated to an exact quarter day. Where applicable, fractions other than an exact quarter day are to be taken to the next higher quarter day.
- (c) Where an employee has been granted recreation leave in advance, the employer may deduct the value of such leave from any remuneration due to the employee on termination of employment.

4.6 Payment of Monetary Value of Accrued Recreation Leave on Death -

- (a) If an employee dies, the monetary value of accrued leave for which payment has not already been made, may be applied towards the payment of funeral expenses or may be paid to the employee's next of kin or to the Estate.
- (b) Where the funeral expenses have not been paid or have been paid by a person other than the person making the claim for payment of untaken recreation leave, approval may be sought from the Minister to direct that the funeral expenses form the first charge on the monetary value of leave. Payment may be made directly to the funeral director or to the person who paid the funeral expenses, subject to production of receipts.
- (c) Any balance of the monetary value of recreation leave should then be paid to the employee's next of kin or to the Estate as specified in the next clause.
- (d) If no claim for payment of funeral expenses is made, the monetary value of leave is to be paid in the following order (each class taking to the exclusion of the others):

- (1) to the widow or widower of the employee; or
- (2) to the children of the employee; or
- (3) to the dependent relatives of the employee; or
- (4) to the personal representative of the employee (that is the Estate)

4.7 Recreation Leave Loading -

- (a) Employees are to be granted a recreation leave loading equivalent to 17.5 per cent of four weeks' ordinary salary or wages, provided that the loading payable does not, in any case, exceed the loading calculated in accordance with the foregoing on the maximum salary applicable from time to time to Grade 12, Clerk under the Crown Employees (Public Sector – Salaries 2019) Award.
- (b) There shall be a leave loading year ending 30 November, in every year. The full entitlement to the loading on recreation leave that the employee has accrued over the previous leave year is to be paid to the employee on the first occasion when he or she takes sufficient recreation leave to enable the employee to be absent from duty for at least two consecutive weeks after 1 December in any year. The loading will apply only to leave accrued in the year ending on the preceding 30 November.
- (c) Leave and salary records need to be endorsed to indicate that the leave loading for the previous leave loading year has been paid.
- (d) In the event of no such absence occurring by 30 November of the following year, the employee is to be paid the monetary value of the recreation leave loading payable on leave accrued as at 30 November of the previous leave year, notwithstanding that the employee has not entered on leave. Leave and salary records need to be endorsed to indicate that the payment has been made.
- (e) On retirement or termination of services by the employer for any reason other than misconduct an employee, who has not already taken a period of recreation leave since the preceding 1 December and who has not been paid the recreation leave loading in respect of such leave, is to be paid the recreation leave loading which would have been payable had such leave been taken.
- (f) The recreation leave loading is not to be paid when an employee is granted recreation leave to credit or the monetary value of recreation leave to credit on resignation or dismissal for misconduct.
- (g) Broken service during the year does not attract the recreation leave loading. If an employee resigns and is subsequently re-employed during the same year, only the service from the date of re-employment is to be taken into account for annual leave loading purposes.
- (h) Rate of Payment -
 - (1) The recreation leave loading is to be calculated on the salary or wage rate paid for the leave when taken.
 - (2) If an increase in the salary or wage rate occurs during a period of leave, retrospective adjustment of the recreation leave loading is to be made. Where payment is made as at 30 November, because no period of two weeks' leave has been taken during the year, the payment is to be calculated at the rate which would have been paid had the leave been taken at 30 November.
 - (3) Provided adequate notice is given, the recreation leave loading is to be paid prior to entry on leave, generally at the same time as the salary or wages in respect of the period of leave.
 - (4) The recreation leave loading may be calculated in the following manner:

- (i) Annual Salaries; loading on 4 weeks leave; divide the annual salary by 74.54.
- (ii) Weekly Rates; loading on 4 weeks leave; divide the weekly rate by 1.4286.

5. Purchased Leave

- 5.1 An employee may apply to enter into an agreement with the employer to purchase either 10 days (2 weeks) or 20 days (4 weeks) additional leave in a 12 month period.
- (a) Each application will be considered subject to operational requirements and personal needs and will take into account the employer's business needs and work demands.
 - (b) The leave must be taken in the 12 month period specified in the Purchased Leave Agreement and will not attract any leave loading.
 - (c) The leave will count as service for all purposes.
- 5.2 The purchased leave will be funded through the reduction in the employee's ordinary rate of pay.
- (a) Purchased leave rate of pay means the rate of pay an employee receives when their ordinary salary rate has been reduced to cover the cost of purchased leave.
 - (b) To calculate the purchased leave rate of pay, the employee's ordinary salary rate will be reduced by the number of weeks of purchased leave and then annualised at a pro rata rate over the 12 month period.
- 5.3 Purchased leave is subject to the following provisions:
- (a) The purchased leave cannot be accrued and will be refunded where it has not been taken in the 12 month period.
 - (b) Other leave taken during the 12 month purchased leave agreement period i.e. sick leave, recreation leave, extended leave or leave in lieu will be paid at the purchased leave rate of pay.
 - (c) Sick leave cannot be taken during a period of purchased leave.
 - (d) The purchased leave rate of pay will be the salary for all purposes including superannuation and shift loadings.
 - (e) Overtime and salary related allowances not paid during periods of recreation leave will be calculated using the employee's hourly rate based on the ordinary rate of pay.
 - (f) Allowance for Temporary Assignment will not be paid when a period of purchased leave is taken.
- 5.4 Specific conditions governing purchased leave may be amended from time to time by the Director of Public Employee in consultation with the Association. The employer may make adjustments relating to their salary administration arrangements.

