



Government of **Western Australia**  
Department of **Commerce**  
**Labour Relations**

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**PUBLIC SERVICE AND GOVERNMENT OFFICERS GENERAL AGREEMENT 2014 –  
IMPLEMENTATION GUIDELINES AND EXPLANATORY NOTES**

The Implementation Guidelines and Explanatory Notes are attached for the Public Service and Government Officers General Agreement 2014.

Please contact your Labour Relations Adviser if you have any queries concerning the General Agreement.

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# **PUBLIC SERVICE AND GOVERNMENT OFFICERS GENERAL AGREEMENT 2014**

*Implementation Guidelines*

*and*

*Explanatory Notes*

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## IMPLEMENTATION GUIDELINES AND EXPLANATORY NOTES 2014

These Implementation Guidelines and Explanatory Notes (the Guidelines) provide information on existing, new and amended provisions negotiated for the Public Service and Government Officers General Agreement 2014.

The Guidelines replace the *2011 Public Service and Government Officers General Agreement, Public Service Award and Government Officers Salaries, Allowances and Conditions Award Implementation Guidelines and Explanatory Notes*.

**Part 1 – Implementation guidelines** provides detail regarding implementing salaries and conditions.

The key changes arising from Public Service and Government Officers General Agreement 2014 are summarised at **Part 2 – Summary of Changes to the General Agreement**.

No changes were made to the *Public Service Award 1992* or the *Government Officers Salaries, Allowances and Conditions Award 1989* as a result of the General Agreement 6 (GA6) negotiations.

**Part 3 – Explanatory Notes** provides further detail on both new and existing clauses to place the changes to the General Agreement in context.

## PART 1 - IMPLEMENTATION GUIDELINES

### DEFINITIONS

1. In these Guidelines and Explanatory Notes:
  - a) “ASA” means an agency specific agreement;
  - b) “Applicable Award” is determined by the scope and resposdency of the PSA and GOSAC;
  - c) “Commerce” means the Department of Commerce;
  - d) “CSA” means The Civil Service Association of Western Australia Incorporated;
  - e) “GA6 agreements” mean the agreements negotiated between Commerce and the CSA and include the following:
    - *Public Service and Government Officers General Agreement 2014;*
    - *Country High School Hostels Authority Residential College Supervisory Staff General Agreement 2014;*
    - *School Support Officers (Government) General Agreement 2014;*
    - *Electorate and Research Employees General Agreement 2014;*
    - *Social Trainers General Agreement 2014;*
    - *Department of the Attorney General Jury Officers Agreement 2014;*
    - *Family Resource Employees General Agreement 2014;*
    - *Government Officers (Insurance Commission of Western Australia) General Agreement 2014; and*
    - *Department of Corrective Services Youth Custodial Officers’ General Agreement 2014.*
  - f) “General Agreement” and “2014 General Agreement” means the Public Service and Government Officers General Agreement 2014;
  - g) “GOSAC” means the *Government Officers Salaries, Allowances and Conditions Award 1989;*
  - h) “Government officer” means a government officer within the meaning of the *Industrial Relations Act 1979*, employed by an employer party listed in Item (3) of Schedule 5 of the General Agreement and covered by GOSAC;
  - i) “PSA” means the *Public Service Award 1992;*

- j) "Public service officer" means a public service officer or executive employee employed under Part 3 or Part 8, Section 100 of the *Public Sector Management Act 1994* (WA) or continuing as such by virtue of clause 4 (c) of Schedule 5 of that Act, and covered by the PSA;
- k) "PSC" means Public Sector Commission;
- l) "Replaced General Agreement" and "2011 General Agreement" means the Public Service and Government Officers General Agreement 2011; and
- m) "WAIRC" means the Western Australian Industrial Relations Commission.

## **OVERVIEW**

- 2. These Guidelines aim to facilitate understanding of the General Agreement.
- 3. The new General Agreement was negotiated by Commerce on behalf of respondent employers, and the CSA representing the employees covered by the General Agreement. The parties agreed that the outcomes of the General Agreement would form the basis for related General Agreements (the GA6 agreements).
- 4. The WAIRC Order for the General Agreement took effect from the date of registration which was 16 September 2014.
- 5. Salary increases which operate on and from specific dates are outlined at paragraph 8.
- 6. A copy of the General Agreement and this document can be accessed from the Labour Relations Division of the Department of Commerce's website at:

<http://www.commerce.wa.gov.au/labour-relations/circulars-departments-and-authorities>

## **SALARY OUTCOMES**

- 7. The General Agreement was registered on 16 September 2014 and took effect on and from that date.
- 8. The General Agreement provides for the following salary increases detailed in clause 10 – Salaries, Schedule 2 – General Division Salaries and Schedule 3 – Specified Calling Salaries:
  - a) 2.75% on and from the date of registration;
  - b) 2.5% on and from 13 June 2015; and
  - c) 2.5% on and from 13 June 2016.
- 9. The salary increases apply on and from the dates specified, as opposed to the first pay period commencing on or after that date.
- 10. As provided by clause 10.2 of the General Agreement, employees employed at the date of registration are entitled to a payment equivalent to the additional salary that would have been received had the first increase of 2.75% been payable on and from 13 June 2014.

11. Employees whose employment ceased prior to 16 September 2014 are not entitled to the payment provided for by clause 10.2, or conditions under the General Agreement.
12. Fortnightly salaries shall be determined according to the annual salaries, calculated to four decimal points and rounded to the nearest one cent.

#### Arrears – Permanent and Fixed Term Contract Employment

13. Employees who have moved between employers respondent to the General Agreement on or after 13 June 2014 and before 16 September 2014 are eligible to receive the payment provided by clause 10.2 from their employing authority as at 16 September 2014, provided that the break between periods of employment was no more than one calendar week.
14. Employees who, on or after 13 June 2014 and before 16 September 2014, have moved from another WA Public Sector employer where they were employed under another industrial instrument to which the CSA was respondent, are eligible to receive the payment provided by clause 10.2 from their employing authority as at 16 September 2014, provided that the break between periods of employment was no more than one calendar week. See paragraph 23 of Part 3 – Explanatory Notes for relevant examples.

#### Arrears - Casual Employment

15. Casual employment is by the hour. There is no entitlement to the additional payment provided by clause 10.2 with respect to employment that occurred prior to registration of the General Agreement.

### **STATUTORY CONTRACTS OF EMPLOYMENT**

16. For employees still covered by statutory contracts of employment in lieu of repealed workplace agreements, refer to Circular to Departments and Authorities No. 16 of 2002 – Workplace Agreements - Transitional Provisions, including the associated Policy Statement, which continues to have application.

### **CONDITIONS OF EMPLOYMENT**

17. All conditions of employment contained in the General Agreement commence operation from the date of registration (16 September 2014).



## PART 2 – SUMMARY OF CHANGES TO THE GENERAL AGREEMENT

This Part includes a summary of the changes to the General Agreement. The table indicates where more detailed information can be found regarding each change in Part 3 – Explanatory Notes of these Guidelines and also provides cross-references to the relevant clause of the General Agreement.

**Table of changes to the 2014 General Agreement**

PSGOGA clause	Amendment	Reference in Part 3 – Explanatory Notes
<b>Clause 6 – TERM OF GENERAL AGREEMENT</b>		
Clause 6.1	The nominal term of agreement is three years. The agreement expires on 12 June 2017.	Para 10
<b>Clause 9 – AGENCY SPECIFIC AGREEMENTS</b>		
Clause 9.2	Provides for the Christmas/New Year Closedown provisions contained in ASAs pertaining to State Training Providers to operate in lieu of the Christmas/New Year Closedown provisions of the General Agreement.	Para 15  See related changes at paras 323, 324 and 379
<b>Clause 10 – SALARIES</b>		
Clauses 10.2 – 10.6	Provides for the following salary increases: <ul style="list-style-type: none"> <li>• 2.75% on and from the date of registration;</li> <li>• 2.5% on and from 13 June 2015; and</li> <li>• 2.5% on and from 13 June 2016.</li> </ul> <p>Employees employed at the date of registration are entitled to a payment equivalent to the additional salary that would have been received had the first increase of 2.75% been payable on and from 13 June 2014.</p>	Paras 19 - 25
<b>Clause 13 – RECOVERY OF OVERPAYMENTS</b>		
Clause 13.5 (a)	Provides that the employer may not deduct or require an employee to repay an amount exceeding 5% of the employee's net pay in any one pay period without agreement between the parties (formerly 10%).	Para 31

<b>Clause 22 – PURCHASED LEAVE – 42/52 ARRANGEMENT</b>		
Clause 22.1	Clarifies the General Agreement provisions replace the applicable Award purchased leave provisions.	Para 85
Clause 22.5	Clarifies an employee's entitlement to access nine or ten weeks' purchased leave.	Para 88
Clause 22.11	Clarifies that payment of overtime is at an employee's ordinary rate not their reduced purchased leave rate.	Para 90
<b>Clause 23 – MATERNITY LEAVE</b>		
Clause 23.6 (c) (ii)	Clarifies payment for Higher Duties Allowance is for the first four weeks at the full rate regardless of whether leave is taken at half pay.	Para 116
Clause 23.7 (b)	Provides for an employee to take unpaid Maternity Leave earlier than six weeks before the expected date of birth if the employer agrees.	Paras 117 - 119
Clause 23.10 (a) and (b)	Removes the requirement for the exhaustion of all leave credits before an <i>application</i> for extended unpaid leave can be submitted. Clarifies that it is the <i>approval</i> of the application that is subject to exhaustion of all leave credits.	Para 135
Clause 23.14 (f)	Clarifies an employer's right to require an employee to revert to their pre-Maternity Leave working arrangements.	Paras 153 and 154
<b>Clause 24 – ADOPTION LEAVE</b>		
Clause 24.4 (c) (ii)	Clarifies payment for Higher Duties Allowance is for the first four weeks at the full rate regardless of whether leave is taken at half pay.	Para 181
Clause 24.7 (b) Refer to clause 23.10 (a) and (b) above	Removes the requirement for the exhaustion of all leave credits before an <i>application</i> for extended unpaid leave can be submitted. Clarifies that it is the <i>approval</i> of the application that is subject to exhaustion of all leave credits.	Para 186 - 187 Refer to para 135
Clause 24.7 (f) Refer to clause 23.14 (f) above	Clarifies an employer's right to require an employee to revert to their pre-Maternity Leave working arrangements.	Para 186 - 187 Refer to paras 153 - 154

<b>Clause 25 – OTHER PARENT LEAVE</b>		
Clause 25.4 (c) (ii)	Clarifies payment for Higher Duties Allowance is for the first four weeks at the full rate regardless of whether leave is taken at half pay.	Para 219
Clause 25.7 (b)  Refer to clause 23.10 (a) and (b) above	Removes the requirement for the exhaustion of all leave credits before an <i>application</i> for extended unpaid leave can be submitted. Clarifies that it is the <i>approval</i> of the application that is subject to exhaustion of all leave credits.	Para 223 and 224  Refer to para 135
Clause 25.7 (f)  Refer to clause 23.14 (f) above	Clarifies an employer's right to require an employee to revert to their pre-Maternity Leave working arrangements.	Para 223 - 224  Refer to paras 153 - 154
<b>Clause 26 – PARTNER LEAVE</b>		
Clause 26.2	Removes the requirement that an employee must use personal leave in the first week. Provides for the use of personal leave (and other forms of leave) but does not require it.	Paras 227 and 228
26.5	Clarifies that Days in Lieu of the Repealed Public Service Holidays do not form part of Partner Leave.	Para 230
26.10 (a)	Provides for extended unpaid partner leave to be taken in separate periods, not necessarily one continuous period. The leave is to be taken in separate periods of no less than two weeks, unless the employer agrees.	Para 231
26.10 (b)	The period of extended unpaid partner leave must be concluded within 12 months of the birth of the child.	Para 232
<b>Clause 31 – ANNUAL LEAVE LOADING</b>		
Clauses 31.4 and 31.11 (d)	Provides that the calculation of the annual leave loading maximum is equivalent to 17.5% of four weeks' salary of a general division Level 8.1 employee.	Paras 279 - 283
<b>Clause 32 – ANNUAL LEAVE LOADING FOR SHIFT WORK EMPLOYEES AND EMPLOYEES ON COMMUTED ARRANGEMENTS THAT INCORPORATE ANNUAL LEAVE LOADING</b>		
Clause 32	New clause introduced, resulting in all annual leave loading provisions applicable to shift work employees and employees on commuted arrangements that incorporate annual leave loading being contained in the General Agreement.  Under the 2011 General Agreement, leave loading provisions for these employees were contained in the applicable Award.	Paras 284 - 297

Clauses 32.4 (b) and (c)	Provides that the calculation of the annual leave loading maximum is equivalent to 17.5% of four weeks' salary (or five weeks' for shift workers entitled to an additional week's leave) of a general division Level 8.1 employee, for employees who are not paid their leave loading in the first pay period in December.	Para 298 - 304
<b>Clause 34 – DAYS IN LIEU OF THE REPEALED PUBLIC SERVICE HOLIDAYS</b>		
Clause 34.1	Deletes reference to Premier's Circular 2003/01 and updates reference to Public Sector Commissioner's Circular 2009-32.	Para 319
Clause 34.2	Clarifies that the entitlement is made available, not accrued, and provides guidance as to how the entitlement is accessed.	Paras 320 - 322
<b>Clause 35 – CHRISTMAS/NEW YEAR CLOSEDOWN</b>		
Clause 35.2	Provides clarification that Christmas Closedown provisions contained in State Training Provider ASAs operate in lieu of the General Agreement provisions.	Para 323 - 324  See related changes at paras 15 and 379
<b>Clause 36 – BEREAVEMENT LEAVE</b>		
Clause 36	New clause inserted. Includes access to accrued leave entitlements for interstate travel for bereavement purposes, not just overseas travel.	Paras 330 - 332
<b>Schedule 4 – AGENCY SPECIFIC AGREEMENTS</b>		
Sch 4 item 1	Provide separate list of ASAs for State Training Providers, consequential to the amendments at clauses 9 and 35.	Para 379  See related changes at paras 15, 323, 324 and 379
Sch 4 item 2	ASAs that are no longer in operation have been deleted.	Para 378
<b>Schedule 5 – PARTIES TO THIS GENERAL AGREEMENT</b>		
Sch 5 items 2 and 3	The schedule has been updated to incorporate agency name changes and machinery of Government changes.	Para 381

## **PART 3 - EXPLANATORY NOTES**

These Explanatory Notes are not a stand-alone document. They are to be read in conjunction with the General Agreement and the applicable Award. The General Agreement, read in conjunction with the applicable Award, provides the salaries and employment conditions of public service officers and government officers.

