

**PUBLIC SECTOR CSA AGREEMENT 2019**

## WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION


<b>PARTIES</b>	CHEMISTRY CENTRE (WA) AND OTHERS, THE CIVIL SERVICE ASSOCIATION OF WA INCORPORATED, DEPARTMENT OF MINES, INDUSTRY REGULATION AND SAFETY	<b>APPLICANTS</b>
	-v-	
	(NOT APPLICABLE)	
		<b>RESPONDENT</b>
<b>CORAM</b>	PUBLIC SERVICE ARBITRATOR SENIOR COMMISSIONER S J KENNER	
<b>DATE</b>	MONDAY, 4 NOVEMBER 2019	
<b>FILE NO</b>	PSAAG 2 OF 2019	
<b>CITATION NO.</b>	2019 WAIRC 00787	

<b>Result</b>	Agreement registered
<b>Representation</b>	Ms M Bendotti and with her Ms J Menaglio as agents for the employer parties  Mr M Finnegan of counsel and with him Ms R Hendon and Ms M Bray on behalf of the Civil Service Association of Western Australia Incorporated

*Order*

HAVING heard Ms M Bendotti and with her Ms J Menaglio of the Department of Mines, Industry Regulation and Safety as agents for the employer parties and Mr M Finnegan of counsel and with him Ms R Hendon and Ms M Bray on behalf of The Civil Service Association of Western Australia Incorporated and by consent, the Arbitrator, pursuant to the powers conferred on him under the Industrial Relations Act, 1979 hereby orders –

THAT the agreement made between the parties filed in the Registry of Commission on 14 October 2019 entitled *Public Sector CSA Agreement 2019* attached hereto be registered as an industrial agreement with effect on and from 4 November 2019 in replacement of the *Public Service and Government Officers CSA General Agreement 2017* which by operation of s 41(8) of the Act is hereby cancelled.

 (Sgd.) S.J. KENNER

SENIOR COMMISSIONER S J KENNER  
PUBLIC SERVICE ARBITRATOR

# PUBLIC SECTOR CSA AGREEMENT 2019

## PART 1: APPLICATION OF THIS AGREEMENT

### 1. TITLE

This Agreement shall be known as the Public Sector CSA Agreement 2019, which cancels and replaces the Public Service and Government Officers CSA General Agreement 2017.

### 2. ARRANGEMENT

#### PART 1: APPLICATION OF THIS AGREEMENT

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### 3. DEFINITIONS

For the purposes of this Agreement the following definitions shall apply.

#### 3.1 "Agency" means:

- (a) a department, SES organisation, or non-SES organisation, as defined in the *Public Sector Management Act 1994*, in relation to Employees employed under the *Public Service Award 1992*; or
- (b) a public authority listed in Item (3) of Schedule 6 – Parties to this Agreement of this Agreement, in relation to Employees employed under the *Government Officers Salaries, Allowances and Conditions Award 1989*.

3.2 "Agency Specific Agreement" (ASA) means an industrial agreement developed in accordance with clause 9 – Agency Specific Agreements of this Agreement, which will be read in conjunction with this Agreement and the Applicable Award.

3.3 "Agreement" means the Public Sector CSA Agreement 2019.

3.4 "Applicable Award" is determined by the scope and resendency of the *Public Service Award 1992* or the *Government Officers Salaries, Allowances and Conditions Award 1989*.

3.5 "child" and "grandchild" shall be read as including children of a multiple birth or adoption.

3.6 "casual Employee" means a Casual Officer as defined in clause 6 – Definitions of the Applicable Award.

3.7 "Employee" means an employee to whom this Agreement applies as prescribed in clause 5.2.

#### 3.8 "Employer" means:

- (a) an employing authority as defined by section 5 of the *Public Sector Management Act 1994*, in relation to Employees employed under the *Public Service Award 1992*; or
- (b) the employing authority of an Employer party listed in Item (3) of Schedule 6 – Parties to this Agreement.

3.9 "Ordinary rate of salary" means rate of salary as provided for within Schedule 2 – General Division Salaries, Schedule 3 – Specified Calling Salaries or Schedule 4 – Legal Grade Salaries of this Agreement.

3.10 "Partner" means a person who is a spouse or a de facto partner.

3.11 "PSC" means Public Sector Commission.

#### 3.12 "Public Sector" means:

- (a) all agencies, ministerial offices and non-SES organisations as defined in section 3 of the *Public Sector Management Act 1994*; and

- (b) employing authorities as defined in section 5 of the *Public Sector Management Act 1994*.
- 3.13 "PSLR" means Public Sector Labour Relations. PSLR is responsible for the coordination and governance of all public sector labour relations matters, in accordance with Premier's Circular 2017/03 - Coordination and Governance of Public Sector Labour Relations or its replacement.
- 3.14 "Redeployment period" means the redeployment period as defined by regulation 28 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.15 "Regional employee" means any Employee other than one whose assigned headquarters are within the metropolitan area as defined by the Applicable Award.
- 3.16 "Registered employee" means a registered employee as defined by section 94 (1A) of the *Public Sector Management Act 1994*.
- 3.17 "Registrable employee" means a registrable employee as defined by section 94 (1A) of the *Public Sector Management Act 1994*.
- 3.18 "Replacement employee" means an Employee specifically engaged to replace an Employee proceeding on maternity leave, adoption leave, other parent leave or unpaid grandparental leave.
- 3.19 "Suitability" means Suitable office, post or position or Suitable employment as defined by section 94 (6) of the *Public Sector Management Act 1994* as read with regulation 7 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.20 "Suitable office, post or position", and "Suitable employment" have the meaning given in section 94 (6) of the *Public Sector Management Act 1994* as read with regulation 7 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.21 "Surplus employee" means either a Registrable employee or a Registered employee.
- 3.22 "Suspend" means to suspend the continuance of an Employee's Redeployment period in accordance with regulation 29 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.23 "TAFE colleges" means Technical and Further Education colleges.
- 3.24 "Union" means The Civil Service Association of Western Australia Incorporated.
- 3.25 "WAIRC" means the Western Australian Industrial Relations Commission.

#### 4. PURPOSE OF AGREEMENT

4.1 The parties agree that the purpose of this Agreement is to:

- (a) provide salary increases in accordance with this Agreement, for Employees bound by this Agreement;



- (b) in conjunction with the Applicable Award, provide a core set of employment conditions for Employees bound by this Agreement; and
- (c) allow the parties to negotiate ASAs in accordance with clause 9 – Agency Specific Agreements of this Agreement.

## 5. APPLICATION AND PARTIES BOUND

5.1 The parties bound by this Agreement are listed in Schedule 6 – Parties to this Agreement.

5.2 (a) Subject to clause 5.2 (b), this Agreement shall apply to:

- (i) all public service officers and executive Employees, employed under Part 3 or Part 8, section 100 of the *Public Sector Management Act 1994* or continuing as such by virtue of clause 4 (c) of Schedule 5 of that Act, and covered by the *Public Service Award 1992*; and
- (ii) all government officers, within the meaning of the *Industrial Relations Act 1979*, employed by an Employer party listed in Item (3) of Schedule 6 – Parties to this Agreement of this Agreement and covered by the *Government Officers Salaries, Allowances and Conditions Award 1989*.

who are members of or eligible to be members of the Union.

(b) This Agreement shall not apply to:

- (i) a chief executive officer as defined in section 3 (1) of the *Public Sector Management Act 1994*;
- (ii) those government officers listed in Schedule B of the *Government Officers Salaries, Allowances and Conditions Award 1989*;
- (iii) employees whose remuneration payable is determined or recommended pursuant to the *Salaries and Allowances Act 1975*; or
- (iv) employees whose remuneration is determined by an Act to be at a fixed rate, or is determined by the Governor pursuant to the provisions of any Act.

5.3 As at the date of registration the approximate number of Employees bound by this Agreement is 29,918.

5.4 This Agreement shall be read in conjunction with the Applicable Award.

5.5 Provisions in the Applicable Award that deal with subject matters not otherwise dealt with by this Agreement are preserved at the date of registration. For the purposes of this clause, these provisions will be referred to as the “preserved provisions”.

5.6 Subsequent to the registration of this Agreement, any variations to provisions of the Applicable Award issued through orders of the WAIRC will prevail over the preserved provisions to the extent of any inconsistency.

5.7 Subject to clause 5.6, where the provisions of the Applicable Award and this Agreement are inconsistent, this Agreement will prevail.

5.8 The ASAs listed at Schedule 5 – Agency Specific Agreements of this Agreement shall continue in force unless replaced by a subsequent agreement or a party withdraws from the agreement.

## 6. TERM OF AGREEMENT

6.1 This Agreement shall operate from the date of registration and, in accordance with section 41 of the *Industrial Relations Act 1979*, will expire on 12 June 2021.

6.2 The parties to this Agreement agree to re-open negotiations for a replacement Agreement at least six months prior to the expiry of this Agreement with a view to implement a replacement Agreement on 13 June 2021.

## 7. NO FURTHER CLAIMS

7.1 The parties to this Agreement undertake that, for its term, no salary increases will be sought or granted other than those provided under the terms of this Agreement. This includes salary adjustments arising out of State Wage Cases. Such increases are to be absorbed in the salaries set out in this Agreement.

7.2 The parties to this Agreement undertake that, for its term, there will be no further claims on matters contained in this Agreement except where specifically provided for.

## 8. CORE CONDITIONS

8.1 The core conditions of employment for Employees covered by this Agreement shall be the terms and conditions provided for in this Agreement, with the exception of clause 22 – Hours of this Agreement provided an average of no more than 37.5 hours per week is worked as ordinary hours, and the following provisions contained in the Applicable Award.

	Core condition	Employees employed under the <i>Public Service Award 1992</i>	Employees employed under the <i>Government Officers Salaries, Allowances and Conditions Award 1989</i>
(a)	Contract of Service	Clause 8	Clause 8
(b)	Purchased Leave – Deferred Salary Arrangement	Clause 14	Clause 14
(c)	Salary Packaging Arrangement	Clause 15	Clause 15
(d)	Supported Wage	Clause 16	Clause 16
(e)	Traineeships	Clause 17	Clause 17
(f)	Annual Increments	Clause 18	Clause 18
(g)	Higher Duties Allowance	Clause 19	Clause 19
(h)	Annual Leave	Clause 23	Clause 23

(i)	Public Holidays	Clause 24	Clause 24
(j)	Long Service Leave	Clause 25	Clause 25
(k)	Cultural/Ceremonial Leave	Clause 33	Clause 33
(l)	Blood/Plasma Donors Leave	Clause 34	Clause 34
(m)	Emergency Service Leave	Clause 35	Clause 35
(n)	Union Facilities For Union Representatives	Clause 36	Clause 36
(o)	Leave to Attend Association Business	Clause 37	Clause 37
(p)	Trade Union Training Leave	Clause 38	Clause 38
(q)	Defence Force Reserves Leave	Clause 39	Clause 39
(r)	Witness and Jury Service	Clause 41	Clause 40
(s)	Keeping of and Access to Employment Records	Clause 57	Clause 58
(t)	Right of Entry and Inspection by Authorised Representatives	Clause 59	Clause 60
(u)	Copies of Award	Clause 60	Clause 61

## 9. AGENCY SPECIFIC AGREEMENTS

- 9.1 The primary industrial instruments for regulating pay and conditions for Employees shall be the Applicable Award and this Agreement. An ASA shall be read in conjunction with the Applicable Award and this Agreement and except where this Agreement identifies conditions as core, the ASA will prevail over this Agreement and the Applicable Award to the extent of any inconsistencies.
- 9.2 Core conditions of employment referred to in clause 8 – Core Conditions of this Agreement cannot be the subject of an ASA, other than the exception pertaining to the TAFE colleges provided in clause 36.2 (b).
- 9.3 The parties accept that ASAs will only be made in the following circumstances:
- (a) where an existing ASA is due to expire and the parties seek to register a replacement ASA; or
  - (b) where arrangements are agreed by the parties to be necessary due to the nature of work undertaken or the environment in an Agency.
- 9.4 Should the parties be unable to reach agreement the matter may be referred by either party to the WAIRC.

## PART 2: SALARY RELATED MATTERS

### 10. SALARIES

- 10.1 The annual salaries provided for by this Agreement shall be those contained in Schedule 2 – General Division Salaries, Schedule 3 – Specified Calling Salaries and Schedule 4 – Legal Grade Salaries of this Agreement.
- 10.2 An Employee who is employed by the Employer on the date of registration of this Agreement will, on registration of the agreement, receive a payment equivalent to the additional annual salary increase that would have been paid had the salaries in Schedule 2 - General Division Salaries, Schedule 3 – Specified Calling Salaries or Schedule 4 – Legal Grade Salaries of this Agreement been paid on and from 13 June 2019.
- 10.3 An Employee who resigns or retires or whose employment is otherwise terminated prior to the registration of this Agreement is not entitled to the payment provided in clause 10.2.
- 10.4 The second and final annual salary increase of \$1,000 shall operate on and from 13 June 2020.
- 10.5 The annual salaries provided in Schedule 2 – General Division Salaries and Schedule 3 – Specified Calling Salaries of this Agreement include full and final settlement of productivity improvements up to the date of commencement of the Public Service and Government Officers General Agreement 2011.
- 10.6 An Employee covered by clause 16 – Supported Wage of the Applicable Award shall be paid the applicable percentage of the minimum rate of pay prescribed by this Agreement for the class of work the person is performing.
- 10.7 An Employee’s fortnightly salary shall be:
- (a) determined according to the annual salaries contained in Schedule 2 – General Division Salaries, Schedule 3 – Specified Calling Salaries and Schedule 4 – Legal Grade Salaries of this Agreement;
  - (b) calculated to four decimal points; and
  - (c) rounded to the nearest one cent.
- 10.8 Subject to clause 10.3, the Employer will pay the payment provided in clause 10.2 to an Employee who, prior to the registration of this Agreement:
- (a) was employed in the Public Sector under a different industrial agreement to which the Union is respondent; or was employed by another Employer named in this Agreement; and
  - (b) commenced employment with their current Employer within one calendar week of ceasing employment with their previous Public Sector Employer.

## 11. TRAINEESHIP RATES OF PAY

- 11.1 This clause replaces clause 17 (2) (d) of the Applicable Award.
- 11.2 The salary applicable to school-based trainees and junior trainees (under 21) shall be the applicable level 1 General Division Salary as per Schedule 2 – General Division Salaries of this Agreement in accordance with the trainee’s age.
- 11.3 The salary applicable to adult trainees shall be the level 1.1 General Division salary as per Schedule 2 – General Division Salaries.
- 11.4 Despite clause 10.2, the salaries provided for in this clause apply from the date of registration.

## 12. SALARY PACKAGING

- 12.1 Salaries as prescribed by Schedule 2 – General Division Salaries, Schedule 3 – Specified Calling Salaries and Schedule 4 – Legal Grade Salaries of this Agreement are to be applied for the purposes of clause 15 (3) of the Applicable Award, regarding Total Employment Cost, and clause 15 (6) of the Applicable Award, regarding Compulsory Employer Superannuation Guarantee contributions.

## 13. RECOVERY OF UNDERPAYMENTS

- 13.1 Where an Employee is underpaid in any manner:
- (a) the Employer will, once the Employer is aware of the underpayment, rectify the error as soon as practicable;
  - (b) where possible the underpayment shall be rectified no later than in the pay period immediately following the date on which the Employer is aware that an underpayment has occurred; and
  - (c) where an Employee can demonstrate that an underpayment has created serious financial hardship, the Employee shall be paid by way of a special payment as soon as practicable.
- 13.2 An Employer shall compensate an Employee for costs resulting directly from an underpayment, where it is proven that the costs resulted directly from the underpayment. This includes compensation for overdraft fees, dishonoured cheque costs, and dishonour fees related to routine deductions from the bank account into which an Employee’s salary is paid.
- 13.3 Nothing in this clause shall be taken as precluding the Employee’s legal right to pursue recovery of underpayments.

## 14. RECOVERY OF OVERPAYMENTS

- 14.1 The Employer has an obligation under the *Financial Management Act 2006* to account for public monies. This requires the Employer to recover overpayments made to an Employee.
- 14.2 Any overpayment will be repaid to the Employer within a reasonable period of time.

- 14.3 Where an overpayment is identified and proven, the Employer will provide the Employee with the written details of the overpayment and notify the Employee of their intent to recover the overpayment.
- 14.4 Where the Employee accepts that there has been an overpayment, arrangements for the recovery of the overpayment will be negotiated between the Employer and Employee.
- 14.5 If agreement on a repayment schedule cannot be reached within a reasonable period of time, the Employer may deduct the amount of the overpayment over the same period of time that the overpayment occurred provided:
- (a) the Employer may not deduct or require an Employee to repay an amount exceeding 5 per cent of the Employee's net pay in any one pay period without the Employee's agreement; and
  - (b) where necessary, an Employer may deduct money over a period of time greater than the period of time over which the overpayment occurred.
- 14.6 If the Employee disputes the existence of an overpayment and the matter is not resolved within a reasonable period of time, the matter should be dealt with in accordance with clause 61 – Dispute Settlement Procedure of this Agreement. No deductions relating to the overpayment shall be made from the Employee's pay while the matter is being dealt with in accordance with the Dispute Settlement Procedure.
- 14.7 Nothing in this clause shall be taken as precluding the Employer's legal right to pursue recovery of overpayments.
- 14.8 Where an Employer alters the pay cycle or pay day, any consequential variations to an Employee's fortnightly salary and/or payments to compensate shall not be considered an overpayment for the purposes of this clause.

### PART 3: CONTRACT OF EMPLOYMENT

#### 15. DIRECT AND PERMANENT EMPLOYMENT

##### Statements of Government Preference

- 15.1 The Western Australian Government recognises that:
- (a) direct employment is the preferred form of engagement, noting this may not be practicable or financially achievable in all circumstances; and
  - (b) permanent employment is the preferred mode of employment for Employees covered by this Agreement.
- 15.2 The Employer recognises that casual employment, labour hire, and other contract for service arrangements are not the preferred methods for delivery of services, and the Employer will work towards minimising the use of casual employment, labour hire and other contract for service arrangements.

### **Government Temporary Labour Hire Review**

- 15.3 The use of temporary labour hire arrangements will be limited to the circumstances set out in Approved Procedure 5 – Approved Contracts for Services Procedures (AP 5).
- 15.4 PSC will conduct regular compliance reviews to ensure Employers are complying with AP 5. The findings of these reviews will be provided to the Peak Consultative Forum (PCF) for consideration. Employers found to be non-compliant with AP 5 as a result of the reviews will be directed to comply with AP 5.
- 15.5 The Union may refer concerns about the potential misuse of labour hire contracts to the PCF.
- 15.6 During the life of this Agreement, the PCF will conduct a review of existing contract for service labour hire arrangements and associated procedures across the Public Sector.
- 15.7 The review will consider:
- (a) reasons for the use of labour hire rather than direct employment; and
  - (b) opportunities for work currently being done by labour hire arrangements to be delivered by the Public Sector where it is financially viable to do so.
- 15.8 Employers are to provide any information requested by the PCF to support the review in a timely manner.
- 15.9 The parties agree to consult through the PCF on any changes proposed to AP 5.

### **Joint Consultative Committee Access to Information**

- 15.10 Within 60 days of a request being made in writing, the Employer will provide to the Joint Consultative Committee (JCC) the names of the labour hire businesses used; the functions undertaken; the headcount number of labour hire employees performing the work; and the amount of money paid to each labour hire business.

### **Surplus Employees**

- 15.11 Prior to engaging, or extending the engagement of, a labour hire employee, or otherwise entering into a new or extended labour hire arrangement, the Employer must first consider whether any permanent Surplus employees can undertake the role or duties required. All duties undertaken by labour hire employees will be assessed every three months for the possibility of a Surplus employee instead undertaking the role or duties. If a permanent Surplus employee can undertake the role or duties, they will be offered the employment.
- 15.12 Where more than one appropriate permanent Surplus employee exists, the following hierarchy shall apply for access to the role or duties:
- (a) internal Surplus employees are considered first;
  - (b) if no internal Surplus employees are suitable, Registered employees from other employing authorities are considered; and

- (c) if no Registered employees are suitable, Registrable employees from other employing authorities are considered.

## 16. PUBLIC SECTOR DELIVERY OF PUBLIC SERVICES

- 16.1 The Government and Employers prefer the delivery of public services to be undertaken by Employees.
- 16.2 Only in exceptional circumstances, and following Government having considered the public interest, will work or functions currently undertaken by Employees be privatised or outsourced. Meaningful consultation will occur with the Union and affected Employees at the earliest possible opportunity.
- 16.3 If Government identifies work carried out by persons external to the Public Sector which can be returned to the Public Sector in line with its stated preference the Union will be consulted at the earliest opportunity.

## 17. PART TIME EMPLOYMENT

- 17.1 The provisions of this clause:
  - (a) are to be read in conjunction with clause 9 – Part-Time Employment of the Applicable Award, with the exception of:
    - (i) clause 9 (6) of the *Public Service Award 1992*; and
    - (ii) clause 9 (12) of the *Government Officers Salaries, Allowances and Conditions Award 1989*; and
  - (b) do not prevent an Employee from accessing provisions contained in clause 39 – Maternity Leave, clause 40 – Adoption Leave and clause 41 – Other Parent Leave of this Agreement concerning return to work on a modified basis.
- 17.2 An Employee may request the Employer to permit the Employee to work on a modified basis in their current position or in a position equivalent in pay, conditions and status to their current position and commensurate with the Employee's skills and abilities.
- 17.3 An Employee may seek to work on a modified basis that involves the Employee working on different days or at different times or both, and/or on fewer days or for fewer hours or both, than the Employee currently works.
- 17.4 An Employer:
  - (a) must give reasonable consideration to an Employee's request to work on a modified basis, particularly where the request relates to an Employee's caring responsibilities or phasing into retirement;
  - (b) may only refuse an Employee's request to work on a modified basis if there are grounds to refuse relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person; and



- (c) has the onus for demonstrating that there are grounds to refuse the Employee's request that would satisfy a reasonable person.

17.5 An Employer is to give the Employee written notice of the Employer's decision on a request to work on a modified basis. If the request is refused, the notice must set out the reasons for the refusal.

17.6 Right of reversion of Employees

- (a) Where a full time Employee is permitted to work part time for a period of no greater than 12 months, the Employee has a right, upon four weeks' written notice, to revert to full time hours in the position previously occupied before becoming part time or a position of equal classification as soon as deemed practicable by the Employer, but no later than the expiry of the agreed period.
- (b) Where a full time Employee is permitted to work part time for a period greater than 12 months, the Employee may apply to revert to full time hours in the position previously occupied before becoming part time or a position of equal classification, but only as soon as is deemed practicable by the Employer. This should not prevent the transfer of the Employee to another full time position at a salary commensurable to their previous full time position.

17.7 Variation to a part time Employee's working hours

Where agreement is reached to vary a part time Employee's ordinary working hours pursuant to the following clauses of the Applicable Award:

- (a) clause 9 (3) (c) of the *Public Service Award 1992*; or
- (b) clause 9 (1) (c) of the *Government Officers Salaries, Allowances and Conditions Award 1989*; and

the Employee works additional hours, up to 7.5 hours on any day, or additional days, up to a total of five days per week, without receiving overtime payments; the additional hours and/or days worked shall be considered part of the Employee's ordinary working hours. These hours are therefore included in calculations for leave entitlements.

