CROWN EMPLOYEES (NSW DEPARTMENT OF FAMILY AND COMMUNITY SERVICES - COMMUNITY SERVICES DIVISION) AFTER HOURS SERVICE AWARD 2016

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(Case No. 2016/00006307)

Before Commissioner Stanton 24 August 2016

REVIEWED AWARD

PART A

1. Arrangement

PART A

Clause No. Subject Matter

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2. Title

This award shall be known as the Crown Employees (NSW Department of Family and Community Services - Community Services Division) After Hours Service Award 2016.

3. Definitions

"Act" means the NSW *Industrial Relations Act* 1996 and its Regulations.

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

"Department" means the NSW Department of Family and Community Services - Community Services Division.

"Disturbance Rate" means a rate paid to a rostered officer who the District Director has determined need only be contactable and able to respond to after hours calls out of hours wherever possible.

"Officer" means all persons permanently or temporarily employed under the provisions of the Government Sector Employment Act 2013and who, on or after the operative date of this Award, are employed within the NSW Department of Family and Community Services - Community Services Division.

"On Call Rate" means a rate paid to the rostered officer who the District Director has determined must be available for the rostered period to receive after hours calls out of ordinary hours and be able to respond.

“District” means a geographical area defined as a District for the purpose of the Department's operations outside of the Greater Sydney Metropolitan area.
"Rostered Officer" means an officer who has volunteered to be rostered on-call or on a disturbance basis to provide after hours services.

4. Rostering Arrangements

On-call -

4.1 An officer may be rostered on-call or disturbance for a minimum of one day. An officer shall not be rostered for part of a day, except where there are insufficient volunteers to permit otherwise.

4.2 For the purposes of subclause (i) of this clause, one day shall mean:

5.00 p.m. to 9.00 a.m. the following day on Monday to Saturday;

9.00 a.m. Saturday to 9.00 a.m. Sunday; and

9.00 a.m. Sunday to 9.00 a.m. Monday.

Provided that where normal closing time in the locality concerned is a time other than 5.00 p.m., then that time will be substituted for 5.00 p.m. in the above provision and where the normal opening time in the locality is a time other than 9.00 a.m. then that time may be similarly substituted.

4.3 An officer rostered on-call for seven consecutive days shall not be required to work a similar roster for a period of at least six weeks. In any event, such an officer shall not be required to work a similar roster for a period of three weeks.

4.4 Rostering arrangements shall be determined by the District Director in consultation with affected officers and having regard to the availability and training of those officers who have volunteered to be placed on roster. Such arrangements should also have regard to particular local geographical concerns and travelling distances involved in responding to a crisis call.

4.5 A rostered officer may withdraw from the service at any time but wherever possible, such officer should provide at least two weeks notice of their intention to do so. The District Director may terminate the roster of an officer by consultation at any time but should provide similar notice.

4.6 A District Director may vary the roster with at least two weeks notice except when unusual and unforeseen circumstances arise, in which case the roster may be varied with less than two weeks notice.

4.7 Disturbance - An officer rostered on a disturbance basis may be so rostered for any period as determined by the District Director.

4.8 The arrangements in subclause (4.7) are limited to the extent that no such officer shall be rostered for part of a day.

4.9 For the purposes of subclause (4.8) of this clause, the meaning of "a day" shall be the same as that prescribed for officers rostered on-call.

4.10 The conditions relating to termination or variation of rostering arrangements shall be the same as those relating to officers appointed to be on-call.

4.11 General – In each District covered by this Award there shall be a minimum of two officers rostered on-call or on a disturbance basis.

In any situation where an officer responds to a call-out that officer shall determine whether another officer shall attend the call-out provided that the parties to the award recognise generally the desirability of having two officers attend the call-out in crisis situations.

5. Rates for After Hours Service

5.1 The rates and conditions of all officers who are rostered either on-call or on a disturbance basis are as set out in Table 1 - Rates of Pay, of Part B, Monetary Rates.

5.2 Disturbance - A disturbance rate is payable of an amount as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

5.3 An officer in receipt of the disturbance rate shall be entitled to the on-call rate in the event that an after hours call is received which requires a call out. Such adjustment shall be in substitution of the disturbance rate and will only be made on a daily basis.

5.4 The on-call and disturbance rates shall be adjusted from time-to-time in line with adjustments in salaries of Caseworkers.

6. Contactability

6.1 On-call - wherever possible, the Department shall supply a mobile phone to a rostered officer. A rostered officer must remain near the mobile phone or private telephone which must remain switched on. A rostered officer shall be available to answer calls personally and must not utilise an answering machine.

6.2 Disturbance - the officer must make available a telephone number and/or mobile telephone number, which must be a number on which he/she can normally be contacted while on the roster. Where it is reasonable to do so, the officer will answer a call immediately.

6.3 Where a rostered officer is not supplied with a mobile phone, he/she shall be reimbursed for the rental costs associated with their private telephone and all costs incurred with calls made from that phone associated with a crisis.

6.4 A rostered officer must contact the District Director immediately it becomes known that the officer shall be unavailable for rostered duty.

7. Response to Crisis Calls

Where a rostered officer seeks the assistance of a co-worker other than another rostered officer for the purposes of responding to a call, such co-worker shall be paid overtime on the basis set out in clause 9 Overtime, and if required to utilise their private vehicle shall be paid at the rate specified in clause 8, Use of Departmental Vehicles.

