

# **PUBLIC HOSPITAL CAREER MEDICAL OFFICERS (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

## **PART A**

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## **PART A**

### **2. Definitions**

"Area Health Service" means an Area Health Service constituted pursuant to section 17 of the *Health Services Act 1997*.

"Hospital" means a public hospital as defined under section 15 of the *Health Services Act 1997*.

"Corporation" means the Health Administration Corporation.

"Association" means the Australian Salaried Medical Officers' Federation (New South Wales) or the Health Services Union.

"Medical Officer" means a person licensed or registered by the Medical Board of New South Wales pursuant to the *Medical Practice Act 1992* employed in a position covered by this Award.

"Career Medical Officer" means a Medical Officer who is employed and/or appointed to a position, not being that of a medical officer in training, in a hospital, who may be required to undertake such duties and at such places as directed within such hospital.

"Authority" means the Public Employment Office established under Chapter 6 of the *Public Employment and Management Act 2002*.

"Officer" means a Career Medical Officer employed on a full-time or permanent part-time basis at a hospital, area health service or health facility.

### **3. Salaries**

#### **Part A –**

Salaries for Career Medical Officers shall be as set out in the Health Professional and Medical Salaries (State) Award.

Career Medical Officers with less than five years postgraduate experience shall be appointed to Grade 1.

Career Medical Officers with five years postgraduate experience or more shall be appointed to Grade 2.

Progression within Grades 1 and 2 shall occur on the anniversary of appointment. Provided that nothing in this clause precludes the Employer, at the Employer's sole discretion, from:

- (i) initially appointing a Career Medical Officer to a higher step within the relevant grade; or
- (ii) accelerating a Career Medical Officer through the steps within the relevant grade irrespective of length of service.

A Career Medical Officer employed as at 26 May 2005 shall be translated to either Grade 1 or Grade 2 in accordance with the criteria immediately above. The step within the grade will reflect his/her years of experience as a Career Medical Officer since appointment or since achieving five years postgraduate experience, as appropriate.

Provided that Career Medical Officers who at 20 April 2005 were Grade 2 or Grade 3 Career Medical Officers and who, subsequent to obtaining full registration, possessed seven years full-time experience (or seven years part-time experience with equivalent outside experience acceptable to the employer) in the New South Wales public health system will be translated to the Transitional Grade, provided that the rate payable on the Transitional Grade shall not be less than the rate payable under the translation provisions immediately above . The step within the Transitional Grade will be determined as follows:

Transitional Grade 1: Career Medical Officers currently on Grade 2 or Grade 3, Year 1

Transitional Grade 2: Career Medical Officers currently on Grade 3, Year 2

Transitional Grade 3: Career Medical Officers currently on Grade 3, Year 3

Progression within the Transitional Grade shall be in accordance with the provisions of this Award.

A Career Medical Officer appointed to the Transitional Grade shall be entitled to apply to be appointed to the Senior Career Medical Officer grade in accordance with the provisions of this Award. Provided that a Career Medical Officer who has been employed on the top step of the Transitional Grade for at least twelve months and who is appointed as a Senior Career Medical Officer shall be entitled to progress to the second step of the Senior Career Medical Officer grade after six months.

These translation arrangements will not change the anniversary date. Provided that a Career Medical Officer shall be paid less than the salary rate paid as at 26 May 2005 (as amended by the salary increase effective 1 July 2004).

A grading committee consisting of two nominees of the Health Administration Corporation and two representatives of the Association(s) shall be constituted to consider and make recommendations to the employer in relation to appointment to the Senior Career Medical Officer grade. The committee shall meet to consider an application for progression to this grade by a Career Medical Officer within twenty-eight days of an application being submitted to the employer.

The grading committee shall not recommend appointment to the Senior Career Medical Officer grade unless the individual:

- (i) has at least seven years post graduate experience; and
- (ii) has a demonstrated capacity to perform clinical duties and responsibilities at a senior level with minimal clinical supervision in one or more areas of medical speciality; and
- (iii) is to perform clinical duties and responsibilities at a senior level with minimal clinical supervision in one or more areas of medical speciality as required by the employer.