6. Extended Leave

- 6.1 Employees are entitled to extended leave in accordance with the Government Sector Employment Regulation 2014.
- 6.2 Employees who are required to take leave without pay as a result of the law vacation shall have such periods counted as service for the purposes of extended leave.

7. Sick Leave

7.1 Accrual of Leave -

- (a) Subject to the conditions set out in this clause, an employee with not less than three months' continuous service may be granted sick leave up to a maximum of ten working days in each sick leave year in respect of absence from duty, provided the employer is satisfied that such absence is due to illness or incapacity not attributable to the employee's misconduct.
- (b) For those who commenced employment prior to 1 July 1986, a sick leave year shall commence on the first day of January each year. In the first year of service, however, where the employee has completed at least three months' of continuous service, sick leave shall accrue on the following basis:-
 - (1) Where employment commenced after 31 December and prior to 1 April: 10 days
 - (2) Where employment commenced after 31 March and prior to 1 July: 7.5 days
 - (3) Where employment commenced after 30 June and prior to 1 October: 5 days
 - (4) Where employment commenced after 30 September and prior to 1 January: 2.5 days
- (c) For those who commenced employment after 1 July, 1986, the following sick leave provisions apply:
 - (1) during the first 12 months of employment:
 - first 3 months of continuous service: no leave
 - 3 to 6 months of continuous service: 5 days
 - 6 to 9 months continuous service: 7.5 days
 - 9 to 12 months of continuous service: 10 days
 - (2) on completion of 12 months' service; 10 days sick leave will be available per year from the anniversary of commencement of employment.
- (d) Re-employment in the same leave year - Where an employee is re-employed in the same leave year, sick leave entitlement in respect of that year is not to exceed ten working days or the sick leave that the employee would have been entitled to had employment during the year been continuous from the date of first employment in that year, whichever is the lesser.
- (e) Previous accumulation - An employee who was employed as such on 1 January 1970 is to be credited with the sick leave accumulated as at that date. In respect of a partially completed year of service as at 31 December 1969, accumulation under the said paragraph 6.1(b) is to be calculated by allowing half a day for each completed month of service.
- (f) Accumulation from 1 January 1970 - Effective from 1 January 1970, all sick leave not utilised during the leave year, accumulates and may be used during subsequent service as required in respect of genuine absences due to illness or incapacity.
- (g) Service - Except as provided in paragraph 7.1(d) above and in the Continuity of Service section hereunder, previous periods of employment are not to be taken into account for sick leave purposes.

7.2 Special Leave for Accepted War-Caused Disabilities - After a continuous period of at least three months' service as a Ministerial employee, an employee who has had a period of service with the armed forces of Australia, is eligible to be granted up to ten days' special sick leave on full pay in any sick

leave year in addition to his or her ordinary sick leave, if he or she is absent as a result of an accepted war-caused disability. Absences from duty for the following reasons are also to be debited against the special sick leave:

- (a) attending hospital or medical officer for pension review;
- (b) attending hospital to report or for periodical examination or attention; and;
- (c) attending Limb Factories for supply, renewal and or repair of artificial replacements or surgical appliances.

7.3 When an employee exhausts the special sick leave allocation in a leave year, any further absences in that year on account of war-caused disabilities, are to be charged against ordinary sick leave to credit.

7.4 Notification of Absence - If an employee is to be absent from duty because of illness or other emergency, the employee shall notify or arrange for another person to notify the supervisor as soon as possible of the employee's absence and the reason for the absence.

7.5 Leave Pending Determination of Claims for Workers Compensation -

- (a) Pending the determination of a claim for workers compensation, an employee may be granted sick leave to credit. If subsequently, payment of workers' compensation is approved, any sick leave granted in anticipation of workers' compensation is to be restored to the employee's credit.
- (b) When an employee who has been absent from duty in excess of 26 weeks, is granted the statutory rate under workers' compensation, he or she may utilise available sick leave to make up the difference between the statutory rate and ordinary rate of weekly salary or wage. On the expiration of available sick leave, weekly compensation payments only will be payable.

