

CROWN EMPLOYEES (MINISTERIAL DRIVERS) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, Industrial Organisation of Employees.

(No. IRC 363120 of 2021)

Before Commissioner Webster

[TBC] 2022

AWARD

Arrangement

Clause No. Subject Matter

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1. Title of Award

This Award will be known as the Crown Employees (Ministerial Driver) Award.

2. Definitions

"Act" means the *Government Sector Employment Act (2013)* NSW

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

"Conditions Award" means the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* and any replacement award or variation to this award.

"Department" means the Department of Premier and Cabinet and any subsequent agency which becomes the employer of the Employees.

"Employees" means employees employed as Ministerial Drivers, Casual Ministerial Drivers or in subsequent and equivalent roles.

"Manager" means the Department's officer in charge of Transport Services.

"Metropolitan Sydney" means a 75km radius (as the crow flies) from 52 Martin Place, Sydney.

"Salaries Award" means the *Crown Employees Public Sector – Salaries 2022) Award* and any replacement award or variation to this award.

"Work, Health and Safety framework" means the relevant policies, procedures or other material for managing the relevant WHS risks in the workplace for Transport Service employees.

3. Parties

3.1 The parties to this award are:

The Association;

The Industrial Relations Secretary.

4. Coverage

4.1 This award applies to all Employees.

5. Conditions of employment

5.1 Employees are entitled to the conditions of employment as set out in this award and, except where inconsistent with this award, the conditions provided for under the Conditions Award and under any applicable legislation, including the Act and the statutory instruments made thereunder.

5.2 This award replaces the following determinations, which will no longer have application to the Employees:

- a. Ministerial Drivers' Salaries and Conditions – New South Wales Premier's Department Determination No 953 of 2007
- b. Casual Ministerial Drivers Rates of Pay and Conditions – NSW Department of Premier and the Cabinet Determination No 3 of 2016

- c. Lead Ministerial Drivers Rates of Pay and Conditions – NSW Department of Premier and Cabinet Determination No 4 of 2016

- 5.3 The salaries and salary related allowances contained in this award will be adjusted by the same percentage increase that is applied to adjustments in the Salaries Award, including any increase in superannuation.

6. Ministerial Drivers

- 6.1 The Ministerial Driver base salary is identified at clause 23.
- 6.2 All conditions in this award apply to Ministerial Drivers, excluding the conditions applicable to Casual Ministerial Drivers.

7. Driving Assignments and Schedules

- 7.1 Driving assignments and schedules will be approved by the Manager, or other authorised officers of the Department from time to time.

8. Hours of Work

- 8.1 Ordinary working hours will be 38 hours per week, Monday to Friday, with a rostered day off each 4 weeks in accordance with the Conditions Award.
- 8.2 Unless otherwise scheduled, the notional daily hours will be as rostered with a one hour lunch break.
- 8.3 The start and end of duty times will be by arrangement between the Minister or Office Holder or other approved user of vehicle transport services and the Employee in consultation with the Manager, taking account of work health and safety considerations.
- 8.4 Employees will advise the Manager or the Department's officer responsible for scheduling of changes in driving assignments to facilitate scheduling of driving assignments and vehicle transport services and management of fatigue.

9. Recording of Hours

- 9.1 Employees are required to record their daily hours worked, including start and finish times of any breaks or non-driving taken, in the format as required Department from time to time. Recording of hours is to be done daily.

10. Out of Hours Allowance

- 10.1 All out of hours work, with the exception of Sundays and public holidays, will be compensated by payment of an out of hours allowance equivalent to 20 hours overtime based on 12 hours at time and one half of the Employee's base salary and 8 hours at double time of the Employee's base salary. This is equal to an allowance calculated as 34 hours at ordinary time of base salary.
- 10.2 The Out of Hours Allowance is set out at Part B, clause 24.
- 10.3 This allowance is to be paid in the nature of salary and is:
 - a. To be adjusted using the calculation at clause 10.1 and subject to changes in the base salary for Employees;
 - b. Recognised for all paid leave, superannuation and termination purposes;

- c. Compensation for overtime (excluding Sundays and public holidays), weekday, weekend and holiday penalty rates and all incidents of employment involving after hours duty (including On Call, On Call [Standby], Recall to Duty, Payment for Overtime or Leave in Lieu, Provision of Transport in Conjunction with Working of Overtime) other than accommodation and meal allowances; and,
- d. Paid on the basis that Ministerial Drivers will be available for duty as required Monday to Saturday.

11. Overtime on Sundays and Public Holidays

- 11.1 Overtime worked on Sundays and public holidays is calculated on the Employee's base salary and will be subject to the provisions of the Conditions Award.

12. Meal Breaks and Meal Allowances

- 12.1 Meal breaks will be in accordance with the Conditions Award, subject to Employees being granted unpaid meal breaks of one hour duration where possible. A meal break should be provided after no more than five hours of continuous work.
- 12.2 In addition to the meal breaks, an overtime meal allowance will be provided for Employees on duty for the following times at the overtime meal allowance rate:
 - a. Monday to Friday:
 - i. A breakfast meal allowance will be paid to employees who are directed to commence work before 6:00am;
 - ii. A dinner meal allowance will be paid when employees are directed to finish work after 7:00pm.
 - b. Saturdays and Sundays, when on duty for more than five hours of continuous work.
- 12.3 For the purposes of subclause 12.2, an Employee is directed to commence work before 6:00am or finish work after 7:30pm if they are so directed by their manager or by the Minister or Office Holder (with the approval of the Employee's manager)."
- 12.4 For the purpose of the award provisions regarding overtime meal breaks, an Employee's ordinary hours of duty on weekdays will end at the times scheduled for end of duty for individual Employees.
- 12.5 For the purpose of the award provisions regarding Meal Expenses on One-Day Journeys, a Lunch allowance will be provided if the Employee is located outside of Metropolitan Sydney at the time of taking a normal lunch break.

