

CROWN EMPLOYEES (MAJOR AND COMMUNITY EVENTS REASSIGNMENT) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

(Case No. 00006007 of 2016)

Before Commissioner Stanton

2 August 2016

REVIEWED AWARD

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2. Title

This Award will be known as the Crown Employees (Major and Community Events Reassignment) Award.

3. Parties

3.1 The Parties to the Award are:

- (i) Industrial Relations Secretary;
- (ii) All agencies referred to in Appendix A;
- (iii) Public Service agencies listed in Schedule 1 to the Act;
- (iv) Unions NSW on behalf of affiliated unions;
- (v) Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (PSA);
- (vi) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch; and
- (vii) The organiser of the Major and Community Events specified in Schedule 1 of this Award as varied from time to time.

4. Definitions

"Act" means the *Government Sector Employment Act 2013*, as amended.

"Agency" means those NSW Government organisations:

- (i) listed in Schedule 1 to the Act; or
- (ii) listed in Appendix A.

"Major and Community Event" means an event set out in Schedule 1 to this Award as varied from time to time.

"Organiser of the Major and Community Event" means the body organising the relevant Major and Community Events as set out in Schedule 1 to this Award as varied from time to time.

"Home agency" means the agency employing the employee.

"Ordinary working hours" means the number of ordinary working hours set by the employee's relevant Award.

"Reassignment period" means the period specified for the operation of a Major and Community Event as set out in Schedule 1 to this Award as varied from time to time, or some other time agreed on an individual basis, during which an employee may be reassigned.

"Reassignment/reassigned" means where an employee has volunteered to undertake duties for a Major and Community Event as directed by the organiser of the Major and Community Event.

"Relevant Award" means the Award or other industrial instruments applying to the employee's contract of service or employment in their home agency.

"Employee" means an employee of a home agency who has volunteered for reassignment to a Major and Community Event.

5. Acknowledgements By the Parties

5.1 The parties agree that reassignment is voluntary and is subject to an expression of interest by the employee and the approval by the home agency, which is to be based on the home agency's operational and service requirements and efficient use of resources. Employees shall not be forced to undertake reassignment.

5.2 The parties acknowledge that the arrangements contained in this Award may vary the normal working arrangements and conditions which may otherwise have applied to employees had they not been reassigned.

- 5.3 The parties acknowledge that future Major and Community Events will arise and appropriate variations will be made to Schedule 1 of this Award to facilitate reassignment of staff to those events.
- 5.4 The parties agree that the arrangements contained in this Award recognise the need for equity, fairness, flexibility and transparency in dealing with staff considerations.

6. Consultation

- 6.1 The organiser of the Major and Community Event will consult with the parties to this Award, (in relation to Union parties either directly or through Unions NSW) in relation to requirements for staff and how staff will be managed, including hours of work, duties and remuneration.

7. Coverage

- 7.1 This Award applies to an employee employed by or in an agency who is reassigned to a Major and Community Event in accordance with this Award but does not include an employee employed under the *Education (School Administrative and Support Staff) Act 1987* or those staff covered under the TAFE Commission of NSW Teachers and Related Employees Enterprise Agreement and TAFE Commission of NSW Teachers in TAFE Children's Centres Enterprise Agreement, and the Crown Employees (Teachers in TAFE and Related Employees, Bradfield College and Teachers in TAFE Children's Centres) Salaries and Conditions Award 2009 other than non school based teaching service staff and those TAFE Related Employees not entitled to agreed weeks of paid non attendance.
- 7.2 Employment arrangements to which this Award applies:
- (i) ongoing employment on a full-time or part-time basis;
 - (ii) temporary employment, where there is a continuing relationship that amounts to an ongoing or continuing contract of employment for a period beyond the expiry of the relevant Major and Community Event.