7.6 Leave as a Charge Against Accrued Recreation Leave, Long Service Leave or Leave Without Pay.

An employee who has exhausted sick leave to credit and is still unable to resume duty through illness or incapacity, may elect to utilise any recreation, long service leave to credit or sick leave without pay, provided the absence continues to be supported by acceptable medical certificates.

7.7 Illness whilst on Recreation or Long Service Leave -

- (a) Where an employee produces a satisfactory medical certificate to the effect that he or she has been incapacitated for any period whilst on recreation leave or for a week or more whilst on long service leave, the employee may be granted sick leave to credit in respect of the period covered by the medical certificate. Recreation or long service leave replaced by the grant of sick leave is to be re credited to the employee.
- (b) The granting of sick leave shall not apply in respect of recreation or long service leave being taken prior to resignation or termination of services.

7.8 Medical Certificates - An employee absent on account of illness for any period shall submit a medical certificate showing the nature of the illness, if called upon by the employer to do so.

8. Public Holidays

8.1 The following public holidays shall be paid for provided they occur on days which ordinarily would be working days for the employees concerned: New Year's Day; Australia Day; Good Friday; Easter Saturday; Easter Monday; Anzac Day; Queen's Birthday; Labor Day; Christmas Day; Boxing Day and such other holidays as may be proclaimed as public holidays throughout the State but not proclaimed local holidays.

8.2 An employee who is absent from work on the working day before or the working day after a Public Holiday without reasonable excuse or without the approval of an appropriate senior person, for example

supervisor at the place of employment, shall not be entitled to payment for such holiday. When work is not carried on right up to the holiday or resumed immediately after a holiday, as at Christmas and New Year, payment for the holiday shall be granted if the employee works up to the time of general stoppage and resumes when the work recommences.

- 8.3 If the holiday falls on a weekend, no additional payment shall be made unless the employee is required to work on that day.
- 8.4 When a holiday occurs during the first month in which an employee is absent through illness, such an employee is to receive pay for the day at the rate of wages paid immediately before the absence commenced.
- 8.5 Where any of the abovementioned public holidays fall within a period of leave granted to an employee, such holidays shall not be a charge against such leave except where leave being taken is long service leave.
- 8.6 An employee who is entitled to be paid for public holidays, shall be paid in full for any such holidays occurring during a period of absence in respect of which workers compensation payments are being made.

9. Leave for Special Purposes

- 9.1 Bereavement Leave -
 - (a) An employee other than a casual employee shall be entitled to up to three days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in 9.1(c) below.
 - (b) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
 - (c) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of Personal/Carer's Leave in 9.11(a)(3) provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
 - (d) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
 - (e) Bereavement leave may be taken in conjunction with other leave available under subclause 9.11. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the court.
- 9.2 Attending Retirement Preparation Seminars - An employee may be granted one day's special leave (with pay) for the purpose of attending a retirement preparation seminar conducted by a recognised Superannuation Fund.
- 9.3 National Aborigines and Torres Strait Islander Day - Employees who identify as Aborigines or Torres Strait Islander may be granted up to one day's special leave to enable them to participate in the celebrations of NAIDOC week each year.
- 9.4 Jury Service - An employee who is called up for jury duty may elect to be granted:
 - (a) special leave with pay to cover the time necessarily absent from work, subject to the employee refunding to the employer any fees, less out-of-pocket expenses, paid by the Court in respect of attendance for jury duty; or

- (b) leave without pay or as a charge against recreation leave to credit, in which case the employee is entitled to retain all fees paid by the Court in respect of attendance for jury duty.

9.5 Firefighting or Assisting the State Emergency Services -

- (a) An employee who undertakes firefighting duties during declared emergencies is to be granted special leave on full pay for the time the employee is required to be absent from duty on such emergency firefighting activities.
- (b) An employee who is a volunteer member of a local Fire Brigade or Rural Fire Service may be granted special leave on full pay to a maximum of five days per year to cover necessary absences from duty when called upon to fight fires during normal working hours.
- (c) An employee, who volunteers to assist the State Emergency Services or Rural Fire Service during emergency operations and is released by the employer for that purpose, is to be regarded as being on duty whilst engaged in these activities during normal working hours and paid as if he or she has been carrying out normal work. Where an employee remains on emergency duty for several days and, as a result, experiences physical distress, such employee may be allowed reasonable time for rest before returning to normal duties.

9.6 Absences due to adverse weather conditions - Employees whose life or property is being threatened by adverse weather conditions or where they are prevented from reporting for duty by fire, flood or snow, are eligible to be granted leave to cover their absence from duty.

9.7 Naturalisation Ceremonies - An employee who is to be naturalised may be granted time off, without loss of pay, for the minimum time necessary to enable him or her to prepare for and attend the ceremony.