The Explanatory Notes consolidate details relating to the changes to the 2014 General Agreement as summarised at Part 2 – Summary of Changes to the General Agreement, as well as information regarding the interpretation of existing clauses of the General Agreement.

### **Clause 1 - Title**

1. This clause specifies the title of the General Agreement as the Public Service and Government Officers General Agreement 2014, which cancels and replaces the Public Service and Government Officers General Agreement 2011.

### **Clause 2 - Arrangement**

2. All clauses and schedules of the General Agreement are listed. New provisions have been added, including clause 32 - Annual Leave Loading for Shift Work Employees and Employees on Commuted Arrangements that Incorporate Annual Leave Loading and clause 36 - Bereavement Leave.

### **Clause 3 - Definitions**

3. Definitions of key words in the General Agreement are specified.
4. "Partner" is defined to mean a person who is a spouse or a de facto partner. Agencies should refer to the definitions clause of the applicable Award for definitions of the terms "spouse" and "de facto partner".

### **Clause 4 - Purpose of General Agreement**

5. The purpose of the General Agreement is to provide salary increases and a core set of employment conditions, and to allow for the negotiation of ASAs.

### **Clause 5 - Application and Parties Bound**

6. This clause identifies the parties bound by the General Agreement and employees to whom the General Agreement applies.
7. The General Agreement is to be read in conjunction with the applicable Award. The General Agreement prevails to the extent of any inconsistencies.
8. The 2011 General Agreement introduced clause 5.6, which preserves the provisions of the applicable Award that deal with subject matter not otherwise dealt with by the General Agreement. It also confirmed that any variations to these Awards made subsequent to registration of the Agreement will apply.
9. The clause refers to existing ASAs which continue in force when the General Agreement was registered, unless:
  - a) the ASA is replaced by a subsequent ASA; or
  - b) a party withdraws from an ASA.

## **Clause 6 - Term of General Agreement**

10. The General Agreement was registered on 16 September 2014, and is effective from that date. It will expire on 12 June 2017.
11. The parties have agreed to re-open negotiations for a replacement General Agreement at least six months prior to expiry, with a view to implementing a replacement General Agreement on 13 June 2017.

## **Clause 7 - No Further Claims**

12. The parties agree that there will be no further claims for salary increases or on matters contained in the General Agreement for the term of the General Agreement, except where specifically provided for.

## **Clause 8 - Core Conditions**

13. Core employment conditions cannot be varied. The core employment conditions are:
  - a) the terms and conditions provided for in the General Agreement, with the exception of clause 17 – Hours, provided an average of no more than 37.5 hours per week is required to be worked as ordinary hours; and
  - b) all the applicable Award clauses listed in clause 8 – Core Conditions of the General Agreement.

## **Clause 9 - Agency Specific Agreements (ASAs)**

14. This clause provides for ASAs to be made in certain circumstances provided they do not vary the core employment conditions referred to in General Agreement clause 8 – Core Conditions.
15. The 2014 General Agreement provides clarification that Christmas/New Year Closedown provisions contained in ASAs for State Training Providers (formerly TAFEs) continue to apply in lieu of the General Agreement Christmas/New Year Closedown provisions.
16. Except where the General Agreement identifies conditions as core, the provisions of ASAs prevail over the General Agreement and the applicable Award to the extent of any inconsistencies.
17. Where new ASAs are being considered, agencies are required to consult with Commerce and gain formal endorsement of negotiating parameters prior to the commencement of negotiations.
18. ASAs are to be negotiated with the CSA. Where agreement cannot be reached, either party may refer the matter to the WAIRC.

## **Clause 10 - Salaries**

19. Annual salaries are contained in Schedules 2 and 3 of the General Agreement.
20. The fortnightly salary paid is to be calculated in accordance with clause 10.8 of the General Agreement.
21. The salary increases payable under the General Agreement apply from the date of registration (16 September 2014), 13 June 2015 and 13 June 2016.

22. Clause 10.2 entitles employees employed at the date of registration (16 September 2014) to a payment equivalent to the additional salary that would have been received had the first increase of 2.75% been payable on and from 13 June 2014.
23. Clause 10.9 provides for the administration of the amount payable under clause 10.2 where, between 13 June 2014 and 16 September 2014, an employee has moved:
- a) between employers respondent to the General Agreement; or
  - b) from an employer respondent to another agreement to which the CSA is a party.

**Example 1 – employee changes agency between employers prior to registration but remains covered by PSGOGA**

A public service officer commenced employment with the Department of Premier and Cabinet on 1 January 2012 under the Public Sector and Government Officers General Agreement 2011. They then commenced employment with the Small Business Development Corporation (SBDC) on 20 July 2014, and were a SBDC employee on 16 September 2014 (being the date of registration). The employee remained covered by the 2011 General Agreement and the 2014 General Agreement once it was registered. If the break between periods of employment was not more than one calendar week, SBDC is responsible for paying the 2.75% increase on the salary received by the employee for the period 13 June 2014 to 16 September 2014. This also applies to a fixed term contract employee.

**Example 2 – employee changes agency between employers prior to registration and changes General Agreement coverage**

An employee commenced with the Disability Services Commission on 30 August 2013, where they were employed under the Social Trainers General Agreement 2011 (being an industrial instrument to which the CSA is respondent). They then moved to the Department of Health on 2 July 2014, where they were employed under the Public Service and Government Officers General Agreement 2011, and were a Department of Health employee on 16 September 2014 (being the date of registration). If the break between periods of employment was not more than one calendar week, the Department of Health is responsible for paying the 2.75% increase on the salary received by the employee for the period 13 June 2014 to 16 September 2014. This also applies to a fixed term contract employee.

**Example 3 – employee changes agency after registration**

A public service officer, employed by the Department of Transport on 3 March 2013, was a Department of Transport employee on the date of registration of the agreement – 16 September 2014. The employee then commenced employment with the Public Sector Commission on 17 September 2014 (the day after registration of the General Agreement). The Public Sector Commission does not physically implement the new General Agreement rates, or the payments due under clause 10.2, until 9 October 2014. In this scenario, the Department of Transport is responsible for paying the 2.75% increase on the salary received by the employee for the period 13 June 2014 to 16 September 2014. The Public Sector Commission is then responsible for back paying the new General Agreement rates from 13 June 2014 to 9 October 2014.

#### **Example 4 – break between employment at different agencies**

The one calendar week break limit between periods of employment does not include periods of paid leave. For example, an employee may take/be paid out four weeks annual leave at the end of their period of employment with Dental Health Services, then have another week off without leave before commencing employment with the Department of Premier and Cabinet. The employee will remain entitled to the payment available under clause 10.2 in this situation.

24. The payment provided by clause 10.2 includes both salary and any allowances paid to the employee during the period 13 June 2014 and 16 September 2014 such as shift work, higher duties and overtime. However, the payment of new rates for allowances such as the out of hours contact allowances applies from the date of registration of the General Agreement in accordance with paragraph 53 of these Explanatory Notes.
25. Employees whose employment ceased prior to the date of registration of the General Agreement - 16 September 2014 - are not entitled to the payment provided by clause 10.2 of the General Agreement.

#### **Clause 11 - Salary Packaging**

26. Salaries as prescribed by Schedules 2 and 3 of the General Agreement are to be applied for the purposes of the salary packaging arrangements in the applicable Award.
27. Circular to Departments and Authorities No. 4 of 2012 - Guidelines for Salary Packaging in the WA Public Sector 2012 - Amendments to Support the Introduction of Choice of Superannuation Fund (Super Choice) provides further information.

#### **Clause 12 – Recovery of Underpayments**

28. This clause prescribes the process by which an employer must repay an underpaid employee. It does not, however, preclude the employee's legal right to pursue recovery of an underpayment.
29. Further guidance for agencies is available in Circular to Departments and Authorities No. 3 of 2012 – Recovery and Prevention of Overpayments and Underpayments.

#### **Clause 13 – Recovery of Overpayments**

30. This clause prescribes the process by which an employer may recover overpayments from an employee. It does not, however, preclude the employer's legal right to pursue recovery of an overpayment.
31. Under the 2014 General Agreement the employer may not deduct or require an employee to repay an amount exceeding 5% without prior agreement. This was 10% under the 2011 General Agreement. This amendment does not prevent the employer and employee agreeing to deductions greater than 5% of the employee's net pay in any one period.
32. Further guidance for agencies is available in Circular to Departments and Authorities No. 3 of 2012 – Recovery and Prevention of Overpayments and Underpayments.



## **Clause 14 – Part Time Employment**

33. This clause specifies that employees have the right to request to work on a part time basis and that the employer must give reasonable consideration to the request.
34. The intent of this clause is to provide all employees with access to part time employment, particularly those employees who have caring responsibilities, for example, for children or elderly parents, or those employees who wish to phase their retirement.
35. The onus is on the employer to demonstrate that there are grounds for refusing an employee's request to work on a modified (part time) basis. The reasons must also be put in writing.
36. These provisions do not prevent an employee from accessing the right to work on a part time basis on their return from Maternity, Adoption or Other Parent Leave. Notwithstanding the part time provisions of clause 14, employees returning from Maternity, Adoption or Other Parent Leave have specific provisions under clauses 23 – Maternity Leave, 24 – Adoption Leave and 25 – Other Parent Leave.

## **Clause 15 – Fixed Term Contract Employment**

37. This clause outlines the circumstances in which employees may be employed on fixed term contracts.

## **Clause 16 - Working with Children Checks**

38. This clause outlines an employer's responsibilities regarding the payment for working with children checks for their employees.

## **Clause 17 - Hours**

### Flexible Working Arrangements

39. Flexible working arrangements are the primary hours arrangement. They shall apply unless the employer otherwise specifies or the employee does not wish to work flexible hours. Core periods of work are not prescribed.
40. The availability of flexible working arrangements is not restricted to particular classification levels. However, the employer may limit access to and the operation of flexible working arrangements to ensure operational needs and customer service requirements of the agency are met. The employer shall not unreasonably limit access to flexible working arrangements. The General Agreement also specifies that the employer shall not unreasonably limit access to the banking of credit hours.
41. Flexible working arrangements provide for the right of employees to be compensated for additional hours required to be worked to meet operational and customer service requirements. It is not intended that flexible working arrangements be used to accrue periods of leave, except in the limited circumstances provided for in clause 35 – Christmas/New Year Closedown. Whilst flexible working arrangements are not for accruing periods of leave, an employer may approve an employee taking flexi leave in conjunction with periods of paid leave.
42. Approval of flexi leave should be in writing.
43. A flexitime roster may indicate minimum staffing and other requirements in respect to starting and finishing times to suit the operational needs of the agency.

### Variations to Flexible Working Arrangements

44. The only core condition of employment in this clause is the restriction on the maximum average hours per week that may be required to be worked as ordinary hours – being 37.5 hours. This condition cannot be varied. Other conditions may, however, be varied.
45. Employers wishing to vary the flexible working arrangement to be observed are required to give one month's notice in writing to the agency, branch, section or employees to be affected by the change.
46. Examples of variations that are within the clause parameters include limiting access to and the operation of the flexible working arrangement [clause 17.7 (b)], requiring/not requiring a flexitime roster and arrangements where a new roster is to be utilised [clause 17.9 (a)].
47. Through an ASA the employer may introduce alternative flexible working arrangements, provided that an average of no more than 37.5 hours per week is required to be worked as ordinary hours. For example:
  - a) operational arrangements may require a settlement period of eight weeks. The ordinary hours required to be worked would then be 300 (i.e. 37.5 x 8). Credit and banked hours are not included in calculating the average ordinary hours required to be worked each week;
  - b) changing the maximum of 37.5 credit hours in a settlement period [clause 17.11 (b)];
  - c) changing from 37.5 the number of hours that may be banked at any time [clause 17.11 (c)];
  - d) reducing the amount of flexi leave that may be taken in a settlement period [clause 17.14 (d)]; and
  - e) altering the maximum of four debit hours allowed at the end of a settlement period [clause 17.12 (a)].