If a grading committee does not recommend progression by a Career Medical Officer to Senior Career Medical Officer then the committee must provide written reasons to why progression was not recommended, which should provide guidance in respect of any future applications. Such written reasons must be provided to the Career Medical Officer within twenty-one days of the date of the meeting held to consider the application for regrading.

A Career Medical Officer shall not make more than one application for progression to Senior Career Medical Officer in any 12 month period.

A Senior Career Medical Officer will progress to the second step of the Senior Career Medical Officer grade on the anniversary of his or her commencement on that grade.

Individual Career Medical Officers employed as at 26 May 2005 in receipt of a salary higher than that of Senior Registrar as set out in the Health Professional and Medical Salaries (State) Award may reach written agreement with their employer that overtime payment will be calculated on the salary ascribed to Senior Registrar, as varied from time to time. Any such agreement will require further written agreement on an annual basis.

**Part B -**

- (a) For the purpose of calculation of payments to officers pursuant to the provisions of this Award, one hour's pay shall be calculated in accordance with the following formula:

$$\frac{\text{Annual Salary}}{52.17857} \times \frac{1}{38}$$

and one day's pay shall be calculated by multiplying "one hour's pay" (as calculated in accordance with the above formula) by 7.6.

- (b) Officers shall be eligible to progress to the next higher step in the scale on the anniversary of the date on which they were appointed.

**Part C - Permanent Part-Time Career Medical Officers**

- (i) A permanent part-time employee is one who is permanently appointed to work a specified number of hours which are less than those prescribed for a full-time employee.
- (ii) Employees engaged under Part C of this clause shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed by Part A, with a minimum payment of two hours for each start and one thirty-eighth of the appropriate allowances prescribed by Clause 15, Uniform and Laundry Allowances, if applicable but shall not be entitled to an additional day off or part thereof as prescribed by Clause 6, Hours of Work.
- (iii) Employees engaged under Part C of this clause shall be entitled to all other benefits of this award not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.
- (iv) Employees engaged under Part C of this clause are entitled to contribute to the appropriate superannuation scheme subject to the requirements of relevant legislation.
- (v) A permanent part-time employee will progress to the next incremental step every 12 months from the date of commencement of employment, provided the work performed by the employee outside the scope of the part-time agreement is commensurate with the experience of a full-time employee and is acceptable to the Employer. This subclause does not preclude accelerated progression.

**4. Salary increases and work value**

The Corporation and the Associations agree that during the term of this Award the rates payable to Career Medical Officers will be increased by the same percentage increases (including retrospective adjustments) as may apply from time to time to the classification of Medical Officer under the Health Professional and Medical Salaries (State) Award.

The Corporation and the Associations acknowledge that all work value increases for the period up to 1 July 2004 are recognised by this Award, and shall not form the basis of any future claims.

## 5. In-Charge Allowance

An allowance as set out in Item 1 of Table 1 - Allowances shall be paid to officers for each twelve hours of duty or part thereof of continuous in-charge duty for responsibility for after hours medical services. This allowance shall be varied in accordance with increases in salary rates under this Award.

## 6. Hours of Work

- (i) The ordinary hours of work shall not exceed an average of 38 hours per week. This shall be achieved by rostering officers for duty over either forty hours in any period of seven consecutive days or eighty hours in any period of fourteen consecutive days and, in addition, then granting officers roster leave additional to that prescribed in subclause (ii) of this clause to the extent of one additional day per calendar month. Such additional roster leave may accumulate to a maximum of twelve days and shall be granted in multiples of one day for periods ranging from one day to two weeks. Upon termination of employment an officer shall be paid the monetary value of any untaken additional roster leave, calculated at the officer's ordinary time rate of pay as prescribed by Clause 3, Salaries.
- (ii) Officers shall be free from ordinary hours of duty for not less than two days in each week or where this is not practicable, four days in each fortnight. Where practicable, days off shall be consecutive and where possible additional rostered days off shall be combined with other rostered time off.
- (iii) No shift shall be less than eight hours in length on a weekday or less than four hours in length on a Saturday, Sunday or public holiday.
- (iv) No broken or split shifts shall be worked.
- (v) All time worked in excess of ten hours in any one shift shall be paid as overtime.
- (vi) Where in any pay period, an officer is not employed by a hospital for the whole of the pay period, the ordinary hours of work for the purpose of calculating salary for that pay period (i.e., 38 or 76 hours) will be adjusted by the following factor, rounded to the nearest whole number -