8. Use of Departmental Vehicles

8.1 An officer rostered on-call shall be provided with a Departmental vehicle for the whole of the period that he/she is so rostered. The Departmental vehicle may be used for private purposes and such usage shall be limited to travel within the particular District that is serviced by the rostered officer.

8.2 The private usage of Departmental vehicles referred to in subclause (8.1) shall not apply to officers who are rostered on a disturbance basis.

8.3 Where it is necessary for any rostered officer to utilise a private vehicle in response to an after hours call, the "Casual Rate" from the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009, as varied from time to time, shall apply or such other rate as may be prescribed by an award applying generally to Public Servants.

9. Overtime

9.1 The rates set out in clause 5, Rates for After Hours Service, include compensation for time taken to receive calls advising of a possible crisis situation, and where an officer is not able or obliged to respond to a call in person, the time taken to make calls arranging for another officer or person to respond. All other time spent in the performance of work in response to a crisis call shall be paid for as set out hereunder:

(a) for all overtime worked before the usual commencing time, and after the usual ceasing time Monday to Friday, inclusive, at the rate of time and one-half for the first two hours and at the rate of double time thereafter until relieved from duty;

(b) for all overtime worked on a Saturday at the rate of time and one-half for the first two hours and at the rate of double time thereafter;

(c) for all overtime on a Sunday at the rate of double time;

(d) for all overtime worked on a Public Holiday at the rate of double time and a half, i.e., ordinary rates and a half in addition to salary;

(e) An officer shall be paid a minimum of four hours at the appropriate penalty rate for each call responded to, provided that where the period of work commences within the minimum payment period for a previous response, payment shall be calculated as if the officer had been continuously engaged on overtime from the commencement of work on the first call until the expiry of the minimum four-hour period on the last call or completion of work on the last call, whichever is the later. Provided that the rate upon which the overtime rate is later calculated shall not exceed Clerk Grade 6 of the Crown Employees (Public Sector - Salaries 2016) Award.

9.2 Where an officer responds to a call the officer shall have at least eight consecutive hours of duty between the end of work on the last such call and the commencement of normal duty. If on the instruction of the Department the officer resumes or continues work without having had such eight consecutive hours off duty the officer shall be paid at double rates until the Officer is released from duty for such period and the officer shall then be entitled to be absent until the officer has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

10. Selection Criteria and Process

10.1 The District Director shall advise all officers in the Region of any proposal to introduce an on call or disturbance roster, including the proposed details of the roster and shall call for expressions of interest from staff who volunteer to participate as a rostered officer as necessary.

10.2 The District Director shall ensure that an assessment of the rostered officer's capacity to respond to after hours calls in relevant programme areas is carried out before the officer is rostered for duty.

11. Training

The District Director shall ensure that all officers who volunteer to participate in the after hours service are provided with any training necessary to respond effectively to calls received in relevant programme areas.

12. Anti-Discrimination

12.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the NSW *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.

12.2 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.

12.3 Under the NSW *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.

12.4 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 NSW *Anti-Discrimination Act* 1977;

(d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.

12.5 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.

NOTES:

(a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

(b) Section 56(d) of the NSW *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."

13. Grievance and Dispute Settling Procedures

13.1 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 appropriate department, if required.

13.2 An officer 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.

13.3 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the NSW *Anti Discrimination Act 1977*) that makes it impractical for the officer 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.

13.4 The immediate manager, 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.

13.5 If the matter remains unresolved with the immediate manager, the officer may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two (2) working days, or as soon as practicable. The officer may pursue the sequence of reference to successive levels of management until the matter is referred to the Department Head.

13.6 The Department Head may refer the matter to the Secretary, Department of Premier and Cabinet for consideration.

13.7 If the matter remains unresolved, the Department Head shall provide a written response to the officer 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.

13.8 An officer, at any stage, may request to be represented by the Association.

13.9 The officer 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.

13.10 The officer, Association, Department and Secretary, Department of Premier and Cabinet shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.

13.11 Whilst the procedures outlined in subclauses 13.1 to 13.10 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 officer or member of the public.

14. Area, Incidence and Duration

This award shall apply to officers employed as Managers Client Services, Managers Casework, Caseworkers, Senior Practitioners and Casework Specialists who volunteer to be placed on an On-Call or Disturbance Roster for the provision of an after hours service in the District.

The officers regulated by this award shall be entitled to the conditions of employment as set out in this Award and, except where specifically varied by this Award, existing conditions are provided for under the *Government Sector Employment Act 2013*, its Regulation and Rules, the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 and the Crown Employees (Public Sector - Salaries 2016) Award or any awards replacing these awards.

This Award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees (NSW Department of Family and Community Services - Community Services Division) After Hours Service Award published 3 August 2012 (372 IG 644) and all variations thereof.

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 (3 10 IG 359) and take effect on and from 24 August 2016.

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

PART B

MONETARY RATES

Table 1 - Rates of Pay

Classification	Amount from first full pay period to commence on or after 1 July 2016 $
Monday 5.00 pm to Saturday 9.00 am	99.35 per day
Saturday 9.00 am to Sunday 9.00 am	149.02 per day
Sunday 9.00 am to Monday 9.00 am	149.02 per day
Public Holiday	149.02 per day

Table 2 - Other Rates and Allowances

Item No	Clause No.	Amount from first full pay period to commence on or after 1 July 2016 $
1	5.2 Disturbance Rate	29.77 per day

J. D. STANTON, Commissioner

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