9.8 Leave to attend Trade Union Training Courses - Leave may be granted up to a maximum of 12 working days in any period of two years to employees who are members of the union to attend short training courses or seminars conducted by or with the support of the Trade Union Training Australia, subject to the following conditions:

- (a) that the employer's operating requirements permit the grant of leave and the employee's absence does not require the employment of relief staff;
- (b) leave of absence will be granted at ordinary pay, that is, payment is not to include shift allowances, penalty rates or overtime;
- (c) leave granted will count as service for all purposes;
- (d) expenses associated with attendance at such courses or seminars, for example fares, accommodation, meal costs, will be met by the employee concerned, but subject to the maximum prescribed above, leave may include travelling time required during working hours to attend such courses or seminars;
- (e) applications for leave must be accompanied by a statement from the union that it has nominated the employee concerned for such course or seminar or that it supports his or her application.

9.9 Leave for employees holding office in Local Government -

- (a) Holders of the office of Mayor of a Municipality, President of a Shire or Chairman of a County Council may be granted special leave with pay for the purpose of attending meetings, conferences or performing other council work which cannot be carried out outside of ordinary working hours.
- (b) Whilst the quantum of leave to be granted is to be determined by the employer, absences requiring time off during normal working hours should be kept to a minimum.

- (c) Where the employer is not prepared to grant special leave with pay, the employee may be granted leave as a charge against available recreation leave or leave without pay.

9.10 English Language Tuition Leave -

- (a) Employees of non-English speaking background who are unable to adequately communicate in the English language, shall be granted time off without loss of pay to attend English Language Classes conducted by the employer or any other recognised statutory authority, for example the Adult Migrant English Service.
- (b) The type, duration and extent of courses conducted by the employer shall be developed in consultation with the Adult Migrant English Service or other recognised authority.

9.11 Personal/Carer's Leave -

(a) Use of Sick Leave -

- (1) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph 9.11(a)(3) shall be entitled to use, in accordance with this subclause, any sick leave accruing from 1 January 1998 in terms of clause 6 Sick Leave, for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.
- (2) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (3) The entitlement to use sick leave in accordance with this subclause is subject to:
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being:
 - (A) a spouse of the employee; or
 - (B) a de facto spouse, who, in relation to the employee, is a person of the opposite sex to the employee who lives with the employee as the husband or wife of the employee on a bona fide domestic basis although not legally married to that person; 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 employee or the spouse or de facto spouse of the employee; or
 - (D) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
 - (E) a relative of the employee who is a member of the same household, where for the purposes of this subclause:

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

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

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

- (b) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of the absence.
- (c) Unpaid Leave for Family Purpose - An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph 9.11(a)(3) of this clause who is ill.
- (d) Recreation Leave -
 - (1) An employee may elect, with the consent of the employer, subject to the provisions of clause 4 Recreation Leave, to take recreation leave not exceeding five days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
 - (2) Access to recreation leave, as prescribed in subparagraph 9.11(d)(1) of this subclause, shall be exclusive of any Law Vacation period provided for elsewhere under this award.
 - (3) Where applicable, an employee and employer may agree to defer payment of recreation leave loading in respect of single day absences, until at least five consecutive recreation leave days are taken.

9A. Leave for Matters Arising from Domestic Violence

- 9A.1 The definition of domestic violence is found in subclause 2.5, of clause 2 Definitions of this award;
- 9A.2 Leave entitlements provided for in clause 7 Sick Leave and subclause 9.11, Personal Carers Leave, may be used by employees experiencing domestic violence;
- 9A.3 Where the leave entitlements referred to in subclause 9A.2 are exhausted, the employer shall grant up to five days Special Leave per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations;
- 9A.4 The employer 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;
- 9A.5 Personal information concerning domestic violence will be kept confidential by the Department;
- 9A.6 The employer, 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.

10. Military Leave

- 10.1 Annual Grant - In the period of 12 months commencing on 1 July each year, employees who are part-time members of the Defence Forces' Reserves are entitled to be granted military leave on the following basis:
 - (a) Annual Training for members of the:
 - Navy Reserve - 13 calendar days on full pay.
 - Army Reserve - 14 calendar days on full pay.
 - Air Force Reserve - 16 calendar days on full pay.

- (b) Attendance at a School, Class or Course of Instruction by members of the:

Navy Reserve - 13 calendar days on full pay.

Army Reserve - 14 calendar days on full pay.

Air Force Reserve - 16 calendar days on full pay.

Leave provided for in this subclause also applies to attendances in a teaching capacity.

- (c) Additional Grant - Where the Commanding Officer certifies in writing that it is obligatory for the employee to attend training for a period that exceeds the leave normally available, the employer may grant further military leave not exceeding four calendar days in any one military leave year. If the additional 4 calendar days are insufficient to cover the excess, then the employer may grant leave as a charge against recreation or long service leave to credit or as leave without pay.
- (d) Alternative Arrangements - Whilst every effort should be made to release an employee from work at the time requested, military leave may be refused if it is not in the public interest to grant the leave at the time applied for. In such cases, the leave is to be granted later in the military leave year to enable the employee to attend an equivalent annual camp, school, class or course of instruction.
- (e) Payment for Military Leave - Payment of wages in respect of periods of military leave is additional to any payments that the employee receives from the Defence Force Reserves.