$$\frac{\text{Number of calendar days employed}}{\text{Number of calendar days in pay period}}$$

- (vii) Officers shall be given at least two weeks' notice of rosters to be worked in relation to ordinary hours of work and also where practicable, in relation to additional (overtime) rostered hours of work, provided that a hospital may change the rosters without notice to meet any emergent situation. This subclause shall not apply in respect of the granting by hospitals of additional roster leave pursuant to this clause.
- (viii) In the interests of patient care and the health and welfare of medical staff, officers shall have a break from duty for the purpose of taking a meal. There shall be a uniform meal break of 30 minutes except where locally agreed arrangements for a longer period are made (which shall not exceed one hour).
- (ix) If officers are required to work during their meal breaks they shall be paid for the time worked. Unless the employee is permitted to finish duty early on the same shift then overtime becomes payable once the total ordinary work time of the shift has elapsed.

- (x) Medical administrators are to establish simple and effective procedures in consultation with officers to record when staff are required to work through their meal breaks and to ensure that payment is made.

## **7. Penalty Rates**

Any ordinary hours worked between the following hours shall be paid at ordinary time plus the appropriate penalty rate:

- (i) Hours worked between 6.00 pm and midnight, Monday to Friday – 12.5%.
- (ii) Midnight and 8.00 am, midnight Sunday to midnight Friday – 25%.
- (iii) Midnight Friday and midnight Saturday – 50%.
- (iv) Midnight Saturday and midnight Sunday – 75%.

## **8. Time Worked**

Time worked means the time during which an officer is required by a hospital to be in attendance at a hospital for the purpose of carrying out such functions as the hospital may call on him/her to perform, and it shall include times when the officer, in waiting to carry out some active functions, is studying or resting or sleeping or engaged in any other activity.

Provided that time worked does not include uninterrupted breaks allowed and actually taken for meals.

Provided further that where an officer attends of his/her own volition outside of hours rostered on duty, or where an officer remains in attendance when formally released from the obligation to perform professional duties, the hospital shall not be liable to make any payment for such attendance.

## **9. Overtime**

- (i) All time worked by officers in excess of the ordinary hours specified in clause 6, Hours of Work, shall be paid at the rate of time and one half for the first two hours, and double time for the remaining hours worked, provided that all overtime performed on a Sunday shall be at double time.
- (ii) All time worked by employees employed pursuant to Part C, Permanent Part-Time Career Medical Officers, of clause 3, Salaries, in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift shall be paid at the appropriate overtime rate prescribed herein. Time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on the shift concerned shall not be regarded as overtime but an extension of the contract hours for that day and shall be paid at the ordinary rate of pay.
- (iii) An officer who works authorised overtime and was not notified on or prior to his/her previous shift of the requirement to work such overtime shall be paid in addition to payment for such overtime the meal allowance set out in Department of Health Information Bulletin 2004/6, as amended from time to time:
  - (a) for breakfast when commencing such overtime work at or before 6.00 am;

- (b) for an evening meal when such overtime is worked for at least one hour immediately following his/her normal ceasing time, exclusive of any meal break and extends beyond or is worked wholly after 7.00 pm;
- (c) for luncheon when such overtime extends beyond 2.00 pm on Saturdays, Sundays or holidays;

or shall be provided with adequate meals in lieu of such payments.