### Employee Initiated Span of Working Hours

48. The General Agreement provides employees with the capacity to request to work their ordinary hours outside the span of 7:00 a.m. to 6:00 p.m. and for employers to approve such requests.
49. Such agreements must:
  - a) only be initiated at the employee's request;
  - b) be in writing; and
  - c) specify the duration of the agreement and the times during which ordinary hours may be worked.
50. An employer is required, on receipt of a written request from the CSA, to provide the CSA with the details of such agreements. It is therefore incumbent upon an agency to ensure written agreements are completed and the details retained.

### Nine Day Fortnight

51. Nine day fortnights remain in the General Agreement but only in the limited circumstances where they have been preserved.
52. The General Agreement provides employers with the capacity to vary the day of the week on which an employee takes their special rostered day off. This is subject, however, to providing one month's written notice to the employee and a requirement on the employer to reasonably consider an employee's family circumstances and caring responsibilities before making such a decision.

### **Clause 18 – Out of Hours Contact**

53. The formula for calculating Out of Hours Contact allowances is based on the current salary for a Level 3.1 general division employee. Consequently, the allowance will increase in line with future salary increases. The new rate applies from the date of registration of the General Agreement – 16 September 2014.
54. Commuted allowances will need to be recalculated if they include out of hours contact allowances.

### **Clause 19 – Shift Work**

55. The definition of "afternoon shift" has been retained in the General Agreement, reflecting the definition contained in both of the applicable Awards.
56. Shift allowance is paid on an individual's salary other than for those employees with a salary below that of a general division employee Level 1.7. Such employees are entitled to the allowance that would be paid to a general division Level 1.7 employee.
57. The formula applies to a standard 7.5 hour shift. Pro rata adjustments still apply to weekday afternoon and night shifts of other than 7.5 hours duration consistent with clause 21 (3) (a) of the applicable Award.
58. Overtime shifts stand alone and are paid at the prescribed overtime rate/s on the ordinary rate of salary excluding for example shift, weekend and public holiday penalties.
59. There is no shift allowance paid for situations where employees are rostered to work but are then absent, for example, on personal leave.

### **Clause 20 – Overtime**

60. In the 2008 General Agreements, access to overtime was expanded, in comparison to the applicable Award, to include Level 6.4 for general division employees and Level 3.4 for specified calling employees. This has been retained in the 2014 General Agreement and provides that higher level employees may still access the overtime provisions but only in the circumstances set out in clause 20.3 of the General Agreement.

## **Clause 21 - Personal Leave**

61. The General Agreement contains an employee's full entitlement to personal leave and the clause does not need to be read in conjunction with an Award.
62. On commencement of the operation of this clause on 30 July 2004, both sick and short leave ceased to exist for the purposes of the General Agreement. All existing sick leave credits (except for war caused illnesses) were converted to cumulative personal leave and recorded in hours.

### Reasons for Taking Personal Leave

63. The situations in which an employer may grant personal leave are outlined in clause 21.24.

### Personal Leave Entitlement

64. Whilst employees are able to access personal leave in accordance with clause 21.24 of the General Agreement, to ensure compliance with the *Minimum Conditions of Employment Act 1993* a minimum of 75 hours must be available to employees for the purposes of an employee's entitlement to paid leave for illness or injury; or carer's leave [clause 21.11].

### Application for Leave

65. Leave forms are required to reflect the reason for the leave.
66. Each application for personal leave should be considered on its merits. The form of evidence to satisfy a reasonable person of the entitlement will depend upon the circumstances. For example, evidence for leave for illness or injury to satisfy a reasonable person could be in the usual form of an appropriate medical certificate detailed as unfit for duty or with the nature of the illness. Alternatively, written advice from a physiotherapist or dentist may be sufficient. A medical certificate may not necessarily be required if the employer is satisfied that the employee was ill or injured.
67. In general, supporting evidence is not required for single or two consecutive day absences. In addition, the previous Award requirement for a medical certificate after an aggregate of five days sick leave in a credit year no longer applies as the General Agreement clause replaces the sick leave clause of the applicable Award. However, where the employer has good reason to believe that the absence may not be reasonable or legitimate, the employer may request evidence be provided. The employer must provide the employee with reasons for requesting the evidence.
68. Supporting evidence provided to the employer must be retained in accordance with the agency's record keeping plan.
69. The evidence must cover the entire period of the absence.
70. Personal leave will not be granted where the personal illness is attributable to an employee's serious and wilful misconduct in the course of the employee's employment. This reflects the *Minimum Conditions of Employment Act 1993*.

### Personal Leave on Half Pay and Without Pay

71. In exceptional circumstances, the employer may approve the conversion of an employee's personal leave credits to half pay to cover an absence on personal leave due to illness or injury. Employees have responsibility to clarify the financial implications of such an action on their personal circumstances.
72. Employees who have exhausted all personal leave entitlements and are ill or injured may apply for personal leave without pay. Employees are required to complete the necessary application and produce medical evidence to satisfy a reasonable person. To determine the effect on salary and leave entitlements of personal leave without pay, apply "Sick Leave Without Pay" as outlined in Administrative Instruction 610 - Effect on Grants of Leave and Period of Suspension on Salary and Leave Entitlements.

### Effect of Grants of Leave on Personal Leave Entitlements

73. To determine the effect on personal leave entitlements of various types of leave granted, instead of "Sick Leave Credits" read "Personal Leave Credits" in Administrative Instruction 610 - Effect on Grants of Leave and Period of Suspension on Salary and Leave Entitlements.

### Agency Policies

74. Agencies should have policies consistent with this clause that address such matters as:
  - a) defining the respective roles and responsibilities of employees, managers and Human Resources;
  - b) monitoring, analysing and reporting absence levels and trends;
  - c) notification of personal leave absences;
  - d) when evidence is required;
  - e) what form of evidence is required;
  - f) who makes decisions about the requirement for evidence;
  - g) how to deal with requirements for evidence, and its retention;
  - h) ensuring new and existing employees and managers are aware of the policies; and
  - i) providing training and advice to support the application of personal leave.

### Portability

75. The personal leave portability provisions at clauses 21.42 and 21.43 take into account the different portability of sick leave entitlements available to government officers and public service officers. This distinction replicates what was provided in the former Public Service General Agreement 2008 and the Government Officers Salaries, Allowances and Conditions General Agreement 2008, which were amalgamated in 2011.

### Travelling Time for Regional Employees

76. A regional employee is an employee whose assigned headquarters is not within the metropolitan area as defined in the applicable Award.
77. Payment for travelling time is at the ordinary time rate that would have applied had the employee been at work and includes any higher duties and district allowance. Overtime and shift penalties are not included as part of the travelling time rate. The travelling time is treated as service for all purposes, i.e. similar to actual working time.
78. There is no prior qualifying time required for regional employees to access this travelling time, i.e. the full 37.5 hours are accessible from the date of commencement in the region.
79. Travelling time in excess of the prescribed 37.5 hours per twelve months may be approved by an employer, on a case-by-case basis, and in the context of fair and equitable application of the provision.
80. All travelling time is subject to the evidentiary requirements outlined in clauses 21.29 to 21.33.
81. Employees transferring within or between regions without any break of service (as applied in awards generally) retain their original regional anniversary date for the purpose of establishing their travelling time entitlements.
82. The 240 km minimum is the radius from the employee's headquarters, not the actual road, sea or air travel distance undertaken. This is consistent with the principle and application of the metropolitan 50 km radius.
83. Travelling time must not be debited against personal leave entitlements. Agencies should separately identify the utilisation of travelling time, i.e. create a separate pay code for this provision.
84. Employees not eligible for this travelling time entitlement include:
  - a) casual employees;
  - b) employees on any form of leave without pay including personal leave without pay;
  - c) employees on worker's compensation; and
  - d) metropolitan based employees attending medical facilities in regional areas.

### **Clause 22 – Purchased Leave – 42/52 Arrangement**

85. The 2014 General Agreement clarifies that this clause replaces the Purchased Leave provisions of the applicable Award.
86. The General Agreement provides that any purchased leave not taken during the calendar year in which it was purchased will be paid out in February of the following calendar year.
87. The 2014 General Agreement retains the requirement that untaken purchased leave is to be paid out at the rate at which it was purchased.

88. In order to access purchased leave, an employee must:
- a) satisfy the agency's accrued leave management policy;
  - b) take at least one week of annual leave if they are purchasing nine weeks' leave;  
or
  - c) take at least two weeks' annual leave if they are purchasing ten weeks' leave.
89. These provisions seek to prevent the accrual of excessive amounts of annual leave. An employer does have the discretion to allow an employee to access purchased leave without first taking one or two week's annual leave as provided for at clause 22.5 of the General Agreement.
90. The 2014 General Agreement provides clarification that an employee who has purchased leave pursuant to this clause will have overtime paid for at the ordinary rate of salary, not their reduced fortnightly salary due to the purchasing of leave. This will also apply where overtime is referred to as a percentage of salary.

### **Clause 23 – Maternity Leave**

#### Maternity Leave

91. This clause covers pregnant employees who give birth and provide parental care to that child.
92. All references to a "child" in the Maternity Leave clause should be read as including "children" of a multiple birth.
93. If an employee gives birth to more than one child at one time, the employee is entitled to the period of Maternity Leave they would have received had only a single child been born.

#### Eligibility

94. An employee must have completed 12 months continuous service in the Western Australian Public Sector as defined under the *Public Sector Management Act 1994* (WA) immediately preceding the Maternity Leave in order to receive paid Maternity Leave.
95. Prior service outside the WA Public Sector, such as with the Commonwealth public service, is not recognised as service towards the 12 month qualifying period for paid Maternity Leave. While this and other service outside the WA Public Sector may be recognised for the purposes of annual or long service leave accrual, the Agreement only allows recognition of service with the WA Public Sector for the purposes of paid Maternity Leave.
96. Where an employee is on a fixed term contract and takes Maternity Leave (paid or unpaid), the leave cannot extend beyond the end of the contract. The employee's employment will cease at the end of the contract. Fixed term contract employees on Maternity Leave at half pay whose contracts expire prior to completing their extended leave would only be entitled to the leave which was taken prior to the expiration of the contract.

97. An employee who has previously taken paid Maternity Leave is eligible to take another period of paid Maternity Leave without accruing another 12 months continuous service. Such employees are not required to conclude their Maternity Leave or leave without pay taken in conjunction with Maternity Leave and as a result do not need to resume duties.
98. An employee on leave without pay unrelated to Maternity Leave must resume duties prior to being entitled to paid Maternity Leave. An employee should resume duties such that they undertake meaningful work for the employer. Therefore, returning for a short period such as one day may not constitute resuming duty in order to qualify for a period of paid Maternity Leave.
99. Pregnant casual employees are only entitled to unpaid Maternity Leave and must meet the requirements of clause 23.3 (b).
100. Any reference in the Maternity Leave clause that allows an employee to utilise paid leave entitlements such as annual leave do not extend to eligible casual employees, who are paid a loading in lieu of leave entitlements.

#### Notice requirements

101. An employee who wishes to commence paid or unpaid Maternity Leave must provide their employer with no less than eight weeks' notice in writing.
102. An employee is not in breach of the clause if the required eight weeks' notice is not given because the birth of the child takes place before the time the employee intended to take the leave.
103. An employee who chooses to vary the period of leave taken must give four weeks' notice of their intention to do so.

#### General Entitlement to Maternity Leave

104. An eligible employee is entitled to 52 weeks unpaid Maternity Leave.
105. Subject to the requirements of the Maternity Leave clause, an eligible employee is entitled to 14 weeks paid Maternity Leave, which forms part of the 52 week entitlement.
106. Paid Maternity Leave is inclusive of any public holidays or repealed public service days in lieu falling within that time.
107. Employees may only access Maternity Leave in one continuous period. Where less than the standard Maternity Leave is taken, the unused portion cannot be preserved in any way for use at a later date.
108. Where Maternity Leave is shared with Other Parent Leave between parents of the same child, each employee can only access their share of the leave in one continuous period. This effectively means that Maternity Leave, Other Parent Leave or Adoption Leave cannot be shared between parents on a day-to-day, week-by-week or month-by-month basis.



109. Notwithstanding paragraph 108:
- a) An employee who meets the exceptional circumstances in clause 23.6 (d) may take paid Maternity Leave in more than one continuous period. This provision does not apply to situations where a mother returns to work or takes annual leave following the child's birth.
  - b) An employee who undertakes special temporary or casual employment during unpaid Maternity Leave is able to take their unpaid Maternity Leave in more than one period, subject to the provisions of clause 23.13.
110. Paid Maternity Leave, Adoption Leave and Other Parent Leave may be shared between the partners/parents assuming the role of primary caregiver. Where both parents work in the WA Public Sector, the total paid Maternity Leave, Adoption Leave or Other Parent Leave entitlement provided to the employees shall not exceed the quantum provided to a single person in clause 23.5 (b) or its half pay equivalent. This applies to all employees of the WA Public Sector, regardless of Award coverage.