**18. FIXED TERM CONTRACT EMPLOYMENT**

18.1 Subject to this clause and in accordance with clause 8 – Contract of Service of the Applicable Award, Employees may be employed on contracts having fixed terms.

18.2 Before employing a person as a fixed term contract Employee or providing a new or extended fixed term contract to an Employee, the Employer must first consider whether any permanent Surplus employees can undertake the role or duties required. If a permanent Surplus employee can undertake the role or duties, they will be offered the employment.

18.3 Notwithstanding clause 18.2, the Employer will have discretion to renew an existing fixed term contract if the Employee has been in the same or similar role for more than two years and the

arrangements are being reviewed for possible conversion under a process referred to at clause 18.8.

- 18.4 Where more than one appropriate permanent Surplus employee exists, the following hierarchy shall apply for access to the role or duties:
- (a) internal Surplus employees are considered first;
  - (b) if no internal Surplus employees are suitable, Registered employees from other employing authorities are considered; and
  - (c) if no Registered employees are suitable, Registrable employees from other employing authorities are considered.
- 18.5 In exercising their employing authority, Employers may only employ a person as a fixed term contract Employee in the following circumstances:
- (a) covering one-off periods of relief;
  - (b) work on a project with a finite life;
    - (i) where a project is substantially externally funded including multiple external funding sources, the Employer must present a business case supporting the use of fixed term contract Employees in such positions to the JCC;
    - (ii) where external funding has been consistent on an historical basis and it can be reasonably expected to continue, the Employer shall assess the percentage of positions for which permanent appointment can be made;
  - (c) work that is seasonal in nature;
  - (d) where an Employee with specific skills is not readily available in the Public Sector is required for a finite period; or
  - (e) in any other situation as agreed between the parties to this Agreement.
- 18.6 Employees appointed for a fixed term shall be advised in writing of the terms of the appointment, including the circumstances of the appointment as provided under clause 18.5 and the dates of commencement and termination of employment.
- 18.7 The Employer will provide the Union the names and work locations of all Employees on fixed term contracts within 28 days of a request being made in writing.
- 18.8 The parties acknowledge that Commissioner's Instruction No. 23 – Conversion and appointment of fixed term contract and casual employees to permanency (CI 23) was a corrective measure to enable the conversion of some fixed term contract and casual Employees to permanent employment in agreed circumstances. CI 23 will continue to apply to fixed term and casual Employees employed or engaged on 10 August 2018. CI 23 is subject to review according to its terms.

- 18.9 The Government commits to identifying, within 12 months of the registration of this Agreement, and in consultation with the Union and other Public Sector unions, an ongoing mechanism to facilitate the review of fixed term contract and casual Employees for conversion to permanent employment. Findings of the CI 23 review will inform this broader review.
- 18.10 The Government commits to a review of employment practices in the Public Sector as governed by Commissioner’s Instruction No. 2 – Filling a Public Sector Vacancy (CI 2). The CI 2 review will examine, among other things, the question of long term acting in vacant roles within the Public Sector, secondments, appointment pools, suitability lists and other recruitment practices. The review will be carried out in consultation with stakeholders, including the Union and other Public Sector unions.

## 19. CASUAL EMPLOYMENT

- 19.1 The provisions of this clause replace clause 10 – Casual Employment of the Applicable Award.

### Salary

- 19.2 A casual Employee shall be paid for each hour worked at the appropriate classification contained in Schedule 2 – General Division Salaries, Schedule 3 – Specified Calling Salaries or Schedule 4 – Legal Grade Salaries of this Agreement in accordance with the following formula:

$$\frac{\text{Fortnightly salary}}{75}$$

with the addition of casual loading in lieu of annual leave, personal leave and payment for public holidays. Casual loading will be in accordance with clause 19.3.

### Casual Loading

- 19.3 The casual loading payable is 22 per cent on and from the date of registration of this Agreement and 25 per cent on and from 13 June 2020.

### Conditions of Employment

- 19.4 (a) Conditions of employment, leave and allowances provided under this Agreement or the Applicable Award do not apply to a casual Employee with the exception of bereavement leave, long service leave, family and domestic violence leave and carers leave. However, where expenses are directly and necessarily incurred by a casual Employee in the ordinary performance of their duties, the Employee shall be entitled to reimbursement in accordance with the Applicable Award.
- (b) The minimum period of engagement of a casual Employee will be 3 hours on each engagement.
- (c) The Employer will determine the appropriate increments for casual Employees by taking into consideration prior experience within the Public Sector.
- (d) Nothing in this clause shall confer “permanent” or “fixed term contract” officer status within the meaning of section 64 of the *Public Sector Management Act 1994*.

- (e) The employment of a casual Employee may be terminated at any time by the casual Employee or the Employer giving to the other one hour's prior notice. In the event of an Employer or casual Employee failing to give the required notice, one hour's salary shall be paid or forfeited.
- (f) Neither the Overtime Allowance provisions of the Applicable Award, nor clause 22.16 – Overtime of this Agreement, applies to casual Employees. Additional hours are paid at the normal casual rate.

### **Caring Responsibilities**

- 19.5 (a) Subject to the evidentiary and notice requirements in clause 26 – Personal Leave of this Agreement, a casual Employee is entitled to not be available to attend work or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (b) The Employer and the casual Employee shall agree on the period for which the casual Employee will be entitled to not be available to attend work. In the absence of agreement, the Employee is entitled to not be available to attend work for up to 47 hours (i.e. two days) per occasion. The casual Employee is not entitled to any payment for the period of non-attendance.
- (c) An Employer must not fail to re-engage a casual Employee because the casual Employee accessed the entitlements provided for in this clause. The rights of an Employer to engage or not engage a casual Employee are otherwise not affected.

### **20. NOTICE OF TERMINATION BY EMPLOYER FOR EMPLOYEES OVER 45 YEARS OF AGE**

- 20.1 The provisions of this clause are to be read in conjunction with clause 8 – Contract of Service of the Applicable Award.
- 20.2 The period of notice for an Employee who, at the end of the day the notice is given, is over 45 years of age and has completed at least two years' continuous service with the Employer, is to be increased by one week.
- 20.3 The additional period of notice shall form part of the notice provided under the Applicable Award or payment in lieu of notice worked out on the basis of the Employee's ordinary hours of work.

### **21. WORKING WITH CHILDREN CHECKS**

- 21.1 Where an Employee is obliged to obtain a working with children check in accordance with the *Working With Children (Criminal Record Checking) Act 2004*, payment for the check shall be as follows:
- (a) An Employer must pay the cost for an Employee obliged to obtain a working with children check after their employment has already commenced.

(b) A new Employee must pay for their initial working with children check. An Employer has the discretion to reimburse a new Employee who commenced employment after 1 January 2006 and has paid for their initial working with children check.

(c) An Employer must pay the cost for an Employee's working with children check renewals.

21.2 The provisions of this clause apply to all Employees, including fixed term contract and casual Employees.

#### **PART 4: HOURS OF WORK**

##### **22. HOURS**

22.1 The provisions of this clause shall replace the provisions of clause 20 – Hours of the Applicable Award.

##### **Prescribed Hours**

22.2 The prescribed hours of duty shall be 150 hours per four week settlement period, to be worked between 7.00am and 6.00pm, Monday to Friday, as determined by the Employer, with a lunch interval of not less than 30 minutes.

22.3 Subject to the lunch interval, prescribed hours are to be worked as one continuous period. However, Employees shall not be required to work more than five hours continuously without a break.

22.4 This does not preclude Employers requiring or agreeing to the working of standard hours of 7.5 hours per day with a lunch interval to be taken between 12.00 noon and 2.00pm. Where working of standard hours is required by the Employer, the requirement must be consistent with operational needs and customer service requirements.

22.5 (a) The Employer may vary the prescribed hours of duty observed in the Agency or any branch or section thereof, consistent with a 150 hour four week settlement period, so as to make provisions for:

(i) the attendance of Employees for duty on a Saturday, Sunday or public holiday;

(ii) the performance of shift work including work on Saturdays, Sundays or public holidays; and

(iii) the nature of the duties of an Employee or class of Employees in fulfilling the responsibilities of their office;

provided that where the hours of duty are so varied an Employee shall not be required to work more than five hours continuously without a break.

(b) Employers wishing to vary the prescribed hours of duty to be observed shall be required to give one month's notice in writing to the Agency, branch, section or Employees to be affected by the change.

### Ordinary Hours

- (c) Employees working during their prescribed hours of duty on a Saturday, Sunday or public holiday will attract the following payment for all ordinary hours worked:
  - (i) Saturdays – time and a half.
  - (ii) Sundays – time and three quarters.
  - (iii) Public holidays – double time and a half.

Provided that subject to agreement between the Employer and the Employee, work performed during ordinary rostered hours on a public holiday shall be paid for at the rate of time and a half and the Employee may, in addition, be allowed a day's leave with pay to be added to annual leave or to be taken at some other time within a period of one year.

### Overtime

- (d) An Employee required to work overtime on any day shall be paid the appropriate rates as set out in clause 22 – Overtime Allowance of the Applicable Award for all time so worked.

### Flexible Working Arrangements

22.6 Flexible working arrangements provide for 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. Subject to the prior approval of the Employer, an Employee may, however, take flexi leave in conjunction with periods of paid leave.

#### 22.7 Application

- (a) Within the parameters of clause 22.2, flexible working arrangements shall apply unless the Employer otherwise specifies.
- (b) 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, including the banking of credit hours.
- (c) Employers wishing to vary the flexible working arrangements to be observed shall be required to give one month's notice in writing to the Agency, branch, section or Employees to be affected by the change.
- (d) Flexible working arrangements are available to part time, full time and fixed term contract Employees. Flexible working arrangements are available to part time Employees on a pro rata basis.
- (e) In accordance with clause 9 – Agency Specific Agreements of this Agreement, the Employer may approve alternative flexible working arrangements, provided that an average of no more than 37.5 hours per week is worked as ordinary hours.

## 22.8 Hours of Duty

- (a) The prescribed hours of duty may be worked with flexible starting and finishing times in accordance with the provisions of this clause.
- (b) For the purpose of leave, public holidays and public service holidays, a day shall be credited as 7.5 hours.

## 22.9 Flexitime Roster

- (a) Where a flexitime roster is required, the authorisation of the roster shall be the responsibility of the Employer. The roster will indicate the minimum staffing and any other requirements in respect to starting and finishing times, lunch break coverage and flexi leave.
- (b) The roster shall cover a settlement period of four weeks and shall be made available to all affected Employees no later than three days prior to the settlement period commencing.
- (c) The roster shall be prepared in consultation with the affected Employees, subject to the Employer retaining the right to determine arrangements to suit the operational needs of the Agency.
- (d) Subject to four weeks' notice being given to affected Employees, the Employer may withdraw authorisation of a flexitime roster.

## 22.10 Settlement Period

- (a) For recording time worked, there shall be a settlement period of four weeks.
- (b) The settlement period shall commence at the beginning of a pay period.

## 22.11 Credit and Banked Hours

- (a) Credit hours in excess of the prescribed hours of 150 hours per settlement period to a maximum of 15 hours can be carried forward to the next settlement period.
- (b) During a settlement period, the maximum number of credit hours cannot exceed 37.5 hours.
- (c) An additional maximum of 37.5 hours can be banked in any calendar year. Banked hours can be carried over into a new calendar year but cannot exceed 37.5 hours at any time. At the end of each settlement period hours worked in excess of the maximum 52.5 hours credit and banked hours, will be lost.
- (d) On termination, resignation or transfer to another Agency, unused credit or banked hours will not be paid out and will be lost. However, the Employer will provide the opportunity for credit and banked hours to be cleared.

#### 22.12 Debit Hours

- (a) Debit hours below the prescribed hours of 150 hours per settlement period to a maximum of four hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.
- (b) For debit hours in excess of four hours, an Employee shall be required to take leave without pay for the period necessary to reduce debit hours to four.
- (c) Employees having excessive debit hours may be placed on standard working hours in addition to being required to take leave without pay.

#### 22.13 Maximum Daily Working Hours

A maximum of ten ordinary hours may be worked in any one day, between the hours of 7.00am and 6.00pm, except where an Employee and Employer have agreed to a different span of hours under clause 22.17, in which case a maximum of ten ordinary hours may be worked in any one day between the agreed span of hours.

#### 22.14 Flexi Leave

- (a) Flexi leave, including both credit and banked hours, must be taken consistent with the prepared roster, where it exists, and/or subject to the prior approval of the Employer.
- (b) In any settlement period an Employee may be allowed a maximum of two days' leave taken from credit hours.
- (c) In exceptional circumstances and with the approval of the Employer, flexi leave may be taken before accrual of sufficient credit hours subject to such conditions as the Employer may impose. Banked hours may not be taken in advance of accrual.
- (d) In any settlement period a maximum of three days flexi leave may be taken from a combination of credit and banked hours. Subject to operational need and customer service requirements, the Employer may approve alternative arrangements to enable Employees to clear banked and/or credit hours up to the maximum of 52.5 hours.
- (e) Flexi leave may be taken in any combination of half days and full days.

#### 22.15 Study Leave

Where study leave has been approved by the Employer pursuant to the provisions of clause 30 – Study Assistance of the Applicable Award, credits will be given for education commitments falling within the prescribed hours of duty and for which time off is necessary to allow for attendance at formal classes.

#### 22.16 Overtime

- (a) Where Employees are directed by the Employer to work more than 7.5 hours in any one day, overtime applies. The parties acknowledge that the flexible working arrangement provides for the working of hours in excess of 7.5 hours per day as normal hours if the Employer and Employee agree.



- (b) For the purpose of clause 22 – Overtime Allowance of the Applicable Award, Employees receiving at least one day's prior notice to work overtime, the prescribed hours of duty on the day that overtime is performed shall be 7.5 hours.
- (c) Where an Employee is required to work overtime at the conclusion of a day with less than one day's notice, and:
  - (i) where the Employee has, at the commencement of that day, two hours or more flexi leave credits, the Employee shall be paid overtime after five hour's work on that day, or for time worked after 3.30pm, whichever is the later;
  - (ii) where that Employee has commenced duty prior to 8.30am and has, at the commencement of that day, less than two hours flexi leave credits, the Employee shall be paid overtime, for time worked after the completion of 7.5 hour's on that day; or
  - (iii) where that Employee has commenced work after 8.30am and has, at the commencement of that day, less than two hours flexi leave credits, the Employee shall be paid overtime for time worked after 5.30pm or after working 7.5 hours on that day, whichever is the earlier.
- (d) Where an Employee is required to work overtime at the beginning of a day with less than one day's notice, that Employee shall be paid overtime for any time worked prior to the commencement time for prescribed hours of duty determined by the Employer under clause 22.2, or prior to the commencement time agreed between the Employee and the Employer under clause 22.17.

#### **Employee Initiated Span of Working Hours**

- 22.17 Notwithstanding clause 22.2, where the Employee requests and the Employer approves, an Employee may work their ordinary hours outside the span of 7.00am to 6.00pm. The working of ordinary hours outside the span of 7.00am to 6.00pm may only be implemented at an Employee's request.
- 22.18 Agreements under clause 22.17 are to be in writing and must specify the duration of the agreement, and the times during which ordinary hours may be worked.
- 22.19 On receipt of a written request from the Union, the Employer will provide the Union with details of agreements made under clause 22.17 including the work location, the duration of the agreement/s, and the times during which ordinary hours may be worked.
- 22.20 Where written agreement is reached between an Employer and an Employee for the Employee to work their ordinary hours outside the span of 7.00am to 6.00pm, no overtime or shift work penalties shall be applied to those hours.
- 22.21 An Employer shall not require an Employee to work outside the span of 7.00am to 6.00pm without the payment of overtime as per clause 22 – Overtime Allowance of the Applicable Award, or the payment of shift penalties as per clause 21 – Shift Work Allowance of the Applicable Award, whichever may apply.

## Nine Day Fortnight

22.22 Notwithstanding clause 22.2, access to nine day fortnight arrangements as prescribed by this clause is not available unless currently in operation in work or occupational groups, in which case those arrangements may continue. New Employees joining these groups may also work a nine day fortnight.

### (a) Hours of Duty

- (i) Prescribed hours of duty of 75 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 20 minutes.
- (ii) The Employer shall determine Employees' starting and finishing times between the spread of 7.00am and 6.00pm, in order to ensure that Agency requirements are met on each day.

### (b) Lunch Break

- (i) Employees shall be allowed forty-five minutes for a meal break between 12.00 noon and 2.00pm to meet Agency requirements.
- (ii) Such meal breaks shall be arranged so that adequate staff are on duty between 12.00 noon and 2.00pm to meet Agency requirements.

### (c) Special Rostered Day Off

- (i) Each Employee who works a nine day fortnight is entitled to one special rostered day off per fortnight. This special rostered day off shall be taken by the Employee in accordance with a roster prepared by the Employer showing days and hours of duty and special rostered days off for each Employee.
- (ii) Where an Employee regularly takes their special rostered day off on a particular day of the week, the Employer shall give the Employee one month's written notice of any variation to the day of the week on which an Employee is to take that special rostered day off.
- (iii) Before making the decision to vary the day on which an Employee regularly takes their special rostered day off, the Employer shall give reasonable consideration to an Employee's family circumstances and caring responsibilities.

### (d) Leave

For the purposes of paid leave, a day shall be credited as 8 hours 20 minutes and the following provisions apply:

- (i) When a public holiday falls on an Employee's special rostered day off the Employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.

- (ii) For a public holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or a special rostered day off.
- (iii) A four week annual leave entitlement is equivalent to 150 hours, the equivalent to eighteen rostered working days of 8 hours 20 minutes, and two special rostered days off.
- (iv) An Employee who is sick on a special rostered day off will not be granted personal leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of clause 22 – Overtime Allowance of the Applicable Award shall apply for work performed prior to an Employee's nominated starting time and after an Employee's nominated finishing time in accordance with clause 22.22 (a) (ii), and on an Employee's special rostered day off.

(f) Study Leave

Credits for study leave will be given for educational commitments falling due between an Employee's nominated starting and finishing times.

## 23. OUT OF HOURS CONTACT

23.1 The provisions of this clause replace the following clauses of the Applicable Award:

- (a) clause 22 (1) (k), clause 22 (6) and Schedule H – Part I – Out of Hours Contact of the *Public Service Award 1992*; or
- (b) clause 22 (5); and Schedule I – Part I – Out of Hours Contact of the *Government Officers' Salaries, Allowances and Conditions Award 1989*.

23.2 The following terms shall have the following meanings.

"out of hours contact" includes the following:

- (a) (i) 'standby' means a written instruction or other authorised direction by the Employer or a duly authorised officer to an Employee to remain at the Employee's place of employment during any period outside the Employee's normal hours of duty, and to perform certain designated tasks periodically or on an impromptu basis. The Employee shall be provided with appropriate facilities for sleeping if attendance is overnight, and other personal needs, where practicable.
- (ii) Other than in extraordinary circumstances, Employees shall not be required to perform more than two periods of standby in any rostered week.
- (iii) This provision shall not replace normal overtime or shift work requirements.

- (b) 'on call' means a written instruction or other authorised direction by the Employer or a duly authorised officer to an Employee rostered to remain at the Employee's residence or to otherwise be immediately contactable by telephone or other means outside the Employee's normal hours of duty in case of a call out requiring an immediate return to duty. The nature of the duties to be performed requires an Employee to be in a state of readiness for immediate return to duty.
- (c) (i) 'availability' means a written instruction or other authorised direction by the Employer or a duly authorised officer to an Employee to remain contactable, but not necessarily immediately contactable by telephone or other means, outside the Employee's normal hours of duty and be available and in a fit state at all such times for recall to duty.
- (ii) 'availability' will not include situations where Employees carry telephones or other means or make their telephone numbers or other contact details available only in the event that they may be needed for casual contact or recall to work. Subject to clause 25 – Overtime of this Agreement, recall to work under such circumstances would constitute emergency duty in accordance with the following clauses of the Applicable Award:
- (aa) clause 22 (7) – Emergency Duty of the *Public Service Award 1992*; or
- (bb) clause 22 (6) of the *Government Officers, Salaries, Allowances and Conditions Award 1989*.
- (d) 'return to duty' also includes, but is not limited to, situations where an Employee, if recalled to duty, can perform such duty outside the usual headquarters where the Employee performs ordinary rostered hours.

23.3 Where out of hours contact is a usual feature of the duties for which Employees are regularly rostered, the issue of a roster is deemed to be a written instruction.

23.4 (a) Except as otherwise agreed between the Employer and the Union, an Employee who is required by the Employer or a duly authorised officer to be on out of hours contact during periods off duty shall be paid an allowance in accordance with the formulae below for each hour or part thereof the Employee is on out of hours contact.

Standby:	current level 3.1 weekly rate	x	$\frac{1}{37.5}$	x	$\frac{37.5}{100}$	
On call:	current level 3.1 weekly rate	x	$\frac{1}{37.5}$	x	$\frac{18.75}{100}$	
On call:	current level 3.1 weekly rate	x	$\frac{1}{37.5}$	x	$\frac{18.75}{100}$	x $\frac{50}{100}$

Provided that:

- (i) "current level 3.1 weekly rate" refers to the weekly salary of a level 3.1 Employee as per Schedule 2 – General Division Salaries of this Agreement; and

- (ii) payment in accordance with this clause shall not be made with respect to any period for which payment is made in accordance with the following clauses of the Applicable Award:
  - (aa) clause 22 (3) – Overtime of the *Public Service Award 1992*; or
  - (bb) clause 22 (4) of the *Government Officers, Salaries, Allowances and Conditions Award 1989*when the Employee is recalled to work.
- (b) When an Employee is required to be on call or available the Employer shall provide the Employee with the means of contact free of charge for the purposes of work-related activity.
- (c) Where the means of contact is to be by land line or satellite telephone fixed at the Employee's residence the Employer shall:
  - (i) where the telephone is not already installed, pay the cost of such installation.
  - (ii) where an Employee pays or contributes towards the payment of the rental of such telephone, pay the Employee 1/52nd of the annual rental paid by the Employee for each seven days, or part thereof, on which an Employee is rostered to be on call or available.
  - (iii) provided that where as a usual feature of the duties an Employee is regularly rostered to be on call or available, pay the full amount of the telephone rental.
- (d) An Employee shall be reimbursed the cost of all telephone calls made on behalf of the Employer as a result of being on out of hours contact.
- (e) Where an Employee rostered for on call or availability is recalled to duty during the period for which the Employee is on out of hours contact then the Employee shall receive payment for hours worked in accordance with the following clauses of the Applicable Award:
  - (i) clause 22 (3) – Overtime of the *Public Service Award 1992*; or
  - (ii) clause 22 (4) of the *Government Officers, Salaries, Allowances and Conditions Award 1989*.
- (f) Where an Employee rostered for on call or availability is recalled to duty, the time spent travelling to and from the place at which duty is to be performed, shall be included with actual duty for the purposes of overtime payment.
- (g) Minimum payment provisions do not apply to an Employee rostered for out of hours contact duty.
- (h) An Employee in receipt of an out of hours contact allowance and who is recalled to duty shall not be regarded as having performed emergency duty in accordance with the following clauses of the Applicable Award:

- (i) clause 22 (7) – Emergency Duty of the *Public Service Award 1992*; or
  - (ii) clause 22 (6) of the *Government Officers, Salaries, Allowances and Conditions Award 1989*.
- (i) Employees subject to this clause shall, where practicable, be periodically relieved from any requirement to hold themselves on standby, on call or availability.
  - (j) No Employee shall be on out of hours contact after the last working day preceding a period of annual leave or long service leave.

