

# INDEPENDENT COMMISSION AGAINST CORRUPTION AWARD 2024

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Independent Commission Against Corruption.

(Case No. XXXXX of 2024)

Before XXXXX

November 2024

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### **1. Title of Award**

This Award will be known as the Independent Commission Against Corruption Award 2024.

### **2. Dictionary of Terms**

Commission - the Independent Commission Against Corruption

ICAC - the Independent Commission Against Corruption

PSA - the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales

Executive - the ICAC's statutory officers and Executive Directors

Chief Commissioner - the Chief Commissioner of the ICAC

Domestic Violence - means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*

### **3. Aims of the Award**

The Commission is a statutory body set up under the *Independent Commission Against Corruption Act 1988* to expose and minimise corruption in the NSW public sector. This Award documents the conditions of employment and the rights and obligations of management and staff that will help to achieve this objective.

This Award was negotiated by the ICAC Award Negotiation Committee comprised three staff, a Public Service Association industrial officer and three management representatives. Staff were consulted throughout the development of the Award and have agreed to this Award.

The Award aims to achieve the following outcomes:

- to improve the efficiency and productivity of the ICAC
- to enhance our culture of consultation
- to provide equitable remuneration and conditions of employment
- to provide information on conditions of employment in plain English
- to improve the development and utilisation of staff

We are committed to certain fundamental values in all our interactions with public sector agencies, other organisations, individuals and our staff. These are:

- Fairness – Acting fairly and inspiring trust.
- Integrity – Promoting integrity in the public sector while modelling it ourselves.
- Accountability – Being accountable to the public and each other.

- Tenacity – Showing tenacity and professionalism.

This Award rescinds and replaces all other industrial instruments except as referred to in this document.

#### **4. Communication and Consultation**

The Commission Consultative Group (CCG) is the formal mechanism for consultation and communication between staff and management on matters of policy and procedure.

Purpose - to improve performance through consultation leading to informed decision making.

Role - to consider issues of policy or procedure, with Commission-wide significance to staff, as referred by staff and management. Generally, the CCG provides a consultative forum for developing or reviewing policies, procedures, and/or recommendations as to final policy or procedure to the Chief Commissioner or manager with delegated authority. Delegation to the CCG of decision-making power in suitable matters will also be an option for the Executive.

PSA representation - a PSA industrial staff representative.

Staff representation - there are five staff representatives, at least one of whom is a delegate of the PSA. Representatives are elected by secret ballot and are appointed for a period of two years.

The Executive representation – Up to three Executive representatives are appointed by the Chief Commissioner for a period of two years.

Operation - The CCG determines its own meeting procedure and charter of operation.

Other committees - The Health, Safety and Equity Committee report to the Chief Commissioner through the Executive Director, Corporate Services. The Executive Director, Corporate Services will ensure that this committee is appropriately structured and operates in accordance with relevant legislation, including that election procedures are appropriate, and that membership is balanced by gender and is representative of the staff.

#### **5. ICAC Officer Classification and Salary Structure**

- (1) The ICAC Officer classification Grades 1 - 8 have regard to the following principles:
  - (a) work of equal value attracts equal remuneration in a structure reflecting a composite weighting of the markets from which the Commission recruits its employees
  - (b) a structure which supports improved performance
- (2) The ICAC Officer grades and salary rates appear in Table 1 of Schedule 1 of this Award.
- (3) The salary structure has regard for equivalent work value and salaries in the following markets:
 

NSW public sector (Administrative & Clerical and Legal), Police/Investigator (NSW, Federal, Australian Crime Commission)

Private sector (Information Technology)
- (4) All ICAC roles are evaluated using job evaluation processes and placed within the ICAC Officer grades, as shown in Table 1 of Schedule 1 of this Award.
- (5) Table 2 of Schedule 1 shows the salaries of Investigation Division roles that receive overtime and/or incidents allowances as detailed in clauses 27(5) and 29(5) of this Award.
- (6) Merit based selection processes are required for permanent upward movement between ICAC Officer grades.

- (7) Progression through the salary points (increments) in an ICAC Officer grade requires satisfactory performance within the Commission's performance management system, as described in clause 7 of this Award.
- (8) The annual salaries of ICAC staff covered by this Award shall be adjusted by an increase of 4.0 per cent from the first full pay period on or after 1 July 2024, 3.0 per cent from 1 July 2025 and 3.0 per cent from 1 July 2026.

## **6. Basis of Employment**

- (1) The employment of members of staff of the Commission is subject to s.104 of the *Independent Commission Against Corruption Act 1988*.
- (2) Members of staff of the Commission are appointed by the Chief Commissioner and are taken to be employed by the Government of New South Wales in the service of the Crown but the Chief Commissioner is, for the purposes of any proceedings relating to staff employed under s.104 held before a competent tribunal having jurisdiction to deal with such matters, taken to be the employer of the staff.
- (3) Persons employed under s.104 are appointed as a member of staff of the Commission at the discretion of the Chief Commissioner and are subject to the control and direction of the Chief Commissioner.
- (4) The basis of employment in the Commission is ongoing (either full-time or part-time), that is, continuing employment subject to satisfactory work performance and conduct.
- (5) The Commission may engage employees other than ongoing employees. These employees may be casual, fixed term or secondees and will be engaged when:
  - (a) additional skills, expertise or experience in the current workforce are required and the position will not be required on an ongoing basis.
  - (b) a role is vacant because an employee is on approved leave of absence.
- (6) It is the intention of the parties that the Commission's recruitment policy will indicate the steps to be taken to determine the availability of skills, expertise or experience within the Commission prior to the initiation of any external action. Appointment to a role at the ICAC will involve a six months probationary period or such period as the Chief Commissioner directs. The probationary period applies to ongoing employees.
- (7) Satisfactory performance encompasses, but is not limited to:
  - (a) satisfactory discharge of duties as incorporated in the individual performance agreement
  - (b) participation in corporate activities
  - (c) commitment to and participation in training and development opportunities.
- (8) Satisfactory conduct encompasses, but is not limited to:
  - (a) observing the law
  - (b) observing Commission policies and procedures
  - (c) observing ethical standards of behaviour as set out in the Commission's Code of Conduct.
- (9) Subject to section 104 of the *Independent Commission Against Corruption Act 1988*, the Commission will, wherever possible, follow the management practices relating to termination and dismissal prescribed in legislation that affects NSW Government.

- (10) Recruits may decide to be seconded to an ongoing role or come to the Commission on Leave Without Pay from their substantive public sector employer. Where the Commission offers ongoing employment in the same role then staff currently on secondment or leave without pay may apply to resign from their substantive employment and join the Commission as an ongoing member of staff in their current job, provided performance and conduct are satisfactory and, where possible, three months' notice is given. This opportunity is not available to temporary employees.
- (11) A temporary employee may be directly appointed to an ongoing role if the employee has filled that role for one year on a temporary basis and was initially recruited under merit selection.
- (12) Resignation - 4 weeks notice in writing is required unless the Commission agrees to a lesser period of notice.
- (13) Termination of employment - 4 weeks notice shall be given by staff; or in lieu of notice, the Commission may grant payment in lieu.
- (14) Casual employees shall receive leave entitlements as referred to in Schedule 3 of this Award.

### **7. Performance Management and Salary Increments**

- (1) The aims of the Commission's performance management system are:
  - (a) to establish a climate of continuous improvement within the Commission
  - (b) to match individual staff performance objectives with Commission performance objectives and Corporate and Strategic Plans
  - (c) to provide a process that ensures honest communication between staff and supervisors about the work they do, how it is done and how performance is measured
  - (d) to ensure the identification of training and development needs are in line with requirements of the individual and the Commission.
- (2) The Commission's performance management system is based on an annual performance agreement between staff and their supervisor. The annual performance agreement sets out the agreed outcomes to be measured and how these outcomes will be measured (i.e. performance measures).
- (3) There are stages to be completed each year for the Commission's performance management system, which will occur at a common time for all employees, these stages are outlined in the Commission's policy on performance management.
- (4) Progression through the salary points in the ICAC Officer range is based on performance under the Commission's performance management system. The Annual Review, which occurs in June each year, includes an overall assessment of performance.
- (5) All staff have a common increment date of 1 July, and their increment will be eligible for payment in the first full pay period commencing on or after 1 July each year, subject to satisfactory performance under the Commission's performance management system.
- (6) The minimum period of service required before consideration for an increment would be 4 months subject to completion of a Performance Agreement within 6 weeks of appointment or promotion.
- (7) Procedures for managing poor performance will include:
  - (a) the implementation of a 3 month performance improvement plan, with a further extension of 1 month if performance remains unsatisfactory.
  - (b) the deferral of an increment following unsatisfactory performance will create a new increment anniversary date for that year. If performance is maintained at a satisfactory level for at least a 4

month period, prior to the common increment date of 1 July, the staff member, similar to other staff, may be considered for an increment at that time. If the period of satisfactory performance and issuing of a new increment date is less than four months prior to the common increment date, then the staff member will only receive an increment on their new increment date and will not be entitled to another increment at the common increment date. If performance is maintained at a satisfactory level, it will not be until the subsequent year that the common increment date will once again become applicable.

## **8. Training and Development**

- (1) The Commission is committed to providing training and development activities that aim to increase the skills, knowledge and experience of staff. The activities provided include:
  - (a) job relevant training
  - (b) refresher courses
  - (c) new skills training
  - (d) participation in corporate activities
  - (e) opportunities to do work at a similar or higher grade within the Commission, or on secondment to other agencies
  - (f) transfer, promotion or secondment opportunities
  - (g) training where performance has been identified as inadequate
  - (h) other career development opportunities relevant to the work of the Commission

## **9. Redundancy and Redeployment**

Staff and management are covered by the provisions of the NSW Department of Premier and Cabinet's 'Managing Excess Employees' Policy and directions for redundancy and redeployment.

## **10. Conditions of Employment**

- (1) The conditions of employment are set out in this Award and include compliance with the Commission's General Policies and Procedures. The Commission's General Policies and Procedures are to be read as amended and in force at the date under consideration. To the extent of any inconsistency between the Commission's General Policies and Procedures and the Award, the conditions of the Award shall prevail.
- (2) The ICAC's conditions of employment are based on NSW public service conditions at the date of the making of this Award. Changes in public service Awards and/or conditions of employment that occur after the making of this Award will be referred to the CCG for consideration and possible recommendation to the Chief Commissioner. If it is decided they should apply, this Award will be varied in accordance with the *Industrial Relations Act 1996*.
- (3) In setting conditions of service for staff of the Commission regard will be given to the provisions of the current Crown Employees (Public Service Conditions of Employment) Award.
- (4) If conditions of employment for staff of the Commission are not covered by this Award, then the provisions of the current Crown Employees (Public Service Conditions of Employment) Award or any replacement award will be referred to. Any changes to conditions of service will be made in consultation with the CCG. Variations in conditions, such as those for Surveillance Officers, are addressed through internal policy at ICAC.