#### Payment for Paid Maternity Leave

111. Subject to paragraph 113, an employee is to be paid according to their ordinary working hours at the time of commencement of Maternity Leave. This provision applies where the employee may have changed employment status – for example, from part time to full time – immediately prior to commencing paid Maternity Leave.
112. Paid Maternity Leave will be paid on a pro-rata basis for part time employees. A part time employee is to be paid either the average hours worked over the preceding 12 months; or their ordinary working hours at the time of commencement of Maternity Leave, excluding shift and weekend penalties, whichever is the greater.
113. Any salary increases that fall due prior to or during a period of paid Maternity Leave will be incorporated into the rate payable from the date of the increase.
114. Where an employee has not resumed duty following the conclusion of their Maternity Leave and the employee is entitled to a subsequent period of paid Maternity Leave, the employee's paid Maternity Leave is to be paid according to the employee's status and classification at the time of commencing the original period of Maternity Leave.
115. Special temporary or casual employment undertaken by the employee has no effect on the provisions of paragraph 114 notwithstanding that the employee may have undertaken special temporary or casual work at a different classification or on a different basis to their substantive position.
116. Higher duties allowance is payable on the first four weeks of paid Maternity Leave if the employee has been in receipt of a higher duties allowance for a period of 12 months continuous service immediately prior to commencing Maternity Leave. The 2014 General Agreement clarifies that an employee who elects to take paid Maternity Leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.

### Commencement of Maternity Leave

117. Subject to paragraph 118, a pregnant employee may proceed on Maternity Leave any time up to six weeks before the expected date of the birth.
118. A pregnant employee may commence *unpaid* Maternity Leave earlier than six weeks before the expected date of birth if the employer agrees. However, the leave must not start later than the birth of the child.
119. Where a period of unpaid Maternity Leave is directly preceded by paid Maternity Leave, paragraph 118 is not applicable.
120. The clause does not require a pregnant employee who wishes to work during the six weeks prior to the expected date of the birth to provide a certificate from a medical practitioner certifying that she is fit for work. The clause does provide the employer with the discretion to request such a medical certificate if the employer has reason to believe that the employee continuing to work in that timeframe would render a danger to themselves, fellow employees or the public.
121. If the pregnancy of an employee terminates by other than the birth of a live child not earlier than twenty weeks before the expected date of the birth, an eligible employee is still entitled to the paid Maternity Leave.
122. If the pregnancy has not progressed to 20 weeks from the expected date of birth an employee can access personal leave as required or certified by a medical practitioner.
123. The period of paid Maternity Leave must be concluded within 12 months after the birth of the child. An employer does have discretion, in exceptional circumstances, to allow an employee to take a period of paid Maternity Leave that will result in the employee being on paid Maternity Leave more than 12 months after the birth of the child. This may occur for example, where a child requires a lengthy hospitalisation following birth which makes it impossible to for an employee to take their period of paid Maternity Leave within the required timeframe.
124. If an employer does allow an employee to take a period of paid Maternity Leave more than 12 months after the birth of the child, the period of paid Maternity Leave must not exceed the quantum prescribed at clause 23.5 (b). The employer may also require evidence that would satisfy a reasonable person that the circumstances warrant allowing the employee to take their period of paid Maternity Leave more than 12 months after the birth of the child.

### Modification of Duties and Transfer to a Safe Job

125. Subject to a number of requirements, a pregnant employee is entitled to work on a part time basis during her pregnancy. She may work in one or more part time periods depending upon the demands of her pregnancy.
126. For the purposes of leave accrual during these periods of part time employment, calculations are to be made in accordance with the part time employment provisions contained in the applicable Award.
127. The entitlement in clause 23.8 (e) to a paid absence where an employer does not think it is reasonably practicable to modify an employee's duties or provide an employee with a transfer to a safe job, is available to all pregnant employees including eligible casual employees as defined.

128. This paid absence entitlement is in addition to other leave entitlements and a pregnant employee who proceeds on a paid absence will have no change to her terms and conditions of employment. This means, if an employee is certified as either being unfit for work, or fit for work but it is inadvisable for her to continue in her present position in the period prior to proceeding on Maternity Leave, she is entitled to:
- a) have the duties of her position modified;
  - b) be transferred to a safe job at the same classification level; or
  - c) paid absence as per clause 23.8 (e).
129. An entitlement to paid absence under these circumstances applies irrespective of any award or agreement requirement for a pregnant employee to proceed on Maternity Leave six weeks prior to the expected date of birth or otherwise.
130. Eligible casual employees are entitled to proceed on a paid absence as provided for under clause 23.8 (e) if it is not reasonably practicable for the employer to modify the employee's duties or to transfer the casual employee to a safe job.
131. If the eligible casual employee proceeds on a paid absence under clause 23.8 (e) the employer must pay the amount that the employee would reasonably expect to be paid if the employee had worked during that period.

#### Interaction with Other Leave Entitlements

132. An employee may choose to substitute part of the 52 weeks unpaid Maternity Leave with accrued annual leave or long service leave. If the employee does choose to do this, the leave substituted will form part of the Maternity Leave quantum available and will not increase the maximum Maternity Leave available.
133. Personal leave is not payable on a period of paid or unpaid Maternity Leave.

#### Extended Unpaid Maternity Leave

134. An employee can make a request to extend their unpaid Maternity Leave by up to two years. If granted this would allow an employee up to three years unpaid Maternity Leave on the birth of a child, inclusive of any period of paid Maternity Leave if applicable.
135. Approval for an extension to unpaid Maternity Leave will be subject to all other available leave entitlements being exhausted. However, an employee is not required to exhaust all their personal leave credits prior to having an extension to unpaid Maternity Leave approved.
136. The employer must agree to the employee's request to extend partner leave unless the employer is not satisfied the request is genuinely based on the employee's parental responsibilities, or the adverse effect granting the request would have on the conduct of operations or business of the employer.

#### Replacement Employee

137. Replacement employee means an employee specifically engaged to replace an employee proceeding on maternity leave, adoption leave, other parent leave or grandparental leave.

138. The incumbent employee takes precedence over the replacement employee. As a result the employer shall inform a replacement employee of the tenure of the position prior to engagement. Should the incumbent employee decide to return to work earlier than expected, the employer must accommodate their return subject to the employee providing the required period of notice.

#### Employment During Unpaid Maternity Leave

139. Where both the employer and employee agree, an employee may be employed by the employer on a special temporary or casual basis during a period of unpaid parental leave or leave without pay taken in conjunction with unpaid parental leave. An employee may not be employed during any period of paid leave taken concurrently with a period of unpaid parental leave.
140. Public service officers who are engaged on Special Temporary Employment can only be employed in connection with their substantive office, post or position. As a result public service officers:
- a) can only undertake special casual employment if they are employed substantively as an eligible casual employee; and
  - b) can undertake temporary employment in a higher duties position as they retain a connection with their substantive office, post or any other position in connection with their substantive office, post or position.
141. Employees other than public service officers are not limited to working only in connection with their substantive position. Subject to the parties' agreement, employees other than public service officers may be employed in special temporary or casual employment in any position on a full time, part time or casual basis. They must, however, be employed at the level commensurate to the level of the available position.
142. Special temporary or casual employment is treated as part of the employee's period of unpaid Maternity Leave or leave without pay related to Maternity Leave unless the employee provides written notice to their employer that they will be extending their period of leave. If written notice is provided, the employee's period of leave can be extended by a period up to or equal to the total period of time they were engaged in temporary or casual employment.
143. Any unused portion of unpaid Maternity Leave or leave without pay must be recommenced immediately following the completion of a period of temporary or casual employment. If the unused portion of Maternity Leave or leave without pay is not recommenced, it will not be preserved.
144. Except for employees undertaking special casual employment, periods of temporary employment undertaken shall count as qualifying service for all purposes under the applicable Award and the General Agreement. Such periods of temporary employment shall therefore, for example, count as service with respect to annual, sick or personal, and long service entitlements, and salary increments.
145. Notwithstanding paragraph 144, where a casual employee would ordinarily receive an entitlement under the applicable Award or the General Agreement, periods of special casual employment shall also count as qualifying service.

146. Any temporary or casual employment undertaken by an employee shall have no adverse effect on their entitlements with respect to their substantive position. For example, where an employee undertakes temporary employment on a part time basis or at a lower classification level to their substantive position, the employee's entitlement to annual leave shall not be diminished.
147. When considering the use of special temporary or casual employment, employers should give consideration to the impact on the employment of any replacement employee.
148. An employee is not to be engaged by another employer whilst on Maternity Leave unless authorised to do so by the employing authority prior to Maternity Leave. Maternity Leave is provided so that an employee can provide care to a child during the time in which the employee would have otherwise been at work. It is not a period of leave without pay where the employee may undertake work with another employer.

#### Return to Work on Conclusion of Maternity Leave

149. Employees returning to work on the conclusion of Maternity Leave have the right to return, not simply the right to request to return to work, on a modified basis. This includes working part-time, working fewer days and/or fewer hours or working different days and/or at different times than the employee was working before proceeding on Maternity Leave. This right must be read in conjunction with the part time employment provisions of the applicable Award and the General Agreement.

#### Right to Revert

150. An employee who has returned to work on a modified basis on the conclusion of Maternity Leave has the right to request a reversion to working on the same basis as they worked either immediately before starting Maternity Leave or on a full time basis at the same classification level.
151. Employers must agree to a request to revert unless there are reasonable grounds not to agree. Reasonable grounds for refusal and an employee's right to seek enforcement are set out in clause 23.14 (e) of the Maternity Leave clause.
152. An employer must provide an employee with written notice of their decision concerning an employee's request to revert. If the employee's request is refused, the employer must set out the reasons for the refusal in the written notice.

#### Employer Requirement to Revert

153. Subject to paragraph 154 of these Explanatory Notes, where an employee has been permitted by the employer to work on a modified basis the employer may subsequently require the employee to resume working on the same basis as the employee worked immediately before starting Maternity Leave.
154. The employer may only require the employee to revert if:
  - a) the continuation of the arrangement would have an adverse effect on the conduct of operations or business of the employer; or
  - b) the employee's child has reached school age.

### Effect of Maternity Leave on the Contract of Employment

155. Where an eligible casual employee becomes a permanent or fixed term contract employee with the same WA Public Sector employer within three months of completing their last period of casual employment, their service as an eligible casual employee will count as qualifying service for paid Maternity leave.

### **Clause 24 – Adoption Leave**

156. Adoption Leave applies to an employee who legally adopts a child or children.
157. All references to a “child” in the Adoption Leave clause should be read as including “children” of a multiple adoption.
158. If the employee adopts more than one child at one time, the employee is entitled to the period of Adoption Leave they would have received had only a single child been adopted.

### Eligibility

159. Only an employee who legally adopts a child is entitled to Adoption Leave.
160. An employee must have completed 12 months continuous service in the WA Public Sector, as defined under the *Public Sector Management Act 1994 (WA)*, immediately preceding the Adoption Leave in order to receive paid Adoption Leave.
161. Prior service outside the WA Public Sector, such as with the Commonwealth public service, is not recognised as service towards this 12 month qualifying period for paid Adoption Leave. While this and other service outside the WA Public Sector may be recognised for the purposes of annual or long service leave accrual, the General Agreement only allows recognition of service with the WA Public Sector for the purposes of paid Adoption Leave.
162. Where an employee is on a fixed term contract and takes Adoption Leave (paid or unpaid), the leave cannot extend beyond the end of the contract. The employee’s employment would cease at the end of that contract. Fixed term contract employees on Adoption Leave at half pay whose contracts expire prior to completing their extended leave would only be entitled to the leave which was taken prior to the expiration of the contract.
163. An employee who has previously taken paid Adoption Leave is eligible to take another period of paid Adoption Leave without accruing another 12 months continuous service and without concluding their Adoption Leave or leave without pay taken in conjunction with Adoption Leave and as a result do not need to resume duties.
164. An employee on leave without pay unrelated to Adoption Leave must resume duties prior to being entitled to paid Adoption Leave. An employee should resume duties such that they undertake meaningful work for the employer. Therefore, returning for a short period such as one day may not constitute resuming duty in order to qualify for a period of paid Adoption Leave.
165. Eligible casual employees are only entitled to unpaid Adoption Leave and must meet the requirements of clause 24.2 (d). Any reference in the Adoption Leave clause that allows an employee to utilise paid leave entitlements such as annual leave do not extend to eligible casual employees. Casual employees are paid a loading in lieu of leave entitlements.

### Notice requirements

166. An employee who wishes to commence paid or unpaid Adoption Leave must provide their employer with no less than eight weeks' notice in writing.
167. An employee is not in breach of the clause if the required notice is not given because the placement of the child takes place before the time the employee intended to take the leave.
168. An employee who chooses to vary the period of leave taken must give four weeks' notice of their intention to do so.

### General Entitlement to Adoption Leave

169. An eligible employee is entitled to 52 weeks unpaid Adoption Leave.
170. Subject to the requirements of the Adoption Leave clause an eligible employee is entitled to 14 weeks paid Adoption Leave, which forms part of the 52 week entitlement.
171. Paid Adoption Leave is inclusive of any public holidays or repealed public service days in lieu falling within that time.
172. Employees may only access Adoption Leave in one continuous period. Where less than the standard Adoption Leave is taken, the unused portion cannot be preserved in any way for use at a later date.
173. Where Adoption Leave is shared with Other Parent Leave between parents of the same child, each employee can only access their share of the leave in one continuous period. This effectively means that Maternity Leave, Other Parent Leave or Adoption Leave cannot be shared between parents on a day-to-day, week-by-week or month-by-month basis.
174. Notwithstanding paragraph 173, an employee who undertakes special temporary or casual employment during unpaid Adoption Leave is able to take their unpaid Adoption Leave in more than one period, subject to the provisions of clause 23.13 as it applies to Adoption Leave.
175. Paid Adoption Leave, Maternity Leave and Other Parent Leave may be shared between the partners/parents assuming the role of primary caregiver. Where both parents work in the WA Public Sector, the total paid Maternity Leave, Adoption Leave or Other Parent Leave entitlement provided to the employees shall not exceed the quantum provided to a single person in clause 23.5 (b) or its half pay equivalent. This applies to all employees of the WA Public Sector, regardless of Award coverage.