- (iv) Provided however that an officer employed in a community health facility shall be granted time in lieu of overtime payments. Such time in lieu shall be taken within three months of accrual and at ordinary time. If such accrued time in lieu is unable to be taken within the three month period, it is to be paid out at the end of the three month period in accordance with subclause (i) above at the current rates of pay then applying.

### **10. On-Call and Call-Back**

- (i) An "on-call period" is a period during which an officer is required by the employer to be on-call. No employee shall be required to remain on call while on leave.
- (ii) For the purposes of calculation of payment of on-call allowances and for call-back duty, an on-call period shall not exceed 24 hours.
- (iii) An officer shall be paid for each on-call period which coincides with a day rostered on duty an allowance as set out in Item 2 of Table 1 – Allowances and for each on-call period coinciding with a rostered day off an allowance as set in the said Item 2 with a maximum payment as set out in the said Item 2 per week. These allowances shall be varied in accordance with increases in salary rates under this Award.
- (iv) An officer who is called back for duty shall be paid for all time worked at the appropriate overtime rate, with a minimum of four hours at such rates. If an officer is called back on more than one occasion during the call back period for which he or she is paid, the officer will not be entitled to further payment until the expiration of the four hour payment period.
- (v) The amounts specified in subclause (iii) shall be taken to include expenses incurred in taking telephone calls at one's own residence and other expenses incurred being available for emergency duty.

### **11. Annual Leave**

- (i) All officers shall be allowed four calendar weeks leave of absence on full pay in respect of each twelve months service as defined in this Award plus one day on full pay in respect of each public holiday occurring within the period of such leave.
- (ii) Officers who are required to work on Sundays and/or public holidays during a qualifying period of employment for annual leave purposes shall be entitled to receive additional annual leave in respect of each complete period of eight hours so worked as follows:
  - (a) if 35 or more such periods on such days have been worked - one week;
  - (b) if less than 35 such periods on such days have been worked - leave proportionately calculated on the basis of 38 hours leave for 35 such periods worked;

- (c) work performed by reason of call-backs pursuant to clause 9, Overtime, shall be disregarded when assessing an officer's entitlement under this subclause.
  - (d) The calculations referred to in paragraphs (a) and (b) of this sub-clause shall be made to the nearest one-fifth of the ordinary hours worked, half or more than half of one-fifth being regarded as one-fifth and less than half being disregarded.
- (iii) Annual leave shall be given and shall be taken within a period of six months after the date when the right to annual leave accrued; provided that the giving and taking of the whole or any separate period of such annual leave may, by mutual agreement between the employer and the officer, be postponed for a further period not exceeding six months.
  - (iv) If the officer and the employer so agree, the annual leave or any such separate periods may be taken wholly or partly in advance before the officer has become entitled to that leave, but where leave is taken in such circumstances a further period of annual leave shall not commence to accrue until the expiration of the twelve months in respect of which the annual leave or part thereof has been so taken.
  - (v) Except as provided by this clause, payment shall not be made to an officer in lieu of any annual leave or part thereof nor shall any such payment be accepted by the officer.
  - (vi) The officer shall be given at least two months notice of the date from which his/her annual leave is to be taken.
  - (vii) Each officer shall be paid before entering upon annual leave his/her ordinary rate of salary for the period of leave.
  - (viii) Where the employment of an officer is terminated, the officer shall be entitled to receive proportionate payment for each completed month of service, together with such additional annual leave entitlements due under sub clause (ii). All payments are to be made at the rate of salary to which such officer is entitled under this Award.
  - (ix) Where the annual leave under this clause or any part thereof has been taken in advance by an officer pursuant to sub clause (iv), of this clause; and
    - (a) the employment of the officer is terminated before he/she has completed the year of employment in respect of which such annual leave or part thereof was taken; and
    - (b) the sum paid to the officer as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay to the officer under sub clause (viii) of this clause, the employer shall not be liable to make any payment to the officer under the said sub clause (viii); and shall be entitled to deduct the amount of such excess from any remuneration payable to the officer upon the termination of the employment.
  - (x) Any annual leave which had accrued to an officer employed immediately prior to the operative date of this Award under the provisions then in force and who continues in employment under this Award shall remain to his/her credit and such leave may be allowed as provided in this clause in addition to any other leave which has accrued to an officer under the provisions of this clause.