**24. SHIFT WORK**

24.1 This clause is to be read in conjunction with clause 21 – Shift Work Allowance of the Applicable Award.

24.2 Definitions

The following terms shall have the following meaning and shall replace the definitions for Day shift, Afternoon shift and Night shift contained in clause 21 (1) of the Applicable Award:

- (a) “Day shift” means a shift commencing at or after 6.00am and before 12.00 noon.
- (b) “Afternoon shift” means a shift commencing at or after 12.00 noon and before 6.00pm.
- (c) “Night shift” means a shift commencing at or after 6.00pm and at or before 5.59am.

24.3 An Employee required to work a weekday Night shift will, in addition to the Ordinary rate of salary, be paid an allowance in accordance with the following formula for each shift so worked:

$$\text{annual salary} \quad \times \quad \frac{12}{313} \quad \times \quad \frac{1}{10} \quad \times \quad \frac{20}{100}$$

24.4 Notwithstanding clause 24.3, the minimum amount payable per shift to an Employee required to work Night shift will be the allowance payable to an Employee with an annual salary of level 1.4 Employee as per Schedule 2 – General Division Salaries of this Agreement using the formula provided in clause 24.3.

24.5 For the purposes of this clause “annual salary” is the Ordinary rate of salary payable for the position as prescribed in Schedule 2 – General Division Salaries, Schedule 3 – Specified Calling Salaries, or Schedule 4 – Legal Grade Salaries of this Agreement.

24.6 This Night shift allowance will be paid in lieu of the night shift allowance prescribed in clause 21 (2) (a) of the Applicable Award.

## 25. OVERTIME

### Cases Where Overtime Provisions Do Not Apply

25.1 This clause is to be read in conjunction with clause 22 – Overtime Allowance of the Applicable Award, with the exception of:

- (a) clause 22 (4) – Cases Where Overtime Provisions Do Not Apply of the *Public Service Award 1992*; and
- (b) clause 22 (4) (i) and (j) of the *Government Officers Salaries, Allowances and Conditions Award 1989*.

25.2 Payment for overtime, the granting of time off in lieu of overtime or travelling time shall not be approved in the following cases:

- (a) Employees whose maximum salary, or maximum salary and allowance in the nature of salary exceeds that determined in Schedule 2 – General Division Salaries for level 6 Employees, Schedule 3 – Specified Calling Salaries for level 3 Employees or Schedule 4 – Legal Grade Salaries for level L2LG.6 of this Agreement.
- (b) Employees whose work is not subject to close supervision.

25.3 Notwithstanding clause 25.2:

- (a) Where it appears just and reasonable, the Employer may approve the payment of overtime or grant time off in lieu to any Employee referred to in clause 25.2 (a).
- (b) When an Employee who is not subject to close supervision is directed by the Employer to carry out specific duties involving the working of overtime, and provided such overtime can be reasonably determined by the Employee's supervisor, then such Employee shall be entitled to the payment of overtime or time off in lieu of overtime in accordance with the following clauses of the Applicable Award:
  - (i) clauses 22 (3) (b) or (d) – Overtime of the *Public Service Award 1992*; or
  - (ii) clauses 22 (4) (b) or (c) of the *Government Officers Salaries, Allowances and Conditions Award 1989*.

## PART 5: LEAVE

### 26. PERSONAL LEAVE

#### Introduction

26.1 The provisions of this clause replace clause 31 – Short Leave, clause 27 – Carers Leave, and clause 26 – Sick Leave of the Applicable Award.

26.2 The intention of personal leave is to give Employees and Employers greater flexibility by providing leave on full pay for a variety of personal purposes. Personal leave replaces sick, paid carer's leave and short leave.

- 26.3 This clause commenced on 30 July 2004. An Employee's pre-existing sick leave anniversary date is maintained for the purposes of the personal leave entitlement.
- 26.4 Personal leave is not for circumstances normally met by other forms of leave.
- 26.5 This clause does not apply to casual Employees.
- 26.6 An Employee employed on a fixed term contract for a period of 12 months or more shall be credited with the same entitlement as a permanent Employee. An Employee on a fixed term contract for a period less than 12 months shall be credited on a pro rata basis for the period of the contract.
- 26.7 A part time Employee shall be entitled to the same personal leave credits as a full time Employee but on a pro rata basis according to the number of hours worked each fortnight. Payment for personal leave shall only be made for those hours that would normally have been worked had the Employee not been on personal leave.

#### Entitlement

- 26.8 The Employer shall credit each permanent, full time Employee with 112.5 personal leave credits for each year of continuous service, of which 97.5 hours are cumulative and 15 hours are non-cumulative as follows:

	Personal Leave: Cumulative	Personal Leave: Non-cumulative
On the day of initial appointment	48.75 hours	15 hours
On completion of 6 months' continuous service	48.75 hours	0 hours
On the completion of 12 months' continuous service	97.5 hours	15 hours
On the completion of each further period of 12 months' continuous service	97.5 hours	15 hours

- 26.9 Where Employees access personal leave, it shall be deducted from their non-cumulative entitlement in the first instance.
- 26.10 In the year of accrual the 112.5 hours personal leave entitlement may be accessed for illness or injury, carer's leave, unanticipated matters or planned matters in accordance with the provisions of this clause. On completion of each year of accrual, unused personal leave from that year up to a maximum of 97.5 hours will be cumulative and added to personal leave accumulated from previous years. Unused non-cumulative leave will be lost on completion of each anniversary year.
- 26.11 Whilst Employees are able to access personal leave in accordance with clause 26.24, 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.
- 26.12 Personal leave will not be debited for public holidays that the Employee would have observed.



26.13 Personal leave may be taken on an hourly basis.

26.14 War caused illnesses

(a) An Employee who produces a certificate from the Department of Veterans' Affairs stating that the Employee suffers from war caused illness may be granted special personal leave credits of 112 hours 30 minutes (15 standard hour days) per annum on full pay in respect of that war caused illness. These credits shall accumulate up to a maximum credit of 337 hours and 30 minutes (45 standard hour days), and shall be recorded separately to the Employee's normal personal leave credit.

(b) Every application for personal leave for war caused illness shall be supported by a certificate from a registered medical practitioner as to the nature of the illness.

#### Variation of Ordinary Working Hours

26.15 When an Employee's ordinary working hours change during an anniversary year, personal leave credits are adjusted to reflect the pro rata portion for that anniversary year.

26.16 At the time ordinary working hours change, personal leave credits are adjusted to reflect ordinary working hours up to that point in time as a proportion of the total ordinary working hours for the anniversary year.

26.17 Personal leave is credited pro rata on a weekly basis from the time ordinary working hours change until the next anniversary date, such that the total hours credited for that anniversary year is on a pro rata basis according to the number of ordinary working hours for the period.

#### Reconciliation

26.18 At the completion of an anniversary year, where an Employee has taken personal leave in excess of their current and accrued entitlement the unearned leave must be debited at the commencement of the following anniversary year/s.

26.19 The requirements of the *Minimum Conditions of Employment Act 1993* must be met at the commencement of the following anniversary year. The remaining portion of debited personal leave that exceeds the leave credited is to be debited at the commencement of the subsequent and where necessary following anniversary year/s.

26.20 Where an Employee ceases duty and has taken personal leave that exceeds the leave credited for that anniversary year, the Employee must refund the value of the unearned leave, calculated at the rate of salary as at the date the leave was taken. No refund is required in the event of the death of the Employee.

#### Access

26.21 An Employee is unable to access personal leave while on any period of leave without pay; maternity leave, adoption leave or other parent leave; or annual or long service leave, except as provided for in clauses 26.34 (re-crediting annual leave) and 26.35 (re-crediting long service leave).

- 26.22 If an Employee has exhausted all accrued personal leave the Employer may allow the Employee who has at least 12 months' service to anticipate up to 37.5 hours personal leave from next year's credit. If the Employee ceases duty before accruing the leave, the value of the unearned portion must be refunded to the Employer, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of the Employee.
- 26.23 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.

#### Application for Personal Leave

- 26.24 Reasonable and legitimate requests for personal leave will be approved subject to available credits. Subject to clause 26.8 the Employer may grant personal leave in the following circumstances:
- (a) where the Employee is ill or injured;
  - (b) to provide care or support to a member of the Employee's family or household who requires care or support because of an illness or injury to the member; or an unexpected emergency affecting the member;
  - (c) for unanticipated matters of a compassionate or pressing nature which arise without notice and require immediate attention;
  - (d) by prior approval of the Employer having regard for Agency requirements and the needs of the Employee, planned matters where arrangements cannot be organised outside of normal working hours or be accommodated by the utilisation of flexi time credits by Employees working according to approved flexible working hours arrangements or other leave. Planned personal leave will not be approved for regular ongoing situations.
- 26.25 An Employer may grant two days' unpaid personal leave per occasion to an Employee to provide care and support to a member of the Employee's family or household due to the birth of a child to the member. This entitlement does not of itself limit an Employee's access to paid personal leave as provided by clause 26.24 or partner leave as provided for by clause 42 – Partner Leave of this Agreement. This leave may also be substituted with accrued annual leave, long service leave, time off in lieu of overtime, flexi leave and/or banked hours to which the Employee is entitled.
- 26.26 Employees must complete the necessary application and clearly identify which of the above circumstances apply to their personal leave request.
- 26.27 The definition of family shall be the definition contained in the *Equal Opportunity Act 1984* for "relative". That is, a person who is related to the Employee by blood, marriage, affinity or adoption, and includes a person who is wholly or mainly dependent on, or is a member of the household of, the Employee.
- 26.28 Where practicable, the Employee must give reasonable notice prior to taking leave. Where prior notice cannot be given, notice must be provided as early as possible on the day of absence. Where possible, an estimate of the period of absence from work shall be provided.

## **Evidence**

- 26.29 An application for personal leave exceeding two consecutive working days shall be supported by evidence that would satisfy a reasonable person of the entitlement.
- 26.30 In general, supporting evidence is not required for single or two consecutive day absences. 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. The leave shall not be granted where the absence is not reasonable or legitimate.
- 26.31 Personal leave will not be granted where an Employee is absent from duty because of personal illness attributable to the Employee's serious and wilful misconduct in the course of the Employee's employment.
- 26.32 Where there is doubt about the cause of an Employee's illness, the Employer may require the Employee to submit to a medical examination by a medical practitioner of the Employer's choice, which the Employee must attend. Where it is reported that the absence is because of illness caused by the Employee's serious and wilful misconduct in the course of the Employee's employment, or the Employee fails without reasonable cause to attend the medical examination, the fee for the examination must be deducted from the Employee's salary and personal leave will not be granted.
- 26.33 If the Employer has reason to believe that an Employee is in such a state of health as to render a danger to themselves, fellow Employees or the public, the Employee may be required to obtain and furnish a report as to the Employee's condition from a registered medical practitioner nominated by the Employer. The Employer shall pay the fee for any such examination.

## **Re-crediting Annual Leave**

- 26.34 Where an Employee is ill or injured during the period of annual leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Employer that as a result of the illness or injury, the Employee was confined to their place of residence or a hospital for a period of at least seven consecutive calendar days, the Employer may grant personal leave for the period during which the Employee was so confined and reinstate annual leave equivalent to the period of confinement.

## **Re-crediting Long Service Leave**

- 26.35 Where an Employee is ill or injured during the period of long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Employer that as a result of illness or injury, the Employee was confined to their place of residence or a hospital for a period of at least 14 consecutive calendar days, the Employer may grant personal leave for the period during which the Employee was so confined and reinstate long service leave equivalent to the period of confinement.

## **Personal Leave Without Pay Whilst Ill or Injured**

- 26.36 Employees who have exhausted all of their personal leave entitlements and are ill or injured may apply for personal leave without pay. Employees are required to complete the necessary

application and provide evidence to satisfy a reasonable person. The Employer shall not unreasonably withhold this leave.

- 26.37 Personal leave without pay not exceeding a period of three months in a continuous absence does not affect salary increment dates, anniversary date of personal leave credits, long service leave entitlements or annual leave entitlements. Where a period of personal leave without pay exceeds three months in a continuous absence, the period in excess of three months is excised from qualifying service.
- 26.38 Personal leave without pay is not available to Employees who have exhausted all of their personal leave entitlements and are seeking leave for circumstances outlined in clauses 26.24 (b), (c) and (d) or 26.25. However, other forms of leave, including unpaid carer's leave and leave without pay, may be available.

#### Other Conditions

- 26.39 Where an Employee who has been retired from the public service on medical grounds resumes duty therein, personal leave credits at the date of retirement shall be reinstated. This provision does not apply to an Employee who has resigned from the public service and is subsequently reappointed.
- 26.40 Unused personal leave will not be cashed out or paid out when an Employee ceases their employment.

#### Workers' Compensation

- 26.41 Where an Employee suffers an "injury" within the meaning of section 5 of the *Workers' Compensation and Injury Management Act 1981*, which necessitates that Employee being absent from duty, personal leave with pay shall be granted to the extent of personal leave credits. In accordance with section 80 (2) of the *Workers' Compensation and Injury Management Act 1981* where the claim for workers' compensation is decided in favour of the Employee, personal leave credit is to be reinstated and the period of absence shall be granted as personal leave without pay.

#### Portability

- 26.42 This subclause shall apply to Employees who are employed under the *Public Service Award 1992*.
- (a) The Employer shall credit an Employee additional personal leave credits up to those held at the date that Employee ceased previous employment provided:
- (i) immediately prior to commencing employment in the Public Service, the Employee was employed in the service of:
- (aa) the Commonwealth Government of Australia;
- (bb) any other State of Australia; or
- (cc) in a State body or statutory authority prescribed by Administrative Instruction 611; and

- (ii) the Employee's employment with the Public Service commenced no later than one week after ceasing previous employment, and
  - (iii) the personal leave credited shall be no greater than that which would have applied had the entitlement accumulated whilst employed in a State body or statutory authority prescribed by Administrative Instruction 611.
- (b) The maximum break in employment permitted by clause 26.42 (a) (ii) may be varied by the approval of the Employer provided that where employment with the Public Service commenced more than one week after ceasing the previous employment, the period in excess of one week does not exceed the amount of accrued and pro rata annual leave paid out at the date the Employee ceased with the previous Employer.

26.43 This subclause shall apply to Employees who are employed under the *Government Officers Salaries, Allowances and Conditions Award 1989*.

- (a) The Employer shall credit an Employee additional personal leave credits up to those held at the date that Employee ceased previous employment provided:
- (i) immediately prior to commencing employment in the public authority, the Employee was employed in the service of:
    - (aa) the Public Service of Western Australia; or
    - (bb) any other State body of Western Australia; and
  - (ii) the Employee's employment with the public authority of Western Australia commenced no later than one week after ceasing previous employment; and
  - (iii) the personal leave credited shall be no greater than that which would have applied had the entitlement accumulated whilst employed in a State body or statutory authority prescribed by Administrative Instruction 611.
- (b) The maximum break in employment permitted by clause 26.43 (a) (ii) may be varied by the approval of the Employer provided that where employment with the public authority of Western Australia commenced more than one week after ceasing the previous employment, the period in excess of one week does not exceed the amount of accrued and pro rata annual leave paid out at the date the Employee ceased with the previous Employer.

#### Travelling time for Regional Employees

26.44 Subject to the evidence requirements set out in clauses 26.29 to 26.33, a Regional employee who requires medical attention at a medical facility in Western Australia located 240 kilometres or more from their workplace will be granted paid travel time undertaken during the Employee's ordinary working hours up to a maximum of 37.5 hours per annum.

26.45 The Employer may approve additional paid travel time to a medical facility in Western Australia where the Employee can demonstrate to the satisfaction of the Employer that more travel time is warranted.

26.46 The provisions of clauses 26.44 and 26.45 are not available to Employees whilst on leave without pay or personal leave without pay.

26.47 The provisions of clauses 26.44 and 26.45 apply as follows:

- (a) An Employee employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent Employee for each full year of service and pro rata for any residual portion of employment.
- (b) An Employee employed on a fixed term contract for a period less than 12 months shall be credited with the same entitlement on a pro rata basis for the period of employment.
- (c) A part time Employee shall be entitled to the same entitlement as a full time Employee for the period of employment, but on a pro rata basis according to the number of ordinary hours worked each fortnight.
- (d) The provisions do not apply to casual Employees.

## 27. FAMILY AND DOMESTIC VIOLENCE LEAVE

27.1 In recognition that Employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work the Employer has agreed to the leave which is the subject of this clause. The Employer is committed to providing support to Employees that experience family and domestic violence.

27.2 An Employee will not be discriminated against or have adverse action taken against them because of their disclosure of, experience of, or perceived experience of, family and domestic violence.

27.3 The Employer does not tolerate Employees perpetrating family and domestic violence in or from the workplace. Employees must not use work facilities to perpetrate family and domestic violence. Any such conduct is a breach of employment obligations and any Employees who do so will face disciplinary action.

### Definition of Family and Domestic Violence

27.4 (a) The meaning of family and domestic violence is in accordance with the definition of "family violence" in section 5A of the *Restraining Orders Act 1997*.

(b) To avoid doubt, this definition includes behaviour that:

- (i) is physically or sexually abusive;
- (ii) is emotionally or psychologically abusive;
- (iii) is economically abusive;
- (iv) is threatening;

- (v) is coercive;
- (vi) in any other way controls or dominates the family or household member and causes that person to feel fear for their safety or wellbeing or that of another person; or
- (vii) causes a child to hear or witness, or otherwise be exposed to the effects of, such behaviour.

#### **Access to Family and Domestic Violence Leave**

- 27.5 In accordance with the following subclauses, an Employee, including a casual Employee, may make application for leave to deal with activities related to family and domestic violence. The Employer will assess each application and give consideration to the personal circumstances of the Employee seeking the leave.
- 27.6 Such activities, related to family and domestic violence may include attendance at medical appointments; legal proceedings; counselling; appointments with a medical or legal practitioner; relocation or making other safety arrangements; and other matters of a compassionate or pressing nature related to the family and domestic violence which arise without notice and require immediate attention.
- 27.7 Subject to clauses 27.5 and 27.6, an Employee experiencing family and domestic violence will have access to 10 non-cumulative days per year of paid family and domestic violence leave, in addition to their existing leave entitlements.
- 27.8 Upon exhaustion of the leave entitlement in clause 27.7, Employees will be entitled to up to two days' unpaid family and domestic violence leave on each occasion.
- 27.9 Family and domestic violence leave does not affect salary increment dates, personal leave entitlements, long service leave entitlements or annual leave entitlements.
- 27.10 Subject to the Employer's approval of the application, family and domestic violence leave may be taken as whole or part days off.
- 27.11 Application of the leave entitlement for casual Employees will apply to the extent of their agreed working arrangements.

#### **Notice and Evidentiary Requirements**

- 27.12 The Employee shall give his or her Employer notice as soon as reasonably practicable of their request to take leave under this clause.
- 27.13 Supporting evidence of family and domestic violence may be required to access paid leave entitlements however this should not be onerous on the Employee. Leave can be granted without supporting documentation when the manager/supervisor is satisfied that it is not required.
- 27.14 Evidence may include a document issued by the police, a court, a legal service, a health professional, a counsellor, a financial institution, a family and domestic violence support service or a refuge service. A statutory declaration may also be provided.

- 27.15 Such evidence will be dealt with in accordance with the confidentiality provisions in this clause. Only the Employee will retain a copy of the evidence and information will not be kept on an Employee's personnel file, unless otherwise agreed.

#### **Access to Other Forms of Leave**

- 27.16 Subject to the leave provisions of this Agreement and Applicable Award, an Employee experiencing family and domestic violence may use other leave entitlements.
- 27.17 Subject to the Employer's approval of the application, and sufficient leave credits being available, leave may be taken as whole or part days off.
- 27.18 Forms of other paid leave include:
- (a) personal leave entitlements;
  - (b) annual leave;
  - (c) accrued long service leave;
  - (d) purchased leave; or
  - (e) accrued time off in lieu of overtime, flexi leave or banked hours.
- 27.19 Approval of leave without pay is subject to the provisions of this Agreement and Applicable Award.

#### **Confidentiality**

- 27.20 The Employer will take all reasonable steps to ensure any information disclosed by Employees regarding family and domestic violence is kept strictly confidential. Disclosure will be on a need-to-know basis only and only to maintain safety. Where possible, disclosure will only occur with the express consent of the Employee.
- 27.21 Employers will take reasonable steps to ensure any information or documentation provided by an Employee regarding family and domestic violence is kept confidential. Generally speaking, only the Employee will retain a copy of evidence for accessing family and domestic violence leave and information will not be kept on an Employee's personnel file.
- 27.22 Subsequent disclosure within an organisation should be on a need-to-know basis, for example if there is a potential for workplace safety to be impacted and generally with the consent of the Employee.
- 27.23 This clause does not override any legal obligations to disclose information.

#### **Contact Person**

- 27.24 The Employer will identify contact/s within the workplace who will be trained in family and domestic violence and associated privacy issues. The Employer will advertise the name of any family and domestic violence contacts within the workplace.



## Individual Support

- 27.25 Where there is a risk to the personal health or safety of an Employee who is experiencing or has experienced family and domestic violence, the Employer, where appropriate, may:
- (a) facilitate flexible working arrangements, such as changes to hours/days worked, working different days or length of days, changed shift/rostering arrangements, in accordance with the provisions of this Agreement and Applicable Award; and/or
  - (b) make workplace modifications including changes to the Employee's telephone number and email address and, where appropriate/practicable, the Employee's work location.
- 27.26 An Employee who is experiencing or has experienced family and domestic violence may access confidential counselling support via the Employer's employee assistance program.

## Workplace Safety

- 27.27 Where an Employee raises issues of family and domestic violence the Employer should establish with the Employee the level of risk and seek advice from their human resource/safety specialist to review and implement specific safety and emergency management systems and plans.
- 27.28 With the exception of access to the Employer's employee assistance program which is available to all Employees, the provisions of this clause are only applicable to Employees who are victims of family and domestic violence.

## 28. PURCHASED LEAVE – 42/52 ARRANGEMENT

- 28.1 The provisions of this clause replace clause 13 – Purchased Leave – 44/52 Salary Arrangement of the Applicable Award.
- 28.2 The Employer and the Employee may agree to enter into an arrangement whereby the Employee can purchase up to ten weeks' additional leave.
- 28.3 The Employer will assess each application for a 42/52 salary arrangement on its merits and give consideration to the personal circumstances of the Employee seeking the arrangement.
- 28.4 Where an Employee is applying for purchased leave of between five and ten weeks, the Employer will give priority access to those Employees with caring responsibilities.
- 28.5 In order to access approved purchased leave, an Employee must:
- (a) satisfy the Agency's accrued leave management policy; and
  - (b) take one weeks' annual leave if purchasing nine weeks' leave; or
  - (c) take two weeks' annual leave if purchasing ten weeks' leave.
- 28.6 Notwithstanding clause 28.5 (b) and (c), the Employer may allow an Employee to access purchased leave before they have accessed one or two week's annual leave, whichever applies, where the Employee requests it. Any such request may only be refused by the Employer if there are reasonable grounds to do so.