### Payment for Paid Adoption Leave

176. Subject to paragraph 178, an employee is to be paid according to their ordinary working hours at the time of commencement of Adoption Leave. This provision applies where the employee may have changed employment status – for example, from part time to full time – immediately prior to commencing paid Adoption Leave.
177. Paid Adoption Leave will be paid on a pro-rata basis for part time employees. A part time employee is to be paid either the average hours worked over the preceding 12 months; or their ordinary working hours at the time of commencement of Adoption Leave, excluding shift and weekend penalties, whichever is the greater.

178. Any salary increases that fall due prior to or during a period of paid Adoption Leave will be incorporated to the rate payable from the date of the increase.
179. Where an employee has not resumed duty following the conclusion of their Adoption Leave and the employee is entitled to a subsequent period of paid Adoption Leave, the employee's paid Adoption Leave is to be paid according to the employee's status and classification at the time of commencing the original period of Adoption Leave.
180. Special temporary or casual employment undertaken by the employee has no effect on the provisions of paragraph 179, notwithstanding that the employee may have undertaken special temporary or casual work at a different classification or on a different basis to their substantive position.
181. Higher duties allowance is payable on the first four weeks of paid Adoption Leave if the employee has been in receipt of a higher duties allowance for a period of 12 months' continuous service immediately prior to commencing Adoption Leave. The 2014 General Agreement clarifies at clause 24.4 (c) (ii) that an employee who elects to take paid Adoption Leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.

#### Commencement of Adoption Leave

182. An employee can commence Adoption Leave on the placement of the adopted child.
183. Notwithstanding paragraph 182, an employee may commence Adoption Leave on the day which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption.
184. The period of paid Adoption Leave must be concluded within 12 months of the day of placement. An employer does have discretion, in exceptional circumstances, to allow an employee to take a period of paid Adoption Leave that will result in the employee being on paid Adoption Leave more than 12 months after the day of placement.
185. If an employer does allow an employee to take a period of paid Adoption Leave more than 12 months after the day of placement, the period of paid Adoption Leave must not exceed the quantum prescribed at clause 24.3 (b). The employer may also require evidence that would satisfy a reasonable person that the circumstances warrant allowing the employee to take their period of paid Adoption Leave more than 12 months after the day of placement.

#### Other Provisions

186. The following provisions of the Maternity Leave clause apply to Adoption Leave:
  - a) clause 23.9 – Interaction with Other Leave Entitlements;
  - b) clause 23.10 – Extended Unpaid Maternity Leave;
  - c) clause 23.11 – Communication During Maternity Leave;
  - d) clause 23.12 – Replacement Employee;
  - e) clause 23.13 – Employment During Unpaid Maternity Leave;
  - f) clause 23.14 – Return to Work on Conclusion of Maternity Leave; and
  - g) clause 23.15 – Effect of Maternity Leave on the Contract of Employment.



187. The Explanatory Notes as provided for under Maternity leave have the same application as it applies to Adoption Leave for the above clauses.

#### **Clause 25 – Other Parent Leave**

188. Other Parent Leave applies to an employee who, subject to the below eligibility requirements, is the primary caregiver of the child but not the birth parent.
189. In order for an employee to be the “primary care giver”, they must assume the principal role for the care and attention of a child aged under twelve months or a newly adopted child. Only one person can be the primary care giver of the child at any one time.
190. All references to a “child” in the Other Parent Leave clause should be read as including “children” of a multiple adoption.
191. If the birth parent gives birth to more than one child at one time, the employee is entitled to the period of Other Parent Leave that they would have received had only a single child been born.

#### Eligibility

192. The “Other Parent” must be the primary caregiver of the child that provides principal care for the majority of the time.
193. The definition of "Other Parent" at clause 25.1 (b) (i) states the "other parent" may or may not be the biological parent, and does not necessarily have to be the partner of the birth parent, but must be the primary care giver of the child.
194. The definition clarifies that the other parent can be the biological parent of the child but may or may not be the partner of the birth parent. The intent of the clause is to take into consideration that a biological parent, where they are not the partner of the birth parent, may take on the role of primary care giver. The intent of the clause is not to expand the entitlement to any person.
195. Other Parent Leave is limited to the biological parent or the partner of the birth or adoptive parent who will have a parental relationship with the child and take on parenting responsibilities as the primary caregiver.
196. An employee must have completed 12 months continuous service in the WA Public Sector as defined under the *Public Sector Management Act 1994* (WA) immediately preceding the Other Parent Leave in order to receive paid Other Parent Leave.
197. Prior service outside the WA Public Sector, such as with the Commonwealth public service, is not recognised as service towards the 12 month qualifying period for paid Other Parent Leave. While this and other service outside the WA Public Sector may be recognised for the purposes of annual or long service leave accrual, the Agreement only allows recognition of service with the WA Public Sector for the purposes of paid Other Parent Leave.
198. Where an employee is on a fixed term contract and takes Other Parent Leave (paid or unpaid), the leave cannot extend beyond the end of the contract. The employee's employment would cease at the end of the contract. Fixed term contract employees on Other Parent Leave at half pay whose contracts expire prior to completing their extended leave would only be entitled to the leave which was taken prior to the expiration of the contract.

199. With respect to paid Other Parent Leave only, the employer may require an employee to provide confirmation of their primary care giver status. Where the employer requires the employee to confirm their status as the primary care giver, the employee is to provide the employer with evidence that would satisfy a reasonable person of the entitlement to Other Parent Leave.
200. Confirmation of primary care giver status may be provided by, but is not limited to:
- c) a statutory declaration containing sufficient details to satisfy a reasonable person of the employee's entitlement to paid parental leave;
  - d) a medical certificate addressing any incapacity the child's mother or adoptive parent may have to be its primary care giver;
  - e) details of any leave being taken by the child's mother or adoptive parent;
  - f) details of the mother or adoptive parent's working and study arrangements; and/or
  - g) details of the child's care arrangements.
201. Other Parent Leave (paid or unpaid) cannot be used to care for a child other than the newly born or newly adopted child. This means that the employee cannot take Other Parent Leave to care for another child or children because the birth parent or other adoptive parent is caring for the newly born or adopted child.
202. An employee on leave without pay unrelated to Other Parent Leave must resume duties prior to being entitled to paid Other Parent Leave. An employee should resume duties such that they undertake meaningful work for the employer. Therefore, returning for a short period such as one day may not constitute resuming duty in order to qualify for a period of paid Other Parent Leave.
203. Eligible casual employees are only entitled to unpaid Other Parent Leave and must meet the requirements of clause 25.2 (b). Any reference in the Other Parent Leave clause that allows an employee to utilise paid leave entitlements such as annual leave do not extend to eligible casual employees. Casual employees are paid a loading in lieu of leave entitlements.

#### Notice requirements

204. An employee who wishes to commence paid or unpaid Other Parent Leave must provide their employer with no less than eight weeks' notice in writing.
205. An employee is not in breach of the clause if the required notice is not given because the birth of the child takes place before the time the employee intended to take the leave.
206. An employee who chooses to vary the period of leave taken must give four weeks' notice of their intention to do so.

#### General Entitlement to Other Parent Leave

207. An eligible employee is entitled to 52 weeks unpaid Other Parent Leave.
208. Subject to the requirements of the Other Parent Leave clause an eligible employee is entitled to 14 weeks paid Other Parent Leave, which forms part of the 52 week entitlement.

209. Paid Other Parent Leave is inclusive of any public holidays or repealed public service days in lieu falling within that time.
210. Employees may only access Other Parent Leave in one continuous period. Where less than the standard Other Parent Leave is taken, the unused portion cannot be preserved in any way for use at a later date.
211. Where Maternity Leave is shared with Other Parent Leave between parents of the same child, each employee can only access their share of the leave in one continuous period. This effectively means that Maternity Leave, Other Parent Leave or Adoption Leave cannot be shared between parents on a day-to-day, week-by-week or month-by-month basis.
212. Notwithstanding paragraph 211, an employee who undertakes special temporary or casual employment during unpaid Other Parent Leave is able to take their unpaid Other Parent Leave in more than one period, subject to the provisions of clause 23.13 as it applies to Other Parent Leave.
213. Paid Maternity Leave, Adoption Leave and Other Parent Leave may be shared between the partners/parents assuming the role of primary caregiver. Where both parents work in the WA Public Sector, the total paid Maternity Leave, Adoption Leave or Other Parent Leave entitlement provided to the employees shall not exceed the quantum provided to a single person or its half pay equivalent. This applies to all employees of the WA Public Sector, regardless of Award coverage.

#### Payment for Paid Other Parent Leave

214. Subject to paragraph 216, an employee is to be paid according to their ordinary working hours at the time of commencement of Other Parent Leave. This provision applies where the employee may have changed employment status – for example, from part time to full time – immediately prior to commencing paid Other Parent Leave.
215. Paid Other Parent Leave will be paid on a pro-rata basis for part time employees. A part time employee is to be paid either the average hours worked over the preceding 12 months; or their ordinary working hours at the time of commencement of Other Parent Leave, excluding shift and weekend penalties, whichever is the greater.
216. Any salary increases that fall due prior to or during a period of paid Other Parent Leave will be incorporated to the rate payable from the date of the increase.
217. Where an employee has not resumed duty following the conclusion of their Other Parent Leave and the employee is entitled to a subsequent period of paid Other Parent Leave, the employee's paid Other Parent Leave is to be paid according to the employee's status and classification at the time of commencing the original period of Other Parent Leave.
218. Special temporary or casual employment undertaken by the employee has no effect on this, notwithstanding that the employee may have undertaken special temporary or casual work at a different classification or on a different basis to their substantive position.

219. Higher duties allowance is payable on the first four weeks of paid Other Parent Leave if the employee has been in receipt of a higher duties allowance for a period of 12 months continuous service immediately prior to commencing Other Parent Leave. The 2014 General Agreement provides clarification that an employee who elects to take paid Other Parent Leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.

#### Commencement of Other Parent Leave

220. An employee can only commence Other Parent Leave from the day the employee assumes primary care of the child.
221. The period of paid Other Parent Leave must be concluded within 12 months after the birth of the child. An employer does have discretion, in exceptional circumstances, to allow an employee to take a period of paid Other Parent Leave that will result in the employee being on paid Other Parent Leave more than 12 months after the birth of the child. This may occur, for example, where a child requires a lengthy hospitalisation following its birth which makes it impossible for an employee to take their period of paid Other Parent Leave within the required timeframe.
222. If an employer does allow an employee to take a period of paid Other Parent Leave more than 12 months after the birth of the child, the period of paid Other Parent Leave must not exceed the quantum prescribed at clause 25.3 (b). The employer may also require evidence that would satisfy a reasonable person that the circumstances warrant allowing the employee to take their period of paid Other Parent Leave more than 12 months after the birth of the child.

#### Other Provisions

223. The following provisions of the Maternity Leave clause apply to Other Parent Leave:
- a) clause 23.9 – Interaction with Other Leave Entitlements;
  - b) clause 23.10 – Extended Unpaid Maternity Leave;
  - c) clause 23.11 – Communication During Maternity Leave;
  - d) clause 23.12 – Replacement Employee;
  - e) clause 23.13 – Employment During Unpaid Maternity Leave;
  - f) clause 23.14 – Return to Work on Conclusion of Maternity Leave; and
  - g) clause 23.15 – Effect of Maternity Leave on the Contract of Employment.
224. The Explanatory Notes as provided for under Maternity leave have the same application as applies to Other Parent Leave for the above clauses.

#### **Clause 26 – Partner Leave**

225. The 2008 General Agreements created a separate clause for partner leave, which incorporates the unpaid partner leave provisions previously contained in Circular to Departments and Authorities No. 3 of 2007 – Parental Leave which is now cancelled.
226. The General Agreement provides employees the right to access accrued paid leave for paid partner leave purposes. That is, to take a form of paid leave when their partner gives birth to their child.

227. The 2014 General Agreement provides that, subject to available credits, employees may take the one week's Partner Leave as:
- a) paid personal leave, subject to clause 26.8;
  - b) paid annual and/or long service leave;
  - c) paid accrued time off in lieu of overtime, flexi leave and/or banked hours; and/or
  - d) unpaid partner leave.
228. The 2011 General Agreement provided that the entitlement to paid partner leave must be taken as paid personal leave. The 2014 General Agreement provides more flexibility in that an employee may access any of the leave types referred to at paragraph 227.
229. If the employee does elect to use their accrued personal leave credits the employer will need to ensure the employee retains sufficient personal leave credits (75 hours) to meet the requirements of the *Minimum Conditions of Employment Act 1993*.
230. Any public holidays or days in lieu of the repealed public service holidays that fall during partner leave shall be counted as part of the partner leave and do not extend the period of partner leave. The reference to days in lieu of the repealed public service holidays is a clarification introduced in the 2014 General Agreement.
231. An employee is entitled to request an extension to the period of partner leave up to a maximum of eight weeks. The additional weeks shall be unpaid and the eight week maximum is inclusive of any period of partner leave already taken. The 2014 General Agreement introduced the entitlement that extended unpaid partner leave may be taken in separate periods, but, unless the employer agrees, each period must not be shorter than two weeks.
232. Further to the amendment at paragraph 231, the 2014 General Agreement clarifies that the period of extended partner leave must be concluded within twelve months of the birth of the child. In the case of adoption, the period of leave must be concluded within twelve months of the date of placement of the child.
233. The employer must agree to the employee's request to extend partner leave unless the employer is not satisfied the request is genuinely based on the employee's parental responsibilities, or due to the adverse effect granting the request would have on the conduct of operations or business of the employer.
234. The right to request extended unpaid partner leave does not prevent employees from making an application to utilise other forms of leave following the initial one week period of partner leave. However, approvals of such forms of leave shall be in accordance with the relevant clause of the General Agreement or applicable Award and not the provisions of this clause.
235. Part time employees are entitled to the provisions of this clause.