8. Nature of Reassignment

- 8.1 At all times during a period of reassignment the employee will remain the employee of the home agency but will be subject to the control and direction of the organiser of the Major and Community Event while on reassignment.
- 8.2 To volunteer for reassignment, an employee is to express an interest in reassignment in accordance with procedures established by the Department of Premier and Cabinet.
- 8.3 The approval of the home agency to an employee being reassigned is subject to the service delivery needs of the home agency at the time of reassignment.
- 8.4 Reassignment will be for a specified term. The minimum duration will be ten working days or as otherwise agreed between the employee, the organiser of the Major and Community Event and the home agency.
- 8.5 An employee may be reassigned during the reassignment period at any time and on any number of occasions, which may vary in duration.
- 8.6 Reassignment may extend to times outside the reassignment period, as agreed between the employee, the home agency and the organiser of the Major and Community Event on a case by case basis.
- 8.7 While it is expected that the employee, having volunteered for reassignment, will remain with the Major and Community Event for the agreed time, it is recognised that the employee may terminate the reassignment and return to their home agency, but will do so in accordance with clause 19 of this Award.

9. Right of Return and Continuity of Employment

- 9.1 An employee who has been reassigned is entitled at the end of the reassignment to return to the position and salary level in the home agency occupied substantively by the employee immediately before the reassignment. Thereafter the usual staff establishment management arrangements of the home agency apply to the employee.
- 9.2 Nothing in relation to reassignment will affect the employee's continuity of service, process for termination of service, or other employment rights with the home agency.

10. Relationship to Relevant Awards

- 10.1 It is the intention of the parties that the employee's relevant Award will continue to apply while the employee is on reassignment. However, where this Award varies or replaces arrangements in the employee's relevant Award, the provisions in this Award are to apply.

11. Rates of Pay

- 11.1 The employee's rate of pay while the employee is on reassignment will be the Rate of Pay they would have received in their home agency had they not been reassigned.
- 11.2 The nominal grading given to a position by the organiser of the Major and Community Event is indicative of the level from which staff seeking reassignment might be drawn. It will not entitle an employee to higher pay nor operate to reduce an employee's normal rate of pay.
- 11.3 The rate of pay is to include any shift penalties and other allowances in the nature of salary which the employee would have been entitled to receive had the employee not been reassigned.
- 11.4 Where there is any doubt as to the shift penalties that the employee would have been entitled to receive, the average of the last 4 week rostered period, not including any period of annual or other leave, will be used.
- 11.5 The employee's rate of pay will apply to all reassignment work, irrespective of the duration, the time of day or day of the week worked.
- 11.6 An employee who is a shift worker will not be paid shift penalty rates based on any shift rosters applying to the reassigned work.
- 11.7 An employee who is not a shift worker will not receive payment of shift penalty rates for any shift rosters applying to the reassigned work.

12. Suspension of Home Agency Flexitime and Other Similar Arrangements

- 12.1 An employee's entitlements under flexible working hours (flexitime), fortnightly or monthly rostered days off or any other work attendance arrangement operating in the employee's home agency will be suspended for the duration of the employee's reassignment. All entitlements and associated balances will be preserved until the employee returns from reassignment. The home agency is to implement an appropriate extension of time for the employee to access entitlements and clear associated balances after reassignment.
- 12.2 Accrued flex leave, banked time, accrued days off or rostered days off entitlements, which may have accrued to the employee under a work attendance arrangement, will not be available during reassignment unless there is prior agreement between the employee, the home agency and the organiser of the Major and Community Event. Otherwise, the entitlement to access these accruals will be preserved until the employee returns from reassignment.

NOTE: Working hours arrangements during reassignment may allow the employee to use hours worked in excess of their ordinary working hours towards additional days off duty, as provided in subclauses 14.4 and 14.5 of this Award.