- (5) Staff transferring to the Commission from other NSW public sector agencies may be able to transfer some of their existing entitlements to the Commission consistent with NSW public sector mobility provisions.

### **11. Hours of Employment - Flexible Working Hours Scheme (FWHS)**

- (1) The Commission operates under a Flexible Working Hours Scheme as follows. This clause must be read in conjunction with the Commission's internal policy as is in force at the relevant time. The provisions of this clause prevail to the extent of any inconsistency with the policy.
- (2) Purpose - to improve organisational performance and to provide employees with flexibility in arranging working hours.
- (3) Principles - In order that staffing levels are sufficient to meet operational requirements, the Guarantee of Service and performance standards, management and staff are committed to ensuring that:
- (a) decisions regarding working hours will be made taking into account the requirements of the particular Division, Section or team and the Commission
  - (b) decisions regarding working hours will be made between an employee and their direct supervisor based on consultation and negotiation
  - (c) supervisors will notify staff of the need to change hours as soon as practicable
  - (d) staff will give reasonable notice of request for flex leave
- (4) The provisions of this clause shall apply to part time staff on a pro rata basis.
- (5) Surveillance Officers - Management recognises the need for greater flexibility in managing the flexible working hours' scheme for Surveillance Officers and allows for variations in recognition of the employment situation of surveillance staff, which are referred to in internal policy at ICAC.
- (6) Ordinary hours of work - 7 hours/day, 35 hours/week, Monday to Friday.
- (7) Commission's daily hours of business - 9 am to 5 pm.
- (8) Daily period in which work is to be performed (bandwidth) - 7.30 am to 7.00 pm. This period may be varied with the agreement of staff and their supervisor to meet Commission or staff needs. If the bandwidth is altered, flex is accrued after 7 hours work (excluding meal breaks) and overtime after 11.5 hours from the start of the altered bandwidth.
- (9) Minimum hours to be worked each day - 5 hours. Minimum hours may be varied temporarily by agreement of the staff member and their Executive Director in exceptional circumstances.
- (10) Maximum hours to be worked each day - 10, unless approved otherwise.
- (11) Meal break – Minimum of 30 minutes every 5 hours. Conditions specific to Surveillance Officers, including meal breaks and meal allowance eligibility, are managed through internal policy at ICAC.
- (12) Flex Period - 140 hours (4 weeks), which are the contract hours for a fulltime employee.
- (13) Maximum Flex Leave that can be taken in any financial year - 26 days (182 hours).
- (14) Carry over credit at end of Flex Period - up to 42 hours.
- (15) Carry over debit at end of Flex Period - up to 10 hours. Debits in excess of 10 hours must be offset by an application for Annual Leave.
- (16) Flex Leave that can be taken in a Flex Period - 21 hours. Staff are expected to take Flex leave as either a half day (3.5 hours) or a full day (7 hours). Part time employees may take a pro rata amount equivalent

to the hours worked on a specific day. Flex Leave may be taken at the beginning and/or end of a period of other leave.

- (17) Flex Record - Staff must maintain current and accurate records of their working hours on the Timekeeper system. Data from the Record will be analysed from time to time.
- (18) Where a staff member has accrued 6 weeks annual leave (over 30 days), unless otherwise authorised by their Director, flex leave, including flex leave can only be taken in situations where at least one day of annual leave has been applied for and approved within the flex period. If however, annual leave has been applied for and declined or not actioned by the manager, access to flex leave is still available.

## **12. Flexible Work Arrangements (FWA)**

- (1) This Award aims to provide assistance to staff in balancing their personal and work commitments. This enables the Commission to be more flexible in the delivery of its services and to improve the satisfaction of staff. FWA will only be available with the agreement of management. All conditions of employment in this Award apply to part time staff on a pro-rata basis.
- (2) The following FWA are available:
  - (a) Ongoing Part-time Employment - enables staff to work hours which are less than the full-time weekly hours of their role.
  - (b) Part-time Leave Without Pay - enables staff to work on a part-time basis for a period of time, either by cutting hours in their current role or by doing other duties. At the end of the period, they return to full-time work.
  - (c) Part Year Employment - enables staff to work for an agreed number of weeks per year, with an agreed number of unpaid weeks.
  - (d) Job Sharing - enables a job to be shared by two or more staff. They may be employed on a part-time basis or may be full-time employees taking part-time leave without pay.
  - (e) Working at home - Staff may work at home from time to time if it is an efficient and effective way of working and the outcomes to be achieved are agreed to by their supervisor.
- (3) An ongoing member of staff originally employed on a full-time basis and currently working in a FWA has the right to return to full-time employment. In such a case they will be paid at their substantive salary level but may not be able return to the work carried out before entering the FWA in accordance with the ICAC Policy.

### **12A. Lactation Breaks**

This clause applies to lactating employees who seek to breastfeed and/or express milk while at work. Lactation breaks are provided for breastfeeding, expressing milk and associated activities such as labelling and storing of milk and cleaning of equipment. Lactation breaks are necessary to maintain employee wellbeing and to ensure an adequate milk supply for the child.

- (1) Lactation breaks are in addition to any other rest period and meal break as provided for in this award.
- (2) Full-time employees or part-time employees working more than 4 hours per day are entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day (or per shift).
- (3) Part-time employees working 4 hours or less on any one day are entitled to one paid lactation break of up to 30 minutes on any day so worked.
- (4) A flexible approach to lactation breaks is taken by mutual agreement between the employee and the manager. An employee's request for flexibility regarding lactation breaks will be supported as far as possible and not unreasonably refused. Lactation breaks may be joined with another paid break or part

thereof to provide for a longer lactation break, or the total lactation break of 60 minutes (full time equivalency) may provide for 3 or more shorter breaks. This flexibility recognises the differing breastfeeding requirements for employees as their child develops. Arrangements for breaks should be reviewed at agreed intervals to ensure appropriate balance is maintained between the employee's needs and operational requirements.

- (5) Employees will have access to a suitable, private space for the purpose of breastfeeding or expressing milk.
- (6) Where practical, the minimum requirements would include:
  - a private and hygienic space which is suitably signed
  - comfortable seating, a table, access to power point and storage for equipment
  - access to refrigerator and facilities for washing hands and equipment
- (7) Where it is not practicable to provide these facilities on site, reasonable alternatives should be discussed and agreed between the employee and their manager.
- (8) Employees who experience difficulties transitioning from home-based breastfeeding to the workplace are afforded time and access to resources in the workplace in paid time. Employees may access sick leave or flexible working hours provisions as required to seek advice or treatment from external services, such as the Australian Breastfeeding Association Helpline of NSW Health.

### **13. Annual Leave**

- (1) Staff are entitled to 20 working days/140 hours of annual leave per year. Annual leave accrues at the rate of 1.67 working days/11.62 hours per month and may be taken in periods of not less than ¼ day. At least 10 days annual leave must be taken each financial year. To enable better planning of annual leave and flex leave, and to ensure better availability of staff throughout the year, staff undertake to manage their annual leave to give the Commission maximum notice of their wishes. The Commission, will, wherever possible, meet the leave requirements of staff; however, the taking of annual leave is subject to Commission convenience.
- (2) An annual leave entitlement does not accrue during any periods of unpaid leave except for periods of sick leave without pay.
- (3) Staff annual leave balances at 30 June each year can accrue to a maximum of 30 working days/210 hours unless an approval to conserve annual leave has been granted by the relevant director. The taking of flex leave can be affected by annual leave balance in excess of 30 days. Refer to clause 11, Hours of Employment - Flexible Working Hours Scheme (FWHS).

### **14. Concessional Leave and Easter Thursday**

- (1) Concessional Leave: At Christmas, where the Premier grants concessional leave, the Chief Commissioner may make a similar grant to Commission staff provided that adequate service to the public is maintained. Advice to staff on whether the leave is available, as well as the relevant conditions, will be provided at least two weeks prior to Christmas each year.
- (2) Easter Thursday: The Chief Commissioner may grant access to an additional ½ day flex leave on the afternoon of Easter Thursday in the flex period in which Easter Thursday falls, provided that adequate service to the public is maintained. In order to be able to take the additional ½ day of flex leave the staff member must have enough flex time accrued during the flex period to ensure he/she does not go into debit of more than 10 hours at the end of the flex period.

### **15. Extended Leave**

- (1) The ICAC extended leave entitlements are:

- (a) Extended leave (EL) entitlement after 10 years service - 2 months (44 working days) on full pay and 11 working days for every year of service thereafter. EL may be taken at half pay.
- (b) EL entitlement after 7 years service - staff with 7 years or more service will be entitled to take (or be paid out on resignation) EL in the usual manner. The quantum of leave available is that which would have applied if pro rata leave was granted. No repayment will be required if a staff member does not reach 10 years service.
- (c) EL entitlement after 5 years service but less than 7 years service - If the ICAC terminates employment for reasons other than serious and intentional misconduct, or, staff leave on account of illness, incapacity or domestic or other pressing necessity, staff are entitled to 1 month's EL for 5 years service plus a pro-rata rate for service of between 6 and 7 years.
- (d) EL on Double Pay - A staff member with an entitlement to EL may elect to take leave at double pay. The additional payment will be made as a superable, taxable allowance for employees covered by the *First State Superannuation Act 1992* and members of another complying fund of their choice. The double payment is not superable for members of the closed NSW Public Sector Superannuation Schemes, which are established by the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-Contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987* and the *Superannuation Act 1916*.

The staff members leave balance will be debited for the actual period of the absence from work and an equivalent number of days as are necessary to pay the allowance. Other leave entitlements, e.g. annual leave, sick leave and EL will accrue at the single time rate where a staff member takes EL at double time. Superannuation contributions will only be made on the basis of the actual absence from work, i.e. at the single time rate. Where a staff member elects to take EL at double pay, in most cases a minimum period of absence of one week should be taken, i.e. one week leave utilising two weeks of accrued leave.

- (2) Public holidays that fall whilst a staff member is on a period of EL will be paid and not debited from a staff member's EL entitlement. In respect of public holidays that fall during a period of double pay EL a staff member will not be debited in respect of the leave on a public holiday. The staff member's leave balance will however be reduced by an additional day to fund the non-superable taxable allowance.
- (3) Service for EL purposes - The following service with public sector agencies may count for EL purposes, depending on the agency:
  - (a) ongoing and temporary work periods of employment with the ICAC under the *Independent Commission Against Corruption Act 1988*.
  - (b) continuous service with agencies under the *Government Sector Employment Act 2013* and the *Government Sector Employment Regulation 2014*, including those recognised in Schedule 1 and Schedule 2 of the Regulation. This generally includes service with the NSW public sector, and may also include service with certain Commonwealth and interstate agencies, where such service is recognised under clause 6 of Schedule 2.
  - (c) where the break in service between a public sector agency and starting work with the ICAC is less than two months, this previous employment may be able to be recognised for EL purposes providing that the offer of employment with the Commission was accepted with the Commission prior to resignation.