10.2 Medical Examinations - Special leave up to a maximum of one day may be granted for the time necessary to attend a medical examination or tests for acceptance as a part-time member of the Defence Force Reserves, subject to production of evidence of attendance.

10.2.1 Casual Employees - A casual employee required to undertake part-time military training may be granted leave on the same basis as applies to other employees, provided the period does not exceed the period in which he or she would normally have been employed by the current employer.

11. Study Time

11.1 Purpose - Study time is granted for the following purposes:

- (a) attendance at compulsory lectures, tutorials or residential schools, where these are held during working hours;
- (b) necessary travelling during working hours to attend lectures or tutorials held during or outside working hours;
- (c) weekly private study;
- (d) to provide a period of time off prior to or during the examination period for private study purposes as an alternative to weekly study time.

11.2 Courses Eligible for Study Time - Courses for which study time is granted must meet at least one criteria in each of the subclauses below:

- (a) lead to a recognised qualification; or
- be a TAFE special course; or
- be a bridging or qualifying course; or

be an incidental subject which forms part of a course for which study time would be available, where the incidental subject is of relevance to the employer or the public sector.

- (b) be administered by a public institution;
be accredited by the Department of Education and Training; or
lead to membership of a registered professional organisation.
- (c) be able to be taken on a part-time basis. Study time does not apply to a course that is organised essentially for full time students or which, in later stages, requires full-time attendance.

11.3 More Than One Course Studied at the One Time -

- (a) Study time may be granted for more than one course at the same time, provided that the two courses together result in a part-time load and the attendance pattern is convenient to the employer.
- (b) Regardless of the number of courses studied at one time, the maximum grant remains four hours per week, as outlined in subclause 10.4 below.

11.4 Calculation of Study Time Grant -

- (a) Half an hour is granted for every hour of class attendance required, up to a maximum grant of four hours per week and in respect of correspondence courses, by allowing half an hour for every hour of tutorial or lecture attendance in a corresponding face to face course.
- (b) Where there are block attendance requirements or field days, the grant is calculated by:
Step 1: totalling the attendance requirement, in hours, for the semester;
Step 2: dividing this amount by two;
Step 3: dividing this by the number of weeks in the semester that lectures are held;
Step 4: this amount, or 4 hours, whichever is the lesser, is the weekly amount granted.

11.5 Additional Leave -

- (a) Where the grant in subclause 10.4 above is insufficient to cover essential absences, the necessary extra should be granted. Additional leave which, together with leave granted under 10.4 above, totals 4 hours or less does not have to be made up. Leave of more than 4 hours per week must be made up.
- (b) Study time granted in excess of 4 hours may be made up either in advance or in retrospect.

11.6 Study Time in Excess of Four Hours Per Week - Study time granted in excess of four hours per week may be made up either in advance or in retrospect but always in accordance with the arrangement negotiated, in advance, between the employer and employee.

When such an arrangement is being negotiated, the following factors should be considered:

- (a) nature of the duties;
- (b) needs of the workplace;
- (c) whether additional leave granted can be made up before the next grant; and
- (d) use of other forms of leave to offset the additional study time where making it up is impractical.

11.7 When Study Time is Postponed or Not Granted.

- (a) Study time is not to be granted in respect of any classes not attended or when an employee is absent on any other form of leave.
- (b) Study time is an expendable grant. It is lost if not taken at the nominated time but, if an emergency situation arises and the employee is asked by the employer to forego their normal study time, such time may be granted on another day during the same week.

11.8 Power to Grant or Refuse - The grant of study time is subject to the relevance of the course and employer convenience. The employer has the power to grant, and to refuse, study time and the actual study time arrangement must be negotiated between the employee and the employer.

11.9 Repeated Subjects -

- (a) Study time is not available for repeated subjects unless evidence can be provided that failure to successfully complete the subject at first attempt was caused by circumstances outside the employee's control.
- (b) An employee attending, during working hours, repeat subjects for which study time has not been granted, must make up all time taken off in attending those subjects.

11.10 Accumulation - Subject to employer's convenience:

- (a) employees may choose to accumulate part or all of their study time;
- (b) accumulated study time may be taken in any pattern or at any time.

11.11 Compulsory Residential Schools - Correspondence students may accumulate their study time as outlined in subclause 10.10 above in order to cover any compulsory residential schools.

11.12 Block Grants -

- (a) Some courses require substantial block attendance to allow students to undertake compulsory practical work experience.
- (b) A block grant may be made, either in addition to or instead of study time accumulating under 10.11 above, if the employer is satisfied that:
 - (1) block attendance is compulsory;
 - (2) the usual study time grant is inadequate; and
 - (3) the course is of significant value and therefore warrants a different kind of grant.