(NOTATION: The conditions under which the annual leave loading shall be paid to officers are the same as generally applied through circulars issued by the Corporation).

## **12. Public Holidays**

- (i) Public Holidays shall be allowed to officers on full pay.
- (ii) Where an officer is required to and does work on any of the public holidays, as set out in this clause, the officer shall have one day added to the period of his/her annual leave for each public holiday so worked unless time off in respect of time worked on any such public holiday has already been granted to the officer. The provisions of this sub clause shall also apply to officers where a public holiday falls on a rostered day off.
- (iii) For the purpose of this clause, the following shall be deemed to be public holidays: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, or in lieu of any such day any holiday proclaimed in lieu thereof, together with any other day duly proclaimed as a special day and observed as a public holiday within the area in which the hospital in which the officer is employed is situated.
- (iv) All hours worked on public holidays shall be paid at the rate of time and one half.

## **13. Sick Leave**

- (i) An officer shall be allowed sick leave on full pay calculated by allowing 76 rostered ordinary hours of work for each year of continuous service less any sick leave on full pay already taken subject to the following conditions:
  - (a) The employer may require the sickness to be certified to by the medical superintendent or by a legally qualified medical practitioner, approved by the hospital, or may require other satisfactory evidence thereof. This requirement shall be dispensed with where the absence does not exceed two consecutive days.
  - (b) An officer shall not be entitled to sick leave until the expiration of three months' continuous service.
  - (c) Each officer shall take all reasonably practicable steps to inform the employer of his or her inability to attend for duty and as far as possible state the estimated duration of the absence. Where practicable such notice shall be given within twenty-four hours of the commencement of such absence.
  - (d) An officer shall not be entitled to sick leave on full pay for any period in respect of which such officer is entitled to workers' compensation; provided, however, an employer shall pay to an officer who has sick leave entitlements under this clause, the difference between the amount received as workers' compensation and full pay, if the employee elects such payment. The officer's sick leave entitlements under this clause shall, for each week during which such difference is paid, be reduced by that proportion of hours which the difference paid bears to full pay. On the expiration of available sick leave, weekly compensation payments only shall be payable.
  - (e) An officer not eligible for sick leave during periods when he/she would have normally been rostered on overtime shifts.
- (ii) Continuous service for the purpose of this clause shall be calculated in the same manner as provided for in paragraph (a) of subclause (ii) of Clause 19, Long Service Leave.

- (iii) Full pay for the purpose of this clause shall include the uniform allowance where payable under clause 15, Uniform and Laundry Allowance.
- (iv) Sick leave as defined shall accrue and be transferable between hospitals, at the rate of 76 rostered ordinary hours of work per year of continuous service, minus leave taken.
- (v) Any sick leave which had accrued to an officer employed immediately prior to the operative date of this Award, under the provisions then in force and who continues in employment under this Award shall remain to his/her credit and such leave may be allowed as provided in this clause in addition to any other leave which has accrued to an officer under the provisions of this clause.
- (vi) Subject to the provision of a satisfactory medical certificate and sick leave being due, annual or long service leave shall be re-credited where an illness of at least a week's duration occurs during the period of annual or long service leave, provided that the period of leave does not occur prior to retirement, resignation or termination of service.

#### **14. Family and Community Services Leave and Personal/Carer's Leave**

- (i) Family and Community Services (FACS) Leave and Personal/Carer's Leave are separate, stand alone entitlements.
- (ii) The provisions outlined in Parts A and B of this clause are available to all employees covered by this Award, other than casual employees as defined in subclause (iii) below.
- (iii) Casual employees as defined in the Health Industry Status of Employment (State) Award are entitled to the provisions outlined in Part C of this clause.