## **16. Family and Community Service Leave and Carer's Leave**

- (1) Family and Community Service Leave (FACSL) - staff may be granted FACSL for reasons relating to unplanned and/or emergency situations associated with:
  - (a) their family responsibilities
  - (b) their performance of community service duties

- (c) pressing necessity.
- (2) Such unplanned and emergency situations may include, but not be limited to, the following: -
- (a) Compassionate grounds, such as the death or illness of a family member or a member of the staff member's household including organising and attending to funeral arrangements;
  - (b) Emergency accommodation matters up to one day, such as attendance at court as defendant in an eviction action, arranging accommodation, or when required to remove furniture and effects;
  - (c) Emergency or weather conditions; such as when flood, fire, snow or disruption to utility services etc, threatens a staff member's property and/or prevents a staff member from reporting for duty;
  - (d) Attending to emergency or unplanned or unforeseen family responsibilities, such as attending a child's school for an emergency reason or emergency cancellations by childcare providers;
  - (e) Attendance at court by a staff member to answer a charge for a criminal offence, only if the Chief Commissioner considers the granting of family and community service leave to be appropriate in a particular case;
  - (f) Attendance as a competitor in major amateur sport (other than Olympic or Commonwealth Games) for staff members who are selected to represent Australia or the State;
  - (g) Absence during normal working hours to attend meetings, conferences or to perform other duties for staff members holding office in Local Government whose duties necessitate absence during normal working hours for these purposes, provided that the staff member does not hold a position of Mayor of a local government council.
- (3) Non-emergency appointments or duties shall be scheduled or performed outside of normal working hours or through approved use of flexible working arrangements or other appropriate leave.
- (4) FACS leave can be used for carer's responsibilities to care for an ill family member as defined below. In this situation, FACS leave does not need to be unplanned or an emergency however, FACS leave needs to be exhausted prior to carer's leave being accessed to care for an ill family member. Refer to carer's leave for further explanation.
- (5) A family member for these purposes is:
- (a) Your child
  - (b) The child of your current or former husband, wife, de facto opposite or same sex partner
  - (c) Any adult who you are the legal guardian of
  - (d) Any 'family member'. This means any of the following:
    - (i) Your current or former husband, wife, de facto opposite or same sex partner,
    - (ii) Your grandchild or the grandchild of your current or former husband, wife, de facto opposite or same sex partner,
    - (iii) Your parent or the parent of your current or former husband, wife, de facto opposite or same sex partner,
    - (iv) Your grandparent or the grandparent of your current or former husband, wife, de facto opposite or same sex partner,
    - (v) Your brother or sister or the brother or sister of your current or former husband, wife, de facto opposite or same sex partner.

- (6) Family and community service leave shall accrue as follows:
  - (a) 2-1/2 days in the staff member's first year of service;
  - (b) 2-1/2 days in the staff member's second year of service; and
  - (c) 1 day per year thereafter.
- (7) Part time staff will accrue at a pro-rata amount.
- (8) Where FACSLS is exhausted, two additional working days FACSLS may be granted on a discrete per occasion basis on the death of a person defined above.
- (9) Carer's Leave (CL) - Where FACSLS is exhausted, unused sick leave may be granted to staff responsible for the care of an ill family member using the above definition of family member.
- (10) The sick leave that can be accessed is:
  - (a) unused sick leave from the previous 3 years.
  - (b) access to additional sick leave accumulated from eligible service may be granted in special cases.
- (11) When applying for CL staff must supply:
  - (a) a medical certificate or Statutory Declaration for periods greater than 2 consecutive working days.
  - (b) details of the name of the person being cared for, their relationship with that person, the reason for that period of leave.
  - (c) the exact nature of the illness does not need to be disclosed.
- (12) The use of CL will be managed in the same way as sick leave, with evidence and medical certificates being required when applying for carer's leave for takings in excess of two consecutive days.
- (13) Where FACSLS and CL are exhausted, time off in lieu of overtime or travelling compensation or flex time, annual, EL and leave without pay may be granted.

#### **17. Holy Days and Essential Religious Duties**

- (1) Staff of any religious faith who need leave for the purpose of observing holy days of that faith may be granted available paid or unpaid leave provided that adequate notice is given.
- (2) Staff of any religious faith who need time off during daily working hours to attend to essential religious duties of that faith may use the provisions of the Flexible Working Hours Scheme.

#### **18. Leave Without Pay**

- (1) Staff may be granted periods of leave without pay in excess of 2 months after 2 years employment with the Commission. The maximum period that may be granted in this case is 12 months subject to special approval by the Chief Commissioner. Staff taking 12 months LWOP must return to work for the Commission for a minimum of 2 years before further LWOP is granted.
- (2) A staff member shall not be required to exhaust accrued paid leave before proceeding on leave without pay but, if the staff member elects to combine all or part of accrued paid leave with leave without pay, the paid leave shall be taken before leave without pay.
- (3) No paid leave shall be granted during a period of leave without pay.

## 19. Military Leave

- (1) Staff who are volunteer, part-time members of the Defence Forces may be granted military leave on full pay to attend training, education, instruction and compulsory parades. The grant each financial year is:
  - (a) Navy Reserve - up to 24 calendar days
  - (b) Army Reserve - up to 24 calendar days
  - (c) Air Force Reserve - up to 28 calendar days
- (2) The Chief Commissioner may grant a staff member special leave of up to 1 day to attend medical examinations and tests required for acceptance as volunteer part time members of the Australian Defence Forces.
- (3) A staff member who is requested by the Australian Defence Forces to provide additional military services requiring leave in excess of the entitlement specified may be granted Military Leave Top Up Pay by the Chief Commissioner. Military Leave Top Up Pay is calculated as the difference between a staff member's ordinary pay as if they had been at work, and the Reservist's pay which they receive from the Commonwealth Department of Defence.
- (4) During a period of Military Leave Top Up Pay, a staff member will continue to accrue sick leave, annual and extended leave entitlements, and the Commission is to continue to make superannuation contributions at the normal rate.

## 20. Parental Leave

The following table summarises the entitlements in this section. This table must be read with the relevant clauses. If there are inconsistencies, the provisions in the relevant clause will prevail.

**Summary of parental leave provisions**

Leave	Paid leave	Unpaid leave	Total leave
Parental Leave	14 weeks for a parent with caring responsibility associated with the birth, adoption, altruistic surrogacy, or ongoing placement arrangement of a child	38 weeks	52 weeks
Bonus Paid Parental Leave	2 weeks for single parents or when both parents have taken any Paid Parental Leave offered by their employers		2 weeks
Special Pre-Term Birth Leave	From birth to the end of 36 weeks' gestation for the parent with the caring responsibility of a child born before 37 weeks, then revert to full-term parental leave provisions		From birth to the end of 36 weeks
Leave for a Stillbirth (the birth of a baby without signs of life, at 20 or more completed weeks or where a child dies shortly after birth)	14 weeks for the employee who gave birth  2 weeks for an employee whose partner gave birth		14 weeks for the employee who gave birth  2 weeks for an employee whose partner gave birth

Requests to extend leave or return part time		52 weeks	52 weeks
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(1) For the purpose of this clause:

- (a) “Altruistic Surrogacy” means a surrogacy arrangement as defined in the Surrogacy Act 2010 (NSW) and must not be a commercial surrogacy arrangement.
- (b) “De facto partner” means a person who is the employee’s partner and lives with them on a genuine domestic basis but is not legally married to the employee.
- (c) “Caring responsibility” means a person who meets the child’s physical needs, including feeding, dressing, bathing and otherwise supervising the child.
- (d) “Child” means:
  - (i) For birth-related leave, a child (or children from a multiple birth) of the employee, employee’s partner or employee’s legal surrogate.
  - (ii) For adoption-related leave, a child (or children) who the employee or the employee’s partner will adopt and is not the employee or employee’s partner’s child. The child (or children) is or will be under 18 years of age.
  - (iii) For ongoing placement arrangement-related leave, a child (or children) under 18 years, placed in the permanent care of the employee or the employee’s partner.
- (e) “Confirmation of placement letter” means a letter from the Department of Communities and Justice (DCJ) or their accredited designated agency that:
  - (i) confirms the employee is an authorised foster carer or relative/kinship carer who is or will be providing continuous care on an ongoing basis for a child or young person who is subject to a legal order allocating parental responsibility to the Minister; or
  - (ii) confirms the employee is an authorised relative/kinship carer, authorised foster carer or other suitable person who is or will be providing continuous care on an ongoing basis for a child or young person for whom they hold parental responsibility under a legal order, including a guardianship order; and
  - (iii) confirms the start date of the placement.
- (f) Fertility treatment” means any of the following assisted reproductive technology treatments as defined in the Assisted Reproductive Technology Act 2007 (NSW) including but not limited to:
  - (i) intrauterine insemination (IUI)
  - (ii) in-vitro fertilisation (IVF)
  - (iii) intracytoplasmic sperm injection (ICSI)
  - (iv) Ovulation induction (OI).
- (g) “Full-term birth” means the birth of a live child from 37 weeks.
- (h) “Legal order” means an order made by the Children’s Court of NSW under the Children and Young Persons (Care and Protection) Act 1998 (NSW) including:

- (i) Parental Responsibility to the Minister (PRM), Relative/Kin (PRR) or Non-Relative (PNR) Interim Orders;
- (ii) Short Term Court Order (STCO) allocating parental responsibility to the Minister, Relative/Kin or Non-Relative for a period of at least 12 months;
- (iii) Parental Responsibility to the Minister (PRM), Relative/Kin (PRR) or Non-Relative (PNR) Long Term Care to 18 years Final Order; or
- (iv) Guardianship Order.

For the purposes of this definition, a legal order made by the Federal Circuit and Family Court of Australia under the *Family Law Act 19XX* (Cth) includes a final order allocating parental responsibility to relative/kin or suitable person to 18 years provided that the Department of Communities and Justice intervened as a party to the proceedings and the employee is an authorised carer eligible for the out-of-home care carer allowance.

- (i) “Legal surrogate” means the birth mother in a surrogacy arrangement as defined in the Surrogacy Act 2010 (NSW).
- (j) “Miscarriage” means a pregnancy that ceases before 20 weeks or where the number of weeks is unknown, or the baby weighed less than 400g.
- (k) “Ongoing placement arrangement” means the placement of a child or young person who is subject to a legal order of the Children’s Court of NSW or Federal Circuit and Family Court of Australia with an authorised foster carer, authorised relative/kinship carer or suitable person on an ongoing basis. Ongoing placements do not include informal arrangements or emergency, respite care or short-term care with a specified end date.
- (l) “Partner” means a spouse, de facto partner, former spouse or former de facto partner.
- (m) “Pre-term birth” means the birth of a live child before 37 weeks.
- (n) “Stillbirth” means the birth of a baby without signs of life, at 20 or more completed weeks or where a child dies shortly after birth.