- 28.7 The provisions of clause 28.5 (b) and (c) do not apply to an Employee who purchases less than nine weeks' leave.
- 28.8 An agreement to take a reduced salary spread over the 52 weeks of the year will yield the following amounts of purchased leave.

Number of weeks' salary spread over 52 weeks	Number of weeks' purchased leave
42	10
43	9
44	8
45	7
46	6
47	5
48	4
49	3
50	2
51	1

- 28.9 (a) Purchased leave is not able to be accrued. The Employee is entitled to pay in lieu of any purchased leave not taken. In the event that the Employee is unable to take such purchased leave, their salary will be adjusted in the last pay period in February to take account of the fact that time worked during the previous year was not included in their salary.
- (b) Untaken purchased leave will be paid out at the rate at which it was purchased.
- 28.10 (a) Where an Employee who is in receipt of an allowance provided for in clause 19 – Higher Duties Allowance of the Applicable Award or clause 46 – Higher Duties Allowance of this Agreement proceeds on any period of purchased leave, the Employee shall not be entitled to receive payment of the allowance for any period of purchased leave.
- (b) Other than when an Employee is on a period of purchased leave, the higher duties allowance component of an Employee's salary shall not be affected by an agreement to reduce the Employee's salary for purchased leave purposes.
- 28.11 Overtime is paid at the Ordinary rate of salary and not the reduced rate. This will also apply where overtime is referred to as a percentage of salary.
- 28.12 In the event that a part time Employee's ordinary working hours are varied during the year, the salary paid for such leave will be adjusted in the last pay in February to take account of any variations to the Employee's ordinary working hours during the previous year.
- 29. EARLY ACCESS TO PRO RATA LONG SERVICE LEAVE**
- 29.1 This clause is to be read in conjunction with clause 25 – Long Service Leave of the Applicable Award.

- 29.2 Subject to clause 29.4, Employees within seven years of their preservation age under Western Australian Government superannuation arrangements may, by agreement with their Employer, choose early access to their long service leave at the rate of 9.28 days per completed 12 month period of continuous service for full time Employees.
- 29.3 Part time and casual Employees have the same entitlement as full time Employees.
- (a) For part time Employees their entitlement is calculated on a pro rata basis according to any variations to their ordinary working hours during the accrual period.
  - (b) For casual Employees their entitlement is calculated on a pro rata basis according to the average hours worked during the accrual period.
- 29.4 Early access to pro rata long service leave does not include access to long service leave which the Employee has accumulated or become entitled to, prior to being within seven years of their preservation age.
- 29.5 Under this clause, long service leave can only be taken as paid leave and there is no capacity for payment in lieu of leave.
- 29.6 Employees may, by agreement with their Employer:
- (a) clear pro rata long service leave in minimum periods of one day; and/or
  - (b) access pro rata long service leave at half, full or double pay.
- 29.7 Any period of leave taken in accordance with this clause will be excised for the purpose of continuous service in accordance with the following clauses of the Applicable Award:
- (a) clause 25 (5) of the *Public Service Award 1992*; or
  - (b) clause 25 (4) of the *Government Officers Salaries, Allowances and Conditions Award 1989*.

### 30. PRO RATA ADDITIONAL ANNUAL LEAVE FOR SHIFT WORK EMPLOYEES

- 30.1 The provisions of this clause replace the provisions of clause 21 (2) (e) – Shift Work Allowance of the Applicable Award, and shall be read in conjunction with all other provisions of clause 21 – Shift Work Allowance of the Applicable Award.
- 30.2 An Employee engaged on shift work who is rostered to work regularly on Sundays and/or public holidays shall be entitled to five days’ leave in addition to the Employee’s normal entitlement to annual leave.
- 30.3 For the purposes of this clause, “rostered to work regularly” means the Employee is rostered to and works on at least eleven Sundays and/or public holidays in a period of up to 12 months’ continuous service.
- 30.4 This entitlement accrues according to the following table, provided that the maximum accrual will not exceed five days (37.5 hours) for each completed 12 month period of continuous service.

Number of Sundays and/or public holidays rostered and worked within a 12 month period	Additional leave entitlement (accrual portion)
3	1 day
5	2 days
7	3 days
9	4 days
11	5 days

- 30.5 Where an Employee is no longer rostered to work regularly on Sundays and/or public holidays they shall cease to accrue the additional leave provided by this clause.
- 30.6 The additional leave provided by this clause may be carried from one 12 month period of continuous service to another 12 month period.
- 30.7 The 12 month period of continuous service shall not include any period of leave without pay exceeding 14 continuous calendar days.
- 30.8 A part time Employee is entitled to pro rata additional leave, to be calculated according to the hours the Employee worked on the Sundays and/or public holidays required for each accrual portion. Where these hours varied, the entitlement shall be determined according to an average of the hours worked on the Sundays and/or public holidays required for each accrual portion.
- 30.9 Where an entitlement that is superior to the provisions of this clause exists in an award or an industrial agreement, the superior entitlement shall be provided to the Employee.

**31. PRO RATA ADDITIONAL ANNUAL LEAVE FOR NORTH WEST EMPLOYEES**

- 31.1 The provisions of this clause replace the provisions of:
- (a) clause 23 (6) – Additional Leave for the North West of the *Public Service Award 1992*; and
  - (b) clause 23 (7) of the *Government Officers Salaries, Allowances and Conditions Award 1989*; and

shall be read in conjunction with all other provisions of clause 23 – Annual Leave of the Applicable Award.

- 31.2 An Employee whose headquarters are located north of 26 degrees south latitude shall be entitled to 37.5 hours leave in addition to the Employee’s normal entitlement to annual leave.
- 31.3 The intention of this clause is to provide the additional leave for North West Employees on a pro rata basis without the requirement for an Employee to first complete 12 months’ continuous service in the North West. An Employee shall therefore accrue 0.10274 hours of paid additional annual leave at the end of each calendar day of the year, provided that the maximum accrual will not exceed 37.5 hours for each completed 12 month period of continuous service.

- 31.4 An Employee may proceed on leave by accessing the pro rata entitlement provided in clause 31.3.
- 31.5 Where an Employee is no longer located north of 26 degrees south latitude they shall cease to accrue the additional leave provided by this clause.
- 31.6 The additional leave provided by this clause may be carried from one 12 month period of continuous service to another 12 month period.
- 31.7 Employees shall not accrue additional leave for any period of leave without pay exceeding 14 continuous calendar days. The 12 month period of continuous service shall not include any period of leave without pay exceeding 14 continuous calendar days.
- 31.8 The provisions of this clause do not apply to an Employee who is in receipt of additional leave as provided by the following clauses of the Applicable Award:
- (a) clause 55 – Weekend Absence from Residence of the *Public Service Award 1992*; or
  - (b) clause 56 – Weekend Absence from Residence of the *Government Officers Salaries, Allowances and Conditions Award 1989*.

## 32. ANNUAL LEAVE LOADING

- 32.1 This clause replaces the following clauses of the Applicable Award:
- (a) clause 23 (11) – Leave Loading of the *Public Service Award 1992*; or
  - (b) clause 23 (14) of the *Government Officers Salaries, Allowances and Conditions Award 1989*
- for Employees not engaged on shift, or commuted arrangements that incorporate leave loading.
- 32.2 Subject to clauses 32.4 and 32.6, a loading of 17.5 per cent calculated on an Employee's normal rate of salary for a maximum of four weeks' annual leave shall be paid to Employees on the first pay period in December in the calendar year in which the leave accrues.
- 32.3 The leave loading to be paid to Employees who are in the service of the Employer prior to or engaged after 1 January in each year shall be the leave loading anticipated to be due on 31 December of that year.
- 32.4 The maximum payment for the loading provided for in clause 32.2 shall not exceed a rate equivalent to 17.5 per cent of four weeks' salary of a level 8.1 Employee as per Schedule 2 – General Division Salaries of this Agreement as at 1 January in the calendar year in which the leave accrues, in accordance with the following:

	Maximum leave loading for annual leave:	Maximum
(i)	Maximum leave loading payment in December 2019	\$1,788.64
(ii)	Commencing on or after 1 January 2020	\$1,802.05
(iii)	Commencing on or after 1 January 2021	\$1,815.47

32.5 Part time Employees shall be paid a proportion of the annual leave loading at the salary rate applicable, provided that the maximum loading payable shall be calculated in accordance with the following:

$$\frac{\text{Average hours of work per fortnight in the calendar year in which the leave accrues}}{75} \times \frac{\text{Maximum loading in accordance with clause 32.4}}{1}$$

32.6 (a) The loading is calculated on the rate of the normal fortnightly salary, including any allowances which are paid as a regular fortnightly or annual amount.

(b) Any allowance paid to an Employee for undertaking higher duties is only included if the allowance is payable during any period of leave taken during the calendar year as provided for under clause 46 – Higher Duties Allowance of this Agreement.

32.7 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.

32.8 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.

32.9 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; and

(b) pro rata annual leave – no loading is to be paid.

32.10 The loading does not apply to Cadets on full time study.

#### Transitional Arrangements

32.11 Transitional arrangements for leave loading on annual leave accrued prior to 1 January 2011:

(a) When an Employee proceeds on accrued annual leave, the oldest leave accrued will be taken first.

- (b) When an Employee proceeds on accrued annual leave, they will continue to be paid the 17.5 per cent annual leave loading.
- (c) The loading payable on accrued annual leave shall be at the rate applicable at the date the leave is commenced.
- (d) The maximum payment for the loading provided for in clause 32.11 (b) shall not exceed a rate equivalent to 17.5 per cent of four weeks' salary of a level 8.1 Employee as per Schedule 2 – General Division Salaries of this Agreement as at 1 January in the calendar year in which the leave commences, in accordance with the following:

	Maximum leave loading for annual leave:	Maximum
(i)	Commencing on or after the date of registration of this Agreement	\$1,788.64
(ii)	Commencing on or after 1 January 2020	\$1,802.05
(iii)	Commencing on or after 1 January 2021	\$1,815.47

- (e) The maximum payment is in addition to the loading paid in accordance with clause 32.2.
- (f) Where an Employee resigns, or ceases employment, or where an Employee is dismissed, annual leave loading shall be paid for accrued annual leave, calculated in accordance with the provisions of clause 32 – Annual Leave Loading of this Agreement.

32.12 Clause 32.11 ceases to have effect on 1 February 2021. Where an Employee at this date has any unused annual leave which accrued prior to 1 January 2011 the applicable annual leave loading will be paid to the Employee within two pay periods.

**33. ANNUAL LEAVE LOADING FOR SHIFT WORK EMPLOYEES AND EMPLOYEES ON COMMUTED ARRANGEMENTS THAT INCORPORATE ANNUAL LEAVE LOADING**

33.1 This clause replaces the following clauses of the Applicable Award for shift work Employees and Employees on commuted arrangements that incorporate annual leave loading:

- (a) clause 23 (11) of the *Public Service Award 1992*; or
- (b) clause 23 (14) of the *Government Officers Salaries, Allowances and Conditions Award 1989*.

33.2 Subject to the provisions of clauses 33.4 and 33.8, a loading equivalent to 17.5 per cent of normal salary is payable to shift work Employees and Employees on commuted arrangements that incorporate annual leave loading proceeding on annual leave, including accumulated annual leave.

33.3 Subject to the provisions of clauses 33.4 and 33.8, 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 per cent of normal salary for five weeks' leave;

whichever is the greater.

#### 33.4 Maximum loading

(a) Subject to the provisions of clause 33.6, the loading is paid on a maximum of four weeks' annual leave, or five weeks' in the case of shift work Employees who are granted an additional week's penalty leave. Payment of the loading is not made on additional leave granted for any other purpose (e.g. to Employees whose headquarters are located north of the 26 degrees south latitude).

(b) The maximum payment for the loading provided for in clause 33.2 shall not exceed a rate equivalent to 17.5 per cent of four weeks' salary of a level 8.1 Employee as per Schedule 2 – General Division Salaries of this Agreement as at 1 January in the calendar year in which the leave commences, in accordance with the following:

	Maximum leave loading for annual leave:	Maximum
(i)	Commencing on or after the date of registration of this Agreement	\$1,788.64
(ii)	Commencing on or after 1 January 2020	\$1,802.05
(iii)	Commencing on or after 1 January 2021	\$1,815.47

(c) The maximum payment to shift work Employees who are granted an additional week's penalty leave shall not exceed 5/4<sup>th</sup> of the rates prescribed in clause 33.4 (b), in accordance with the following:

	Maximum leave loading for annual leave:	Maximum
(i)	Commencing on or after the date of registration of this Agreement	\$2,235.80
(ii)	Commencing on or after 1 January 2020	\$2,252.56
(iii)	Commencing on or after 1 January 2021	\$2,269.34

33.5 Annual leave commencing in any year and extending without a break into the following year attracts the loading calculated on the salary applicable on the day the leave commenced.

33.6 The loading payable on approved accumulated annual leave shall be at the rate applicable at the date the leave is commenced. Under these circumstances an Employee can receive up to the maximum loading for the approved accumulated annual leave in addition to the loading for the current year's entitlement.



- 33.7 A pro rata loading is payable on periods of approved annual leave that are less than four weeks.
- 33.8 (a) The loading is calculated on the rate of the normal fortnightly salary including any allowances, which are paid as a regular fortnightly or annual amount.
- (b) 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 as provided for under clause 46 – Higher Duties Allowance of this Agreement.
- 33.9 Part-time Employees shall be paid a proportion of the annual leave loading at the salary rate applicable, provided that the maximum loading payable shall be calculated in accordance with the following:

$$\frac{\text{Hours of work per fortnight}}{75} \times \frac{\text{Maximum loading in accordance with clause 33.4(b)}}{1}$$

- 33.10 Clause 33.10 shall apply to Employees who are employed under the *Public Service Award 1992*.
- (a) 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.
- (b) When an Employee resigns, or ceases employment, or where an Employee is dismissed under *Part 5 - Discipline of the Public Sector Management Act 1994*, an annual leave loading shall be paid as follows:
- (i) Accrued entitlements to annual leave – a loading calculated in accordance with the terms of this clause for accrued annual leave is to be paid.
- (ii) Pro rata annual leave – no loading is to be paid.
- (c) An Employee who has been permitted to proceed on annual leave and who ceases duty other than by resignation or dismissal under *Part 5 - Discipline of the Public Sector Management Act 1994*, 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.
- (d) An Employee who has been permitted to proceed on annual leave and who resigns or is dismissed under *Part 5 – Discipline of the Public Sector Management Act 1994* must refund the value of the loading paid for leave other than accrued leave.
- 33.11 Clause 33.11 shall apply to Employees who are employed under the *Government Officers Salaries, Allowances and Conditions Award 1989*.
- (a) 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.

- (b) 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.

33.12 The loading does not apply to Cadets on full time study.

#### **34. EMPLOYEE INITIATED CASH OUT OF ACCRUED ANNUAL LEAVE**

34.1 The parties agree on the importance of Employees taking annual leave for the purposes of rest and recreation.

34.2 This clause, however, recognises that notwithstanding the importance of leave referred to in clause 34.1 some Employees may have excess and overdue annual leave. This clause at the initiative of the Employee provides for Employees to receive payment in lieu of some of their unutilised accrued annual leave.

34.3 (a) Subject to clause 34.4, the Employer and Employee may agree that the Employee forego part of the Employee's entitlement to accrued annual leave in exchange for equivalent payment at the rate which would have applied had the leave been taken at the time the agreement is made.

- (b) The payment includes applicable annual leave loading in accordance with clause 32 – Annual Leave Loading and clause 33 – Annual Leave Loading for Shift Work Employees and Employees on Commuted Arrangements that Incorporate Annual Leave Loading of this Agreement.

34.4 The following criteria shall apply to the cashing out of accrued annual leave:

- (a) the Employee initiates a written request, to their Employer, to cash out accrued annual leave;
- (b) the Employer agrees in writing to the request by the Employee;
- (c) there is an annual leave entitlement that has accrued in previous years;
- (d) no more than 50 per cent of the Employee's total accrued annual leave entitlement can be cashed out;
- (e) the remaining entitlements are not less than two weeks accrued annual leave;
- (f) each instance of cashing out of annual leave must be a separate written agreement between the Employer and Employee; and
- (g) annual leave accruing in the year the request for cashing out is made cannot be cashed out in that year.

34.5 It is the Employee's responsibility to seek information on any taxation implications arising from the payout of annual leave.

## 35. PUBLIC SERVICE HOLIDAYS

### Repealed Public Service Holidays

- 35.1 The two days in lieu of the repealed public service holidays provided for in the Public Sector Commissioner's Circular 2009-32 apply to Employees covered by this Agreement where they would normally be expected to work those days.
- 35.2 Subject to the provisions of the Public Sector Commissioner's Circular 2009-32, 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.
- 35.3 By prior agreement with the Employer the day may be taken on the date of the relevant repealed public service holiday.

### Easter Sunday

- 35.4 Permanent and fixed term contract Employees will be provided an additional day of paid leave for Easter Sunday.
- 35.5 The day of paid leave will be made available to the Employee regardless of whether the Employee would normally be expected to work on that date.
- 35.6 The day of paid leave accrues on the date that Easter Sunday falls each calendar year.
- 35.7 Employee access to the day of leave is subject to the conditions set out in clause 35.2 (b)-(g).

## 36. CHRISTMAS/NEW YEAR CLOSEDOWN

### Observance of a Closedown

- 36.1 An Employer may observe a closedown over the Christmas/New Year period for the whole or part of the Employer's Agency.
- 36.2 (a) Except as provided for by clause 36.2 (b), the dates/duration of the closedown will be at the discretion of the Employer, but will not exceed five working days.

- (b) For the ASAs pertaining to the TAFE colleges listed in Item 1 of Schedule 5 – Agency Specific Agreements of this Agreement, or their replacements, the dates/duration of the closedown will be at the discretion of the Employer, in accordance with the provisions of those ASAs.
- (c) Where an ASA pertaining to the TAFE colleges listed in Item 1 of Schedule 5 – Agency Specific Agreements of this Agreement, or its replacement, is cancelled, the dates/duration of the closedown shall be in accordance with clause 36.2 (a).

#### **Notification of a Closedown**

- 36.3 The Employer will as soon as possible in each calendar year, but not later than 30 June, advise affected Employees of the dates of the closedown and the number of working days involved.

#### **Leave Arrangements During the Closedown**

- 36.4 Employees may access the following forms of paid leave to cover the closedown period:
- (a) flexitime credit and banked hours;
  - (b) rostered days/hours off; or
  - (c) time in lieu of overtime.
- 36.5 In the absence of sufficient banked hours or flexitime credit hours the following types of paid leave will be used to cover the Christmas closedown:
- (a) annual leave;
  - (b) accrued long service leave;
  - (c) pro rata long service leave as provided for at clause 29 – Early Access to Pro Rata Long Service Leave of this Agreement;
  - (d) purchased leave;
  - (e) days in lieu of public service holidays; and
  - (f) the Easter Sunday holiday provided for in clause 35.
- 36.6 Employees who do not currently participate in existing flexi-leave arrangements may alternatively accrue banked hours throughout the calendar year, for the purpose of the closedown period, pursuant to clause 22 – Hours of this Agreement.
- 36.7 The days/hours may only be accrued up to the maximum of the number of hours necessary to cover the period of the closedown.
- 36.8 At the discretion of the Employer the following Employees may be granted either leave without pay or annual leave in advance to cover the amount of leave required for the closedown:

- (a) Employees engaged during the calendar year immediately preceding the closedown who have not accrued sufficient banked hours to cover the period of the close down; or
- (b) Employees who have not accrued sufficient banked hours to cover the period of the close down and have exhausted their paid leave credits.

#### **Managing Debit Hours/Days**

- 36.9 Employees, who have gone into debit to cover the period of the closedown and whose employment is terminated prior to accrual of sufficient hours to cover the debit, will be required to refund the balance of hours outstanding on termination.
- 36.10 Notwithstanding the provisions contained in clause 22.11 (d) – Hours of this Agreement, an Employee who has accrued hours for the purposes of a closedown and subsequently resigns, transfers to another Agency or 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.

#### **37. BEREAVEMENT LEAVE**

- 37.1 The provisions contained in this clause replace those contained in clause 32 – Bereavement Leave of the Applicable Award.
- 37.2 Employees shall, on the death of:
  - (a) the spouse or de-facto partner of the Employee;
  - (b) a former spouse or former de-facto partner of the Employee;
  - (c) a child, step-child, foster child or grandchild of the Employee (including an adult child, step-child or grandchild);
  - (d) a parent, step-parent, foster parent or grandparent of the Employee;
  - (e) a parent in law or former parent in law of the Employee;
  - (f) a brother, sister, step brother or step sister of the Employee; or
  - (g) any other person who, immediately before that person's death, lived with the Employee as a member of the Employee's household;

be eligible for up to three days' paid bereavement leave.

- 37.3 The Employer will not unreasonably withhold approval to grant bereavement leave to an Employee in respect of some other person with whom the Employee had a special relationship, on the request of the Employee.
- 37.4 The three days need not be consecutive.

- 37.5 Bereavement leave is not to be taken during any other period of leave, including periods of unpaid leave.
- 37.6 Payment of such leave may be subject to the Employee providing evidence, if so requested by the employer, of the death or relationship to the deceased that would satisfy a reasonable person.
- 37.7 An Employee requiring more than three days' bereavement leave in order to travel interstate or overseas in the event of a death of a person referred to in clause 37.2 or 37.3, may, upon providing adequate proof, in addition to any bereavement leave to which the Employee is eligible, have immediate access to annual leave and/or accrued long service leave or leave without pay provided all accrued leave is exhausted.
- 37.8 Travelling time for Regional Employees
- (a) Subject to prior approval from the Employer, an Employee entitled to bereavement leave and who, as a result of such bereavement, travels to a location within Western Australia that is more than 240 km from their workplace will be granted paid time off for the travel period undertaken in the Employee's ordinary working hours up to a maximum of 15 hours per bereavement. The Employer will not unreasonably withhold approval.
  - (b) The Employer may approve additional paid travel time within Western Australia where the Employee can demonstrate to the satisfaction of the Employer that more than two days travel time is warranted.
  - (c) The provisions of clauses 37.8 (a) and (b) apply as follows.
    - (i) An Employee employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent Employee for each full year of service and pro rata for any residual portion of employment.
    - (ii) An Employee employed on a fixed term contract for a period less than 12 months shall be credited with the same entitlement on a pro rata basis for the period of employment.
    - (iii) A part time Employee shall be entitled to the same entitlement as a full time employee for the period of employment, but on a pro rata basis according to the number of ordinary hours worked each fortnight.
    - (iv) For casual Employees, the provisions apply to the extent of their agreed working arrangements.

## 38. CULTURAL LEAVE FOR ABORIGINAL AND TORRES STRAIT ISLANDERS

- 38.1 Employees who identify as Aboriginal or Torres Strait Islanders (ATSI) are entitled to paid cultural leave which can be accessed to participate in any of the following:
- (a) cultural and ceremonial obligations under ATSI lore, customs or traditional law; and

- (b) community cultural events such as NAIDOC Week activities, Reconciliation Week or Coming of the Light festivals.
- 38.2 Up to five days of paid cultural leave per calendar year will be available under this clause. The leave need not be taken in one continuous period. Paid cultural leave will not accrue from year to year and will not be paid out on termination.
  - 38.3 The Employer will assess each application for cultural leave on its merits and give consideration to the personal circumstances of the Employee seeking the leave.
  - 38.4 The Employer may request reasonable evidence of the legitimate need for the Employee to be allowed time off.
  - 38.5 If an Employer requires an Employee to attend to business associated with an ATSI organisation, or an organisation that works to facilitate ATSI interests, the attendance is considered to be a part of the Employee's normal duties and the Employee need not access leave under this or any other clause to enable it.
  - 38.6 Cultural leave granted under this clause is in addition to the leave provided by clause 37 – Bereavement Leave of this Agreement and clause 33 – Cultural/Ceremonial Leave of the Applicable Award.