## **Clause 27 – Unpaid Grandparental Leave**

236. The 2008 General Agreements introduced a new leave entitlement – 52 weeks unpaid grandparental leave. This leave is not a discretionary entitlement, akin in this regard to unpaid Maternity, Adoption and Other Parent Leave. This means, subject to the employee meeting the requirements of the clause, the employer cannot refuse to grant grandparental leave.
237. The sole requirement to be met in order to access this entitlement is that the employee be the primary care giver of their grandchild. As with unpaid Maternity, Adoption or Other Parent Leave, there is no requisite period of qualifying service.
238. Unlike Maternity, Adoption or Other Parent Leave, this clause provides:
- a) an employer with the discretion to allow an employee to access grandparental leave on a part time basis. For example, two day's grandparental leave per week for 52 weeks; and
  - b) an employee with the right to commence the leave any time within 24 months following the birth or adoptive placement of their grandchild. For example, when the child is one year old.
239. Whilst grandparental leave can be taken on a part time basis, an employee's absence on grandparental leave must conclude no later than 52 weeks after the commencement of the leave. For example, an employee who takes three days a week grandparental leave commencing 1 January 2012 must conclude their leave by 1 January 2013. The employee in this situation will have taken 156 days leave (three days x 52 weeks).
240. A small number of Maternity Leave provisions (specified in the clause) apply to employees on grandparental leave. These provisions apply with such amendment as is necessary to ensure the provision relates to grandparental rather than Maternity Leave.
241. A fixed term contract employee has the same entitlement to grandparental leave as a permanent employee. The period of leave shall not, however, extend beyond the term of their contract.
242. A part time employee has the same entitlement to grandparental leave as a full time employee, calculated on a pro rata basis. For example, an employee who works three days per week is entitled to 52 weeks leave at three days per week.

## **Clause 28 – Early Access to Pro Rata Long Service Leave**

243. Early access to pro rata long service leave is an ageing workforce initiative. It is available at the rate of 9.28 days per completed 12 month period of continuous service, regardless of the length of prior service, for employees within seven years of preservation age under Western Australian Government superannuation arrangements.
244. An employee's preservation age may vary on their date of birth. Information required concerning preservation age under Western Australian Government superannuation arrangements can be obtained from GESB.

245. Only leave accrued within seven years of the employee's preservation age or post the employee's preservation age can be accessed. This means that any pro rata long service leave accrued prior to this date cannot be accessed under the provisions of this clause once an employee is within the seven year timeframe [see the example in paragraph 246 (b) below].
246. Eligible employees can access 9.28 days from their anniversary date of commencing employment, adjusted for any long service leave excised. The following examples illustrate how pro rata long service may be accessed by an employee who meets the requirements of the General Agreement:
- a) If an employee is within seven years of their preservation age on 1 March 2015 and their first anniversary date is 14 October 2015 (i.e. they commenced employment on 14 October 2014), 9.28 days may be accessed from 14 October 2015.
  - b) If an employee is within seven years of their preservation age on 1 March 2015 and their tenth anniversary date is 14 October 2015 (i.e. they commenced employment on 14 October 2005), only 9.28 days may be accessed from 14 October 2015 under the provisions of this clause.
  - c) If this employee does not take any of the 9.28 days available from 14 October 2015, then on 14 October 2016 the employee can access 18.56 days (9.28 days x two years), assuming the anniversary date has not changed.
  - d) If this employee takes two days long service leave during the period 14 October 2015 to 13 October 2016, then from 16 October 2016 the employee can access 16.56 days (7.28 + 9.28 days). The anniversary date has moved out by the two days long service leave taken.
247. Employees who take pro rata long service leave and resign prior to age 55 are not required to pay back the monetary equivalent of the leave taken.
248. Pro rata long service leave:
- a) Pro rata long service leave taken by public service officers under this clause of the General Agreement is deducted from any pro rata long service leave taken as per PSA clause 25 (9) and from any pro rata long service leave that is paid as a lump sum as per Regulation 5 - Lump Sum Payments of the Public Service Regulations 1988.
  - b) Pro rata long service leave taken by government officers under this clause of the General Agreement is deducted from any pro rata long service leave taken as per GOSAC Award clause 25 (12) and from any pro rata long service leave that is paid as a lump sum as per Award clause 25 (8).
249. This entitlement extends to part time employees on a pro rata basis, and to fixed term contract employees.

### **Clause 29 – Pro Rata Additional Annual Leave for Shift Work Employees**

250. Custom and practice has deemed “regularly rostered” on Sundays and/or public holidays to mean a shift work employee was rostered to work at least 11 Sundays and/or public holidays in a period of 12 months continuous service. The General Agreement includes a definition of “regularly rostered” based on this interpretation.
251. Prior to the introduction of this clause in the 2008 General Agreement, employees could only access the additional leave once they had been rostered to work at least 11 Sundays and public holidays in a period of 12 months continuous service. The General Agreement allows for pro rata access to the additional five day’s annual leave. An eligible employee may therefore access the additional leave where they have been rostered on and worked less than 11 Sundays and/or public holidays in a period of 12 months. For example, an eligible employee who has been rostered on and worked three Sundays is entitled to one additional day of leave.
252. Part time employees are entitled to pro rata leave on a pro rata basis according to the hours worked on the Sundays and/or public holidays for that accrual portion of leave. The calculation is not based on the part time employee’s total weekly hours. For example, an employee who worked four hours on three Sundays is entitled to four hour’s additional leave.
253. If the hours worked on each Sunday varied, the employee is entitled to an average of the hours worked for that accrual portion. For example, an employee who worked four hours on one Sunday and five hours on another two Sundays is entitled to 4.67 hour’s additional leave.
254. The maximum leave accrual remains unchanged at five days (37.5 hours).

### **Clause 30 – Pro Rata Additional Annual Leave for North West Employees**

255. Prior to the introduction of this clause in the 2008 General Agreement, an eligible employee could only access additional leave on the completion of each year of continuous service. The General Agreement allows for pro rata access to the additional leave – that is, where the employee has worked in the North West for less than 12 months.
256. As with ordinary annual leave, the additional leave now accrues on a daily basis.
257. The maximum leave accrual remains unchanged at five days (37.5 hours).
258. There may be situations where an employee is on relief duty or travelling on official business in the North West and is entitled to the additional leave provided by the Weekend Absence from Residence provisions of the applicable Award. Where an employee receives such additional leave, they are not also entitled to the pro rata annual leave provided to North West employees in this clause.



### **Clause 31 – Annual Leave Loading**

259. The General Agreement provides for annual leave loading to be paid on the first pay date in December in the calendar year in which the leave accrues.
260. The clause does not apply to shift work employees, nor to employees on commuted arrangements that incorporate leave loading.
261. Employees who have accrued annual leave prior to 1 January 2011 will have the leave loading paid on that leave as the leave is taken.
262. Subject to the maximum annual leave loading as provided at paragraphs 282 and 283 of these Explanatory Notes, employees who are in the service of the employer prior to or engaged after 1 January in each year shall be paid the leave loading anticipated to be due on 31 December of that year, based on the annual leave accrued in that calendar year. Employees who are engaged after 1 January shall receive the 17.5% loading on pro rata annual leave accrued during that calendar year.
263. Adjustments may be required following the payment of annual leave loading in December to account for any changes in an employee's employment prior to 31 December such as increment, level, higher duties allowance (HDA) or hours.

#### Payment

264. Annual leave loading paid on leave accrued after 1 January 2011 is to be paid based on an employee's normal rate of salary, with a possible exception relating to HDA.
265. The reference to normal rate of salary was a clarification introduced in the 2014 General Agreement. This is to ensure consistency with clause 31.6, which specifies that the loading is calculated on the rate of an employee's normal fortnightly salary, including allowances which are paid as a regular or fortnightly amount, subject to the abovementioned exception in relation to HDA.

#### Higher Duties Allowance

266. Where an employee proceeds on annual leave during the calendar year in which that leave accrues, and:
- a) the leave taken was accrued after 1 January 2011; and
  - b) the employee is in receipt of HDA during the period of leave;
- annual leave loading relating to this period of leave will be paid in December based on:
- a) the HDA rate applicable at the time the leave was taken, or
  - b) the employee's anticipated substantive rate as at 31 December of that year;
- whichever is higher.
267. Annual leave loading paid on leave accrued prior to 1 January 2011 is to be paid based on the HDA rate at the time the leave is taken.

#### Movement between shift and non-shift status

268. Where employees have been employed both as shift and non-shift workers during the course of the calendar year:
- a) any annual leave loading based on annual leave accrued as a non-shift worker after 1 January during the calendar year in which the December payment is made is paid out in December;
  - b) any annual leave loading based on annual leave accrued prior to 1 January 2011 as a non-shift worker is paid out when the leave is taken; and
  - c) any annual leave loading based on annual leave accrued prior to or after 1 January 2011 as a shift worker is paid out when the leave is taken.

#### Part time employment

269. The maximum leave loading payable to part timers is based on the average hours of work per fortnight, as per clause 31.5. The average hours worked per fortnight is inclusive of all ordinary hours worked, and expected to have been worked, during the calendar year, up to and including 31 December. This is inclusive of time spent on paid leave.
270. The formula contained in clause 31.5 is to be applied to employees who have worked in a part time capacity at any point during that calendar year.
271. Where an employee's hours vary after the leave loading payment has been made but before 31 December of that year, the loading payment may require adjustment.

#### Termination of employment

272. An employee must refund any leave loading paid in December if the employee resigns, or ceases employment, or where an employee is dismissed prior to 31 December of that year. This provision does not apply in the event of death of an employee or if the employee retires.
273. Where payment in lieu of accrued or pro rata annual leave is made on the death or retirement of an employee, a loading calculated in accordance with the terms of this clause is to be paid on accrued and pro rata annual leave.
274. When an employee resigns, or ceases employment, or where an employee is dismissed, an annual leave loading shall be paid as follows:
- a) Accrued entitlements to annual leave – a loading calculated in accordance with the terms of this clause for accrued leave is to be paid.
  - b) Pro rata annual leave – no loading is to be paid.

#### Movement of employees between WA Public Sector employers

275. Where an employee moves permanently between WA Public Sector employers maintaining continuity of service and CSA coverage within the GA6 agreements, the employing authority as at the first pay period in December pays annual leave loading based on the full calendar year's accrual.

276. Where an employee has been, or is on secondment, the payment arrangements will need to be addressed as part of the secondment agreement between the host and home employers. However, the employee must receive the annual leave loading payment in December.

#### Transitional Arrangements

277. Employees will clear annual leave starting with the oldest accrued annual leave. When taking annual leave accrued prior to 1 January 2011, employees will be paid a 17.5% leave loading at the time of taking the leave.
278. The maximum payment of annual leave loading paid on leave accrued prior to 1 January 2011 is to be calculated separately to the annual leave loading paid on the first pay date in December.

#### Annual leave loading maximum

279. Under the 2011 General Agreement, the maximum amount of annual leave loading payable on four weeks' annual leave could not exceed the amount set out in the Average Weekly Total Earnings of all Males in Western Australia, as published by the Australian Bureau of Statistics (ABS), for the September quarter of the year immediately preceding the date the leave became due.
280. Since 2012, the ABS has not published quarterly data, requiring a new methodology to determine the annual leave loading maximum.
281. Therefore, the 2014 General Agreement introduced a new methodology for calculating the maximum payment for annual leave loading. As the annual leave loading maximum for salaried officers under the 2011 General Agreement methodology only affected employees at general division Level 8.1 and above, the parties agreed to align the maximum loading to that rate and specify the rates in the General Agreement.
282. For employees who proceed on annual leave that was accrued prior to 1 January 2011:
- a) Where the period of annual leave commenced prior to the date of registration of the 2014 General Agreement (16 September 2014), the maximum payment shall not exceed a rate of \$1,615.80 pursuant to Circular to Departments and Authorities No. 1 of 2014 – Annual Leave Loading 2014.
  - b) Where the period of annual leave commenced on or after the date of registration (16 September 2014), the maximum leave loading rate specified in clause 31.11 (d) of the General Agreement will apply.
283. For employees who receive their leave loading paid in December, the annual leave loading maximum specified at clause 31.4 will apply.