## **20.1 Paid Parental Leave**

- (1) Employees are entitled to up to 14 weeks Paid Parental Leave if:
  - (a) they have or will have completed at least 40 weeks continuous service at the expected date of birth, adoption, altruistic surrogacy or ongoing placement, and
  - (b) they have or will have caring responsibility for the child (or children), or
  - (c) the employee is a legal surrogate and has or will have completed at least 40 weeks continuous service at the expected date of birth.
- (2) Paid Parental Leave must be taken within 24 months of the date of birth, adoption or altruistic surrogacy or ongoing placement.
- (3) Pregnant employees may start Paid Parental Leave up to 9 weeks before their expected date of birth.
- (4) Employees who are eligible for paid parental leave in accordance with 20.1.1 are entitled to an additional two weeks of Bonus Paid Parental Leave where both parents have exhausted any paid parental leave offered by their employer.
- (5) Employees who are single parents or whose partners do not have access to employer paid parental leave will be eligible for the full two weeks of bonus paid parental leave.

- (6) An employee is entitled to Bonus Paid Parental Leave, where it can be demonstrated that their partner:
  - (a) has or will have exhausted the paid parental leave provided by their employer, or
  - (b) has no access to employer paid parental leave.
- (7) A maximum of two employees (if both are working in the NSW Government Sector) can access Paid Parental Leave under this clause per birth, adoption, altruistic surrogacy or ongoing placement arrangement except in the event of an altruistic surrogacy where three employees (two intended parents and one surrogate are all employed in the NSW Government Sector) will be entitled to access Paid Parental Leave.
- (8) Where an employee takes paid parental leave in respect of an ongoing placement arrangement and later adopts, becomes the legal guardian or cares for the child (or children) or young person/s under a different legal order, the employee is not entitled to access a further period of paid parental leave in connection with the adoption, guardianship order or other legal order of the same child (or children).
- (9) In the event that an ongoing placement arrangement ceases, and the employee no longer has responsibility for the care of the child/children, the employee must notify the employer as soon as practicable. At the cessation of an ongoing placement, the remaining period of paid parental leave ceases. The Commission and employee should discuss alternative leave arrangements and/or a return-to-work date.

## **20.2 Unpaid Parental Leave**

- (1) In addition, an employee is entitled to unpaid parental leave where:
  - (a) the employee, their partner or their legal surrogate gives birth; or the employee or their partner adopts; or the employee or their partner have a child placed in the care of the employee or their partner as part of an ongoing placement arrangement, and
  - (b) the employee has or will have responsibility for the care of the child that is born, adopted or placed in an ongoing placement arrangement, or
  - (c) the employee is a legal surrogate who gives birth.
- (2) Subject to this clause the employee shall be entitled to be granted unpaid parental leave as follows:
  - (a) For a pregnant employee, a period up to 9 weeks prior to the expected date of birth; and
  - (b) For all eligible employees, a further period of up to 12 months after the actual date of birth.
- (3) An employee on parental leave does not have to return to work to access a further period of parental leave.
- (4) Where an employee combines paid and unpaid parental leave, the total period of parental leave taken cannot exceed 12 months except where an employee has applied to extend their period of unpaid parental leave under cl. 20.12.

## **20.3 Calculation of Paid Parental Leave**

- (1) Paid Parental Leave including bonus parental leave is calculated at the employee's ordinary rate of pay at the time they take leave.
- (2) Paid Parental Leave may be paid:
  - (a) in advance as a lump sum;

- (b) fortnightly as normal;
  - (c) fortnightly at half pay; or
  - (d) as a combination of full and half pay.
- (3) A full-time employee 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; or
  - (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 during the 40 weeks; or
  - (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.
- (4) An employee who commences a subsequent period of parental leave for another child within 24 months of commencing an initial period of parental leave will be paid:
- (a) at the full-time or part-time rate, they received before starting the initial leave if they have not returned to work; or
  - (b) at a rate based on the hours worked before they took the initial leave if they have returned to work and reduced their hours during the 24-month period; or
  - (c) at a rate based on the hours worked before the subsequent period of leave if they have returned to work and not reduced their hours.

#### **20.4 Concurrency of Paid Parental Leave**

- (1) Employees can take all Paid Parental Leave concurrently except in circumstances where both parents are employed at the same workplace and operational requirements may prevent concurrent leave. In these instances, employees may take up to four weeks Paid Parental Leave concurrently with their partner. Employees may request to take more than four weeks Paid Parental Leave concurrently with their partner in accordance with clause 20.5.

#### **20.5 Flexibility for Taking Paid Parental Leave**

- (1) An employee may request to use their Paid Parental Leave entitlement in ways other than a single continuous period. The Commission will consider this request based on operational requirements and the employee's personal and family circumstances.
- (2) Employees in the same NSW Government Sector workplace may also request to take more than four weeks of parental leave concurrently.
- (3) The Commission may refuse a request on reasonable grounds based on the effect on the Commission including but not limited to:
- (a) that the new working arrangements requested would be too costly for the Commission;
  - (b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
  - (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested;

- (d) that the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity; or
  - (e) that the new working arrangements requested would be likely to have a significant negative impact on customer service.
- (4) The Chief Executive Officer and Executive Director will consider and respond to the request in writing within 21 days.
  - (5) If the Chief Executive Officer and Executive Director agrees to the employee's request to use their Paid Parental Leave entitlement in ways other than a single continuous period, the leave period must not extend beyond 24 months of the date of birth, adoption, altruistic surrogacy or ongoing placement of the child. Any public holidays that fall during the leave will not extend the period of leave.

#### **20.6 Other Accrued Leave in Conjunction with Parental Leave**

- (1) An employee may take available recreation leave or extended leave during the parental leave period as long as it does not extend the total period of parental leave.
- (2) An employee may take available recreation leave at half pay with parental leave provided that:
  - (a) recreation leave at half pay is taken within the period of parental leave;
  - (b) the total period of parental leave is not extended beyond 24 months by the taking of recreation leave at half pay;
  - (c) the half-pay leave is converted to the full-time equivalent and treated as such for the purpose of accruing further recreation, extended and other leave at the full-time rate.

#### **20.7 Pregnancy Related Illness and Alternative Duties**

- (1) A pregnant employee who is sick during their pregnancy may take available paid sick leave, accrued recreation or extended leave, or sick leave without pay.
- (2) If a pregnant employee finds it difficult to perform their normal duties or there is a risk to their health or that of the unborn child, the Executive Director must consult with the employee and take all reasonable steps to arrange safer alternative duties or adjustments.
- (3) Safer alternative duties or adjustments include but are not limited to:
  - (a) having flexible working arrangements for when and where the employee performs their duties;
  - (b) changing duties temporarily;
  - (c) retraining;
  - (d) multiskilling;
  - (e) redesigning their role.
- (4) If a pregnant employee gives the Commission evidence that the employee is fit for work, but that it is inadvisable for the employee to continue in the employee's normal duties, and safe alternative duties or adjustments cannot reasonably be provided, the Commission must grant the employee paid no safe job leave until the end of the risk period, end of the employee's pregnancy or expected commencement of parental leave, whichever is the earliest.

#### **20.8 Further Periods of Parental Leave**

- (1) When an employee, their partner or their legal surrogate gives birth; or the employee or their partner adopts; or the employee or their partner have a child placed in the care of the employee or their partner as part of an ongoing placement arrangement while on parental leave, the employee is entitled to a further period of parental leave.
- (2) At the commencement of the new period of parental leave, any remaining unpaid parental leave from the former birth, adoption or ongoing placement arrangement ceases.
- (3) Any remaining paid parental leave from the former birth, adoption or ongoing placement arrangement may be retained but must be taken within 24 months of the former date of birth, adoption or altruistic surrogacy or placement of a child or children.

#### **20.9 Leave for a Pre-Term Birth**

- (1) When an employee or their partner has a pre-term birth (before 37 weeks), the parent with caring responsibility is entitled to paid Special Pre-Term Parental Leave. This applies from the date of birth to the end of 36 weeks. Where both parents are NSW Government Sector employees, only one parent may access the leave.
- (2) An employee is entitled to paid special pre-term parental leave if they have or would have, if not for the pre-term birth, completed 40 weeks continuous service at the expected date of birth.
- (3) Paid Special Pre-Term Parental Leave starts from the date of the pre-term birth at full pay and the employee must take it in one continuous block up to the end of 36 weeks.
- (4) Immediately following the period of paid special pre-term parental leave and at the commencement of 37 weeks, special pre-term birth parental leave will cease, and an employee may commence parental leave in accordance with clause 20.1 and clause 20.2.
- (5) Where a pre-term child dies during a period of paid Special Pre-Term Parental Leave, the rest of that leave is replaced by up to 14 weeks' Paid Parental Leave in accordance with clause 20.1.
- (6) Employees cannot take paid Special Pre-Term Leave concurrently with any other form of leave.
- (7) When accessing paid Special Pre-Term Parental Leave, the employee must notify the Executive Director as soon as practicable of:
  - (a) the amount of leave required; and
  - (b) which other types of leave (if any) will follow the period of Special Pre-Term Parental Leave, including all paid and unpaid leave that employees propose to take, have applied for, or will take.
- (8) To access paid Special Pre-Term Parental Leave, the employee may need to provide evidence, such as:
  - (a) a medical certificate showing the expected date of birth; or
  - (b) a statutory declaration or medical certificate confirming caring responsibility; or
  - (c) a medical certificate or a birth certificate showing the child's actual date of birth.

#### **20.10 Leave for a Stillbirth**

- (1) A employee who gives birth to a stillborn child has access to paid parental leave in accordance with clause 20.1 or may elect to take available sick leave.
- (2) Where an employee's partner gives birth to a stillborn child the employee can access two weeks Paid Parental Leave.

#### **20.11 Leave Prior to an Adoption**

- (1) In addition to the paid parental leave available at clause 20.1, an employee seeking to adopt a child is entitled to up to two days unpaid special adoption leave to attend interviews or examinations as are necessary as part of the adoption process.
- (2) An employee may also use accrued leave entitlements or flexible working arrangements to attend interviews or examinations. This includes recreation leave, extended leave and where applicable, family and community service leave.