## PART 6: PARENTAL LEAVE

### 39. MATERNITY LEAVE

- 39.1 This clause replaces the parental leave provisions contained in clause 28 – Parental Leave of the Applicable Award.
- 39.2 **Eligibility**
  - (a)
    - (i) A pregnant permanent Employee, fixed term contract Employee or eligible casual employee is entitled to unpaid maternity leave on the birth of a child.
    - (ii) The period of leave for a fixed term contract Employee shall not extend beyond the term of that contract.
    - (iii) An Employee is eligible, without concluding their maternity leave and resuming duty, for subsequent periods of maternity leave, including paid maternity leave, in accordance with the provisions of this clause.
  - (b) A pregnant permanent or fixed term Employee must have completed 12 months' continuous service in the Public Sector immediately preceding the maternity leave in order to receive the forms of paid leave as provided for by this clause.
  - (c) An Employee on a period of leave without pay unrelated to maternity leave, adoption leave or other parent leave must resume duties prior to being entitled to paid maternity leave in accordance with the eligibility requirements.
- 39.3 (a) A pregnant eligible casual employee is entitled to unpaid maternity leave only.

- (b) For the purposes of this clause an “eligible casual employee” means a casual Employee employed by the Employer:
  - (i) on a regular and systematic basis for several periods of employment with a break of no more than three months between each period of employment and where the combined length of the periods of employment are at least 12 months and the breaks of employment were the result of the Employer’s initiative; or
  - (ii) on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and, but for the birth or adoption of a child, the Employee has a reasonable expectation of continuing engagement on a regular and systematic basis.
- (c) Service performed by an eligible casual employee for a Public Sector Employer shall count as service for the purposes of determining 12 months’ continuous service as per clauses 39.2 and 39.3 where:
  - (i) the eligible casual employee has become a permanent or fixed term contract Employee with the same Employer; and
  - (ii) the break between the period of eligible casual employment and permanent or fixed term contract employment is no more than three months.

#### 39.4 Notice Requirements

- (a) An eligible Employee shall give at least eight weeks’ written notice of:
  - (i) their intention to proceed on paid or unpaid maternity leave;
  - (ii) the date the Employee proposes to commence paid or unpaid maternity leave; and
  - (iii) the period of leave to be taken.
- (b) An Employee who has given their Employer notice of their intention to take maternity leave shall provide the Employer with a medical certificate from a registered medical practitioner naming the Employee, confirming the pregnancy and the estimated date of birth.
- (c) An Employee is not in breach of clause 39.4 (a) by failing to give the required period of notice if such failure is due to the birth of the child taking place prior to the date the Employee had intended to proceed on maternity leave.
- (d) An Employee proceeding on maternity leave may elect to take a shorter period of maternity leave to that provided by this clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks’ written notice is provided.



### 39.5 General Entitlement to Maternity Leave

- (a) Subject to the requirements of this clause an eligible Employee is entitled to 52 weeks' unpaid maternity leave.
- (b)
  - (i) Subject to the requirements of this clause an eligible Employee is entitled to 14 weeks' paid maternity leave that will form part of the 52 week unpaid entitlement;
  - (ii) the 14 week period of paid maternity leave is inclusive of any public holidays or repealed public service days in lieu falling within that time;
  - (iii) the period of paid maternity leave can be extended by the Employee taking double the leave on a half-pay basis and its effect is in accordance with clause 39.16.
- (c) An Employee must take maternity leave in one continuous period with the exception of:
  - (i) special temporary employment or special casual employment pursuant to clause 39.14 – Employment During Unpaid Maternity Leave; and
  - (ii) clause 39.9 – Unpaid Special Maternity Leave.
- (d) Except for leave provided under clause 41.3 (f) and clause 42 – Partner Leave of this Agreement, only one parent can proceed on maternity, adoption or other parent leave at any one time.
- (e) Where less than the 52 weeks' maternity leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (f)
  - (i) Notwithstanding clause 39.5 (c) above, paid maternity leave may be taken in more than one period by an Employee who meets the requirements of clause 39.6 (d).
  - (ii) Unpaid maternity leave may be taken in more than one continuous period where the Employee undertakes special temporary employment or special casual employment in accordance with clause 39.14 – Employment during Unpaid Maternity Leave. In these circumstances, the provisions of clause 39.14 – Employment during Unpaid Maternity Leave shall apply.
- (g)
  - (i) Where both parents are employed in the Public Sector an entitlement to paid or unpaid maternity, adoption or other parent leave or parental leave provided for by another industrial agreement can be shared; and
  - (ii) the entitlement provided to the Employees shall not exceed the paid maternity, adoption or other parent leave quantum for one Employee or its half pay equivalent; and

- (iii) the Employees may only proceed on paid and/or unpaid maternity, adoption or other parent leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under clause 39.6 (d). This does not prevent an Employee from taking paid or unpaid partner leave as prescribed by clause 42 – Partner Leave of this Agreement.

#### 39.6 Payment for Paid Maternity Leave

- (a)
  - (i) Subject to clause 39.6 (c) a full time Employee proceeding on paid maternity leave is to be paid according to their ordinary working hours at the time of commencement of maternity leave. Shift and weekend penalty payments are not payable during paid maternity leave.
  - (ii) Subject to clause 39.6 (c) payment for a part time Employee is to be determined according to an average of the hours worked by the Employee over the preceding 12 months; or their ordinary working hours at the time of commencement of maternity leave, exclusive of shift and weekend penalties, whichever is greater.
- (b) An Employee may elect to receive pay in advance for the period of paid maternity leave at the time the maternity leave commences, or may elect to be paid the entitlement on a fortnightly basis over the period of the paid maternity leave.
- (c)
  - (i) An Employee in receipt of a higher duties allowance for a continuous period of 12 months immediately prior to commencing paid maternity leave is to continue to receive the higher duties allowance for the first four weeks of paid maternity leave.
  - (ii) An Employee who is entitled to be paid higher duties allowance in accordance with clause 39.6 (c) (i) and 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.
- (d) An Employee is entitled to remain on paid maternity leave if the pregnancy results in other than a live child; or the Employee is incapacitated following the birth of the child; or the child dies or is hospitalised such that the Employee or the Employee's Partner is not providing principal care to the child.
- (e) Where an Employee is on a period of half pay maternity leave and their employment is terminated through no fault of the Employee, the Employee shall be paid out any period of unused paid maternity leave equivalent to the period of leave the Employee would have accessed had they been on full pay maternity leave when their termination occurred.
- (f) An Employee eligible for a subsequent period of paid maternity leave as provided for under clause 39.2 (a) (iii) shall be paid the maternity leave as follows:
  - (i) according to the Employee's status, classification and ordinary working hours at the time of commencing the original period of paid maternity leave; and
  - (ii) not affected by any period of special temporary employment or special casual employment undertaken in accordance with clause 39.14.

### 39.7 Commencement of Maternity Leave

- (a) The period of paid leave can commence up to six weeks prior to the expected date of birth of the child.
- (b) The period of unpaid leave can commence up to six weeks prior to the expected date of birth of the child or earlier if the Employer and Employee so agree, but must not start later than the birth of the child.
- (c)
  - (i) If the Employer has reason to believe that the continued performance of duties by a pregnant Employee renders danger to herself, fellow Employees or the public, the Employee may be required to obtain and provide a medical certificate stating that the Employee is fit to work in her present position for a stated period.
  - (ii) The Employer shall pay the fee for any such examination.
  - (iii) Where an Employee is deemed to be unfit to work in her present position, the provisions of clause 39.8 – Modification of Duties and Transfer to a Safe Job may apply.
- (d)
  - (i) Where the pregnancy of an Employee terminates other than by the birth of a living child, not earlier than 20 weeks before the expected date of the birth, the entitlement to paid maternity leave remains intact and subject to the eligibility requirements of this clause.
  - (ii) Such paid maternity leave cannot be taken concurrently with any paid personal leave taken in this circumstance.
- (e) The period of paid maternity leave must be concluded within 12 months of the birth of the child.
- (f)
  - (i) The Employer may, in exceptional circumstances, allow an Employee to take paid maternity leave that will result in the Employee being on paid maternity leave more than 12 months after the birth of the child.
  - (ii) An Employer may require evidence that would satisfy a reasonable person that the circumstances warrant allowing the Employee to take their period of paid maternity leave such that it would result in the Employee being on paid maternity leave more than 12 months after the birth of the child.

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

- (a)
  - (i) A pregnant Employee may work part time in one or more periods whilst she is pregnant where she provides her Employer with a medical certificate from a medical practitioner advising that part time employment is, because of her pregnancy, necessary or preferable.
  - (ii) The terms of part time employment undertaken in accordance with clause 39.8 (a) (i) shall be in writing.

- (iii) Such employment shall be in accordance with clause 9 – Part Time Employment of the Applicable Award and clause 17 – Part Time Employment of this Agreement.
- (b) In the absence of an alternative requirement, and unless otherwise agreed between an Employer and Employee, an Employee shall provide their Employer with four weeks' written notice of an intention to:
  - (i) vary part time work arrangements made under clause 39.8 (a); or
  - (ii) revert to full time employment during the Employee's pregnancy.
- (c) An Employee reverting to full time employment in accordance with clause 39.8 (b) (ii) will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the Employee's skill and abilities as the substantive position held immediately prior to undertaking part time employment.
- (d) If an Employee gives her Employer a medical certificate from a medical practitioner, or some other form of evidence that would satisfy a reasonable person, and it contains a statement to the effect that the Employee is fit to work, but that it is inadvisable for her to continue in her present position for a stated period because of:
  - (i) illness, or risks, arising out of her pregnancy; or
  - (ii) hazards connected with that position;

then the Employer must modify the duties of the position or alternatively transfer the Employee to a safe job at the same classification level for the period during which she is unable to continue in her present position.
- (e) If an Employee's Employer does not think it to be reasonably practicable to modify the duties of the position or transfer the Employee to a safe job;
  - (i) the Employee is entitled to be absent from the workplace on full pay for the period during which she is unable to continue in her present position.
  - (ii) An entitlement to be absent from the workplace on full pay as at clause 39.8 (e) (i) applies to an eligible casual employee.
  - (iii) An Employee who is absent from work pursuant to this clause shall be paid the amount she would reasonably have expected to be paid if she had worked during that period.
- (f) An entitlement to be absent from the workplace on full pay is in addition to any leave entitlement the Employee has.
- (g) An entitlement to be absent from the workplace on full pay ends at the earliest of whichever of the following times is applicable:
  - (i) the end of the period stated in the medical certificate;

- (ii) if the Employee's pregnancy results in the birth of a living child – the end of the day before the date of birth; or
- (iii) if the Employee's pregnancy ends otherwise than with the birth of a living child – the end of the day before the end of the pregnancy.

### 39.9 Unpaid Special Maternity Leave

- (a) A pregnant Employee is entitled to a period of unpaid special maternity leave if the Employee is not fit for work during that period because the Employee:
  - (i) has a pregnancy related illness; or
  - (ii) has been pregnant and the pregnancy ends within 28 weeks of the expected date of birth of the child otherwise than by a living child; and
  - (iii) has not utilised personal leave for the period.
- (b) An Employee must give the Employer notice of the taking of unpaid special maternity leave.
- (c) The notice must:
  - (i) be given to the Employer as soon as practicable (which may be a time after the leave has started); and
  - (ii) advise the Employer of the period, or expected period, of the leave.
- (d) An Employee who has given notice of the taking of unpaid special maternity leave must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for a reason specified in 39.9 (a).
- (e) Without limiting 39.9 (d), an Employer may require the evidence referred to in that subsection to be a medical certificate.
- (f) An Employee's entitlement to 52 weeks of unpaid maternity leave provided at 39.5 is not reduced by the amount of any unpaid special maternity leave taken by the Employee while the Employee was pregnant.

### 39.10 Interaction with Other Leave Entitlements

- (a) An Employee proceeding on unpaid maternity leave may elect to substitute any part of that leave with accrued annual and/or accrued long service leave.
- (b) Where annual and/or long service leave is substituted that leave shall form part of the 52 weeks' maternity leave entitlement.
- (c) An Employee proceeding on unpaid maternity leave may elect to substitute all or part of that leave with accrued time off in lieu of overtime, flexi leave and/or banked hours to which the Employee is entitled subject to the provisions of clause 22 – Overtime

Allowance of the Applicable Award and clause 22 – Hours of this Agreement, where applicable.

- (d) Personal leave is not payable on a period of paid or unpaid maternity leave.

#### 39.11 Extended Unpaid Maternity Leave

- (a) An Employee is entitled to apply for leave without pay following maternity leave (“extended unpaid maternity leave”) to extend their leave by up to two years.
- (b) Approval for an extension to unpaid maternity leave will be subject to all other available leave entitlements being exhausted.
- (c) Where both parents work for the Public Sector the total combined period of extended unpaid maternity, adoption or other parent leave shall not exceed two years.
- (d) The Employer is to agree to a request for extended unpaid maternity leave unless:
  - (i) the Employer is not satisfied that the request is genuinely based on the Employee’s parental responsibilities; or
  - (ii) agreeing to the request would have an adverse impact on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person.
- (e) The Employer is to give the Employee written notice of the Employer’s decision on a request for extended unpaid maternity leave under clause 39.11 (a). If the request is refused, the notice is to set out the reasons for the refusal.
- (f) An Employee who believes their request for extended unpaid maternity leave under clause 39.11 has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.

#### 39.12 Communication during Maternity Leave

- (a) If the Employer makes a decision that will have a significant effect on the status, responsibility level, pay or location of an Employee’s position whilst on maternity leave, the Employer must take all reasonable steps to give the Employee information about, and an opportunity to discuss, the effect of the decision on that position.
- (b) An Employee shall also notify the Employer of changes of address or other contact details that might affect the Employer’s capacity to comply with clause 39.12 (a).

#### 39.13 Replacement Employee

- (a) Should a Replacement employee be engaged, the Replacement employee is to be informed prior to engagement of the fixed term nature of the employment and of the rights of the Employee, who is being replaced, including that the engagement may be subject to variation according to clause 39.4 (d) and ability to extend unpaid maternity leave as provided for under clause 39.11.

#### 39.14 Employment during Unpaid Maternity Leave

- (a) Special Temporary Employment
  - (i) For the purposes of this clause, "temporary" means employment of an intermittent nature; for a limited, specified period; and undertaken during unpaid maternity leave or extended unpaid maternity leave.
  - (ii) Notwithstanding any other provision of the maternity leave clause, an Employee may be employed by their Employer on a temporary basis provided that:
    - (aa) both parties agree in writing to the special temporary employment;
    - (bb) public service officers are only employed on a temporary basis in connection with their substantive office, post or position;
    - (cc) any such period of service shall not change the Employee's employment status in regard to their substantive employment; and
    - (dd) any period of special temporary employment shall count as qualifying service for all purposes under the Applicable Award and this Agreement.
- (b) Special Casual Employment
  - (i) Only Employees covered by the *Government Officers Salaries Allowances and Conditions Award 1989* can be engaged on special casual employment during unpaid or extended unpaid maternity leave.
  - (ii) For the purposes of clause 39.14, "casual" means employment on an hourly basis, for a period not exceeding four weeks in any period of engagement, for which a casual loading is paid. It excludes employment undertaken in accordance with clause 39.14 (a) – Special Temporary Employment.
  - (iii) An Employee can be engaged on special casual employment provided that:
    - (aa) both parties agree in writing to the special casual employment;
    - (bb) Employees are employed at the level commensurate to the level of the available position under this Agreement;
    - (cc) in the case of a fixed term contract Employee, the period of the casual employment is within the period of the current fixed term contract;
    - (dd) any such period of service shall not break the Employee's continuity of service nor change the Employee's employment status in regard to their substantive employment; and
    - (ee) any period of special casual employment shall not count as qualifying service other than with respect to entitlements a casual employee

would ordinarily be entitled to for any other purpose under any relevant award, agreement or industrial instrument.

- (c) The provisions of this clause only apply to employment during unpaid maternity leave, and extended unpaid maternity leave taken in conjunction with maternity leave as provided for in clause 39.11 – Extended Unpaid Maternity Leave.
- (d) An Employer cannot engage an Employee in special temporary employment or special casual employment whilst the Employee is on a period of paid maternity leave, annual leave, or long service leave taken concurrently with a period of unpaid maternity leave.
- (e) Effect of special temporary employment and special casual employment on unpaid maternity leave.
  - (i) Subject to clause 39.14 (e) (ii), a period of special temporary employment or special casual employment shall be deemed to be part of the Employee's period of unpaid maternity leave or extended unpaid maternity leave as originally agreed to by the parties.
  - (ii) An Employee who immediately resumes unpaid maternity leave or extended unpaid maternity leave following the conclusion of a period of special temporary employment or special casual employment:
    - (aa) is entitled, on written notice, to extend their period of unpaid maternity leave or extended unpaid maternity leave by the period of time in which they were engaged in special temporary employment or special casual employment; and
    - (bb) shall give not less than four weeks' notice in writing to their Employer of the new date they intend to return to work and so conclude their period of maternity leave or extended unpaid maternity leave.
  - (iii) An Employee who does not immediately resume their period of unpaid maternity leave or extended unpaid maternity leave at the conclusion of a period of special temporary employment or special casual employment cannot preserve the unused portion of leave for use at a later date.

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

- (a)
  - (i) An Employee shall confirm their intention in writing to conclude their maternity leave not less than four weeks prior to the expiration of maternity leave or extended unpaid maternity leave.
  - (ii) An Employee who intends to return to work on a modified basis in accordance with clause 39.15 (d) shall advise their Employer of this intention by notice in writing not less than four weeks prior to the expiration of maternity leave or extended unpaid maternity leave.
- (b) An Employee on return to work following the conclusion of maternity leave or extended unpaid maternity leave will be entitled to the same position or a position equivalent in



pay, conditions and status and commensurate with the Employee's skill and abilities as the substantive position held immediately prior to proceeding on maternity leave.

- (c) Where an Employee was transferred to a safe job or was absent from the workplace on full pay as provided for in clause 39.8 – Modification of Duties and Transfer to a Safe Job, the Employee is entitled to return to the position occupied immediately prior to the transfer or their absence from the workplace on full pay.
- (d) Right to Return to Work on a Modified Basis
  - (i) An Employee may return on a part time or job-share basis to the substantive position occupied prior to the commencement of leave or to a different position as determined by the Employer at the same classification level in accordance with the part time employment provisions of the Applicable Award and this Agreement.
  - (ii) An Employee may return on a modified basis that involves the Employee working on different days or at different times, or both; or on fewer days or for fewer hours or both, than the Employee worked immediately before starting maternity leave.
- (e) Right to Revert
  - (i) An Employee who has returned on a part time or modified basis in accordance with clause 39.15 (d) may subsequently request permission from the Employer to resume working on the same basis as the Employee worked immediately before starting maternity leave or full time work at the same classification level.
  - (ii) A request made under clause 39.15 (e) (i) must be in writing and must be made at least four weeks before the day on which the Employee wishes to resume working on the same basis as the Employee worked immediately before starting maternity leave or full time work at the same classification level.
  - (iii) An Employer is to agree to a request to revert made under clause 39.15 (e) (i) unless there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person.
  - (iv) An Employer is to give the Employee written notice of the Employer's decision on a request to revert under clause 39.15 (e) (i). If the request is refused, the notice is to set out the reasons for the refusal.
  - (v) An Employee who believes their request to revert under clause 39.15 (e) (i) has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.
- (f) Employer Requirement to Revert
  - (i) If, on finishing maternity leave, an Employee has returned to work on a modified basis in accordance with clause 39.15 (d), the Employer may

subsequently require the Employee to resume working on the same basis as the Employee worked immediately before starting maternity leave.

- (ii) A requirement can be made under clause 39.15 (f) (i) only if:
  - (aa) the requirement is made on grounds relating to the adverse effect that the Employee continuing to work on a modified basis would have on the conduct of the operations or business of the Employer and those grounds would satisfy a reasonable person; or
  - (bb) the Employee no longer has a child who has not reached the compulsory education period as defined in section 6 of the *School Education Act 1999*.

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

- (a) (i) Paid maternity leave will count as qualifying service for all purposes under the Applicable Award and this Agreement.
- (ii) Qualifying service for any purpose under the Applicable Award or this Agreement is to be calculated according to the number of weeks of paid maternity leave that were taken at full pay or would have been had the Employee not taken paid maternity leave at half pay. Employees who take paid maternity leave on half pay do not accrue award, agreement or other entitlements beyond those that would have accrued had they taken the leave at full pay.
- (b) (i) Absence on unpaid maternity leave or extended unpaid maternity leave shall not break the continuity of service of Employees.
- (ii) Where an Employee takes a period of unpaid maternity leave or extended unpaid maternity leave exceeding 14 calendar days in one continuous period, the entire period of such leave shall not be taken into account in calculating the period of service for any purpose under the Applicable Award, agreement or industrial instrument. Periods of unpaid leave of 14 days or less shall, however, count for service.
- (c) An Employee on maternity leave may terminate employment at any time during the period of leave by written notice in accordance with clause 8 – Contract of Service of the Applicable Award.
- (d) An Employer shall not terminate the employment of an Employee on the grounds of the Employee's application for maternity leave or absence on maternity leave but otherwise the rights of the Employer in respect of termination of employment are not affected.

#### 40. ADOPTION LEAVE

- 40.1 This clause replaces the parental leave provisions contained in clause 28 – Parental Leave of the Applicable Award.

#### 40.2 Eligibility

- (a) (i) A permanent Employee, fixed term contract Employee or eligible casual employee is entitled to 52 weeks unpaid adoption leave on the placement of a child for adoption as provided for under this clause.
- (ii) The period of leave granted to a fixed term contract Employee shall not extend beyond the term of that contract.
- (iii) An Employee is eligible, without concluding their adoption leave and resuming duty, for subsequent periods of adoption leave, including paid adoption leave, in accordance with the provisions of this clause.
- (b) A permanent or fixed term contract Employee must have completed 12 months' continuous service in the Public Sector immediately preceding the adoption leave in order to receive the forms of paid leave as provided for by this clause.
- (c) An Employee on a period of leave without pay unrelated to maternity leave, adoption leave or other parent leave must resume duties prior to being entitled to paid adoption leave in accordance with the eligibility requirements.
- (d) An eligible casual employee as defined under clause 39.3 is entitled to unpaid adoption leave as provided by this clause.

#### 40.3 General Entitlement to Adoption Leave

- (a) Subject to the requirements of this clause an eligible Employee is entitled to 52 weeks unpaid adoption leave.
- (b) (i) Subject to the requirements of this clause an eligible Employee is entitled to 14 weeks 'paid adoption leave that will form part of the 52 week unpaid entitlement.
- (ii) The 14 week period of paid adoption leave is inclusive of any public holidays or repealed public service days in lieu falling within that time.
- (iii) The period of paid adoption leave can be extended by the Employee taking double the leave on a half-pay basis and its effect is in accordance with clause 39.16 – Effect of Maternity Leave on the Contract of Employment.
- (c) An Employee must take adoption leave in one continuous period with the exception of special temporary employment or special casual employment pursuant to clause 39.14 – Employment during Unpaid Maternity Leave.
- (d) Except for leave provided under clause 41.3 (f) and clause 42 – Partner Leave of this Agreement, only one parent can proceed on maternity, adoption or other parent leave at any one time.
- (e) Where less than the 52 weeks' adoption leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.