11.13 Maximum Periods of Block Grants - Block periods of study time may be granted as follows:

- (a) up to 10 days study time may be granted in addition to the grant outlined in subclause 10.5 above;
- (b) up to 20 days study time may be granted instead of the grant outlined in subclause 10.6 above.

11.14 Study Time Granted for the Whole Course - In some circumstances it may be more appropriate to grant an amount of study time for the whole course. Such study time can then be taken according to the needs of the employee and employer's convenience. In cases of this type, the average yearly study time taken should not be more than 10 days, if taken in accordance with 10.13(a) above or 20 days, if taken in accordance with 10.13(b) above.

11.15 Courses Involving Research and Thesis - Block periods of study time may be granted to staff in relation to the research and thesis component of:

- (a) higher degrees;
- (b) qualifying studies to higher degrees; or
- (c) Honours studies.

11.16 Grant of Block Periods in Respect of Courses Involving Research and Thesis - These block periods may be granted on the following basis:

- (a) where a course at any level involves a thesis or major project as well as coursework, the usual study time would be granted for the coursework and 10 days study time for the thesis or 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 25 days for courses of 2 years' minimum duration and 35 days for courses of 3 years' minimum duration.
- (d) for doctoral studies, the total grant for the course is 45 days.

11.17 Monitoring Study Time - Employers should ensure that:

- (a) employees granted study time have completed their enrolments;
- (b) employees are continuing with the course for which study leave has been granted;
- (c) where there is a choice of times for attendance, the actual attendance pattern is convenient to the employer as well as the employee; and
- (d) additional study time, in excess of four hours per week, is made up.

11.18 The Application Process - Employees who wish to apply for study time should formally notify the employer as soon as possible. Where study time has been granted, employees should give the employer reasonable notice of the program for each year or semester and their proposed pattern of leave. This will allow any negotiations to be completed before the academic year or semester begins.

11.19 Refusal of Study Time Applications - Where an employer decides to refuse an application for study time, he or she should ensure that:

- (a) timely advice is given to the applicant to allow consideration of alternatives;
- (b) counselling is available to applicants to consider alternatives;
- (c) reasons for refusal are clearly and promptly stated, in writing, to the applicant;
- (d) an internal review process or grievance procedure is available should the employee wish a review of the decision.

If subsequently the decision not to grant study time is overturned, the employer may grant study time retrospectively.

11.20 Examination Leave -

- (a) Paid leave, up to a maximum of 5 working days per year, may be granted in respect of attendance at examinations in approved courses of study. Examination leave is available to both face to face and correspondence students.

- (b) The period granted is to include time actually involved in the examination and necessary travelling time. Examination leave is not to be granted in respect of any examinations conducted within normal class timetable during the term or semester, and where study time has been granted to the candidate.

12. Parental Leave

Parental leave includes maternity, adoption and "other parent" leave.

12.1 Maternity leave shall apply to an employee who is pregnant and, subject to this clause the employee 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) An employee who has been granted maternity leave and whose child is stillborn may elect to take available sick leave instead of maternity leave.

12.2 Adoption leave shall apply to an employee adopting a child and who will be the primary care giver, the employee 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 employer may determine, if the child has commenced school at the date of the taking of custody.
- (c) Special Adoption Leave - An employee 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.

12.3 Where maternity or adoption leave does not apply, "other parent" leave is available to male and female employees 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 employee 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.

12.4 An employee taking maternity or adoption leave is entitled to payment at the ordinary rate of pay for a period of up to 14 weeks, an employee 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 employee:

- (a) Applied for parental leave within the time and in the manner determined set out in subclause 12.1 of this clause; and
- (b) Prior to the commencement of parental leave, completed not less than 40 weeks' continuous service.
 - (1) Continuous service is defined as full or part-time but not casual service, within the NSW Public Service or within a State or governmental organisation proclaimed as such under the *Government Sector Employment Act 2014*.

- (c) Payment for the maternity, adoption or short other parent leave may be made as follows:
 - (1) in advance as a lump sum; or
 - (2) fortnightly as normal; or
 - (3) fortnightly at half pay; or
 - (4) a combination of full-pay and half pay.

- 12.5 Payment for parental leave is at the rate applicable when the leave is taken. An employee holding a full time role 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.

- 12.6 An employee 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 employee 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 employee has not reduced their hours.

- 12.7 Calculation of increments and leave credits:
 - (a) Increments - any period of paid parental leave (at full or half-pay) shall count as full service for the purposes of determining incremental progression. However, unpaid parental leave shall not count as service for determining incremental progression.
 - (b) Leave credits -
 - (1) Parental leave at full pay shall count as full service for the purposes of determining all forms of leave.
 - (2) Parental leave at half pay is paid leave that is being taken at a reduced rate of pay and shall accrue all other leave at half the rate.
 - (3) Unpaid parental leave shall not count as service for determining any form of leave entitlement except for extended leave in cases where at least 10 years of service has been completed and the unpaid parental leave does not exceed 6 months.