#### **20.12 Right to Request Extension of Unpaid Parental Leave and Part-Time Return to Work**

- (1) To assist employees with parental responsibilities, an employee who has been granted parental leave in line with clause 20.1, Paid Parental Leave, can apply to the Chief Executive Officer to:
  - (a) extend Unpaid Parental Leave for a further continuous leave period of up to 12 months provided the unpaid parental leave does not extend beyond 24 months from the birth, adoption or ongoing placement of the child; and/or
  - (b) return from full-time parental leave to work part time until the child reaches school age (including the option to return to work on part-time leave without pay).
- (2) An employee intending to apply to return from parental leave part time (in line with clause 20.12.1) must write to the Chief Executive Officer as soon as practicable. An employee can give notice at any time up to four weeks before their proposed return or extension of leave, or later if the Chief Executive Officer agrees.
- (3) The Chief Executive Officer will consider the request and the employee's circumstances and respond in writing. The Chief Executive Officer can only refuse the request on reasonable grounds based on the effect on the workplace or the Chief Executive Officer's business. This could include:
  - (a) that the new working arrangements requested would be too costly for the Commission;
  - (b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
  - (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested;
  - (d) that the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity; or
  - (e) that the new working arrangements requested would be likely to have a significant negative impact on customer service.
- (4) An employee on parental leave may change the period of leave once without the consent of the Commission by providing at least 14 days' notice in writing. Further changes may be made with the consent of the Chief Commissioner.
- (5) An employee who has returned to full-time duty without exhausting their entitlement to 12 months unpaid parental leave is entitled to revert to unpaid parental leave. This may be done once only, by providing a minimum of 4 weeks' notice (or less if the Commission agrees).

#### **20.13 Returning to Work**

- (1) An employee has the right to return to their former role if they have taken parental leave or returned to work part-time under right to request provisions, and they immediately resume duty after the approved leave or part-time work arrangement.

- (2) If the role occupied by the employee immediately prior to the taking of parental leave has ceased to exist, but there are other positions available that the employee is qualified for and is capable of performing, the employee will be appointed to a role of the same grade and classification as the employee's former position.
- (3) An employee does not have the right to their former role if they return to work part time. If the Executive Director approves an employee to return to work part time, the employee will be appointed to a role of the same grade and classification as their former role.

#### **20.14 Notice Requirements**

- (1) The Executive Director must inform employees of their entitlements and obligations under this section when it is made aware that an employee or their partner is pregnant, expecting a child through an altruistic surrogacy arrangement, is having a child placed with them as part of an ongoing placement arrangement or is adopting a child.
- (2) An employee who is an intended parent in an altruistic surrogacy arrangement must notify the Executive Director at least 8 weeks before the expected due date. The employee must give the Executive Director a copy of the pre-conception surrogacy altruistic surrogacy agreement. This agreement is provided for in the Surrogacy Act 2010 and can be redacted as necessary to protect non-employees' privacy.
- (3) To access parental leave, an employee must give the Executive Director written notice, eight weeks or as soon as practicable, before the expected start of their parental leave, of:
  - (a) their intention to take leave; and
  - (b) the child's expected date of birth, adoption, altruistic surrogacy or ongoing placement; and
  - (c) the employee's role as carer of their child for the parental leave period.
- (4) At least four weeks before the expected commencement of parental leave, the employee must advise the Executive Director of:
  - (a) the date they intend to start parental leave; and
  - (b) the date they expect to return to work.
- (5) Once an employee or their partner gives birth, they must notify the Executive Director of the date of birth as soon as convenient.
- (6) If an employee changes their intentions because of a pre-term birth or stillbirth, they must notify the Executive Director as soon as practicable.
- (7) Before and during Paid Parental Leave, an employee must notify the Executive Director of any changes to their circumstances that might affect their eligibility for this leave as soon as possible.

#### **20.15 Evidence Requirements**

- (1) To access Paid Parental Leave, the employee must provide evidence of the birth, adoption, altruistic surrogacy or ongoing placement arrangement:
  - (a) for a birth related leave, a medical or birth certificate showing the child's expected or actual date of birth;
  - (b) for adoption related leave, an integrated birth certificate or certificate of adoption;
  - (c) for altruistic surrogacy related leave, the provision of documentary evidence of the altruistic surrogacy agreement and a statutory declaration advising of the intention to make application for a parentage order as required under the Surrogacy Act 2010. A copy of the parentage order

(redacted as needed) does not need to be provided before accessing Paid Parental Leave if the order is not available before that time but must be provided as soon as it is obtained;

- (d) for an ongoing placement arrangement, a confirmation of placement letter provided by the Department of Communities and Justice, or their accredited designated agency as defined in 20(d)(i). A copy of the legal order as defined in 20(g) (redacted as needed) does not need to be provided before accessing Paid Parental Leave if the order is not available before that time but must be provided as soon as it is obtained.

(2) To access bonus paid parental leave the Commission may require evidence of this such as:

- (a) documents from the partner's employer; or
- (b) a statutory declaration from the employee.

#### **20.16 Communication Requirements**

(1) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Commission will take reasonable steps to:

- (a) 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
- (b) 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.

(2) The employee will take reasonable steps to inform the Commission of any significant matter that will affect the employee's decision about:

- (a) the duration of parental leave;
- (b) whether they intend to return to work; and
- (c) whether they intend to request to return to work part time.

(3) The employee will notify the Commission of any changes to their address and contact details which may affect the Employer's capacity to comply with clause 20.16.1.

#### **20A. Leave Related to Miscarriage and Fertility Treatment**

(1) When an employee or their partner miscarries, the employee is entitled to one week of paid Special Miscarriage Leave on each occasion a pregnancy ceases by way of miscarriage.

(2) Paid Special Miscarriage Leave starts from the date of miscarriage. The employee must take this leave in one continuous block before they can take any other leave.

(3) When accessing paid Special Miscarriage Leave, the employee must notify the Executive Director as soon as reasonably practicable of:

- (a) the amount of leave required; and
- (b) the anticipated date of return to duty.

(4) To access paid Special Miscarriage Leave an agency may request evidence, such as:

- (a) a medical certificate; or
- (b) an early loss certificate from the NSW Registry of Births, Deaths and Marriages.

### **20A.1 Leave for Fertility Treatment**

- (1) Employees can take up to one week of paid Special Fertility Treatment Leave each calendar year to undergo fertility treatment. This includes related medical appointments and travel required to access treatment.
- (2) Special Fertility Treatment Leave does not accumulate, and employees may take it in:
  - (a) part days
  - (b) single days
  - (c) consecutive days.
- (3) Paid Special Fertility Treatment Leave is not available to the partner of the person undergoing fertility treatment.
- (4) When accessing paid Special Fertility Treatment Leave, the employee must notify the Commission as soon as is reasonably practicable of:
  - (a) the amount of leave required, and
  - (b) when they expect to return to work.
- (5) To access paid Special Fertility Treatment Leave, the employee may need to provide a medical certificate that confirms the treatment.

### **21. Public Holidays**

The provisions of the *Public Holidays Act 2010* apply and provide for the following public holidays: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Christmas Day, Boxing Day or such other public holidays that are proclaimed. The Public Service Holiday is to be taken on a day determined by the Chief Commissioner between Christmas Day and New Year's Day.

### **22. Sick Leave**

- (1) Staff members at the time of the Award variation will accrue sick leave in accordance with this clause from 1 January 2009 onwards.
  - (a) At the commencement of employment with the NSW Public Sector, a fulltime staff member is granted an accrual of 5 days sick leave providing this does not exceed the amount that would normally accrue over their period of employment. This also applies to temporary employees.
  - (b) After the first four months of employment, a fulltime staff member shall accrue sick leave on a daily basis at the rate of 1.25 working days per month for the balance of the first year of service.
  - (c) After the first year of service, the staff member shall accrue sick leave on a daily basis at the rate of 15 working days per year of service.
- (2) Payment during the initial 3 months of employment with the Commission - Paid sick leave which may be granted to a staff member, in the first 3 months of employment shall be limited to 5 days paid sick leave, unless the Executive Director approves otherwise. Paid sick leave in excess of 5 days granted in the first 3 months of employment shall be supported by a satisfactory medical certificate.
- (3) Paid sick leave shall not be granted during a period of unpaid leave.
- (4) Any leave not taken is accumulated. Once sick leave with pay is exhausted, sick leave without pay may be granted.

- (5) Medical certificates must be provided for periods of sick leave in excess of 2 consecutive working days, taken on a strike day, consecutively with a public holiday and any time after giving notice of resignation or termination. If a staff member is required to provide evidence of illness for an absence of 2 consecutive working days or less, the Executive Director will advise them in advance.
- (6) A staff member may absent themselves for a total of 5 working days due to illness without the provision of evidence of illness/medical certificate to their manager. Staff members who absent themselves in excess of 5 working days in a calendar year may be required to furnish evidence of illness to their manager for each occasion absent for the balance of the calendar year.
- (7) As a general practice backdated medical certificates will not be accepted. However, if a staff member provides evidence of illness/medical certificate that only covers the latter part of the absence, they can be granted sick leave for the whole period if the manager is satisfied that the reason for the absence is genuine.
- (8) The granting of paid sick leave shall be subject to the staff member providing evidence which indicates the nature of illness or injury and the estimated duration of the absence. If a staff member is concerned about disclosing the nature of the illness to their manager, they may elect to have the application for sick leave dealt with confidentially by an alternate manager or by the Human Resources Section.
- (9) If a staff member who is absent on annual leave and/or extended leave, furnishes to their manager a satisfactory medical certificate in respect of an illness of five or more than five working days in duration, which occurred during the period of leave, their manager may, subject to the provisions of this clause, grant sick leave to the staff member.
- (10) Normal sick leave conditions, such as the requirement to furnish medical certificates pertain to sick leave without pay. Sick leave without pay will count as service for the accrual of paid sick leave and annual leave otherwise it is treated similar to LWOP.

### **23. Special Leave**

- (1) Special is paid leave, which applies to activities regarded as for Commission purposes and which are not covered by other forms of leave. Examples of when special leave may be granted are:
  - (a) for jury service, subject to the provision of a certificate of attendance,
  - (b) where staff are subpoenaed or called as a witness by the State, Territory or Commonwealth,
  - (c) some trade union activities with the prior approval of the Chief Commissioner,
  - (d) other instances determined by the Chief Commissioner.

### **24. Domestic and Family Violence Leave**

Domestic violence is any behaviour in an intimate, family or domestic relationship, which is violent, threatening, coercive, controlling or causes a person to live in fear for their own or someone else's safety. It may be a pattern of ongoing controlling or coercive behaviour.

- (1) An intimate relationship refers to people who are or have been in an intimate partnership, whether or not the relationship involves or has involved a sexual relationship, for example, married, engaged to be married, separated, divorced, de facto partners, couple promised to each other under cultural or religious tradition, or who are dating.
- (2) A family relationship has a broader definition and includes people who are related to another through blood, marriage or de facto partnerships, adoption and fostering relationships, sibling, and extended family relationships. It includes the full range of kinship ties in Aboriginal and Torres Strait Islander communities, and extended family relationships. People living in the same house may also be in a domestic relationship if their relationships exhibit dynamics which may foster coercive and abusive behaviours.

- (3) Examples of behaviours that constitute domestic and family violence include but are not limited to:
- a) physical and sexual violence;
  - b) verbal abuse;
  - c) emotional or psychological abuse;
  - d) stalking and intimidation;
  - e) technology facilitated abuse;
  - f) social and geographical isolation;
  - g) financial abuse;
  - h) cruelty to pets;
  - i) damage to property; or
  - j) threats to be violent in the above ways.