- (f) Unpaid adoption leave may be taken in more than one continuous period where the Employee undertakes special temporary employment or special casual employment in accordance with the provisions at clause 39.14 – Employment during Unpaid Maternity Leave. In these circumstances, the provisions of clause 39.14 – Employment during Unpaid Maternity Leave shall apply.
- (g)
  - (i) Where both parents are employed in the Public Sector an entitlement to paid or unpaid maternity leave, adoption leave or other parent leave or parental leave provided for by another industrial agreement can be shared; and
  - (ii) the entitlement provided to the Employees shall not exceed the paid maternity, adoption or other parent leave quantum for one Employee or its half pay equivalent; and
  - (iii) the Employees may only proceed on paid and/or unpaid maternity, adoption or other parent leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under clause 39.6 (d). This does not prevent an Employee from taking paid or unpaid partner leave as prescribed by clause 42 – Partner Leave of this Agreement

#### 40.4 Payment for Paid Adoption Leave

- (a)
  - (i) Subject to clause 40.4 (c) a full time Employee proceeding on paid adoption leave is to be paid according to their ordinary working hours at the time of commencement of adoption leave. Shift and weekend penalty payments are not payable during paid adoption leave.
  - (ii) Subject to clause 40.4 (c), payment for a part time Employee is to be determined according to an average of the hours worked by the Employee over the preceding 12 months; or their ordinary working hours at the time of commencement of adoption leave, exclusive of shift and weekend penalties, whichever is greater.
- (b) An Employee may elect to receive pay in advance for the period of paid adoption leave at the time the adoption leave commences, or may elect to be paid the entitlement on a fortnightly basis over the period of the paid adoption leave.
- (c)
  - (i) An Employee in receipt of a higher duties allowance for a continuous period of 12 months immediately prior to commencing paid adoption leave, is to continue to receive the higher duties allowance for the first four weeks of paid adoption leave.
  - (ii) An Employee who is entitled to be paid higher duties allowance in accordance with clause 40.4 (c) (i) and 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.
- (d) Where an Employee is on a period of half pay adoption leave and their employment is terminated through no fault of the Employee, the Employee shall be paid out any period of unused paid adoption leave equivalent to the period of leave the Employee would have accessed had they been on full pay adoption leave when their termination occurred.

- (e) An Employee eligible for a subsequent period of paid adoption leave as provided for under clause 40.2 (a) (iii) shall be paid the adoption leave as follows:
  - (i) according to the Employee's status, classification and ordinary working hours at the time of commencing the original period of paid adoption leave; and
  - (ii) not affected by any period of special temporary employment or special casual employment undertaken in accordance with clause 39.14.
- (f) Where less than the 52 weeks' adoption leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (g) An eligible casual employee provided for under clause 40.2 (d) is not entitled to paid adoption leave.
- (h) The "day of placement", in relation to the adoption of a child by an Employee, means the earlier of the following days:
  - (i) the day on which the Employee first takes custody of the child for the adoption; or
  - (ii) the day on which the Employee starts any travel that is reasonably necessary to take custody of the child for the adoption.
- (i) An Employee is not entitled to adoption-related leave unless the child that is, or is to be, placed with the Employee for adoption:
  - (i) is, or will be, under 16 years old as at the day of placement, or the expected day of placement, of the child; and
  - (ii) has not, or will not have, lived continuously with the Employee for a period of six months or more as at the day of placement, or the expected day of placement, of the child; and
  - (iii) is not (otherwise than because of the adoption) a child or stepchild of the Employee or the Employee's Partner.
- (j)
  - (i) An Employee seeking to adopt a child is entitled to two days' unpaid leave to attend interviews or examinations required for the adoption procedure.
  - (ii) An Employee working or residing outside of the Perth metropolitan area is entitled to an additional day's unpaid leave.
  - (iii) The Employee may take any paid leave entitlement to which the Employee is entitled to in lieu of this leave.
- (k)
  - (i) If an application for adoption leave has been granted for the adoption of a child, which does not eventuate, then the period of paid or unpaid adoption leave is terminated.

- (ii) Employees may take any other paid leave entitlement to which they are entitled in lieu of the terminated adoption leave or return to work.

#### 40.5 Commencement of Adoption Leave

- (a) An eligible Employee can commence adoption leave from the day of placement of the child.
- (b) The period of paid adoption leave must conclude within 12 months of the day of placement except under exceptional circumstances as provided under clause 39.7 (f) of the maternity leave clause, but as it relates to adoption leave.

#### 40.6 Notice and Variation Requirements

- (a) An Employee shall give no less than eight weeks' written notice to the Employer of:
  - (i) the date the Employee proposes to commence paid or unpaid adoption leave; and
  - (ii) the period of leave to be taken.
- (b) An Employee is not in breach of clause 40.6 (a) by failing to give the required period of notice if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.
- (c) An Employee proceeding on adoption leave may elect to take a shorter period of adoption leave to that provided by this clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks' written notice is provided.

#### 40.7 Other Provisions

The following provisions, as provided under clause 39 – Maternity Leave of this Agreement, have application to adoption leave:

- (a) clause 39.10 – Interaction with Other Leave Entitlements;
- (b) clause 39.11 – Extended Unpaid Maternity Leave;
- (c) clause 39.12 – Communication during Maternity Leave;
- (d) clause 39.13 – Replacement Employee;
- (e) clause 39.14 – Employment during Unpaid Maternity Leave;
- (f) clause 39.15 – Return to Work on Conclusion of Maternity Leave; and
- (g) clause 39.16 – Effect of Maternity Leave on the Contract of Employment.

## 41. OTHER PARENT LEAVE

41.1 (a) This clause replaces the parental leave provisions, contained in clause 28 – Parental Leave of the Applicable Award.

(b) For the purposes of this clause:

(i) The “other parent” may or may not be the biological parent, and does not necessarily have to be the Partner of the birth parent and has a responsibility for the care of the child.

(ii) The “primary care giver” means the Employee will assume the principal role for the care and attention of a child aged under 12 months or a newly adopted child.

(iii) Only one person can be the primary care giver of the child at any one time.

### 41.2 Eligibility

(a) (i) Where an eligible Employee, other than an Employee entitled to paid maternity leave under clause 39.5 or adoption leave under clause 40.3, is the other parent and has a responsibility for the care of a child under the age of 12 months or newly adopted child the provisions of this clause will apply.

(ii) An Employee must be the primary care giver of the child to access paid other parent leave.

(iii) An Employer may require an Employee to provide confirmation of their primary carer status with evidence that would satisfy a reasonable person.

(b) An eligible casual employee, as defined under clause 39.3 of the maternity leave clause, is entitled to unpaid other parent leave as provided by this clause.

(c) (i) A permanent Employee, fixed term contract Employee or eligible casual employee is entitled to 52 weeks unpaid other parent leave in accordance with this clause.

(ii) An eligible permanent or fixed term contract Employee is entitled to 14 weeks’ paid other parent leave in accordance with this clause if they are the primary care giver of the child.

(iii) An Employee employed on a fixed term contract shall have the same entitlement to other parent leave; however, the period of leave granted shall not extend beyond the term of that contract.

(iv) An Employee is eligible, without concluding their other parent leave and resuming duty, for subsequent periods of other parent leave, including paid other parent leave, in accordance with the provisions of this clause.

- (d) A permanent or fixed term contract Employee must have completed 12 months' continuous service in the Public Sector immediately preceding the other parent leave in order to receive the forms of paid leave as provided for by this clause.
- (e) An Employee on a period of leave without pay unrelated to maternity leave, adoption leave or other parent leave must resume duties prior to being entitled to paid other parent leave in accordance with the eligibility requirements.

#### 41.3 General Entitlement to Other Parent Leave

- (a) Subject to the requirements of this clause an eligible Employee is entitled to 52 weeks' unpaid other parent leave.
- (b)
  - (i) Subject to the requirements of this clause an eligible Employee is entitled to 14 weeks' paid other parent leave that will form part of the 52 week unpaid entitlement if they are the primary care giver of the child.
  - (ii) The 14 week period of paid other parent leave is inclusive of any public holidays or repealed public service days in lieu falling within that time.
  - (iii) The period of paid other parent leave can be extended by the Employee taking double the leave on a half-pay basis and its effect is in accordance with clause 39.16 – Effect of Maternity Leave on the Contract of Employment.
- (c) An Employee must take other parent leave in one continuous period with the exception of special temporary employment or special casual employment pursuant to clause 39.14 – Employment during Unpaid Maternity Leave.
- (d) Where less than the 52 weeks' other parent leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (e) Except for leave provided under clause 41.3 (f) and clause 42 – Partner Leave of this Agreement, only one parent can proceed on maternity, adoption or other parent leave at any one time.
- (f)
  - (i) An Employee, whose Partner is not employed, or is employed and does not intend to take unpaid parental related leave for a child under the age of 12 months or placement of a newly adopted child as provided for in clause 40 – Adoption Leave of this Agreement, may access unpaid other parent leave where:
    - (aa) the Employee will have a responsibility for the care of a child; and
    - (bb) the Partner has responsibility for the care of the child for the period between the date of birth or placement of the child and the start date of the Employee's leave.
  - (ii) The leave application must ensure that the leave commences within 12 months of the date of birth or placement of the child.



- (iii) This entitlement forms part of an Employee's 52 week unpaid other parent leave entitlement and may not be extended beyond 24 months after the date of birth or date of placement of a newly adopted child as provided for in clause 40 – Adoption Leave of this Agreement.
- (g) Unpaid other parent leave may be taken in more than one continuous period where the Employee undertakes special temporary employment or special casual employment in accordance with the provisions at clause 39.14 – Employment during Unpaid Maternity Leave. In these circumstances, the provisions of clause 39.14 – Employment during Unpaid Maternity Leave, shall apply.
- (h)
  - (i) Where both parents are employed in the Public Sector an entitlement to paid or unpaid maternity leave, adoption leave or other parent leave or parental leave provided for by another industrial agreement can be shared; and
  - (ii) the entitlement provided to the Employees shall not exceed the paid maternity, adoption or other parent leave quantum for one Employee or its half pay equivalent; and
  - (iii) the employees may only proceed on paid and/or unpaid maternity, adoption or other parent leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under clause 41.3 (i). This does not prevent an Employee from taking paid or unpaid partner leave as prescribed by clause 42 – Partner Leave of this Agreement.
- (i) If both parents work in the Public Sector and the mother is able to remain on paid maternity leave despite her incapacity to be her child's primary care giver, the Employee may choose which parent will access the paid leave.
  - (i) If the mother chooses to remain on paid maternity leave, the other parent may access unpaid other parent leave for the period they are their child's primary care giver.
  - (ii) If the other parent chooses to be the primary care giver of the child and accesses paid other parent leave the mother may access unpaid maternity leave.
  - (iii) Where the other parent accesses paid leave in accordance with this clause, the mother is entitled to resume paid maternity leave if/when she becomes her child's primary care giver, subject to the provisions of clause 41.3 (i).
- (j) An eligible casual employee provided for under clause 41.2 (b) is entitled to unpaid other parent leave only.

#### 41.4 Payment for Paid Other Parent Leave

- (a)
  - (i) Subject to clause 41.4 (c) a full time Employee proceeding on paid other parent leave is to be paid according to their ordinary working hours at the time of commencement of other parent leave. Shift and weekend penalty payments are not payable during paid other parent leave.

- (ii) Subject to clause 41.4 (c), payment for a part time Employee is to be determined according to an average of the hours worked by the Employee over the preceding 12 months; or their ordinary working hours at the time of commencement of other parent leave, exclusive of shift and weekend penalties, whichever is greater.
- (b) An Employee may elect to receive pay in advance for the period of paid other parent leave at the time the other parent leave commences, or may elect to be paid the entitlement on a fortnightly basis over the period of the paid other parent leave.
- (c)
  - (i) An Employee in receipt of a higher duties allowance for a continuous period of 12 months immediately prior to commencing paid other parent leave, is to continue to receive the higher duties allowance for the first four weeks of paid other parent leave.
  - (ii) An Employee who is entitled to be paid higher duties allowance in accordance with clause 41.4 (c) (i) and 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.
- (d) An Employee is entitled to remain on paid other parent leave where the mother is incapacitated following the birth of the child; or the child dies or is hospitalised such that the Employee or the Employee's Partner is not providing principal care to the child.
- (e) Where an Employee is on a period of half pay other parent leave and their employment is terminated through no fault of the Employee, the Employee shall be paid out any period of unused paid other parent leave equivalent to the period of leave the Employee would have accessed had they been on full pay other parent leave when their termination occurred.
- (f) An Employee eligible for a subsequent period of paid other parent leave as provided for under clause 41.2 (c) (iv) shall be paid the other parent leave as follows:
  - (i) according to the Employee's status, classification and ordinary working hours at the time of commencing the original period of paid other parent leave; and
  - (ii) not affected by any period of special temporary employment or special casual employment undertaken in accordance with clause 39.14 – Employment during Unpaid Maternity Leave.
- (g) Where less than the 52 weeks' other parent leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (h) An eligible casual employee provided for under clause 41.2 (b) is not entitled to paid other parent leave.

#### 41.5 Commencement of Other Parent Leave

- (a) An eligible Employee who has a responsibility for the care of the child can commence other parent leave from the child's birth date or placement, or a later date nominated by the Employee.

- (b) The period of paid other parent leave must conclude within 12 months of the birth or placement of the child except under exceptional circumstances as per clause 39.7 (f) of the maternity leave clause, but as it relates to other parent leave.

#### 41.6 Notice and Variation Requirements

- (a) An Employee shall give no less than eight weeks' written notice to the Employer of:
  - (i) the date the Employee proposes to commence paid or unpaid other parent leave; and
  - (ii) the period of leave to be taken.
- (b) (i) An Employee is not in breach of clause 41.6 (a) by failing to give the required period of notice if such failure is due to the requirement of the Employee to take on the role of primary care giver due to the birth parent or other adoptive parent being incapacitated to take on the principal caring role.
  - (ii) In such circumstances the Employee shall give notice as soon as reasonably possible.
- (c) The granting of leave under this clause is subject to the Employee providing the Employer with evidence that would satisfy a reasonable person detailing the reasons for and the circumstances under which the leave application is made and the relationship the Employee has with the child.
- (d) An Employee proceeding on other parent leave may elect to take a shorter period of other parent leave to that provided by this clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks' written notice is provided.

#### 41.7 Other Provisions

The following provisions, as provided under clause 39 – Maternity Leave of this Agreement have application to other parent leave:

- (a) clause 39.10 – Interaction with Other Leave Entitlements;
- (b) clause 39.11 – Extended Unpaid Maternity Leave;
- (c) clause 39.12 – Communication During Maternity Leave;
- (d) clause 39.13 – Replacement Employee;
- (e) clause 39.14 – Employment During Unpaid Maternity Leave;
- (f) clause 39.15 – Return to Work on Conclusion of Maternity Leave; and
- (g) clause 39.16 – Effect of Maternity Leave on the Contract of Employment.

## 42. PARTNER LEAVE

- 42.1 An Employee who is not taking maternity leave, adoption leave or other parent leave is entitled to one week's partner leave as prescribed by this clause in respect of the:
- (a) birth of a child to the Employee's Partner; or
  - (b) adoption of a child who is not the child or the stepchild of the Employee and/or the Employee's Partner; is under the age of 16; and has not lived continuously with the Employee for six months or longer.
- 42.2 Subject to available credits, the entitlement to one week's partner leave may be taken as:
- (a) paid personal leave, subject to clause 42.7;
  - (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.
- 42.3 Partner leave must be taken immediately following the birth or, in the case of adoption, the placement of the child.
- 42.4 (a) Subject to clause 42.4 (b), the taking of partner leave by an Employee shall have no effect on their or their Partner's entitlement, where applicable, to access paid maternity leave as provided by clause 39 – Maternity Leave, paid adoption leave as provided by clause 40 – Adoption Leave and paid other parent leave as provided by clause 41 – Other Parent Leave of this Agreement.
- (b) Where applicable, unpaid partner leave taken by an Employee shall be counted as part of the Employee's other parent leave entitlement.
- 42.5 Any public holidays that fall during partner leave shall be counted as part of the partner leave and do not extend the period of partner leave.
- 42.6 The taking of accrued time off in lieu of overtime, flexi leave and/or banked hours for partner leave purposes shall be subject to the provisions of clause 22 – Overtime Allowance of the Applicable Award, and clause 22 – Hours of this Agreement, where applicable.

### Personal Leave

- 42.7 An Employee may access their accrued personal leave entitlements for partner leave purposes, subject to the requirements of the *Minimum Conditions of Employment Act 1993* being met. That is, a minimum of 75 hours personal leave must be kept available for an Employee to access for the purposes of an Employee's entitlement to paid leave for illness or injury; or carer's leave.
- 42.8 The right to access personal leave credits for partner leave purposes does not affect an Employee's right to take more than five days personal leave for the purposes provided for in clause 26 – Personal Leave of this Agreement.

## Right to Request Additional Unpaid Partner Leave

- 42.9 (a) The total period of partner leave provided by this clause shall not exceed eight weeks.
- (b) An Employee is entitled to request an extension to the period of partner leave up to a maximum of eight weeks. The additional weeks' leave shall be unpaid and the eight week maximum is inclusive of any period of partner leave already taken in accordance with clause 42.2.
- 42.10 (a) The extended unpaid partner leave may be taken in separate periods. Unless the Employer agrees, each period must not be shorter than two weeks.
- (b) The period of extended unpaid partner leave must be concluded within 12 months of the birth or placement of the child.
- 42.11 The Employer is to agree to an Employee's request to extend their unpaid partner leave made under clause 42.9 (b) unless:
- (a) having considered the Employee's circumstances, the Employer is not satisfied that the request is genuinely based on the Employee's parental responsibilities; or
- (b) there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person. These grounds include, but are not limited to:
- (i) cost;
- (ii) lack of adequate replacement staff;
- (iii) loss of efficiency; and
- (iv) impact on the production or delivery of products or services by the Employer.
- 42.12 The Employer is to give the Employee written notice of the Employer's decision on a request to extend their unpaid partner leave. If the Employee's request is refused, the notice is to set out the reasons for the refusal.
- 42.13 An Employee who believes their request to extend unpaid partner leave has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.
- 42.14 Where an Employer agrees to an Employee's request to extend their period of unpaid partner leave under clause 42.9, the Employer must allow an Employee to elect to substitute any part of that period of unpaid partner leave with accrued annual leave, long service leave, time off in lieu of overtime, flexi leave and/or banked hours.
- 42.15 An Employee on unpaid partner leave is not entitled to paid personal leave.

## Notice

- 42.16 (a) The Employee shall give not less than four weeks' notice in writing to the Employer of the date the Employee proposes to commence partner leave, stating the period of leave to be taken.
- (b) An Employee who has given their Employer notice of their intention to take partner leave shall provide the Employer with a medical certificate from a registered medical practitioner naming the Employee, or the Employee's Partner, confirming the pregnancy and the estimated date of birth.

## Effect of Partner Leave on the Contract of Employment

- 42.17 The provisions of clause 39.16 of the maternity leave clause of this Agreement concerning the effect of maternity leave on the contract of employment shall apply to Employees accessing partner leave, with such amendment as necessary.

## Eligible Casual Employees

- 42.18 An eligible casual employee, as defined in clause 39.3 of the maternity leave clause of this Agreement, is only entitled to unpaid partner leave.

## 43. UNPAID GRANDPARENTAL LEAVE

- 43.1 For the purposes of this clause "primary care giver" means the Employee who will assume the principal role for the care and attention of a grandchild.
- 43.2 An Employee is entitled to a period of up to 52 weeks continuous unpaid grandparental leave in respect of the:
- (a) birth of a grandchild of the Employee; or
- (b) adoption of a grandchild of the Employee, being a child who is not the grandchild or grand-stepchild of the Employee, is under the age of five and has not lived continuously with its adoptive parents for six months or longer.

## Primary Care Giver Status

- 43.3 (a) An Employee is only entitled to grandparental leave if they are or will be the primary care giver of a grandchild.
- (b) Determination of primary care giver status shall be made by reference to the provision of care during what would be the Employee's ordinary hours of work had the Employee not been providing care to their grandchild.
- (c) An Employer may require an Employee to provide confirmation of their primary care giver status. Where an Employer requires an Employee to confirm their status as the primary care giver of a grandchild, the Employee is to provide the Employer with evidence that would satisfy a reasonable person of the entitlement to unpaid grandparental leave.

### Commencement, Notice and Variation of Leave

- 43.4 Commencement of unpaid grandparental leave may occur any time within 24 months following the birth or placement of the Employee's grandchild.
- 43.5 (a) The Employee shall give not less than four weeks' notice in writing to the Employer of the date the Employee proposes to commence unpaid grandparental leave, stating the period of leave to be taken.
- (b) The notice period in clause 43.5 (a) may be waived by the Employer in exceptional circumstances.
- 43.6 An Employee may request and an Employer may agree to an Employee taking grandparental leave on a part time basis provided:
- (a) the Employee is their grandchild's primary care giver on those days for which care is provided by the Employee; and
- (b) the Employee's leave concludes no later than 52 weeks after the commencement of the period of grandparental leave.

### Other Entitlements

- 43.7 The following provisions contained in clause 39 – Maternity Leave of this Agreement shall be read in conjunction with this clause, with such amendment as is necessary:
- (a) clause 39.12 – Communication during Maternity Leave;
- (b) clause 39.13 – Replacement Employee;
- (c) clauses 39.15 (a) (ii) and (b) – Return to Work on Conclusion of Maternity Leave; and
- (d) clause 39.16 – Effect of Maternity Leave on the Contract of Employment.
- 43.8 The entitlement to grandparental leave is as prescribed in this clause. Other than as specified in clause 43.7, an Employee has no entitlement to the provisions contained in clause 39 – Maternity Leave of this Agreement with respect to the birth or adoptive placement of their grandchild.

### 44. SUPERANNUATION ON UNPAID PARENTAL LEAVE

- 44.1 In this clause, "unpaid parental leave" means:
- (a) unpaid maternity leave, which includes unpaid maternity leave, unpaid special maternity leave and extended unpaid maternity leave under clause 39;
- (b) unpaid adoption leave under clause 40; and
- (c) unpaid other parent leave under 41 of this Agreement.

44.2 An Employee or eligible casual employee who is entitled to unpaid parental leave is entitled to have superannuation contributions made in respect of the period of unpaid parental leave taken to a maximum of 12 weeks.

44.3 Superannuation contributions made under this clause will be calculated:

- (a) in respect of the period of unpaid maternity leave, unpaid adoption leave or unpaid other parent leave taken or 12 weeks; whichever is lesser;
- (b) based on the amount that would have been paid to the Employee had they taken paid maternity leave, paid adoption leave or paid other parent leave for that period and in accordance with the following:
  - (i) for full time Employees – the ordinary working hours at the time of commencement of parental leave;
  - (ii) for part time Employees – an average of the hours worked by the Employee over the preceding 12 months; or their ordinary working hours at the time of commencement of parental leave, whichever is greater; or
  - (iii) for eligible casual employees – an average of the hours worked by the eligible casual employee over the preceding 12 months;

exclusive of shift and weekend penalties;

44.4 Superannuation contributions will be paid:

- (a) to the Employee's superannuation fund in respect of which superannuation contributions for that Employee are made; and
- (b) at the time that the period of unpaid parental leave in respect of which the contributions are payable concludes.