#### **A. FACS Leave**

##### **(i) FACS Leave - General**

- (a) For the purpose of this clause relating to FACS leave:

“relative” means a person related by blood, marriage or affinity;

“affinity” means a relationship that one spouse because of marriage has to blood relatives of the other; and

“household” means a family group living in the same domestic dwelling.

- (b) The appropriate Chief Executive or authorised delegate may grant FACS leave to an employee:
  - (1) to provide care and/or support for sick members of the employee's relatives or household; or
  - (2) for reasons related to the family responsibilities of the employee (e.g. to arrange and or attend a funeral of a relative; to accompany a relative to a medical appointment where there is an element of emergency; parent/teacher meetings; education week activities; to meet elder-care requirements of a relative); or
  - (3) for reasons related to the performance of community service by the employee (e.g. in matters relating to citizenship; to office holders in local government, other than as a mayor, for attendance at meetings, conferences or other associated duties; representing

Australia or the State in major amateur sport other than in Olympic/Commonwealth Games); or

- (4) in a case of pressing necessity (e.g. where an employee is unable to attend work because of adverse weather conditions which either prevent attendance or threaten life or property; the illness of a relative; where a child carer is unable to look after their charge).

(ii) FACS leave replaces compassionate leave.

(iii) An employee is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the Chief Executive or authorised delegate approves the grant of leave in the particular case.

Applications for FACS leave to attend court, for reasons other than criminal charges, will be assessed on an individual basis.

(iv) FACS Leave – entitlement

(a) The maximum amount of FACS leave on full pay that may be granted to an employee is:

- (1) 3 working days during the first year of service, commencing on and from 1 January 1995, and thereafter 6 working days in any period of 2 years; or
- (2) 1 working day, on a cumulative basis effective from 1 January 1995, for each year of service after 2 years' continuous service, minus any period of FACS leave already taken by the employee since 1 January 1995,

whichever method provides the greater entitlement.

(b) For the purposes of calculating entitlements under (vi)(a)(1) and (2) above, a working day for employees working 38 hours per week shall be deemed to consist of 8 hours, and a working day for employees working 35 hours per week shall be deemed to consist of 7 hours. The rate at which FACS leave is paid out and utilised shall be on actual hours absent from a rostered shift.

Example A: An employee working 38 hours per week will have an entitlement, in their first year of employment, to 24 hours of FACS leave. If the employee take FACS leave for a full 10 hour shift, the employee would be debited 10 hours of FACS leave.

Example B: An employee working 35 hours per week will have an entitlement, in their first year of employment, to 21 hours of FACS leave. If the employee takes FACS leave for a full 7 hour shift, the employee would be debited 7 hours of FACS leave.

Example C: An employee, employed prior to 1 January 1995, applies for FACS leave on 20 February 1997. The employee is entitled to 6 days in any period of two years. Therefore, to calculate the employee's available FACS leave as at 20 February 1997, add all FACS leave taken from 21 February 1995 to 20 February 1997 and deduct that amount from the 6 days entitlement.

(c) FACS leave is available to part-time employees on a pro rata basis, based on the average number of hours worked per week. A working day shall consist of one-fifth of the employee's average weekly hours during the preceding 12 months or during the employee's period of employment, whichever is the lesser period.

Example: An employee working an average of 30 hours per week will have an entitlement, in his/her first year of employment, of 18 hours of FACS leave. If the employee takes FACS leave for a full rostered shift eg of 4 hours, the employee would be debited 4 hours of FACS leave. Likewise, if the employee was rostered for 8 hours and was absent for the full 8 hours on FACS leave, he/she would be debited 8 hours of FACS leave.

(v) Additional FACS leave for bereavement purposes

Where FACS leave has been exhausted, additional FACS leave of up to 2 days for bereavement may be granted on a discrete, “per occasion” basis to an employee on the death of a relative or member of a household as defined in subclause (i) (a) of Part A of this clause.