#### **24A. Leave for Matters arising from Domestic and Family Violence**

- (1) The definition of domestic violence is found in clause 2 of this award.
- (2) Employees, including casual employees, are entitled to 20 days of paid domestic and family violence leave in each calendar year. This leave is not cumulative.
- (3) Paid domestic and family violence leave is not pro-rata for part-time or casual employees.
- (4) Employees can take paid domestic and family violence leave in part-days, single days, or consecutive days. There is not a minimum number of hours that an employee must take in a day.
- (5) Employees experiencing domestic and family violence may take domestic and family violence leave including for the following purposes:
  - (a) seeking safe accommodation or establishing safety;
  - (d) attending medical, legal, police or counselling appointments relating to their experience of domestic and family violence;
  - (c) attending court and other legal proceedings relating to their experience of domestic and family violence;
  - (d) organising alternative care or education arrangements for their children or person(s) in their care;
  - (e) other activities that will help them to establish safety and recover from their experience of domestic and family violence; or
  - (f) any other purpose associated with the impact of experiencing domestic and family violence which is impractical to do outside of their normal hours of work.
- (6) Domestic and family violence leave does not need to be approved before it can be accessed. However, employees should advise the Commission of the need to take domestic and family violence leave as soon as possible.
- (7) The leave entitlement can be accessed without the need to exhaust other available leave entitlements first.
- (8) The employer should only require evidence of the occurrence of domestic and family violence in exceptional circumstances and should use their discretion when assessing whether evidence is needed, and if so, what type of evidence.

- (9) Evidence of the occurrence of domestic and family violence may include:
- (a) a document issued by the police, a court, a domestic violence support service or a member of the legal profession;
  - (b) a provisional, interim or final Apprehended Violence Order (AVO), Apprehended Domestic Violence Order (ADVO), certificate of conviction or family law injunction;
  - (c) a medical certificate;
  - (d) a statutory declaration by the employee experiencing domestic and family violence; or
  - (e) any other evidence that would satisfy a reasonable person that domestic and family violence has occurred.
- (10) Evidence provided by an employee should be sighted and must be returned to the employee. The evidence must not be retained by the employer or stored on the employee's personnel file.
- (11) The intent of paid domestic and family violence leave is to provide employees with the same remuneration as they would have received, inclusive of penalties that would have applied, if they did not take the leave.
- (a) Full-time and part-time employees are entitled to be paid at their full rate of pay for the hours they would have worked had they not taken the leave.
  - (b) Casual employees will be paid at their full rate of pay for the hours they were rostered for and would have worked had they not taken the leave. For the purposes of this clause, "Rostered" means the employer has offered specific hours of work and the casual employee has accepted that offer.
- (12) Employers must keep personal information about domestic and family violence (including information about support provided by the Employer) confidential. This includes not recording instances of or information about domestic and family violence leave on:
- (a) payslips,
  - (b) the employee's personnel file, or
  - (c) rosters.
- (13) Any information regarding an employee's experience of domestic or family violence, including any domestic and family violence leave or supports provided (under this clause or otherwise), can only be accessed by senior HR personnel or, with the employee's consent, a relevant senior manager.
- (14) Employers must not take adverse action against an employee because they:
- (a) have experienced, or are experiencing, domestic and family violence;
  - (b) use the paid domestic and family violence leave provisions; or
  - (c) are a casual employee who declines to take a shift they are not rostered for because they are attending to a matter connected with domestic and family violence at that time.
- (15) The employer will provide support to an employee experiencing domestic and family violence, including but not limited to the provision of flexible working arrangements, including changing working times, work locations, telephone numbers and email addresses.

#### **24B. Leave for Employees Providing Support to People Experiencing Domestic and Family Violence**

- (1) Employees providing care and support to a member of their family or household experiencing domestic and family violence may, if the criteria is met, access existing leave entitlements including:

- (a) Family and Community Service Leave and Carer's Leave (Clause 16)
- (2) The “family” or “household” member that the employee is providing care and support to must meet the definition of these terms, as referred to at:
  - (a) Clause 16, Family and Community Service Leave and Carer's Leave
- (3) If the employer needs to establish the reasons for an employee accessing existing leave entitlements under these provisions, the employee may be required to provide evidence consistent with subclauses 22 (5), (6) and (7), Sick Leave – Requirements for Evidence of Illness of this award or any other form of evidence that is considered acceptable by the employer such as a statutory declaration.
- (4) Evidence provided by an employee should be sighted and must be returned to the employee. The evidence must not be retained by the employer or stored on the employee’s personnel file.

### **25. Study Time and Examination Leave**

- (1) The Commission encourages staff to undertake further study to enhance their skills and provides assistance in the form of study time and examination leave for approved part-time courses of study. An approved course is one that develops or enhances a staff member's skills and assists them to carry out their duties in the Commission.
- (2) Study Time - Is available for: attendance at lectures, tutorials, residential schools, field days etc., where these are held during working hours; necessary travel during working hours to attend lectures, tutorials etc., held during or outside working hours; and private study.
- (3) 30 minutes study time is granted for each hour of lecture and/or tutorial attendance, up to a maximum of four hours per week (inclusive of travel time). The grant is the same for correspondence courses for which time granted will be calculated on the basis of the equivalent face-to-face course.
- (4) Block periods of study time may be granted for the research and thesis component of higher degrees, qualifying studies for admission to higher degrees, or honours studies on the following basis:
  - (a) where a course at any level involves a thesis or major project as well as course work, the usual study time would be granted for the course work, and ten days study time for the thesis/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:
    - (i) 25 days for courses of 2 years minimum duration;
    - (ii) 35 days for courses of 3 years minimum duration.
  - (d) for doctoral studies, the total grant for the full duration of the course is 45 days.
- (5) Examination Leave - Up to 5 days per year is available for the time actually involved in attending an examination as well as necessary travelling time during working hours. It is not available where an examination is conducted within normal class timetables during the term/semester and study time has already been granted.

### **26. Travelling Time Compensation**

- (1) Staff, except Investigators (surveillance), who undertake approved travel to a location other than the Commission's head office to perform their work, may be compensated for the travelling time involved if it is additional to their normal travel time to and/or from head office:

- (a) Travel during bandwidth: is regarded as normal working hours, less normal travelling time.
  - (b) Travel outside bandwidth: is paid at the normal hourly rate, less normal travelling time.
  - (c) Waiting time: will be paid, less one hour, unless overnight accommodation is involved.
- (2) Periods of travelling time of less than 15 minutes; where sleeping facilities are provided; and where staff stop travelling for meal breaks, are not eligible for compensation.
- (3) At the Executive Director's discretion, a staff member may be compensated for such time either by:
- (a) Payment calculated at staff's current rate of pay with a maximum rate of the 1st Year Rate of ICAC Officer Grade 3; or
  - (b) If it is operationally convenient, by taking equivalent time off in lieu to be granted for excess time spent in travelling on official business. Such time in lieu must be taken within 1 month of accrual unless otherwise authorised by the staff member's manager.
- (4) Time in Lieu is Calculated at the Same Rate as Payment.

## **27. Overtime**

- (1) ICAC Officers Grade 1-6 - who are directed to work outside of the Flex Bandwidth shall be paid overtime at the rate of:
- (a) Monday to Saturday
    - 150% (time and a half) for the first 2 hours and
    - 200% every hour thereafter.
  - (b) Sunday
    - 200% (double time)
  - (c) Public Holidays
    - (i) Monday to Friday:
      - 250% (double time and a half - includes normal salary rate) during bandwidth
      - 250% (double time and a half) after bandwidth
    - (ii) Saturday and Sunday:
      - 250% (double time and a half)
- (2) Overtime is paid at staff's current rate of pay up to a maximum rate of Grade 5, Level 5. A minimum of 3 hours payment will be paid for overtime worked on weekends and public holidays or when staff are called back to duty. Time in lieu may be granted instead of payment. Time in lieu is calculated at the same rate as payment.
- (3) A Meal Allowance may be paid when an expense is actually incurred in obtaining a meal and staff ceased work for at least 30 minutes before or during the period of overtime (meal breaks during overtime are not to be counted as overtime). The Meal Allowances rates are those set from time to time by the Australian Taxation Office as the reasonable limits for the payment of overtime meal allowances.
- (a) Breakfast, when required to start work at or before 6 am

- (b) Lunch, on any Saturday, Sunday or Public Holiday when required to start before or at 8.30 am and until 1.30 pm or later; or, at or after 8.30 am and until 2 pm or later
  - (c) Dinner, when required to work beyond 7.30 pm.
- (4) ICAC Officers Grade 7-8 - are not entitled to the payment of overtime. However, where, in the opinion of the staff member's manager, ICAC Officers Grade 7-8 work excessive additional hours, their manager may approve compensation of not more than 7 hours leave in lieu to be taken within three months of the leave being granted.
  - (5) Investigations Staff Overtime Allowance - Investigators, Senior Investigators, Senior Forensic Accountant, Special Investigators, Senior Technical Officers, Forensic Accountant, Technical Officer, Investigators (surveillance) and Surveillance Team Leader are paid an Overtime Allowance in lieu of overtime payments for overtime worked on weekdays. Overtime will be paid as per this clause for work on weekends and public holidays (including those which fall on weekdays). The allowance forms part of overall remuneration and is:
    - (a) Investigators, Investigators (surveillance), Forensic Accountant, Technical Officer - 9.1%
    - (b) Senior Investigators, Special Investigators, Surveillance Team Leader, Senior Forensic Accountant and Senior Technical Officer - 8.7%

#### **28. Performing Higher Duties**

- (1) Where staff are directed to perform the duties of a higher graded role, in addition to the experience gained performing those duties, an allowance will be paid in the circumstances described here.
- (2) The allowance will be calculated by the difference between staff member's current salary and the nearest salary point of the ICAC Officer Grade of the role being acted in. Payment of the allowance will be as follows:
  - (a) 4 working days or less - No payment
  - (b) 5 or more working days - 100% difference for the full period, except if the staff member does not undertake all the duties and responsibilities of the higher-level role, a percentage of the difference is paid as agreed between the staff member and his/her manager.

#### **29. Allowances and Loadings**

- (1) Annual Leave Loading (ALL)
  - (a) Each year, in the first pay period in December, staff will be eligible to be paid an ALL of 17.5% of the monetary value of up to four weeks Annual Leave accrued in the prior period of 1 December to 30 November. New staff will be paid a pro-rata allowance based on Annual Leave accrued from their entry on duty to 30 November.
  - (b) The maximum rate at which ALL is calculated is the 5th Year rate of ICAC Officer Grade 7. ALL is not paid on resignation or dismissal but is paid on retirement and redundancy.
- (2) Associate's Allowance
 

Staff who occupy the role of Associate will receive an annualised allowance referred to in Schedule 2 of this Award. The allowance will be paid fortnightly to Associates for recognition of annual training and for undertaking hearing sittings as required throughout the year. The allowance will be increased in line with the salary increases prescribed in this Award.
- (3) Community Language Allowance

Staff appointed as language aides under the Community Language Allowance Scheme (CLAS) will be paid the allowance referred to in Schedule 2 of this Award. An annual review of whether the payment of the allowance is still applicable will occur on the anniversary of receiving the allowance. The allowance will be increased in line with the salary increases prescribed in this Award.