44.5 Superannuation contributions will be made in accordance with the *State Superannuation Act 2000* and the *State Superannuation Regulations 2001*.

## **PART 7: ALLOWANCES**

### **45. FIRST AID ALLOWANCE**

45.1 For the purposes of this clause the following expressions shall have the following meanings:

- (a) "appointed" means the Employer has formally assigned an Employee, who is suitably qualified in first aid, to the position of first aid officer; and the Employee has agreed to take on the responsibilities of providing first aid in the workplace, as determined by the Employer;
- (b) "deputy first aid officer" means an Employee who has been appointed by the Employer to take on first aid responsibilities in a workplace when the first aid officer is unable to do so;



- (c) "suitably qualified in first aid" means holding a current statement of attainment that satisfies the national training requirement HLTAID003 – Apply First Aid. This includes, but is not limited to, the successful completion of the two Day Senior First Aid - St John Ambulance Association; or the Senior First Aid (Workplace Level 2) – Australian Red Cross Society training courses.
- (d) "workplace" means the direct area in which the Employee has been employed to work in the ordinary course of their employment.

45.2 An Employee who has been appointed by the Employer to be the first aid officer in a workplace shall be paid a first aid allowance in accordance with the following table:

Effective date	13 June 2019	13 June 2020
Rate (per hour)	\$0.31	\$0.31

*The hourly rate is calculated based as 1 per cent of the gross hourly salary of a level 1.4 of the applicable year as per Schedule 2 – General Division Salaries of this Agreement.*

- 45.3 An eligible part time Employee is entitled to this allowance on a pro rata basis.
- 45.4 The first aid allowance shall be paid to either the appointed first aid officer or the deputy first aid officer in a workplace. The deputy first aid officer shall not be paid the first aid allowance for any period in which the allowance is paid to the appointed first aid officer.
- 45.5 A deputy first aid officer is to be paid the first aid allowance where the Employer has agreed to them taking on the first aid responsibilities in a workplace due to the inability of the appointed first aid officer to do so. For example, where the appointed first aid officer is on annual or long service leave, or extended personal leave.

#### 46. HIGHER DUTIES ALLOWANCE

##### Higher Duties Allowance and Leave

- 46.1 This clause replaces clauses 19 (6), (7) and (8) – Higher Duties Allowance of the Applicable Award.
- 46.2 Where an Employee who is in receipt of an allowance granted under clause 19 – Higher Duties Allowance of the Applicable Award and has been doing so for a continuous period of 12 months or more, proceeds on any period of paid leave and:
  - (a) resumes in the office immediately on return from leave, the Employee shall continue to receive the allowance for the period of leave; or
  - (b) does not resume in the office immediately on return from leave, the Employee shall continue to receive the allowance for the period of leave accrued during the period of higher duties.
- 46.3 Where an Employee who is in receipt of an allowance granted under clause 19 – Higher Duties Allowance of the Applicable Award for less than 12 months proceeds on a period of paid leave,

whether in excess of the normal entitlement or not, the Employee shall continue to receive the allowance for the period of normal leave provided that:

- (a) during the Employee's absence, no other Employee acts in the office in which the Employee was acting immediately prior to proceeding on leave; and
- (b) the Employee resumes in the office immediately on return from leave.

46.4 For the purpose of clause 46.3, "normal leave" means the period of paid leave an Employee would accrue in 12 months. It shall also include any public holidays and leave in lieu accrued during the preceding 12 months taken in conjunction with such paid leave.

#### **Part Time Higher Duties Allowance Arrangements**

46.5 This clause shall be read in conjunction with clause 19 – Higher Duties Allowance of the Applicable Award.

46.6 Where a part time Employee acts in a higher office, the allowance shall be payable after the completion of 37.5 hours service in that position. The 37.5 hours service in the higher position must be worked consecutively according to the hours the part time Employee normally works.

46.7 Where the higher office is a part time position, the allowance shall be payable after the completion of 37.5 hours service in that position. The 37.5 hours service in the higher position must be worked consecutively according to the normal working hours of the part time position for which the allowance is being paid.

#### **47. COMMUTED ALLOWANCES**

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

#### **48. DISTRICT ALLOWANCE**

48.1 This clause shall apply to Employees covered by the *District Allowance (Government Officers) General Agreement 2010*.

48.2 Clauses 48.3 to 48.6 of this Agreement replace clauses 9.1.4 and 9.1.5 of the *District Allowance (Government Officers) General Agreement 2010* respectively.

48.3 When an Employee is on approved annual leave, the Employee shall for the period of such leave, be paid the District Allowance to which the Employee would ordinarily be entitled.

48.4 When an Employee is on approved personal leave or bereavement leave, the Employee shall, for the period of such leave, be paid the District Allowance to which the Employee would ordinarily be entitled to a maximum of two weeks unless the Employee, Employee's dependant/s or partial dependant/s remain in the district. Where the Employee, Employee's dependant/s or partial dependant/s remain in the district the District Allowance will continue to be paid.

- 48.5 Notwithstanding clause 48.4, an Employer may approve payment of a District Allowance for an Employee on approved personal leave in excess of two weeks where the Employer considers the payment being justified by the circumstances.
- 48.6 Except as otherwise provided in this clause, when an Employee is on long service leave or other approved leave with pay the Employee shall only be paid District Allowance for the period of such leave if the Employee, dependant/s or partial dependant/s remain in the district in which the Employee's headquarters are situated.
- 48.7 The parties agree that any increase to district allowance rates resulting from negotiations between Government and Public Sector unions, including the Union, for a replacement for the *District Allowance (Government Officers) General Agreement 2010* will be payable as per that replacement District Allowance General Agreement.

## **PART 8: REGIONAL PROVISIONS**

### **49. REMOTE AND ISOLATED LOCATIONS**

- 49.1 For the purpose of this clause remote and isolated locations shall include those facilities established as a result of Government's response and action plan associated with the Gordon inquiry and located at: Kintore, Warburton, Balgo, Kalumburu, Warakuna/Docker River, Bidyadanga, Dampier Peninsula, Warmun and Jigalong, Blackstone, Burringurrah, Oombulgurri and Looma.
- 49.2 Where Employees are posted to work in the above mentioned remote and isolated locations as their headquarters they will receive, in addition to any other benefits they may be entitled to:
- (a) remote community allowance of \$3,500 per annum, paid fortnightly;
  - (b) free housing, electricity and water;
  - (c) four weeks of remote-community leave for each completed year of service. Remote community leave will accrue per year and be taken at the end of the Employees posting to the location, unless otherwise agreed by the Employee and Employer. Absence on remote community leave will count for service for all purposes; and
  - (d) upon completion of tenure at remote and isolated locations, Employees will be given preference to return to a location of their choice, subject to operational requirements.
- 49.3 An Employee, posted to any of the locations listed in clause 49.1 and who is in receipt of an attraction and retention incentive (ARI) pursuant to Approved Procedure 7 – Attraction and Retention Incentives remains entitled to the benefits pursuant to this clause that exceed the entitlements provided for by the ARI.
- 49.4 Where an Employee is posted to work in any of the above mentioned remote and isolated locations as their headquarters and, due to the actions of the Employer, they do not complete a full term of their posting at the location, they will be entitled to receive the remote community leave set out in clauses 49.2 (c) and (d) on a pro-rata basis.

50. REGIONAL TRAINING AND DEVELOPMENT

50.1 The parties are committed to providing effective workforce management practices and opportunities to staff employed in regional areas.

For the purposes of this clause:

- (a) "Training" includes, but is not limited to, the provision of approved, formal instruction by an Agency representative or an external provider to one or more Employees in order to assist them to undertake a particular role or function, or to enhance their personal skills, knowledge and/or abilities.
- (b) "Development" is the opportunity for an Employee to gain on-the-job experience and skills by working in a position other than the Employee's substantive position. Development opportunities include, but are not limited to:
  - (i) performance of duties at a higher classification level (acting);
  - (ii) secondment to another Agency at the Employee's substantive classification level or at a higher classification level; or
  - (iii) temporary deployment within the same Agency at the Employee's substantive classification level but where the duties differ from those of the Employee's substantive position.

50.2 Employers shall:

- (a) Ensure that Regional employees are, as far as reasonably practicable, provided with access to Training and Development opportunities having regard to that Agency's operational requirements and opportunities provided to metropolitan based staff.
- (b) Ensure that Regional employees are offered job related Training opportunities within their local area or by agreement, in another location. The Employer will cover all costs associated with the Training activity.
- (c) Where Employer initiated Development opportunities are provided away from the Employee's home base, cover costs to the extent of the following provisions of the Applicable Award:
  - (i) clause 50 - Relieving Allowance and clause 55 - Weekend Absence from Residence of the *Public Service Award 1992*; or
  - (ii) clause 49 – Relieving Allowance and clause 56 – Weekend Absence from Residence of the *Government Officers, Salaries, Allowances and Conditions Award 1989*.
- (d) Ensure that Registered employees located in regional areas are provided career transitional support, including ongoing professional Development opportunities.

- 50.3 Each Agency that employs people in regional areas in Western Australia will conduct a review into the accessibility to personal Development opportunities including Training and acting opportunities within 12 months of the registration of this Agreement. The findings of these reviews will be provided to the Agency's JCC.

## **PART 9: WORKFORCE MANAGEMENT**

### **51. REDEPLOYMENT AND REDUNDANCY**

- 51.1 The parties acknowledge that the *Public Sector Management Act 1994* (PSMA) and the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* (Regulations) provide the legislative framework for redeployment and redundancy for all Employees covered by this Agreement. If the provisions of this Agreement and the Regulations are inconsistent, the provision of the Regulations shall prevail.
- 51.2 The Employer and prospective Employer will assess the Suitability of a Surplus employee broadly which includes, but is not limited to:
- (a) acknowledging that the Employee's classification level illustrates core competencies for that classification level;
  - (b) providing sufficient weight to the Employee's knowledge, skills and experience; and
  - (c) recognising the transferability of skills to roles where a direct fit may not exist.
- 51.3 The Employer and prospective Employer will seek to place Surplus employees in suitable positions in accordance with clause 51.2.
- 51.4 The Employer will provide Surplus employees with direct access to priority vacancies through the online Recruitment Advertising Management System.
- 51.5 The Employer will provide Surplus employees with case management in line with the Public Sector Commission's Redeployment and Redundancy Guidelines and the Public Sector Commission's Redeployment and Redundancy Guidelines Appendix A – Case Management or any revised arrangement subsequent to the review of the redeployment and redundancy provisions. The Employer will ensure that Surplus employees are provided with an appropriately skilled case manager/s, a skills audit and continual support to find Suitable employment.
- 51.6 Upon notification of registration, the Employer shall provide an Employee who is notified of the Employer's intention to register them under regulation 18 of the Regulations with the written reason/s for the intended registration and the possible employment, placement and training options available to them.
- 51.7 Where the Employer is able to do so consistent with Commissioner's Instruction No. 12 – Redeployment and Redundancy, the Employer may Suspend the Redeployment period of a Registered employee for the duration that the Employee is participating in retraining, a secondment or other employment placement arrangement. Where suspension of the total duration would exceed the allowable duration under Commissioner's Instruction No. 12 – Redeployment and Redundancy, the Employer may Suspend the Redeployment period for the portion allowable.

51.8 The Employer will notify the Union prior to a Registered employee entering the last three months of their Redeployment period.

## 52. WORKING FROM HOME

52.1 Subject to this clause, Employers may consider the introduction of working from home arrangements. The introduction of working from home arrangements does not provide for the Employee's primary place of work to be moved from the Employee's headquarters/work base to the Employee's home.

52.2 Statutory requirements apply to Employees working from home as they do to Employees working at an Employer's workplace. Employers must ensure understanding and compliance of all affected parties with all statutory responsibilities prior to any arrangements being sanctioned.

52.3 Employers are required to undertake a risk assessment of the work activities carried out by Employees to identify and manage hazards. In carrying out any assessment, Employers must look at who and what may be affected by, and the possible effects of, the work being done from home.

52.4 The introduction of working from home arrangements is subject to:

- (a) the Employee's duties are those they would normally undertake at their headquarters/work base;
- (b) the nature of the Employee's work being such that it is suited to working from home arrangements;
- (c) approval of any arrangement being at the discretion of the Employer;
- (d) the Employee's agreement to enter into the working from home arrangements;
- (e) the introduction of working from home arrangements being in accordance with the provisions of the Employer's policy; and
- (f) the Employer's policy and procedures addressing:
  - (i) general obligations of both the Employer and Employees, including such things as insurance, separation of overheads billed to the homeowner and the Employee's ordinary hours of work while working from home;
  - (ii) duty of care responsibilities owed by the Employer and Employee under the *Occupational Safety and Health Act 1984*; and
  - (iii) all additional statutory obligations affecting the Employer/Employee relationship.

**53. WORKLOAD MANAGEMENT**

- 53.1 Employers are committed to providing a safe and healthy work environment and will not require Employees to undertake an unreasonable workload in the ordinary discharge of their duties.
- 53.2 The objective of this clause is to ensure workload allocation is fair, manageable and without risk to health and safety.
- 53.3 Employers shall take reasonable steps to ensure that Employees:
- (a) do not work excessive or unreasonable hours;
  - (b) are able to clear annual leave; and
  - (c) are paid or otherwise recompensed for work as provided for under the Applicable Award and this Agreement.
- 53.4 Employees are required to perform, attain or sustain a standard of work that may be reasonably expected of them.
- 53.5 Relevant indicators of workload will be monitored and recorded by the Employer on an ongoing basis. Indicators may include but are not limited to:
- (a) nature of work;
  - (b) work patterns;
  - (c) hours of work including accrued RDOs, level of credit and banked hours, credit and banked hours lost each settlement period and overtime;
  - (d) levels of accrued annual and long service leave;
  - (e) environment in which work is performed;
  - (f) volume of work;
  - (g) level of performance;
  - (h) turnover;
  - (i) accident rate;
  - (j) workers' compensation claims lodged;
  - (k) personal leave usage;
  - (l) early retirement records;
  - (m) referral rates to Employee assistance program providers and general feedback regarding workload issues, if raised, from counsellors;

- (n) exit information regarding workload, if raised; and
  - (o) summary information on the results of Employee workload surveys if conducted.
- 53.6 Where Employee performance issues are identified these will be managed in accordance with an Agency's performance management policy and should take into account:
- (a) training and development;
  - (b) application of skill and competencies;
  - (c) capacity to perform at a required level;
  - (d) individual accountability; and
  - (e) communication and feedback.
- 53.7 With the exception of identified Employee performance issues, any workload issues, including workload indicators and the associated monitoring and recording of those indicators, shall be dealt with as a function of the JCC.
- 53.8 Any disputes in relation to this clause will be resolved in accordance with clause 61 – Dispute Settlement Procedure of this Agreement.
- 53.9 Where potential workload issues are identified by the Union or the Employer, a review team will be convened within 21 days of a written request from either party. The review team will be made up of representatives nominated by the Employer and the Union.
- 53.10 Once established, the review team will conduct a workload survey of affected Employees covered by this Agreement.
- 53.11 The review team will determine the content and scope of the workload survey based upon relevant criteria stated in clause 53.5.
- 53.12 A workload survey may only be conducted where one has not been completed in the previous 12 months.
- 53.13 The collated results of the survey, together with the report outlining the findings of the review team, will be provided to the parties to the Agreement within two months of the commencement of the survey.
- 53.14 Broader consultation on the workload survey results, and the findings of the review team may be undertaken through the JCC.
- 54. OCCUPATIONAL SAFETY AND HEALTH REPRESENTATIVES RECORDS**
- 54.1 The Employer shall maintain an Occupational Safety and Health (OSH) Representative Register (Register).
- 54.2 The Register is to record the following information for each OSH representative in the Department/Organisation:



- (a) name;
- (b) work branch/division (as appropriate);
- (c) work location;
- (d) job title/occupation;
- (e) date of election as an OSH representative; and
- (f) training details on completion of relevant OSH training courses, including initial and refresher training dates.

54.3 The Employer shall provide a copy of the Register to the Union every six months.

54.4 The Register is to be submitted to PSLR on 31 January each year, for the previous year.

## 55. UNION FACILITIES

### Inductions

55.1 In addition to clause 36 (5) (e) of the Applicable Award, the Employer shall provide the Union with time to discuss the benefits of Union membership with new Employees as part of the Employees' formal induction program. Where the induction is wholly online, the Union will be afforded the opportunity to provide content on the benefits of union membership for inclusion in the online induction program.

### Union meetings

55.2 Subject to reasonable notice being provided to the Employer:

- (a) Employees will be granted paid time off to attend two meetings per calendar year of up to one hours duration at the workplace held by the Union;
- (b) where a meeting exceeds one hour, any absence will be without pay for that part of the meeting which exceeds one hour; and
- (c) to conduct these meetings the Union, upon written request, will be given access to a private facility at the workplace for the duration of each meeting, if such a facility is reasonably available at the workplace.

## PART 10: CONSULTATIVE MECHANISMS AND REVIEWS

### 56. CONSULTATION AND JOINT CONSULTATIVE COMMITTEE

#### Consultation on Proposals for Change

56.1 The provisions of this clause are to be read in conjunction with clause 58 – Notification of Change of the *Public Service Award 1992* and clause 59 – Notification of Change of the *Government Officers Salaries, Allowances and Conditions Award 1989*.

- 56.2 For the purposes of this clause the expressions below have the following meanings:
- (a) "change" means situations where the Employer proposes to make a change or changes likely to affect existing practice/s, working conditions or employment prospects of Employees;
  - (b) "consultation" means a process that involves the timely exchange of relevant information and the opportunity for discussions between the parties on matters relevant to a proposed change. These discussions are to provide the Union and Employees with a genuine opportunity to contribute to the decision making process.
- 56.3 The parties acknowledge that 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.
- 56.4 The parties agree that:
- (a) Consultation must occur prior to the Employer's decision to make a change.
  - (b) The Employer shall, in writing, notify the Union and Employees who may be affected by a proposed change as soon as practicable. To enable genuine consultation to occur, the notification should include, at a minimum, the nature of the proposed change and the effects it is likely to have on Employees.
  - (c) The consultation discussion shall commence as soon as possible after the Employer notifies the Union and affected Employees of the proposed change.
  - (d) The consultation process will be open and transparent, and the following principles will apply:
    - (i) Employers will ensure appropriate mechanisms and communication channels are in place to facilitate consultation;
    - (ii) the Employer and the Union are to provide all reasonable and relevant information except confidential commercial, business or personal information, the release of which may seriously harm a party or individual;
    - (iii) information provided will be clear and with sufficient background information available so that issues are understood;
    - (iv) Employers will assess the impacts of change broadly;
    - (v) throughout the consultation process, the Employer will provide adequate time, resources and support for information to be considered by affected Employees and the Union and for consultation to occur; and
    - (vi) once a change is implemented, the Employer will evaluate and review the change and inform the Union of the review outcomes.

- 56.5 Where the Employer is proposing change that may result in Surplus employees, they must provide information on their overall workforce composition to the Union and the likely affected Employees as soon as possible. This includes, but is not limited to, data on the use of fixed term contract Employees, casual Employees, labour hire employees and contractors including the:
- (i) number of Employees or persons engaged in each category;
  - (ii) position or duties being undertaken by each Employee or person engaged;
  - (iii) reason for the arrangement or employment;
  - (iv) total duration of each arrangement or employment (including successive contracts); and
  - (v) expiry date of contracts (excluding for casual Employees).

#### **Joint Consultative Committee**

- 56.6 The parties recognise the need for effective communication to improve the business/operational performance and working environment in agencies.
- 56.7 The parties confirm their ongoing commitment to the JCC process.
- 56.8 Each Agency will have a JCC, for the purposes of consultation under this Agreement, comprising of the Employer or their nominee, Employer nominated representatives and Union nominated representatives, unless it is otherwise agreed between the Employer and the Union to effect consultation through some other means.
- 56.9 The JCC will convene within 28 days of a written request being received from either party.
- 56.10 The JCC will determine its own operating procedures.
- 56.11 JCCs will be a forum for consultation on issues such as:
- (a) development of workload management tools within the Agency;
  - (b) industrial issues;
  - (c) fixed term contract employment, casual employment and labour hire usage;
  - (d) changes to work organisation and/or work practices occurring in the workplace;
  - (e) Employer implementation of recommendations from Government decisions, policies and initiatives; and
  - (f) Employer implementation of other aspects of this Agreement.
- 56.12 The consultation process shall comply with the parameters set out in clause 56.4.
- 56.13 Matters not resolved through the JCC can be referred to the provisions of clause 61 - Dispute Settlement Procedure of this Agreement.

## 57. PEAK CONSULTATIVE FORUM

- 57.1 The PCF is established for the purposes of consultation on cross-sector matters including the implementation of this Agreement.
- 57.2 The PCF will consist of senior representatives from the Union and Directors General or their nominated representatives from PSLR, PSC, and other agencies as required.

### Targeted Separation Schemes

- 57.3 If a targeted separation scheme affecting Employees is approved in accordance with regulation 16 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*, PSLR will notify the Union as soon as possible and convene a meeting of the PCF as soon as reasonably practicable to discuss the appropriate mechanisms for consultation. This will include addressing:
- (a) any relevant cross sector matters; and
  - (b) agency-level consultation processes.

### Redeployment and Redundancy

- 57.4 The parties shall, during the term of this Agreement, continue the review of existing processes for Public Sector redeployment and redundancy. The review will:
- (a) evaluate, monitor and report on the overall redeployment and redundancy process and strategies within agencies;
  - (b) consider and recommend processes and strategies for best practice;
  - (c) report on and recommend possibilities for cultural change regarding perceptions of, and approach to, Surplus employees; and
  - (d) explore broad themes including, but not limited to:
    - (i) duration of Redeployment period;
    - (ii) case management and skills matching;
    - (iii) Suitability assessments;
    - (iv) circumstances for suspension and revocation;
    - (v) mechanism for involuntary termination; and
    - (vi) role of central agencies.
- 57.5 The parties acknowledge that 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.

## 58. REVIEW OF COMMON USE AGREEMENTS AND CONTRACTS

### Department of Finance Review

- 58.1 Consistent with clause 15 of this Agreement, which confirms the preference for directly employed public sector employees to provide public services, the Department of Finance is to conduct a review of the use of the following Common Use Agreements (CUAs), or any CUA that replaces them, during the 12 months following the registration of this Agreement:
- (a) Audit Services and Financial Advice (CUAAFA2018);
  - (b) GovNext-ICT (CUAGNICT2015);
  - (c) Human Resource (HR) and Investigation Services (CUAHR2015);
  - (d) Temporary Personnel Services (CUATPS2014); and
  - (e) Information and Communications Technology (ICT) Services; [CUAICTS2015].
- 58.2 The review described in clause 58.1 will examine:
- (a) the procurement planning process, including consideration of whether there are non-financial risks and benefits to the State and whether the CUA currently provides value for money;
  - (b) whether the efficacy of each CUA has been regularly assessed, including whether there has been any audit of whether suppliers under the CUA have met their contractual obligations; and
  - (c) whether there is adequate expertise within agencies to provide oversight and evaluation of the contractual arrangement and use of the CUA, including effective records management and data storage to inform future contracts.
- 58.3 A final review report and all relevant information is to be provided to the Union for discussion at the PCF.