- 12.8 Except as provided in subclauses 12.4, 12.5 and 12.6 of this clause, parental leave shall be granted without pay.

- 12.9 Right to request
 - (a) An employee who has been granted parental leave in accordance with subclause 12.1, 12.2 or 12.3 may make a request to the employer to:

- (1) extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (2) 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 employee in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

12.10 Notification Requirements

- (a) When the employer is made aware that an employee or their spouse is pregnant or is adopting a child, the employer must inform the employee of their entitlements and their obligations under the Award.
- (b) An employee who wishes to take parental leave must notify the employer in writing at least 8 weeks (or as soon as practicable) before the expected commencement of parental leave:
 - (1) that she/he intends to take parental leave, and
 - (2) the expected date of birth or the expected date of placement, and
 - (3) if she/he is likely to make a request under subclause 12.9.
- (c) At least 4 weeks before an employee's expected date of commencing parental leave they must advise:
 - (1) the date on which the parental leave is intended to start, and
 - (2) the period of leave to be taken.
- (d) Employee's request and the employer's decision to be in writing

The employee's request under 12.9(a)(1) and the employer's decision made under 12.9(a)(2) must be recorded in writing.
- (e) An employee 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 employer 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 employer agrees.
- (f) An employee on maternity leave is to notify her employer of the date on which she gave birth as soon as she can conveniently do so.
- (g) An employee must notify the employer as soon as practicable of any change in her intentions as a result of premature delivery or miscarriage.
- (h) An employee on maternity or adoption leave may change the period of leave or arrangement, once without the consent of the employer and any number of times with the consent of the employer. In each case she/he must give the employer at least 14 days notice of the change unless the employer decides otherwise.

- 12.11 An employee has the right to her/his former role if she/he has taken approved leave or part time work in accordance with subclause 12.8, and she/he resumes duty immediately after the approved leave or work on a part time basis.
- 12.12 If the role occupied by the employee immediately prior to the taking of parental leave has ceased to exist, but there are other roles available that the employee is qualified for and is capable of performing, the employee shall be appointed to a role of the same grade and classification as the employee's former role.
- 12.13 If the role occupied by the employee immediately prior to the taking of parental leave has been moved as part of a formal relocation of an organisational unit (for example, the relocation of all or part of an agency from the Central Business District, or the regionalisation of agency's functions) the employee has the right to return to the former role in the new location. If the employee so requests, the employer should consider the practicability of transferring the employee to a role at the same classification and grade in the former, or more suitable location.
- 12.14 An employee does not have a right to her/his former role during a period of return to work on a part time basis. If the employer approves a return to work on a part time basis then the role occupied is to be at the same classification and grade as the former role.
- 12.15 An employee 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 employer) must be given.
- 12.16 An employee who is sick during her pregnancy may take available paid sick leave or accrued recreation or extended leave or sick leave without pay. An employee 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.
- 12.17 An employee 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.
- 12.18 An employee 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.
- 12.19 If, for any reason, a pregnant employee is having difficulty in performing her normal duties or there is a risk to her health or to that of her unborn child, the employer should, in consultation with the employee, 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.
- 12.20 If such adjustments cannot reasonably be made, the employer must grant the employee 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 whichever is the earlier.

12.21 Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
 - (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the role the employee held before commencing parental leave; and
 - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the role the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a) of this subclause.

12.22 Employees entitled to parental leave shall also have an additional entitlement as set out in Appendix B.

12A. Lactation Breaks

- 12A.1 This clause applies to employees 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.
- 12A.2 A full time employee or a part time employee 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.
- 12A.3 A part time employee 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.
- 12A.4 A flexible approach to lactation breaks can be taken by mutual agreement between an employee 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 employee.
- 12A.5 The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- 12A.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 employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- 12A.7 Employees 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.
- 12A.8 Employees 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 7, Sick Leave of this award, or access to flexible working hours, where applicable.

13. Absence Whilst on Compensation to Count as Service for Leave Purposes

Absence due to incapacity caused by an accident for which compensation is payable is to be regarded as service for the accrual of all leave.

14. Absences Caused By Adverse Weather Conditions

Where an employee is stood down without pay because of an adverse weather condition, such absence is to be regarded as service for recreation and long service leave purposes.

15. Continuity of Service

- 15.1 Periods of absence not to affect continuity - Continuity of service shall be deemed not to be broken by periods of absence on recreation, sick or long service leave or other absences not involving a termination of the contract of employment.

An employee's contract of employment and continuity of service shall also be deemed not to be broken by termination of services arising directly or indirectly from an industrial dispute or where the services have been terminated by the employing authority by reason of slackness of work. Such break in the contract of employment however is not to be taken into account in calculating the period of service.