**Clause 32 – Annual Leave Loading for Shift Work Employees and Employees on Commuted Arrangements that Incorporate Annual Leave Loading**

284. Subject to the maximum annual leave loading as provided at paragraphs 302 to 304 of these Explanatory Notes, clause 32 the General Agreement provides for an annual leave loading of 17.5% to be paid to shift work employees and employees on commuted arrangements that incorporate leave loading when they proceed on annual leave.
285. Shift work employees who are granted an additional week's penalty leave when proceeding on annual leave including accumulated annual leave shall be paid:
- a) shift and weekend penalties the employee would have received had the employee not proceeded on annual leave; or
  - b) a loading equivalent to 20% of normal salary for five weeks' leave;
286. Subject to paragraph 287, these employees have leave loading paid when the leave is taken.

Employees on commuted arrangements

287. The payment of leave loading to employees on commuted arrangements that incorporate leave loading will be subject to the terms of the individual commuted arrangement at agency level. Whether employees should receive loading when leave is taken depends upon the methodology for calculating that particular commuted arrangement in terms of how annual leave is incorporated into the commuted allowance, in order to prevent double dipping. Advice should be sought from Commerce regarding the application of this clause to employees on commuted arrangements that incorporate annual leave loading.

Payment

288. Where annual leave loading is paid when an employee takes leave, it is paid on an employee's normal rate of salary. Normal rate of salary includes any allowances which are paid as a regular fortnightly or annual amount. However, any allowance paid to an employee for undertaking additional or higher level duties is only included if the allowance is payable during that period of normal annual leave in accordance with clause 38 - Higher Duties Allowance of the General Agreement.

Movement between shift and non-shift status

289. Where employees have been employed both as shift and non-shift workers during the course of the calendar year:
- a) any annual leave loading based on annual leave accrued as a non-shift worker after 1 January during the calendar year in which the December payment is made is paid out in December;
  - b) any annual leave loading based on annual leave accrued prior to 1 January 2011 as a non-shift worker is paid out when the leave is taken; and
  - c) any annual leave loading based on annual leave accrued prior to or after 1 January 2011 as a shift worker is paid out when the leave is taken.

### Part time employment

290. The maximum leave loading payable to a part time employee is based on the employee's hours of work per fortnight at the time the leave is taken.

### Termination of employment – public service officers

291. Provisions regarding termination are different for public service officers and government officers to reflect the differences in PSA and GOSAC.
292. Where payment in lieu of accrued or pro rata annual leave is made on the death or retirement of an employee, a loading calculated in accordance with the terms of this clause is to be paid on accrued and pro rata annual leave.
293. When an employee resigns, or ceases employment, or where an employee is dismissed under Part V - Discipline of the *Public Sector Management Act 1994* (WA), an annual leave loading shall be paid as follows:
- a) Accrued entitlements to annual leave - a loading calculated in accordance with the terms of this clause for accrued annual leave is to be paid.
  - b) Pro rata annual leave - no loading is to be paid.

294. An employee who has been permitted to proceed on annual leave and who ceases duty other than by resignation or dismissal under Part V - Discipline of the *Public Sector Management Act 1994* (WA), before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion of leave loading but no refund is required in the event of the death of an employee.
295. An employee who has been permitted to proceed on annual leave and who resigns or is dismissed under Part V - Discipline of the *Public Sector Management Act 1994* (WA) must refund the value of the loading paid for leave other than accrued leave.

### Termination of employment – government officers

296. Where payment in lieu of accrued or pro rata annual leave is made on the death, dismissal, resignation or retirement of an employee, a loading calculated in accordance with the terms of this clause is to be paid. Provided that no loading shall be payable in respect of pro rata annual leave paid on resignation or where an employee is dismissed for misconduct.
297. An employee who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion. Provided that no refund shall be necessary in the event of the death of an employee.

### Annual leave loading maximum

298. Clause 32 was introduced in the 2014 General Agreement to specify the maximum leave loading rate for employees who, under the terms of the 2011 General Agreement, had their entitlement to annual leave, including loading, contained in the applicable Award. The employees whose leave loading entitlement was contained in the applicable Award were shift work employees and employees on commuted arrangements that incorporate annual leave loading (i.e. employees who were not covered by clause 31 – Annual Leave Loading of the 2011 General Agreement).

299. The introduction of clause 32 means that the leave loading provisions of the applicable Award are now replaced in their entirety by clauses 31 and 32. All leave loading provisions are now contained in the General Agreement.
300. Clause 32 mirrors the leave loading provisions of the applicable Award. The only substantive change is the introduction of the new maximum leave loading methodology. Therefore the interpretation and application of annual leave provisions for shift work employees and employees on commuted arrangements that incorporate annual leave loading has not changed under the 2014 General Agreement.
301. The maximum leave loading rates for shift work employees and employees on commuted arrangements that incorporate annual leave loading are specified in the General Agreement. The maximum leave loading rates apply to leave that commences on or after the date of registration of the General Agreement (16 September 2014). See paragraph 281 for an explanation of the revised methodology used to calculate the leave loading maximum.
302. Where the period of annual leave commenced on or after the date of registration (16 September 2014), the maximum leave loading rate specified in clause 32.4 (b) or (c) of the General Agreement will apply for employees taking four or five weeks' leave respectively.
303. Where an employee entitled to four weeks' annual leave commenced annual leave prior to the date of registration of the 2014 General Agreement, the maximum payment shall not exceed a rate of \$1,615.80 pursuant to Circular to Departments and Authorities No. 1 of 2014 – Annual Leave Loading 2014.
304. The maximum payment to shift work employees who are granted an additional week's penalty leave (an amount that is 5/4ths of the amount payable to employees who receive four weeks of annual leave per annum) shall not exceed a rate of \$2019.80 for annual leave commencing prior to the date of registration of this General Agreement (16 September 2014), pursuant to Circular to Departments and Authorities No. 1 of 2014 – Annual Leave Loading 2014.

### **Clause 33 – Employee Initiated Cash Out of Accrued Annual Leave**

305. Employees are able to cash out accrued annual leave where certain conditions have been met. The General Agreement recognises the importance of employees taking annual leave for the purposes of rest and recreation. However, this clause takes into account the situation where employees may have excess and overdue annual leave, and provides for employees to receive payment in lieu of some of their unutilised accrued annual leave.
306. A request to cash out annual leave must be initiated by the employee and made in writing. An employer may exercise discretion when considering an application to access this provision.
307. Where an employee initiates a written request to cash out annual leave, any agreement by the employer, approving the cashing out of annual leave, must also be in writing.
308. The clause contains further safeguards which ensure employees will utilise at least part of their accrued annual leave for the purposes of rest or recreation. As such, the following criteria must also be met:
- a) the employee has an entitlement to annual leave that has accrued in a previous year or years;

- b) no more than 50% of the employee's total accrued annual leave entitlement can be cashed out;
- c) the employee must retain no less than two weeks accrued annual leave;
- d) each instance of cashing out must be by separate agreement; and
- e) annual leave accruing in the year the request for cashing out is made cannot be cashed out in that year.

Application of criteria

309. One of the criteria is that an employee may only cash out up to 50% of their **total** accrued annual leave. The PSA defines accrued leave as the leave an employee is entitled to from a previous calendar year (clause 23 (1) (a)).

**Example**

An employee commenced full time employment with the Department of Premier and Cabinet on 1 January 2012. In September 2015, the employee initiates a written request to cash out some of their annual leave. As the employee has completed three years of service (2012, 2013 and 2014), their **total** accrued leave would be 12 weeks of annual leave. Therefore, the employee would be eligible to cash out up to a maximum of six weeks of their unutilised annual leave (i.e. total accrued leave minus accrued leave already taken), provided that they retain with not less than two weeks accrued annual leave.

Applications to Cash Out Accrued Annual Leave

310. The clause does not specify the number of occasions in each calendar year an employee may apply to cash out their accrued annual leave. The clause does, however, require that agreement between the employee and employer is reached.

Payment

311. The rate of pay at which an accrued leave entitlement is paid out will be the rate which would have applied had the leave been taken at the time the agreement to cash out the leave is made.

Payment of leave loading under clause 31 (December payment and transitional arrangements)

312. The below applies to employees who are not:
- a) shift work employees; or
  - b) employees on commuted arrangements that incorporate leave loading.
313. The cash out of annual leave which was accrued prior to 1 January 2011 will include a loading of 17.5%, subject to the maximum payment provided for in clause 31.11(d) of the General Agreement.

314. The cash out of annual leave for the above employees, which was accrued after 1 January 2011, will not be subject to annual leave loading. Such loading shall be paid to employees on the first pay period in December in the calendar year in which the leave accrues.
315. The loading paid out when an employee cashes out their annual leave does not count towards the maximum loading payable when an employee's leave loading is paid out in December of the current year.

Payment of leave loading under clause 32 (shift work employees and employees on commuted arrangements that incorporate leave loading)

316. Subject to paragraph 317, the cash out of annual leave by shift work employees or employees on commuted arrangements that incorporate annual leave loading will include a loading of 17.5%, subject to the maximum provided in clause 32.4 of the General Agreement and detailed at paragraphs 302 to 304 of these Explanatory Notes.
317. The payment of leave loading to employees on commuted arrangements that incorporate leave loading will be subject to the terms of the individual commuted arrangement at agency level and will depend upon how annual leave and loading payments are accounted for in the calculation of that commuted allowance. Advice should be sought from Commerce regarding the application of this clause to employees on commuted arrangements that incorporate annual leave loading. See further information at paragraph 287 regarding the prevention of double dipping.
318. The loading paid out when an employee cashes out their annual leave does not count towards the maximum loading payable when an employee receives leave loading as they proceed on annual leave.

**Clause 34 – Days in Lieu of Repealed Public Service Holidays**

319. This clause provides for the two days in lieu of the repealed public service holidays as provided for in the Public Sector Commissioner's Circular 2009-32 - Days in Lieu - Public Service Holidays (Commissioner's Circular) where an employee would normally be expected to work these days. The entitlement is subject to the provisions of the Commissioner's Circular.
320. The 2014 General Agreement provides clarification that the days in lieu of the repealed public service holidays are made available on the date of the relevant repealed public holiday, as opposed to being accrued.
321. Subject to the provisions of the Commissioner's Circular, the days in lieu of the repealed public service holidays:
- a) are made available on the date of the relevant repealed public service holiday;
  - b) are not available to an employee who is on any period of leave without pay;
  - c) are paid at the rate of ordinary time;
  - d) can be added to annual leave or taken individually;
  - e) must be taken in the calendar year in which they occur;



- f) will be forfeited if not taken in the year in which they occur; and
- g) are not to be paid out on termination of employment.

322. In addition, pursuant to the Commissioner’s Circular, the days in lieu of the repealed public service holidays must be taken at the employer’s convenience.

**Clause 35 – Christmas/New Year Closedown**

323. Subject to paragraph 324, this clause provides employers with the capacity to initiate a closedown during the Christmas to New Year period, for the whole or part of the employer’s agency, provided that the following criteria are met:

- a) the duration of the closedown must not exceed five working days; and
- b) the employer notifies employees of the closedown as soon as possible, but no later than 30 June.

324. The 2014 General Agreement clarifies that for State Training Providers, the dates/duration of the closedown will be at the discretion of the employer in accordance with the provisions of any applicable ASA listed in item 1 of Schedule 4 of the General Agreement.

Leave arrangements during the closedown

325. Subject to clause 35.2(b) and (c), the following forms of leave can be accessed provided the eligibility criteria are met as per the table below:

Leave Type	Criteria for accessing leave for the purpose of a Christmas closedown as per clause 35 – Christmas/New Year Closedown of the General Agreement
Flexitime credit and banked hours	Can be accessed in accordance with clause 17 – Hours of the General Agreement.
Rostered days/hours off	Can be accessed in accordance with clause 17 – Hours of the General Agreement.
Time in lieu of overtime	Can be accessed in accordance with clause 20 – Overtime of the General Agreement.
Annual leave	Can be accessed in the absence of sufficient banked hours or flexitime credit hours to cover the closedown period.
Accrued long service leave	Can be accessed in the absence of sufficient banked hours or flexitime credit hours to cover the closedown period.
Banked hours accrued during the calendar year specifically for the purpose of covering the closedown period	<ul style="list-style-type: none"> <li>• Can be accessed by employees who do not currently participate in existing flexi-leave arrangements.</li> <li>• The hours must be accrued pursuant to clause 17 – Hours of the General Agreement.</li> <li>• The hours are accrued to a maximum of those necessary to cover the closedown period.</li> </ul>

Leave without pay	<p>At the discretion of the employer, leave without pay is available to employees:</p> <ul style="list-style-type: none"> <li>• engaged during the calendar year immediately preceding the closedown who have not accrued sufficient banked hours to cover the period of the closedown; or</li> <li>• who have not accrued sufficient banked hours to cover the period of the closedown and have exhausted their paid leave credits.</li> </ul>
Annual leave in advance	<p>At the discretion of the employer, annual leave in advance is available to employees:</p> <ul style="list-style-type: none"> <li>• engaged during the calendar year immediately preceding the closedown who have not accrued sufficient banked hours to cover the period of the closedown; or</li> </ul> <p>who have not accrued sufficient banked hours to cover the period of the closedown and have exhausted their paid leave credits.</p>

326. Provided all applicable eligibility criteria are met, a combination of leave types can be utilised for the purpose of covering the closedown.
327. Once the employer notifies the employees of the closedown, employees may commence the accrual of hours specifically for the purpose of covering the closedown.
328. Employees accessing flexi leave may go into debit to cover the period of the closedown. Where the employment of such an employee is terminated prior to accrual of sufficient hours to cover the cover the debit, the employee will be required to refund the balance of hours outstanding on termination.
329. Notwithstanding the provisions of clause 17.11 of the General Agreement, an employee, who has accrued hours for the purposes of the closedown and subsequently:
- a) resigns;
  - b) transfers to another agency; or
  - c) otherwise has their employment terminated;
- without being afforded the opportunity to clear their credit and banked hours, will be paid for those unused hours that relate only to the closedown.