13. Working Hours

- 13.1 For the purpose of this Award, the ordinary working hours of an employee while on reassignment will be the weekly equivalent of the ordinary working hours set by the employee's relevant Award.
- 13.2 Fixed starting and finishing times or other standard hours arrangements are not provided by this Award.
- 13.3 The number of hours worked by an employee on reassignment may vary from the employee's ordinary working hours. Additional hours worked outside the employee's ordinary hours of work and on weekends may be anticipated.
- 13.4 Daily hours will be agreed between the organiser of the Major and Community Event and the employee having regard to the Major and Community Event's needs. An employee will not be required to work daily hours of more than 12 hours inclusive of all meal breaks, or no less than four hours duration unless agreed by the employee.
- 13.5 An employee may refuse to work additional hours in circumstances where the working of such hours would result in the employee working unreasonable hours. In determining what is unreasonable the following factors shall be taken into account:
- (1) the employee's prior commitments outside the workplace, particularly the employee's family and carer responsibilities, community obligations or study arrangements;
 - (2) any risk to employee health and safety;
 - (3) the urgency of the work required to be performed during additional hours, the impact on the operational commitments of the organisation and the effect on client services;
 - (4) the notice (if any) given by the organiser of the Major and Community Event regarding the working of the additional hours, and by the employee of their intention to refuse the working of additional hours; or
 - (5) any other relevant matter.
- 13.6 Where practicable, daily hours shall be in accordance with the employee's letter of appointment. Where daily hours or the days on which work is to be performed are modified, the organisers of the Major and Community Event will, where practicable, give seven days notice of the change.
- 13.7 An employee who is reassigned will record the working hours they are directed to work in a record of attendance. The accurate completion of the record of attendance is the joint responsibility of the organiser of the Major and Community Event and the employee. The organiser of the Major and Community Event will forward the record of attendance to the home agency on a monthly basis.
- 13.8 Ordinary hours of work and hours worked in excess of ordinary hours recorded in the record of attendance will be monitored by the home agency. Employees and the organiser of the Major and Community Event will encourage the use of additional hours worked in accordance with subclauses 14.4 and 14.5 (i.e. additional days off duty) of this Award.

14. Rest Breaks and Accrued Attendance Entitlements

- 14.1 An employee will not be required to work more than five hours without the provision of a 30 minute unpaid meal break. An employee will not be required to work more than nine hours without the provision of a 30-minute paid crib break.
- 14.2 An employee must have a break of at least eight hours between the completion of one shift and the commencement of the next, and at least ten hours where the employee is required to work a shift of ten hours or more.

- 14.3 An employee will be rostered off for a minimum of eight days per 28 day period and as far as is practicable, rostered days off should be taken in lots of 2 consecutive days.
- 14.4 Subject to the operational needs of the organiser of the Major and Community Event, an employee may take one additional rostered day off per 28 days utilising hours worked in excess of the employee's ordinary working hours. Hours used to take an additional rostered day off shall be deducted from the time accrued towards time off in lieu as specified in this Award.
- 14.5 Every effort will be made by the parties to utilise hours worked in excess of an employee's ordinary working hours during the period of reassignment, so as to limit the accrual of time off in lieu.

15. Time Off in Lieu (Toil)

- 15.1 Employees eligible for paid overtime in accordance with their home agency Award may access TOIL as set out in this Award.
- 15.2 TOIL shall be granted for hours that an employee is directed to work in excess of the employee's ordinary working hours. Overtime will not be paid in respect of any hours worked.
- 15.3 TOIL shall be calculated on the total hours actually worked over the whole period or periods of reassignment.
- 15.4 If an employee works hours in excess of their total ordinary working hours across the period or periods of reassignment, TOIL will accrue on an hour for hour basis up to the equivalent of 5 hours per week over the period of the reassignment, i.e., a total period of reassignment of 20 weeks allows for a maximum of 100 hours at time for time. TOIL will accrue at the rate of time and one half for all additional hours thereafter.
- 15.5 The number of hours accruing towards TOIL on an hour for hour basis will be reviewed prior to any variation to Schedule 1 of this Award to add further Major and Community Events.
- 15.6 TOIL accrued during reassignment will be calculated by the employee's home agency at the end of the reassignment or at the end of the reassignment period based on attendance records.
- 15.7 The giving and taking of TOIL is a mutual responsibility and cannot be unreasonably refused to be given by the home agency or refused to be taken by the employee.
- 15.8 TOIL will be available to the employee upon return to their home agency for a period of 12 months. Home agencies will put in place arrangements to allow staff to exhaust TOIL within this period.
- 15.9 An extension of up to 6 months may be negotiated between an employee and the home agency to clear a time in lieu balance.
- 15.10 An employee may be directed to take TOIL to exhaust the entitlement within the timeframes specified in the Award. An employee refusing to take TOIL as directed will not be entitled to claim hours worked.
- 15.11 If TOIL accruals are unable to be cleared within the times specified in this Award even though all reasonable efforts have been made by the home agency and the employee to do so, the remaining accrued hours will be paid out by the home agency at overtime rates.
- 15.12 An employee will retain their entitlement to TOIL under this Award in the same manner as is provided for cross-public sector leave arrangements in Division 2 of Part 3 of the Act.