13. Disrupted meal and rest breaks

- 13.1 Risks associated with disrupted meal and rest breaks will be managed consistent with the Work Health and Safety framework.

14. Health Assessments

- 14.1 Health Assessments will be undertaken consistent with the Transport Services Workplace Health and Safety framework.
- 14.2 Health assessments will be conducted by the Department's nominated assessor.

15. Premier's and Leader of the Opposition Driver's Allowances

- 14.3 Assignment to drive for the Premier or the Leader of the Opposition is at the decision of the Premier or the Leader of the Opposition. Continuing assignment to either of those roles may cease at the direction of the Premier or the Leader of the Opposition from time to time.
- 14.4 Employees assigned to drive for the Premier will receive the Premier's Driver allowance identified at clause 25 of this award.
- 14.5 Employees assigned to drive for the Leader of the Opposition will receive the Leader of the Opposition's Drivers allowance identified at clause 25 of this award.
- 14.6 These allowances are only payable while the employees continue to be assigned to drive for the Premier or the Leader of the Opposition.

16. Driving Assessments

- 15.1 Driving assessments will be undertaken consistent with the Transport Services Workplace Health and Safety framework.
- 15.2 Driving assessments will be conducted by service providers, as approved by the Department from time to time.

17. Clothing

- 16.1 The Department has the right to determine an appropriate dress code for employees covered by this award and will provide a clothing allowance of \$900 per annum for employees to comply with this requirement when on duty.
- 16.2 The allowance will be paid in two equal instalments of \$450 (net of tax) every six months in arrears.
- 16.3 The items of clothing for which the allowance will be paid will be as approved by the Department, in consultation with Employees and the Association, from time to time.
- 16.4 The Employee is responsible for maintaining clothing in a serviceable condition. No laundry allowance will be payable.

18. Casual Ministerial Drivers

- 17.1 The hourly rate of pay for a casual Ministerial Driver will be calculated by reference to the annual salary for a Ministerial Driver provided for in clause 22 of this award, as varied from time to time by the Salaries Award, and is calculated by the following formula for the hours worked per day:
- 17.2 Annual salary divided by 52.17857 divided by the ordinary weekly hours of the classification.
- 17.3 The casual rate of pay for casual Ministerial Drivers is calculated on the basis of ordinary working hours being 38 hours per week.
- 17.4 Casual Ministerial Drivers will be provided with the conditions of employment set out in clause 12 of the Conditions Award. This includes, and is not limited to, the entitlement to be paid a minimum of three consecutive hours for each day worked.
- 17.5 All conditions in this award apply to casual Ministerial Drivers excluding clause 10 Out of Hours Work Allowance, which does not apply to casual Ministerial Drivers.

19. Dispute Resolution Procedures

- 18.1 All grievances and disputes relating to the provisions of this award will 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 or Agency, if required.
- 18.2 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.
- 18.3 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.
- 18.4 The immediate manager, or other appropriate employee of the Department, will 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.
- 18.5 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 will respond within two (2) working days, or as soon as practicable. The Employee may pursue the sequence of reference to successive levels of management until the matter is referred to the Department Head.
- 18.6 If the matter remains unresolved, the Department Head will 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.
- 18.7 An Employee, at any stage, may request to be represented by the Association.
- 18.8 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.
- 18.9 The Employee, Association, Department and Secretary will agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- 18.10 Whilst the procedures outlined in subclauses 19.1 to 19.9 of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty will continue unless otherwise agreed between the parties, or, in the case involving work health and safety, if practicable, normal work will proceed in a manner which avoids any risk to the health and safety of any employee or member of the public.

20. Anti-Discrimination

- 19.1 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.
- 19.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 19.3 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.

19.4 Nothing in this clause is to be taken to affect:

19.4.1 Any conduct or act which is specifically exempted from anti-discrimination legislation;

19.4.2 Offering or providing junior rates of pay to persons under 21 years of age;

19.4.3 Any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;

19.4.4 A party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

19.5 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.

19.5.1 Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

19.5.2 Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

21. Area, Incidence and Duration

20.1 This award applies to all Employees employed in the classifications identified in the award.

20.2 This award shall take effect on and from **XX 2022** and shall remain in force for a period of 36 months.

22. No Extra Claims

21.1 During the term of this award, there will be no further claims/demands or proceedings instituted before the NSW Industrial Relations Commission for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the Employees covered by the Award.

Part B

23. Salaries

Classification	Common Salary Points	Salary (1 July 2021)	Salary (1 July 2022 – 2.53%)
Ministerial Driver	39	62,325	63,902

24. Out of Hours Allowance (calculated in accordance with clause 9.1)

Classification	Allowance (1 July 2021)	Allowance – per annum 1 July 2022
Ministerial Driver	55,764	56,902

25. Premier's and Leader of the Opposition Driver Allowances

Allowance	Allowance (1 July 2021)	Allowance (1 July 2022 – 2.53%)
Premier's Driver	\$22,167 pa	\$22,728 pa
Leader of the Opposition's Driver	\$11,083 pa	\$11,363 pa

26. Total Salary

- 24.1 The Ministerial Driver salary includes compensation for irregular hours, often with limited notice, and the exclusion of penalty payments in respect of occasional delayed or interrupted meal breaks and any failure to receive the recognised break between the work of successive days.
- 24.2 The following table reflects total salary, which is inclusive of the base salary (identified at clause 23) plus the out of hours allowance (identified at clause 24).

Classification	Total Salary – per annum 1 July 2021	Total Salary – per annum 1 July 2022
Ministerial Driver	118,089	120,497