### **Clause 36 – Bereavement Leave**

330. With the exception of clause 32 (5) of the applicable Award, this clause is to be read in conjunction with clause 32 of the Applicable Award.
331. The 2014 General Agreement provides that an officer requiring more than two days bereavement leave in order to travel interstate or overseas in the event of the death interstate or overseas of a member of the officer's immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the officer is eligible, have immediate access to annual leave and/or accrued long service leave or leave without pay provided all accrued leave is exhausted.
332. This clause replaces clause 32 (5) of the applicable Award, which limits access to annual and/or long service leave or leave without pay for travel in relation to a death overseas only, not interstate.

### **Clause 37 – Public Sector First Aid Allowance**

333. This allowance is calculated as 1% of the gross hourly salary of a Level 1.8 general division employee and is paid for each hour worked by an employee who has been appointed by the employer to be the first aid officer in a workplace. The quantum of the allowance will therefore increase with each salary increase.
334. An employee is only entitled to receive the first aid allowance if the employer has formally appointed the employee to be the first aid officer for a workplace and the employee has the appropriate first aid qualification. The allowance is not simply paid to any employee who has the appropriate qualification. The allowance should not be paid simultaneously to the first aid officer and any deputy first aid officer/s in a workplace.
335. The first aid allowance is to be paid in the employee's fortnightly pay.
336. The number of and method of appointment of first aid officers is to be determined by the agency.

### **Clause 38 - Higher Duties Allowance**

#### Higher Duties Allowance and Leave

337. Clause 38 provides for the payment of higher duties allowance (HDA) on any period of paid leave, subject to meeting the specified requirements. This includes annual leave, long service leave and paid personal leave. The employee must actually proceed (for example be absent) on annual, personal or long service leave to receive this entitlement.
338. The payment of HDA whilst on Maternity Leave, Adoption Leave and Other Parent Leave is dealt with in clauses 23.6, 24.4, and 25.4 of the General Agreement.
339. Where an employee who has been in receipt of HDA for a continuous period of twelve months or more proceeds on any period of paid leave and resumes in the office immediately on return from leave, the employee shall continue to receive the allowance for the period of paid leave, no matter how long.
340. Where an employee who has been in receipt of HDA for a continuous period of twelve months or more proceeds on any period of paid leave and does not resume in the office immediately on return from leave, the employee shall continue to receive the allowance for the period of the leave accrued during the period of HDA.

341. This entitlement is clarified by means of the following examples:

**Example 1**

If an employee who had no leave accrued prior to commencing on HDA proceeds on six week's leave after 18 months on HDA and is not returning to the office, then HDA is paid for those six weeks of leave. (The six weeks leave being accrued while on 18 months HDA).

**Example 2**

If an employee who had accrued four weeks' leave before commencing HDA proceeds on eight weeks' leave after 12 months on HDA and the employee is returning to the office, then HDA is paid for eight weeks' of leave. (That is, all of the four weeks' pre-HDA accrued leave plus the further four week's leave accrued while on 12 months HDA).

**Example 3**

If an employee who had accrued eight weeks' leave before commencing HDA, proceeds on six week's leave after 12 months on HDA and the employee is returning to the office, then HDA is paid for all six weeks' of leave. If, however, the employee immediately continues on HDA for a further six months and proceeds on a further eight weeks' leave but is not returning to the office, then HDA is paid for a further six weeks' only (being the six week's leave accrued while on 18 months HDA).

**Example 4**

If an employee who had accrued eight week's leave prior to commencing on HDA, proceeds on eight weeks' leave after 18 months on HDA and is not returning to the office, then HDA is only paid for six weeks' of the leave (being the six weeks' leave accrued while on 18 months HDA).

342. Under the applicable Award the HDA is equal to the difference between the employee's own salary and the salary the employee would receive if the employee was permanently appointed to the office in which he/she is acting. This refers to normal HDA. HDA is paid at normal rates and not at double pay or half pay.

*Double Pay Long Service Leave*

343. An employee proceeding on long service leave on double pay for half the period accrued is entitled to HDA according to the length of absence from the workplace and not the actual leave entitlement extinguished. For example, an employee who takes six weeks' long service leave on double pay is absent from the workplace for three weeks. Where the necessary requirements are met, HDA is to be paid for three week's leave. This reflects the principle that HDA should not be paid for any longer than 52 weeks in a 12 month continuous period.

### *Half Pay*

344. An employee proceeding on long service leave on half pay for double the period accrued is entitled to HDA according to the actual leave entitlement extinguished not the length of absence from the workplace. For example, an employee who takes four week's long service leave on half pay is absent from the workplace for eight weeks. Where the necessary requirements are met, HDA is to be paid for four week's leave.

### *Cashing Out of Long Service Leave*

345. Employees who cash out any entitlement of long service leave do not receive HDA on the cashed out entitlement. They do not "proceed" on leave and, if acting for 12 months or more, payment of HDA on the amount cashed out would result in them receiving HDA for more than 52 weeks in a continuous period of 12 months.

### Part Time Higher Duties Allowance Arrangements

346. The General Agreement allows part time employees to access HDA where they work 37.5 consecutive hours according to their part time work pattern. For example, an eligible employee who works 7.5 hours on Mondays, Wednesdays and Fridays will be entitled to a HDA once they have completed 37.5 consecutive hours according to this work pattern – that is, Monday, Wednesday, Friday, Monday, Wednesday.
347. This clause also makes provision for employees to access part time higher offices and receive HDA. For example, an employee acting in a higher office where the normal working hours of that position are 7.5 hours on Mondays, Tuesdays, and Wednesdays will be entitled to HDA once they have completed 37.5 consecutive hours according to this work pattern – that is Monday, Tuesday, Wednesday, Monday, Tuesday.
348. The reference is to 37.5 consecutive hours rather than five consecutive days in recognition that part time employees may work less than 7.5 hours per day, not just less than five days per week.

### **Clause 39 – Commuted Allowance**

349. The introduction of any commuted allowance in lieu of overtime, on call or shift allowances is to be negotiated between the CSA and the employer. On the request of either party the other party is obliged to enter into negotiations for such arrangements.

### **Clause 40 – District Allowance**

350. Clauses 40.3 to 40.6 of the General Agreement replace clauses 9.1.4 and 9.1.5 of the District Allowance (Government Officers) General Agreement 2010 (DAGA) respectively. This clause only applies to employees who are also covered by the DAGA.
351. The PSGOGA clause adds to the DAGA entitlement by providing for the continuation of District Allowance payments whilst on personal leave or bereavement leave for up to a maximum of two weeks. If an employee or their dependant/s remain in the District, the allowance will continue to be paid beyond the two week leave period. The employer has the discretion, as per clause 40.5, to extend the payment of District Allowance beyond two weeks when an employee is on approved personal leave.

352. At the time of registration of the General Agreement, district allowance rates are to be paid in accordance with Circular to Department and Authorities No. 4 of 2014 – District Allowance Rate Adjustments 2014. The District Allowance Circular may be replaced from time to time, Agencies should seek advice from Commerce if they have any questions regarding the payment of District Allowance.

#### **Clause 41 – Remote and Isolated Locations**

353. This clause contains remote and isolated (R&I) leave and other financial benefits for those employees “posted” i.e. required to work in designated “multi-function” locations as defined in the General Agreement.
354. Under normal circumstances a full twelve months must be worked before any R&I leave entitlement applies, and the leave would normally be taken at the end of the posting. However, an employee required to move from an R&I location at the request of the employer for operational reasons has a pro rata R&I leave entitlement.
355. An employee who leaves a designated remote location at the direction of the employer and subsequently returns to that or another designated location will either receive a pro rata R&I leave entitlement for the first location, or have the two components joined for the purposes of calculating the total R&I leave entitlements.
356. R&I leave can only be taken during the term, i.e. before the completion date of the contract by mutual agreement. Similarly, any application to defer the R&I leave due at the completion of the posting can only apply by mutual agreement.
357. The additional leave is a separate entitlement, stands alone and does not attract leave loading. As paid leave it counts towards qualifying service.
358. Agencies should separately identify this leave and create a separate pay code for this entitlement.
359. There is no capacity to cash out this type of leave.
360. Any reference to an attraction and retention incentive in this clause is also to be read as a reference to an attraction and retention benefit.

#### **Clause 42 - Regional Training and Development**

361. A regional employee is an employee whose assigned headquarters is not within the metropolitan area as defined in the applicable Award.
362. This clause contains an undertaking for agencies to review the accessibility of personal development opportunities (including training and acting opportunities) for their regional employees. The review is to have regard for agency operational requirements and comparative opportunities provided to metropolitan employees. The outcomes are to be presented to agency Joint Consultative Committees.

#### **Clause 43 - Working From Home**

363. This is a facilitative clause for working from home, which is subject to employer discretion.
364. The home is not to be designated as the employee’s headquarters. Duties undertaken are those that would normally be performed at the employee’s headquarters.

365. Agencies need to develop their own policy and procedures consistent with the requirements of this clause to safeguard the interests of both employers and employees.

#### **Clause 44 - Workload Management**

366. This clause provides an approach for dealing with workload issues should they arise. In addition, it outlines obligations of employers, and performance requirements of employees.

#### **Clause 45 – Union Facilities**

367. This clause requires an employer to provide the CSA with the time to discuss CSA benefits with new employees as part of the employee's formal induction program. This is in addition to the existing Award requirement to provide CSA representatives with time to discuss CSA benefits with new employees.

#### **Clause 46 - Joint Consultative Committee**

368. This clause provides for notification of employees and the CSA where change affecting employees is proposed, and for the establishment of a JCC.
369. JCCs are forums for consultation. They are not decision-making bodies. Decisions will continue to be made by the employer who is responsible and accountable to Government for the effective and efficient operation of the agency.
370. Matters not resolved through the JCC can be dealt with as provided for in the General Agreement Dispute Settlement Procedure.

#### **Clause 47 - Peak Consultative Forum**

371. This clause maintains the Peak Consultative Forum consisting of senior representatives from the CSA and Directors General or their nominated representatives from Commerce and PSC and, as required, other agencies.
372. The parties have agreed there will be only one Peak Consultative Forum for CSA covered employees in the public sector.

#### **Clause 48 - Contract for Service - Labour Hire**

373. The *Public Sector Management Act 1994 (WA)* requires employers to comply with Approved Procedures established under that Act. Agencies wishing to utilise labour hire are required to follow *Approved Procedure 5 - Approved Contracts for Services Procedures*.

#### **Clause 49 - Dispute Settlement Procedure**

374. This clause provides for a dispute settlement procedure (DSP) for the parties to the General Agreement, JCC disputes and employee/employer disputes.
375. The DSP allows for the resolution of any questions, difficulties or disputes arising from the provisions of the General Agreement only.

#### **Schedule 1 - Signatures of Parties**

376. This schedule contains the signatures of the parties to the General Agreement, with Commerce acting as agent for employers.

## **Schedule 2 – General Division Salaries & Schedule 3 – Specified Calling Salaries**

377. These schedules list salary rates applicable under the General Agreement.

## **Schedule 4 - Agency Specific Agreements**

378. This schedule lists the ASAs which continued in force when the General Agreement was registered unless replaced by a subsequent agreement or a party withdraws from the agreement.

379. Schedule 4 has been split into two parts to clarify the ASAs that apply to State Training Providers. This change operates in conjunction with the amendments to the ASA and Christmas/New Year Closedown clauses as detailed at paragraphs 15, 323 and 324 of these Explanatory Notes.

## **Schedule 5 - Parties to this General Agreement**

380. This schedule lists the CSA party to the agreement and employer parties who are respondent to the PSA and GOSAC Award.

381. The schedule has been updated to incorporate agency name changes and machinery of Government changes.



## **APPENDIX: AMALGAMATION OF GENERAL AGREEMENTS – HISTORICAL NOTE**

The General Agreement formerly existed as two separate agreements; the Public Service General Agreement 2008 and the Government Officers, Salaries, Allowances and Conditions General Agreement 2008. In June 2011 the two agreements were amalgamated into the Public Service and Government Officers General Agreement 2011 as part of the General Agreement 5 negotiations.

The term “Applicable Award” was introduced into the 2011 General Agreement to recognise that employees will be covered by one of the two parent Awards, but not both.

For instances where the General Agreement cross-references different clause numbers of the applicable Awards, the clause is split into two parts. An example of this can be found in clause 14 – Part Time Employment of the General Agreement, where clause 14.1 (a) (i) refers to the applicable PSA clause, and clause 14.1 (a) (ii) refers to the applicable GOSAC Award clause.

Differing definitions applicable to public service officers and government officers are also recognised, such as the definitions of “Agency” and “Employer”. These reflect the definitions formerly contained in the separate 2008 General Agreements.

For further information regarding the amalgamation of the 2008 General Agreements refer to Circular No. 8 of 2011 – Public Service and Government Officers General Agreement 2011 – Implementation Guidelines and Explanatory Notes.