16. Sick Leave, Family and Community Service Leave and Other Paid Leave

- 16.1 Sick Leave, Family and Community Service Leave or other emergency leave, and other paid leave to which the employee is entitled pursuant to their Award or public sector policy arrangement, will continue to be available during reassignment. The requirements of the relevant Award for the taking of such leave, such as the production of a medical certificate, will apply.

- 16.2 Planned leave approved by the home agency may intervene during an employee's reassignment, but would be subject to the organiser of the Major and Community Event agreeing to the leave prior to reassignment.
- 16.3 Unplanned leave taken during reassignment, such as sick leave, will require the employee to notify the organiser of the Major and Community Event as soon as possible of their inability to attend work and the duration that they are likely to be absent.
- 16.4 An employee will submit a leave form to the organiser of the Major and Community Event for all leave taken. Forms will be forwarded to the home agencies as soon as practicable. The duration of any unplanned leave will be recorded in the employee's record of attendance and forwarded to the home agency on a monthly basis.
- 16.5 If the employee indicates to the organiser of the Major and Community Event that the unplanned leave will be for a period of 10 days or more, the organiser of the Major and Community Event may terminate the reassignment and notify the employee. The Major and Community Event is to notify the home agency immediately and the employee is to resume work with the home agency.
- 16.6 An employee whose reassignment has been terminated under these circumstances will be entitled to seek further reassignment upon their return to their home agency.

17. Payroll Issues and Record of Attendance

- 17.1 All payroll issues will remain the responsibility of the home agency for the duration of the reassignment.
- 17.2 The employee will continue to receive their pay, as provided in clause 11 of this Award, during the reassignment period from the home agency.
- 17.3 The organiser of the Major and Community Event and the employee are responsible for maintaining a record of attendance, including the days and hours of work and leave of absence for any reason. The organiser of the Major and Community Event will provide the record of attendance to the home agency on a monthly basis.

18. Transport, Travelling Time and Travelling Allowances

- 18.1 If an employee ceases or commences a shift after 8.00 pm and public transport or any other normal means of transport is not reasonably available, then in consideration of the employee's safety, the organiser of the Major and Community Event may provide transport or make other transport arrangements to or from home, which may include the use of a taxi for that part of the journey for which public transport is not available.
- 18.2 In recognition of the voluntary nature of reassignment, no additional compensation will be provided for additional travel between an employee's home and place of work with the Major and Community Event, compared with an employee's home and their home agency.
- 18.3 Travelling allowances and compensation will not be paid where reassigned staff perform duties at a temporary work location. The organisers of the Major and Community Event will meet all reasonable costs associated with travel, overnight accommodation and meals.
- 18.4 For the purpose of subclause 18.3 a temporary work location is any work location apart from that initially nominated by the organiser of the Major and Community Event as the normal work location.

19. Termination of Reassignment

- 19.1 The reassignment may be terminated by:
- (i) mutual agreement;
 - (ii) the employee;

- (iii) the organiser of the Major and Community Event; or
- (iv) the operation of clause 16, Sick Leave, Family and Community Service Leave and Other Paid Leave.