(4) First Aid Allowance

- (a) Staff appointed as First Aid Officers will be paid the allowances appearing in Schedule 2 of this Award. These allowances will increase in line with the salary increases prescribed in this Award. The First Aid Allowance shall not be paid during extended leave or any other continuous period of leave which exceeds one week.
- (b) When the First Aid Officer is absent on leave for more than one week and another qualified staff member is selected to relieve in the First Aid Officer's position, such staff members shall be paid a pro rata first aid allowance for assuming the duties of a First Aid Officer.

(5) Incidents Allowance

A 12.2% Incidents Allowance is payable to Investigator (surveillance), Surveillance Team Leader, Senior Technical Officer and Technical Officer in compensation for change of shift; alteration of bandwidth; shift allowance; on-call allowance for days rostered off; and on-call allowance for days rostered days on.

(6) Travel Allowances - Accommodation, Meals and Incidentals

- (a) The parties agree that the arrangements for travel and meal allowances provided in this clause are to apply to ICAC staff only and do not constitute a precedent for any other department or agency.
- (b) Staff who undertake approved travel to perform their work are entitled to payment of a Travel Allowance to cover costs of accommodation, meals and incidentals, where such expenses are reasonably and necessarily incurred. The Allowance rates are those set from time to time by the Australian Taxation Office as the reasonable limits for the payment of these allowances. The Commission, rather than the staff member, will book and pay for the accommodation in lieu of paying an allowance to the staff member unless it is not conducive to the conduct of a particular investigation.
- (c) When it is necessary for a staff member to make his/her own arrangements for accommodation, where practicable, he/she shall obtain prior approval for such arrangements and the Commission may elect to pay the provider directly. Investigators (surveillance) are exempt from this rule and would have their own policy.
- (d) Travel involving an overnight stay when accommodation is provided free of charge, a daily allowance for incidentals as set by the Australian Taxation Office will be paid.
- (e) For travel involving no overnight stay no meal allowance will be paid. Investigators (surveillance) are excluded from this clause and have their own policy regarding the payment of meal allowances for one day journeys. If an exception is made by the Chief Commissioner or his/her delegate due to operational considerations, then meals only may be paid at the rate set from time to time by the Australian Taxation Office.
  - (i) Breakfast, when required to commence travel at or before 6.00 am
  - (ii) Lunch when required to travel a total distance on the day of at least 100 kilometres and, as a result, is located at a distance of at least 50 kilometres from the Commission's office at the time of taking the normal lunch break
  - (iii) Dinner, when required to travel after 7.30 pm.
- (f) Overseas Travel will be at the rate specified from time to time by the Australian Taxation Office as the reasonable limit.

- (7) Motor Car allowances
- (a) Where ICAC motor cars are not available, there is no convenient public transport and a car is necessary, approval may be given to staff to use their own motor car for official business. The allowance rates are determined by the ATO rates. Current allowances appear in Schedule 2 of this Award.
  - (b) Where other transport is available but, staff elect and the ICAC authorises, staff may use their own car. The specified journey rate applies up to the cost of the public transport alternative.

### 30. Secure Employment Test Case - WHS Obligations

- (1) For the purposes of this clause, the following definitions shall apply:
- (a) 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.
  - (b) 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.
- (2) If the employer engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises, the employer shall do the following (either directly, or through the agency of the labour hire or contract business).
- (a) consult with employees of the labour hire business and/or contract business regarding the work health and safety consultative arrangements;
  - (b) provide employees of the labour hire business and/or contract business with appropriate work health and safety induction training including the appropriate training required for such employees to perform their jobs safely.
  - (c) 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
  - (d) 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.
- (3) Nothing in this clause is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Work Health and Safety Act 2011* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (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 procedures of this Award.
- (5) This clause has no application in respect to organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations.

### **31. Grievance and Dispute Resolution**

- (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.
- (2) A staff member or persons engaged under clause 30 may notify verbally or in writing their immediate supervisor, manager, grievance officer or union, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- (3) The immediate manager 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.
- (4) If the matter remains unresolved with the immediate manager, the staff member or persons engaged under clause 30 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 staff member until the matter is referred to the Chief Commissioner.
- (5) If the matter remains unresolved, the Chief Commissioner shall provide a written response to the staff member 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.
- (6) A staff member, at any stage, may request to be represented by their union.
- (7) The staff member, or persons engaged under clause 30 or the union on their behalf, or the Commission may refer the matter to the New South Wales Industrial Relations Commission or another appropriate external agency if the matter is unresolved following the use of these procedures.
- (8) The staff member, union, and the Independent Commission Against Corruption shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.

### **32. No Extra Claims**

Other than as provided for in the *Industrial Relations Act 1996*, 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 that take effect prior to the nominal expiry of the Award unilaterally made by a party to this Award unless otherwise agreed by the parties.

This clause does not prevent the Parties from continuing collaborative discussions during the life of the Award to deliver additional enhancements to remuneration and/or conditions of employment, and to achieve additional industry wide and systemic efficiencies and productivity improvements to the delivery of Government services to the public. Changes to conditions or salaries may be jointly progressed and, if agreed, an application to vary the Award may be made by consent prior to the nominal expiry of the Award.

### **33. Anti-Discrimination**

- (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, pregnancy or potential pregnancy, disability, homosexuality or other sexual orientation, transgender identity, age, carers or family responsibilities.
- (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 that, by its terms or operation, has a direct or indirect discriminatory effect.

- (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.
- (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.
- (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.
  - (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."

### 34. Salary Packaging

The Commission supports the provision of salary packaging for executive staff. The range of items and the terms of salary packaging is in accordance with the Salary Packaging page located on the ICAC’s Intranet.

### 35. Area, Incidence and Duration

- (a) This Award applies to non-executive members of staff employed on an ongoing, temporary or casual basis under the ICAC Act.
- (b) This Award rescinds and replaces the Independent Commission Against Corruption Award 2022 published on 4 August 2023 (394 I.G. 1523) and all variations thereof and takes effect from 1 July 2024 and shall remain in force until 30 June 2027.

## SCHEDULE 1 - ICAC OFFICER CLASSIFICATION SALARY RATES

Table 1

ICAC OFFICER GRADE	Salary Point	FFPP 1.7.23	FFPP 1.7.24	FFPP 1.7.25	FFPP 1.7.26
		\$	\$	\$	\$
1A	1	60,702	63,130	65,024	66,975
	2	62,036	64,517	66,453	68,447
	3	64,173	66,740	68,742	70,804
	4	65,782	68,413	70,465	72,579
	5	67,384	70,079	72,181	74,346
1B	1	68,458	71,196	73,332	75,532

	2	70,321	73,134	75,328	77,588
	3	72,462	75,360	77,621	79,950
	4	74,336	77,309	79,628	82,017
	5	76,210	79,258	81,636	84,085
1C	1	75,941	78,979	81,348	83,788
	2	77,812	80,924	83,352	85,853
	3	79,951	83,149	85,643	88,212
	4	81,822	85,095	87,648	90,277
	5	84,494	87,874	90,510	93,225
2	1	86,103	89,547	92,233	95,000
	2	87,974	91,493	94,238	97,065
	3	90,381	93,996	96,816	99,720
	4	93,320	97,053	99,965	102,964
	5	95,465	99,284	102,263	105,331
3	1	98,135	102,060	105,122	108,276
	2	100,807	104,839	107,984	111,224
	3	102,950	107,068	110,280	113,588
	4	106,155	110,401	113,713	117,124
	5	108,830	113,183	116,578	120,075
4	1	111,237	115,686	119,157	122,732
	2	113,912	118,468	122,022	125,683
	3	117,392	122,088	125,751	129,524
	4	120,597	125,421	129,184	133,060
	5	123,812	128,764	132,627	136,606
5	1	126,207	131,255	135,193	139,249
	2	129,148	134,314	138,343	142,493
	3	132,896	138,212	142,358	146,629
	4	137,175	142,662	146,942	151,350
	5	140,383	145,998	150,378	154,889
6	1	141,184	146,831	151,236	155,773
	2	145,461	151,279	155,817	160,492
	3	148,411	154,347	158,977	163,746
	4	152,151	158,237	162,984	167,874
	5	156,967	163,246	168,143	173,187
7	1	154,828	161,021	165,852	170,828
	2	157,229	163,518	168,424	173,477
	3	159,907	166,303	171,292	176,431
	4	162,312	168,804	173,868	179,084
	5	168,460	175,198	180,454	185,868
8	1	164,988	171,588	176,736	182,038
	2	169,530	176,311	181,600	187,048
	3	173,809	180,761	186,184	191,770
	4	178,085	185,208	190,764	196,487
	5	182,628	189,933	195,631	201,500

Table 2

FFPP 1 July 2024

Classification	Base Rate FFPP 1.7.2024	8.7% Overtime Allowance \$	9.1% Overtime Allowance \$	12.2% Incidents Allowance \$	Annual Salary including allowance
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					\$
					\$
Investigator ICAC Officer Grade 3 - Salary Point 1	102,060		9,287		111,347
Investigator ICAC Officer Grade 3 - Salary Point 2	104,839		9,540		114,379
Investigator ICAC Officer Grade 3 - Salary Point 3	107,068		9,743		116,811
Investigator ICAC Officer Grade 3 - Salary Point 4	110,401		10,046		120,447
Investigator ICAC Officer Grade 3 - Salary Point 5	113,183		10,300		123,483
Surveillance Operative ICAC Officer Grade 3 – Salary Point 1	102,060		9,287	12,451	123,798
Surveillance Operative ICAC Officer Grade 3 – Salary Point 2	104,839		9,540	12,790	127,169
Surveillance Operative ICAC Officer Grade 3 – Salary Point 3	107,068		9,743	13,062	129,873
Surveillance Operative ICAC Officer Grade 3 – Salary Point 4	110,401		10,046	13,469	133,916
Surveillance Operative ICAC Officer Grade 3 – Salary Point 5	113,183		10,300	13,808	137,291
Senior Investigator ICAC Officer Grade 4 - Salary Point 1	115,686		10,527		126,213
Senior Investigator ICAC Officer Grade 4 - Salary Point 2	118,468		10,781		129,249
Senior Investigator ICAC Officer Grade 4 - Salary Point 3	122,088		11,110		133,198
Senior Investigator ICAC Officer Grade 4 - Salary Point 4	125,421		11,413		136,834
Senior Investigator ICAC Officer Grade 4 - Salary Point 5	128,764		11,718		140,482
Technical Officer ICAC Officer Grade 4 - Salary Point 1	115,686		10,527	14,114	140,327
Technical Officer ICAC Officer Grade 4 - Salary Point 2	118,468		10,781	14,453	143,702
Technical Officer ICAC Officer Grade 4 - Salary Point 3	122,088		11,110	14,895	148,093