### Employer Reviews

- 58.4 Within the life of this Agreement, Employers are to review any contracts to which they are a party falling into either or both of the following categories:
- (a) tendered contracts for services with a term of four years or more, including any extension to the original term; and
  - (b) contracts with a term of 12 months or more for the provision of payroll, human resource management services, internal audit services, financial advice or ICT services, the annual value of which exceeds \$1 million;

to identify opportunities to return the delivery of services to the Employer to be carried out by directly employed Public Sector employees following the expiry of the contract, where it is economically viable to do so.

- 58.5 Employer reviews will include consideration of the matters listed in clause 58.2, but limited to the scope of each individual contract.
- 58.6 Employers are to provide relevant information from the review and the review outcome in relation to the contracts referred to in clause 58.4 to the JCC.
- 58.7 Employers are to notify the Union of the expiry date of any of the following contracts to which they are a party:
- (a) a contract referred to in clause 58.4 (a):
    - (i) if the Employer does not intend to extend the contract before it expires – 18 months before the expiry date; or
    - (ii) in any other case – when the contract is extended; and
  - (b) a contract referred to in clause 58.4 (b) – 6 months before the expiry date.
- 58.8 The requirements of clauses 58.4 – 58.7 do not apply to any contract that an Employer and the Union agree does not involve the delivery of services that are core public sector functions.
- 58.9 A JCC, or any member of that Committee, may refer to the PCF for review any proposal by an Employer to enter into a contract of a kind referred to in clause 58.4 (a) or (b).
- 58.10 The parties acknowledge that decisions will continue to be made by Employers, who are responsible and accountable to Government for the effective and efficient operation of the Agency. Nothing in this clause prevents the Employer from using contracts for service where it is appropriate to do so.

#### **Provision of Relevant Information for Proposed Contracts for Service – Contracting Out**

- 58.11 Consistent with the requirements in clause 56 – Consultation and Joint Consultative Committee, Employers will provide the Union with the business case for, and all relevant information and data pertaining to, any proposed contracting out of any service or function currently performed by classifications of Employees employed by an Employer.

#### **Confidentiality**

- 58.12 Employers are not required to supply any information to the Union, the JCC or the PCF from the reviews under clause 58.4 if doing so would disclose confidential, commercial in confidence, or personal information.

#### **59. REVIEW INTO A DISCOUNTED PUBLIC TRANSPORT SCHEME**

- 59.1 A Public Transport Scheme Working Group (Working Group) will be established as soon as practicable after the registration of this Agreement.
- 59.2 The Working Group will be led by PSLR and will include representatives of the Department of Treasury, the Public Transport Authority (PTA) and the Union. Other Public Sector entities will be consulted as required.

- 59.3 Within 12 months of this Agreement being registered, the Working Group will identify practicable options for a discounted public transport scheme for Employees that can be implemented.
- 59.4 An option is practicable if it can be implemented:
- (a) with no Fringe Benefits Tax implications;
  - (b) with no, or minimal and achievable, change to the existing public transport ticketing system, as determined by the PTA; and
  - (c) otherwise than by way of a subsidy or allowance.
- 59.5 Options identified by the Working Group as practicable will be evaluated according to:
- (a) the overall estimated cost of each option, taking into account costs of implementation and ongoing administration, and any quantifiable environmental, social and economic benefits associated with increased use of public transport; and
  - (b) the financial benefit to individual Employees each option would provide.
- 59.6 A final evaluation report, including recommendations, will be provided by the Working Group to Government for consideration and implementation of appropriate recommendations.
- 59.7 Government recognises that increased use of public transport has environmental, social and economic benefits and seeks to implement a scheme for Employees that provides more affordable access to public transport. Government wishes to consider options that deliver benefits to Employees and attract minimal implementation, ongoing compliance monitoring and other costs.

**60. RESERVED MATTERS/LIBERTY TO APPLY**

- 60.1 Notwithstanding clause 7 – No Further Claims of this Agreement, the parties agree to negotiate the following possible variations to this Agreement during its life:
- (a) variations to clause 56 – Consultation and Joint Consultative Committee of this Agreement; and
  - (b) inclusion of a new provision relating to foster care leave.

60.2 If the parties reach agreement on either matter, an application will be made via section 43 of the *Industrial Relations Act 1979* to vary the Agreement.

60.3 The parties will also consider the possibility of varying the Applicable Awards as those instruments apply to matters of notification of change and consultative mechanisms.

**61. DISPUTE SETTLEMENT PROCEDURE**

61.1 Any questions, difficulties or disputes arising in the course of the employment of Employees covered by this Agreement shall be dealt with in accordance with this clause.

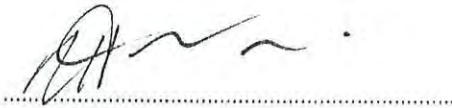
- 61.2 The Employee may be accompanied by a Union representative during all stages of this procedure.
- 61.3 The Employee/s and the manager with whom the dispute has arisen shall discuss the matter and attempt to find a satisfactory solution within three working days.
- 61.4 If the dispute cannot be resolved at this level, the matter shall be referred to, and be discussed with, the relevant manager's superior and an attempt made to find a satisfactory solution within a further three working days.
- 61.5 If the dispute is still not resolved, it may be referred by the Employee/s or Union representative to the Employer or his/her nominee.
- 61.6 Where the dispute cannot be resolved within five working days of the Union representative's referral of the dispute to the Employer or his/her nominee, either party may refer the matter to the WAIRC.
- 61.7 The period for resolving a dispute may be extended by agreement between the parties.
- 61.8 Notwithstanding the operation of clauses 61.3 – 61.6, questions, difficulties or disputes involving multiple employees may be raised by the Union directly with the Employer or the Employer's nominated representative.
- 61.9 If a dispute is raised by the Union via clause 61.8, the parties will make a genuine attempt to reach an agreed solution. If the dispute cannot be resolved, either party may refer the dispute to the WAIRC for conciliation or, where appropriate, arbitration.
- 61.10 Nothing in this clause constitutes a referral agreement within the meaning of section 12 of the *Employment Dispute Resolution Act 2008*.



PART 11: SCHEDULES TO THIS AGREEMENT

SCHEDULE 1: SIGNATURES OF PARTIES

Signed:



Signature

14/10/19

Date

Rikki Hendon  
General Secretary  
The Civil Service Association of Western Australia Incorporated

Signed:



Signature

14th October 2019

Date

Alex Lyon  
Executive Director, Public Sector Labour Relations  
Acting as agent for each Employing Authority listed in Schedule 6 (2) and (3)

SCHEDULE 2: GENERAL DIVISION SALARIES

Level	2018 rate (per annum)	2019 rate (per annum) 13 June 2019	2020 rate (per annum) 13 June 2020
Level 1*			
Under 17 yrs	\$ 25,869	\$ 26,869	\$ 27,869
17 yrs	\$ 30,504	\$ 31,504	\$ 32,504
18 yrs	\$ 35,139	\$ 36,139	\$ 37,139
19 yrs	\$ 39,776	\$ 40,776	\$ 41,776
20 yrs	\$ 44,409	\$ 45,409	\$ 46,409
1.1	\$48,349	\$ 51,930	\$ 52,930
1.2	\$50,930	\$ 54,742	\$ 55,742
1.3	\$52,315	\$ 57,698	\$ 58,698
1.4	\$53,742	\$ 60,376	\$ 61,376
1.5	\$55,136		
1.6	\$56,698		
1.7	\$57,781		
1.8	\$59,376		
Level 2			
2.1	\$ 61,172	\$ 62,172	\$ 63,172
2.2	\$ 62,781	\$ 63,781	\$ 64,781
2.3	\$ 64,482	\$ 65,482	\$ 66,482
2.4	\$ 66,256	\$ 67,256	\$ 68,256
Level 3			
3.1	\$ 69,896	\$ 70,896	\$ 71,896
3.2	\$ 71,781	\$ 72,781	\$ 73,781
3.3	\$ 73,723	\$ 74,723	\$ 75,723
3.4	\$ 75,717	\$ 76,717	\$ 77,717
Level 4			
4.1	\$ 78,452	\$ 79,452	\$ 80,452
4.2	\$ 80,593	\$ 81,593	\$ 82,593
4.3	\$ 82,797	\$ 83,797	\$ 84,797
Level 5			
5.1	\$ 87,047	\$ 88,047	\$ 89,047
5.2	\$ 89,915	\$ 90,915	\$ 91,915
5.3	\$ 92,896	\$ 93,896	\$ 94,896
5.4	\$ 95,994	\$ 96,994	\$ 97,994
Level 6			
6.1	\$ 100,966	\$ 101,966	\$ 102,966
6.2	\$ 104,350	\$ 105,350	\$ 106,350
6.3	\$ 107,853	\$ 108,853	\$ 109,853
6.4	\$ 111,590	\$ 112,590	\$ 113,590

General Division Salaries (continued)

Level 7			
7.1	\$ 117,725	\$ 118,725	\$ 119,725
7.2	\$ 121,701	\$ 122,701	\$ 123,701
7.3	\$ 126,033	\$ 127,033	\$ 128,033
Level 8			
8.1	\$ 133,296	\$ 134,296	\$ 135,296
8.2	\$ 138,348	\$ 139,348	\$ 140,348
8.3	\$ 144,609	\$ 145,609	\$ 146,609
Level 9			
9.1	\$ 152,689	\$ 153,689	\$ 154,689
9.2	\$ 157,981	\$ 158,981	\$ 159,981
9.3	\$ 164,015	\$ 165,015	\$ 166,015
Class 1	\$ 173,438	\$ 174,438	\$ 175,438
Class 2	\$ 182,588	\$ 183,588	\$ 184,588
Class 3	\$ 191,725	\$ 192,725	\$ 193,725
Class 4	\$ 200,869	\$ 201,869	\$ 202,869

\*The following table details the translation of level 1 general division employees to the 2019 increment structure:

2018 Level	New Level at 13 June 2019
1.1	1.1
1.2	
1.3	1.2
1.4	
1.5	1.3
1.6	
1.7	1.4
1.8	

SCHEDULE 3: SPECIFIED CALLING SALARIES

Level	2018 rate (per annum)	2019 rate (per annum) 13 June 2019	2020 rate (per annum) 13 June 2020
Level 1			
1.1	\$ 67,165	\$ 68,165	\$ 69,165
1.2	\$ 70,597	\$ 71,597	\$ 72,597
1.3	\$ 74,405	\$ 75,405	\$ 76,405
1.4	\$ 79,164	\$ 80,164	\$ 81,164
1.5	\$ 86,542	\$ 87,542	\$ 88,542
1.6	\$ 91,345	\$ 92,345	\$ 93,345
Level 2			
2.1	\$ 93,548	\$ 94,548	\$ 95,548
2.2	\$ 96,634	\$ 97,634	\$ 98,634
2.3	\$ 99,845	\$ 100,845	\$ 101,845
2.4	\$ 103,179	\$ 104,179	\$ 105,179
Level 3			
3.1	\$ 108,533	\$ 109,533	\$ 110,533
3.2	\$ 112,176	\$ 113,176	\$ 114,176
3.3	\$ 115,944	\$ 116,944	\$ 117,944
3.4	\$ 119,969	\$ 120,969	\$ 121,969
Level 4			
4.1	\$ 123,885	\$ 124,885	\$ 125,885
4.2	\$ 128,074	\$ 129,074	\$ 130,074
4.3	\$ 132,636	\$ 133,636	\$ 134,636
Level 5			
5.1	\$ 140,046	\$ 141,046	\$ 142,046
5.2	\$ 145,358	\$ 146,358	\$ 147,358
5.3	\$ 151,940	\$ 152,940	\$ 153,940
Level 6			
6.1	\$ 160,164	\$ 161,164	\$ 162,164
6.2	\$ 165,719	\$ 166,719	\$ 167,719
6.3	\$ 172,055	\$ 173,055	\$ 174,055
Level 7	\$ 181,637	\$ 182,637	\$ 183,637
Level 8	\$ 191,220	\$ 192,220	\$ 193,220
Level 9	\$ 200,794	\$ 201,794	\$ 202,794
Level 10	\$ 210,375	\$ 211,375	\$ 212,375

#### SCHEDULE 4: LEGAL GRADE SALARIES

WA Government lawyers within the meaning of the *Legal Profession Act 2008* who are employed within the State Solicitor's Office, the Office of the Director of Public Prosecutions, or the Parliamentary Counsel's Office are entitled to the salaries set out in this Schedule applicable to the level to which each lawyer is appointed.

WA Government lawyers who are not employed in the State Solicitor's Office, the Office of the Director of Public Prosecutions, or the Parliamentary Counsel's Office are entitled to the salaries set out in Schedule 3 – Specified Calling Salaries of this Agreement applicable to the level to which each lawyer is appointed.

Crown Lawyer Specified Callings Descriptor	2018 rate (per annum)	2019 rate (per annum) 13 June 2019	2020 rate (per annum) 13 June 2020
L1LG.1	\$86,542	\$87,542	\$88,542
L1LG.2	\$88,909	\$89,909	\$90,909
L1LG.3	\$91,345	\$92,345	\$93,345
L1LG.4	\$93,548	\$94,548	\$95,548
L1LG.5	\$96,634	\$97,634	\$98,634
L2LG.1	\$93,548	\$94,548	\$95,548
L2LG.2	\$96,634	\$97,634	\$98,634
L2LG.3	\$99,845	\$100,845	\$101,845
L2LG.4	\$103,179	\$104,179	\$105,179
L2LG.5	\$108,533	\$109,533	\$110,533
L2LG.6	\$112,176	\$113,176	\$114,176
L3LG.1	\$123,885	\$124,885	\$125,885
L3LG.2	\$128,074	\$129,074	\$130,074
L3LG.3	\$132,636	\$133,636	\$134,636
L4LG.1	\$140,047	\$141,047	\$142,047
L4LG.2	\$145,358	\$146,358	\$147,358
L4LG.3	\$151,940	\$152,940	\$153,940
L4LG.4	\$160,164	\$161,164	\$162,164
L4LG.5	\$165,719	\$166,719	\$167,719
L5LG.1	\$181,637	\$182,637	\$183,637
L6LG.1	\$200,794	\$201,794	\$202,794
L6LG.2	\$212,679	\$213,679	\$214,679
L6LG.3	\$225,507	\$226,507	\$227,507
L7LG.1	\$237,171	\$238,171	\$239,171

SCHEDULE 5: AGENCY SPECIFIC AGREEMENTS

(1) TAFE colleges

AGENCY	TITLE OF AGREEMENT	ASA NUMBER
North Metropolitan TAFE	Central TAFE Public Service and Government Officers' Agency Specific Agreement 2003	PSAAG 53 of 2002
	Midland College of TAFE Public Service and Government Officers Agency Specific Agreement 2003	PSAAG 52 of 2002
	West Coast College of TAFE Public Service and Government Officers Agency Specific Agreement 2003	PSAAG 59 of 2002
South Metropolitan TAFE	Challenger TAFE Public Service and Government Officers' Agency Specific Agreement 2003	PSAAG 61 of 2002
	South East Metropolitan College of TAFE Public Service and Government Officers Agency Specific Agreement 2003	PSAAG 54 of 2002
Central Regional TAFE	C Y O'Connor College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003	PSAAG 58 of 2002
	Central West College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003	PSAAG 56 of 2002
North Regional TAFE	Kimberley College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003	PSAAG 60 of 2002
	Eastern Pilbara College of TAFE Public Service and Government Officers Agency Specific Agreement 2003	PSAAG 57 of 2002
	West Pilbara College of TAFE Public Service and Government Officers Agency Specific Agreement 2003	PSAAG 50 of 2002
South Regional TAFE	Great Southern TAFE Public Service and Government Officers Agency Specific Agreement 2003	PSAAG 55 of 2002
	South West Regional College of TAFE Public Service and Government Officers Agency Specific Agreement 2003	PSAAG 51 of 2002

## (2) Other agencies

AGENCY	TITLE OF AGREEMENT	ASA NUMBER
Department of Education	Country High Schools Authority Administration Officers Agency Specific Agreement 2007	PSAAG 8 of 2007
Department of Communities	Department for Child Protection Agency Specific Agreement 2016	PSAAG 1 of 2016
Department of Justice	Department of Corrective Services Killara Youth Support (Juvenile Justice Officers) Agency Specific Agreement 2006	PSAAG 2 of 2006
Department of Justice	Department of Corrective Services – Community Work Officers – Agency Specific Agreement 2008	PSAAG 3 of 2008
Department of Primary Industries and Regional Development	Department of Agriculture and Food Agency Specific Agreement 2007	PSAAG 3 of 2007
Department of Finance	Department of Treasury and Finance Agency Specific Agreement 2010	PSAAG 8 of 2010
Department of Primary Industries and Regional Development	Department of Fisheries Agency Specific Agreement 2014	PSAAG 17 of 2014
Department of Fire and Emergency Services	Fire and Emergency Services Authority of WA Agency Specific Agreement 2008	PSAAG 5 of 2008
Department of Mines, Industry Regulation and Safety	Department of Industry and Resources Agency Specific Agreement 2005	PSAAG 16 of 2005
Department of Biodiversity Conservation and Attractions	Department of Environment and Conservation Agency Specific Agreement for Employees Working on Barrow Island 2011	PSAAG 22 of 2011
Department of Biodiversity Conservation and Attractions	Department of Environment and Conservation Agency Specific Agreement 2007	PSAAG 15 of 2007
Department of Planning, Lands and Heritage	Department for Planning and Infrastructure Agency Specific Agreement 2007	PSAAG 18 of 2007
Department of the Premier and Cabinet	State Law Publisher Agency Specific Agreement 2012	PSAAG 2 of 2012
Department of Transport	Department for Planning and Infrastructure Agency Specific Agreement 2007	PSAAG 18 of 2007
Department of Local	Department of Racing, Gaming and Liquor Agency	PSAAG 16 of 2008

AGENCY	TITLE OF AGREEMENT	ASA NUMBER
Government, Sport and Cultural Industries	Specific Agreement 2008	
Department of Communities	Disability Services Commission (Public Servants) Agency Specific Agreement 2006	PSAAG 18 of 2006
Forest Products Commission	Forest Products Commission Agency Specific Agreement 2007	PSAAG 16 of 2007
Government Employees Superannuation Board	Government Employees Superannuation Board (GESB) Agency Specific Agreement 2005	PSAAG 6 of 2005
Landgate	Department of Land Information Agency Specific Agreement 2006	PSAAG 5 of 2006
Legal Aid Commission	Legal Aid Commission Agency Specific Agreement 2005	PSAAG 7 of 2005
Lotterywest	Lotterywest Agency Specific Agreement 2005	PSAAG 10 of 2005
Metropolitan Cemeteries Board	Metropolitan Cemeteries Board Agency Specific Agreement 2007	PSAAG 17 of 2007
Office of the Auditor General	Office of the Auditor General Agency Specific Agreement 2009	PSAAG 8 of 2009
Rottneest Island Authority	Rottneest Island Authority Agency Specific Agreement 2007	PSAAG 6 of 2007
Western Australian Police	Western Australia Police Agency Specific Agreement 2013	PSAAG 1 of 2014



## SCHEDULE 6: PARTIES TO THIS AGREEMENT

(1) Union Party

The Civil Service Association of Western Australia Incorporated

(2) Employer Parties – respondent to the *Public Service Award 1992*

The employing authority, as defined by the *Public Sector Management Act 1994*, of each of the following public authorities, are parties to this Agreement, as well as respondents to the *Public Service Award 1992*:

Chemistry Centre (WA)  
Commissioner for Children and Young People  
Commissioner for Equal Opportunity (Equal Opportunity Commission)  
Department of Biodiversity, Conservation and Attractions  
Department of Communities  
Department of Education  
Department of Finance  
Department of Fire and Emergency Services  
Department of Health  
Department of Jobs, Tourism, Science and Innovation  
Department of Justice  
Department of Local Government, Sport and Cultural Industries  
Department of Mines, Industry Regulation and Safety  
Department of Planning, Lands and Heritage  
Department of Primary Industries and Regional Development  
Department of the Premier and Cabinet  
Department of the Registrar, Western Australian Industrial Relations Commission  
Department of Training and Workforce Development  
Department of Transport  
Department of Treasury  
Department of Water and Environmental Regulation  
Disability Services Commission  
Economic Regulation Authority  
Gascoyne Development Commission  
Goldfields-Esperance Development Commission  
Government Employees Superannuation Board  
Great Southern Development Commission  
Health and Disability Services Complaints Office  
Housing Authority  
Infrastructure WA  
Kimberley Development Commission  
Law Reform Commission of Western Australia  
Mental Health Commission  
Metropolitan Redevelopment Authority  
Mid West Development Commission  
Minerals Research Institute of Western Australia  
Office of the Auditor General  
Office of the Director of Public Prosecutions  
Office of the Inspector of Custodial Services

Peel Development Commission  
Pilbara Development Commission  
Public Sector Commission  
Rottnest Island Authority  
School Curriculum and Standards Authority  
South West Development Commission  
Western Australian Electoral Commission  
Western Australian Health Promotion Foundation (Healthway)  
Western Australian Meat Industry Authority  
Western Australia Police  
Wheatbelt Development Commission  
WorkCover Western Australia Authority

- (3) Employer Parties – respondent to the *Government Officers Salaries, Allowances and Conditions Award 1989*

The employing authority of each of the following are parties to this Agreement, as well as respondents to the *Government Officers Salaries, Allowances and Conditions Award 1989*:

Animal Resources Authority  
Botanic Gardens and Parks Authority  
Building and Construction Industry Training Fund  
Central Regional TAFE  
Construction Industry Long Service Leave Payments Board (MyLeave)  
Department of Biodiversity, Conservation and Attractions  
Department of Communities  
Department of Education  
Department of Jobs, Tourism, Science and Innovation  
Department of Local Government, Sport and Cultural Industries  
Department of Primary Industries and Regional Development  
Department of Training and Workforce Development  
Disability Services Commission  
Forest Products Commission  
Infrastructure WA  
Keep Australia Beautiful Council (W.A.)  
Legal Aid Commission of Western Australia  
Lotteries Commission (LotteryWest)  
Metropolitan Cemeteries Board  
Minerals Research Institute of Western Australia  
North Metropolitan TAFE  
North Metropolitan Health Service (Salaried Officers in the Dental Health Services other than Dentists and Dental Technicians)  
North Regional TAFE  
Office of the Information Commissioner  
Parliamentary Commissioner for Administrative Investigations (Ombudsman Western Australia)  
Perth Theatre Trust  
School Curriculum and Standards Authority  
Small Business Development Corporation  
South Metropolitan TAFE  
South Regional TAFE  
Teacher Registration Board of Western Australia  
The Burswood Park Board  
The Hon. Premier, the Hon. Deputy Premier and all Ministers of the Crown in the right of the State of Western Australia as they be from time to time.  
The National Trust of Australia (W.A.)  
Western Australian Land Information Authority (Landgate)  
Western Australian Sport Centre Trust (VenuesWest)  
Western Australian Tourism Commission (Tourism Western Australia)  
Zoological Parks Authority