- 19.2 Fourteen days notice is required unless some other time is agreed.
- 19.3 The organiser of the Major and Community Event is required to notify the home agency of the termination of the reassignment and the date on which the employee will return.
- 19.4 An employee will return to their home agency upon the termination of the reassignment.

20. Grievance and Disciplinary Policy

- 20.1 All grievances and disputes relating to the provisions of this award during the period of reassignment shall be initially dealt with as close to the sources as possible, with graduated steps for further attempts at resolution at higher levels of authority within the organiser of the Major and Community Event, if required.
- 20.2 Steps taken shall be in accordance with the procedure detailed in Appendix B.
- 20.3 Where the grievance concerns work health and safety or discrimination and harassment, the employee will advise the home agency and the matter will be dealt with in accordance with the procedure in Appendix B or the policy and procedures that apply in the home agency. Where such a grievance or dispute arises, home agencies shall take all reasonable steps to resolve the grievance in consultation with the organiser of the Major and Community Event.
- 20.4 The organiser of the Major and Community Event will notify the home agency in the case of any disciplinary matter and it shall be dealt with in accordance with the policy and procedures that apply in the home agency.

21. Work Health and Safety

- 21.1 Staff reassigned to a Major and Community Event are required to comply with any risk assessment and management plan implemented by the organiser of the Major and Community Event in accordance with Work Health and Safety requirements.
- 21.2 The organiser of the Major and Community Event will comply with all Work Health and Safety requirements.

22. Anti-Discrimination

- 22.1 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.
- 22.2 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 the effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provisions of the Award, which by its terms of operation, has a direct or indirect discriminatory effect.
- 22.3 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.
- 22.4 Nothing in this clause is to be taken to effect:

- (i) Any conduct or act which is specifically exempted from anti-discrimination legislation;
- (ii) Offering or providing junior rates of pay to persons under 21 years of age;
- (iii) Any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
- (iv) A party to this Award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

22.5 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 *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."

23. Area, Incidence and Duration

23.1 This Award shall apply to employees employed in Agencies who are reassigned to Major and Community Events in accordance with this Award.

23.2 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 2 August 2016.

23.3 Changes made to this award subsequent to it first being published on 15 May 2009 (367 I.G. 1566) have been incorporated into this award as part of the review.

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

APPENDIX A

LIST OF AGENCIES

Health Professionals Registration Boards

Parliament of New South Wales

NSW Police Force

State Water Corporation

APPENDIX B

GRIEVANCE PROCEDURE

(i) 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 organiser of the appropriate Major and Community Event, if required.

- (ii) 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.
- (iii) 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 Head of the organiser of the Major and Community Event.
- (iv) The immediate manager, or other appropriate officer, will convene a meeting in order to resolve the grievance, dispute or difficulty within two working days, or as soon as practicable, of the matter being brought to attention.
- (v) 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 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 Head of the Major and Community Event.
- (vi) The Head of the organiser of the Major and Community Event may refer the matter to the Industrial Relations Secretary for consideration.
- (vii) If the matter remains unresolved, the Head of the organiser of the Major and Community Event will provide a written response to the employee and any other party involved in the grievance, dispute or difficulty, concerning the action to be taken, or the reason for not taking action, in relation to the matter.
- (viii) A employee, at any stage, may request to be represented by their union.
- (ix) The employee or the union on their behalf, or the Head of the organiser of the Major and Community Event may refer the matter to the NSW Industrial Relations Commission (the Commission) if the matter is unresolved following the use of these procedures.
- (x) The employee, union, Head of the organiser of the Major and Community Event and the Industrial Relations Secretary will agree to be bound by any order or determination by the Commission in relation to the dispute.
- (xi) While the procedures outlined in (i) to (x) above 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.

SCHEDULE 1

Major and Community Events to which this Award applies

Major and Community Event	Organiser of the Major and Community Event	Reassignment Period
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J. D. STANTON, Commissioner