- 15.2 Termination due to ill health and subsequent re-employment - Where the services of an employee have been terminated because of ill health but the employee is re-employed within a period of twelve months, the previous service is to be taken into account for recreation and sick leave purposes, provided the employee is able to produce a medical certificate which covers the whole period of absence, that is, from date of termination to date of re-employment.
- 15.3 Taking of Leave - Leave is to be taken, whenever practicable, upon the completion of each 12 months service and not later than six months after accrual.
- 15.4 General - In all other respects, the provisions for Recreation Leave under clause 4 apply.

16. Uniforms

One new uniform shall be supplied to each tipstaff Employee upon appointment as a tipstaff and thereafter upon each twelve months completed service. Each tipstaff Employee shall receive a new uniform provided that each tipstaff shall be responsible for the reasonable upkeep and repair of his or her own uniform.

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 Department, if required.
- 17.2 An employee is required to notify in writing their immediate supervisor, 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 Department Head or delegate.
- 17.4 The immediate supervisor, or other appropriate officer, shall convene a meeting in order to resolve the grievance, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to attention.
- 17.5 If the matter remains unresolved with the immediate supervisor, 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. This sequence of reference to successive levels of management may be pursued by the employee until the matter is referred to the Department Head.

- 17.6 The Department Head may refer the matter to the Secretary.
- 17.7 If the matter remains unresolved, the Department Head shall provide a written response to the employee and any other party involved in the grievance, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- 17.8 An employee, at any stage, may request to be represented their union.
- 17.9 The employee, or the Association on their behalf, or the Department Head 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, Department and Secretary 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 subclauses 17.1 to 17.10 of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties, or, in the case involving occupational health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any employee or member of the public.

18. Anti-Discrimination

- 18.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 18.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award, the parties have 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.
- 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 the legislation referred to in this clause.

19. Secure Employment

19.1 Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent roles in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

19.2 Casual Conversion

- (a) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (b) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (c) Any casual employee who has a right to elect under paragraph 19.2(a), upon receiving notice under subclause 19.2(b) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (d) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (e) employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (f) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph 19.2(c), the employer and employee shall, in accordance with this paragraph, and subject to paragraph 19.2(c), discuss and agree upon:
 - (1) whether the employee will convert to full-time or part-time employment; and
 - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (g) Following an agreement being reached pursuant to paragraph 19.2(f), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (h) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

19.3 Workplace Health and Safety

- (a) For the purposes of this subclause, the following definitions shall apply:
 - (1) 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.
 - (2) 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.
- (b) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
 - (1) consult with employees of the labour hire business and/or contract business regarding the workplace health and safety consultative arrangements;
 - (2) provide employees of the labour hire business and/or contract business with appropriate workplace health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
 - (3) 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
 - (4) 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.
- (c) Nothing in this subclause 18.3 is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Workplace Health and Safety Act 2011* or the *Workplace Injury Management and Workers Compensation Act 1998*.

19.4 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 procedure of this award.

- 19.5 This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent legislation) and are deemed by the relevant authority to comply with the national standards for Group Training Organisations.

20. Crown Employees (Public Service Conditions of Employment) Award 2009 to Apply

The provisions of the Crown Employees (Public Service Conditions of Employment) Award 2009 will apply to this award. In the event of corresponding clauses the Crown Employees (Tipstaves to Justices) Award will supersede the Crown Employees (Public Service Conditions of Employment) Award 2009.

21. Area, Incidence and Duration

21.1 This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees (Tipstaves to Justices) Award published 21 October 2016 (380 I.G. 1467), as varied.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 29 August 2019.

This award remains in force until varied or rescinded, the period for which it was made having already expired.

PART B

MONETARY RATES

The salaries are set in accordance with the Crown Employees (Public Sector - Salaries 2019) Award and are effective from the first pay period to commence on or after 1 July 2019

Table 1

Tipstaff	Salary Per Annum Effective 1 July 2019 \$
1st Year of service	61,399
2nd Year of service	62,576
3rd Year of service	63,666
Tipstaff to the Chief Justice	64,779

APPENDIX A

- (1) 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 (2) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).
 - (b) The Department Head and the 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) A Department Head 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.

(2) A family member for the purposes of paragraph (i)(a) above is:

- (a) a spouse of the employee; or
- (b) a de facto spouse being a person of the opposite sex to the employee who lives with the employee as her husband or his wife on a bona fide domestic basis although not legally married to that employee; 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 employee or of the spouse or de facto spouse of the employee; or
- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or a relative of the employee 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.

(3) 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 Department Head 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) A Department Head 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.

APPENDIX B

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (a) the employee or employee's spouse is pregnant; or
 - (b) 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.

- (3) Right to request
 - (a) An employee entitled to parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a) and 3(b) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (4) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer 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 role the employee held before commencing parental leave; and
 - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the role the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

P. M. KITE, *Chief Commissioner*

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