Technical Officer ICAC Officer Grade 4 - Salary Point 4	125,421		11,413	15,301	152,135
Technical Officer ICAC Officer Grade 4 - Salary Point 5	128,764		11,718	15,709	156,191
Principal Investigator ICAC Officer Grade 5 - Salary Point 1	131,255	11,419			142,674
Principal Investigator Officer Grade 5 - Salary Point 2	134,314	11,685			145,999
Principal Investigator ICAC Officer Grade 5 - Salary Point 3	138,212	12,024			150,236
Principal Investigator ICAC Officer Grade 5 - Salary Point 4	142,662	12,412			155,074
Principal Investigator ICAC Officer Grade 5 - Salary Point 5	145,998	12,702			158,700
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 -Salary Point 1	131,255	11,419		16,013	158,687
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 - Salary Point 2	134,314	11,685		16,386	162,385
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 - Salary Point 3	138,212	12,024		16,862	167,098
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 - Salary Point 4	142,662	12,412		17,405	172,479
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 - Salary Point 5	145,998	12,702		17,812	176,512

**FFPP 1 July 2025**

Classification	Base Rate FFPP 1.7.25 \$	8.7% Overtime Allowance \$	9.1% Overtime Allowance \$	12.2% Incidents Allowance \$	Annual Salary including allowances \$
Investigator ICAC Officer Grade 3 - Salary Point 1	105,122		9,566		114,688

Investigator ICAC Officer Grade 3 - Salary Point 2	107,984		9,827		117,811
Investigator ICAC Officer Grade 3 - Salary Point 3	110,280		10,035		120,315
Investigator ICAC Officer Grade 3 - Salary Point 4	113,713		10,348		124,061
Investigator ICAC Officer Grade 3 -Salary Point 5	116,578		10,609		127,187
Surveillance Operative ICAC Officer Grade 3 – Salary Point 1	105,122		9,566	12,825	127,513
Surveillance Operative ICAC Officer Grade 3 – Salary Point 2	107,984		9,827	13,174	130,985
Surveillance Operative ICAC Officer Grade 3 – Salary Point 3	110,280		10,035	13,454	133,769
Surveillance Operative ICAC Officer Grade 3 – Salary Point 4	113,713		10,348	13,873	137,934
Surveillance Operative ICAC Officer Grade 3 – Salary Point 5	116,578		10,609	14,223	141,410
Senior Investigator ICAC Officer Grade 4 - Salary Point 1	119,157		10,843		130,000
Senior Investigator ICAC Officer Grade 4 - Salary Point 2	122,022		11,104		133,126
Senior Investigator ICAC Officer Grade 4 - Salary Point 3	125,751		11,443		137,194
Senior Investigator ICAC Officer Grade 4 - Salary Point 4	129,184		11,756		140,940
Senior Investigator ICAC Officer Grade 4 - Salary Point 5	132,627		12,069		144,696
Technical Officer ICAC Officer Grade 4 - Salary Point 1	119,157		10,843	14,537	144,537
Technical Officer ICAC Officer Grade 4 - Salary Point 2	122,022		11,104	14,887	148,013
Technical Officer ICAC Officer Grade 4 - Salary Point 3	125,751		11,443	15,342	152,536
Technical Officer ICAC Officer Grade 4 - Salary Point 4	129,184		11,756	15,760	156,700
Technical Officer ICAC Officer Grade 4 - Salary Point 5	132,627		12,069	16,180	160,876
Principal Investigator ICAC Officer Grade 5 - Salary Point 1	135,193	11,762			146,955
Principal Investigator ICAC Officer Grade 5 - Salary Point 2	138,343	12,036			150,379
Principal Investigator ICAC Officer Grade 5 - Salary Point 3	142,358	12,385			154,743
Principal Investigator ICAC Officer Grade 5 - Salary Point 4	146,942	12,784			159,726
Principal Investigator ICAC Officer Grade 5 - Salary Point 5	150,378	13,083			163,461
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 -Salary Point 1	135,193	11,762		16,494	163,449

Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 -Salary Point 2	138,343	12,036		16,878	167,257
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 -Salary Point 3	142,358	12,385		17,368	172,111
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 -Salary Point 4	146,942	12,784		17,927	177,653
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 -Salary Point 5	150,378	13,083		18,346	181,807

**FFPP 1 July 2026**

Classification	Base Rate FFPP 1.7.2024	8.7% Overtime Allowance \$	9.1% Overtime Allowance \$	12.2% Incidents Allowance \$	Annual Salary including allowances \$
Investigator ICAC Officer Grade 3 - Salary Point 1	108,276		9,853		118,129
Investigator ICAC Officer Grade 3 - Salary Point 2	111,224		10,121		121,345
Investigator ICAC Officer Grade 3 - Salary Point 3	113,588		10,337		123,925
Investigator ICAC Officer Grade 3 - Salary Point 4	117,124		10,658		127,782
Investigator ICAC Officer Grade 3 - Salary Point 5	120,075		10,927		131,002
Surveillance Operative ICAC Officer Grade 3 – Salary Point 1	108,276		9,853	13,210	131,339
Surveillance Operative ICAC Officer Grade 3 – Salary Point 2	111,224		10,121	13,569	134,914
Surveillance Operative ICAC Officer Grade 3 – Salary Point 3	113,588		10,337	13,858	137,783
Surveillance Operative ICAC Officer Grade 3 – Salary Point 4	117,124		10,658	14,289	142,071
Surveillance Operative ICAC Officer Grade 3 – Salary Point 5	120,075		10,927	14,649	145,651
Senior Investigator ICAC Officer Grade 4 - Salary Point 1	122,732		11,169		133,901
Senior Investigator ICAC Officer Grade 4 - Salary Point 2	125,683		11,437		137,120
Senior Investigator ICAC Officer Grade 4 - Salary Point 3	129,524		11,787		141,311
Senior Investigator ICAC Officer Grade 4 - Salary Point 4	133,060		12,108		145,168

Senior Investigator ICAC Officer Grade 4 - Salary Point 5	136,606		12,431		149,037
Technical Officer ICAC Officer Grade 4 - Salary Point 1	122,732		11,169	14,973	148,874
Technical Officer ICAC Officer Grade 4 - Salary Point 2	125,683		11,437	15,333	152,453
Technical Officer ICAC Officer Grade 4 - Salary Point 3	129,524		11,787	15,802	157,113
Technical Officer ICAC Officer Grade 4 - Salary Point 4	133,060		12,108	16,233	161,401
Technical Officer ICAC Officer Grade 4 - Salary Point 5	136,606		12,431	16,666	165,703
Principal Investigator ICAC Officer Grade 5 - Salary Point 1	139,249	12,115			151,364
Principal Investigator ICAC Officer Grade 5 - Salary Point 2	142,493	12,397			154,890
Principal Investigator ICAC Officer Grade 5 - Salary Point 3	146,629	12,757			159,386
Principal Investigator ICAC Officer Grade 5 - Salary Point 4	151,350	13,167			164,517
Principal Investigator ICAC Officer Grade 5 - Salary Point 5	154,889	13,475			168,364
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 - Salary Point 1	139,249	12,115		16,988	168,352
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 - Salary Point 2	142,493	12,397		17,384	172,274
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 - Salary Point 3	146,629	12,757		17,889	177,275
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 - Salary Point 4	151,350	13,167		18,465	182,982
Surveillance Team Leader/Senior Technical Officer ICAC Officer Grade 5 - Salary Point 5	154,889	13,475		18,896	187,260

**SCHEDULE 2 - ALLOWANCE RATES**

- (1) Associate's Allowance, Community Language Allowance Scheme and First Aid Allowance

Allowance	FFPP 1.7.2023 \$	FFPP 1.7.2024 \$	FFPP 1.7.2025 \$	FFPP 1.7.2026 \$
Associate's Allowance subclause 29(2): Total annual allowance payable in 12 month financial period	7,273	7,564	7,791	8,025
Community Language Scheme subclause 29(3) (p.a)	1,580	1,643	1,692	1,743
Alarm Allowance (on call allowance) (ph)	1.10	1.14	1.17	1.21
For officers that are required to be on call (p.a)	7,626	7,931	8,169	8,414
First Aid Allowance (Senior) (p.a)	1,529	1,590	1,638	1,687
First Aid Allowance subclause 29(4) (p.a)	1,018	1,059	1,091	1,124

(2) Overtime Meal Allowances - subclause 27(3)

Allowances will equal the ATO reasonable limits as set from time to time and as adopted by the ICAC.

(3) Travel Allowances - subclause 29(6)

(a) Involving an overnight stay

Allowances will equal the ATO reasonable limits as set from time to time and as adopted by the ICAC.

(b) Travel of at least 100 kms from head office and involving no overnight stay and approved for reasons relating to operational necessity.

Meals only may be paid at the rate set by the ATO from time to time and as adopted by the ICAC, provided that if there is no set rate, then payment of actuals as per the current policy will be made.

(4) Motor Car Allowances - subclause 29(7)

(a) Official business rate set in line with ATO rates and in future, will vary in line with ATO rates.

(b) Specified journey rate will be 40% of official business rate.

(5) Casual Employees: Persons employed on a casual basis will receive:

(a) Loadings of

(i) 15% for Mondays to Fridays

- (ii) 50% for Saturdays
  - (iii) 75% for Sundays
  - (iv) 150% for Public Holidays
- (b) An additional payment of 1/12th in lieu of annual leave
- (c) Minimum period of engagement of 3 hours
  - (d) Maximum period of engagement of 9 hours (excluding meal breaks) without the payment of overtime
  - (e) Overtime is paid at the overtime rates set out in clause 26 and based on the ordinary hourly rate plus 15% loading.

### **SCHEDULE 3 - CASUAL EMPLOYEES' ENTITLEMENTS**

(1) Casual employees are entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, section 54, Entitlement to Unpaid Parental Leave, in accordance with the *Industrial Relations Act 1996*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

- (a) The Commission must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (i) the employee or employee's spouse is pregnant; or
  - (ii) 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.

(2) Personal Carer's 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 (3) 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 Chief Commissioner 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) The Chief Commissioner 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.

(3) A Family Member for the Purposes of (2)(a) above is:

- (a) a spouse of the staff member; or
- (b) a de facto spouse being a person of a different or same sex to the staff member who lives with the staff member as their husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
- (c) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex-nuptial child), parent (including a foster parent or legal guardian), grandparent, grandchild or sibling of the staff member or of the spouse or of de facto spouse of the staff member; or
- (d) a relative of the staff member 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.

(4) 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 Chief Commissioner 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) The Chief Commissioner 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.

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