(vi) Use of other leave entitlements

The appropriate Chief Executive or authorised delegate may grant an employee other leave entitlements for reasons related to family responsibilities or community service, by the employee.

An employee may elect, with the consent of the employer, to take annual leave; long service leave; or leave without pay.

**B. Personal/Carer’s Leave**

(i) Use of sick leave to care for the person concerned – definitions

A person who needs the employee’s care and support is referred to as the “person concerned” and is:

- (a) a spouse of the employee; or
- (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (e) a relative of the employee who is a member of the same household, where for the purpose of this clause relating to Personal/Carer’s Leave:

“relative” means a person related by blood, marriage or affinity;

“affinity” means a relationship that one spouse because of marriage has to blood relatives of the other; and

“household” means a family group living in the same domestic dwelling.

(ii) Use of sick leave to care for the person concerned – entitlement

- (a) The entitlement to use sick leave in accordance with this subclause is subject to:

- (1) the employee being responsible for the care and support of the person concerned; and
  - (2) the person concerned being as defined in subclause (i) of Part B of this clause.
- (b) Other than a casual or any other employee who receives a loading in lieu of sick leave, an employee with responsibilities in relation to a person who needs their care and support shall be entitled to use the untaken sick leave, from that year's annual sick leave entitlement, to provide care and support for such persons when they are ill.
  - (c) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (b) above, sick leave untaken from the previous 3 years may also be accessed by an employee with responsibilities in relation to a person who needs their care and support.
  - (d) The Chief Executive or authorised delegate may, in special circumstances, make a grant of additional sick leave. This grant can only be taken from sick leave untaken prior to the period referred to in subclause (c) above.
  - (e) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, that the illness of the person concerned is such as to require care by another person.
  - (f) The employee has the right to choose the method by which the ground for leave is established, that is, by production of either a medical certificate or statutory declaration.
  - (g) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
  - (h) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
  - (i) In normal circumstances, the employee must not take leave under this part where another person has taken leave to care for the same person.

(iii) Use of other leave entitlements

An employee may elect, with the consent of the employer, to take:

- (a) annual leave, including annual leave not exceeding 10 days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties. An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken. An employee may elect with the employer's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
- (b) long service leave; or
- (c) leave without pay for the purpose of providing care and support to the person concerned as defined in subclause (i) of Part B of this clause.

- (iv) Time off in lieu of payment of overtime
  - (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment of overtime at a time or times agreed with the employer within 12 months of the said election
  - (b) Overtime taken as time off during ordinary time shall be taken at the ordinary time rate, that is, one hour off for each hour of overtime worked.
  - (c) If, having elected to take time as leave in accordance with (iv)(a) above and the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the twelve 12 month period from the date the overtime was worked, or earlier by agreement, or on termination.
  - (d) Where no election is made in accordance with paragraph (iv)(a) above, the employee shall be paid overtime rates in accordance with the provisions of clause 9, Overtime.
- (v) Use of make-up time
  - (a) An employee may elect, with the consent of the employer, to work “make-up time”. “Make-up time” is worked when the employee takes time off during ordinary hours for family or community service responsibilities, and works those hours at another time, during the spread of ordinary hours provided for in clause 6 of this Award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the employer, to work “make-up time” (under which the employee takes time off during ordinary hours and works those hours at another time) at the applicable shift work rate which would have been applicable to the hours taken off.

**C Entitlements for Casual Employees**

- (i) Bereavement entitlements for casual employees
  - (a) Casual employees are entitled to not be available to attend work or to leave work upon the death in Australia of a relative or member of a household as prescribed in subclause (i)(a) of Part A of this clause.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (ie 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 employee accessed the entitlements provided for in this part. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (ii) Personal carers entitlement for casual employees
  - (a) Subject to the evidentiary and notice requirements in subclauses (ii)(e) – (h) of Part B of this clause casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause (i) of Part B of this clause 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 employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (ie 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 employee accessed the entitlements provided for in this part. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

### **15. Uniform and Laundry Allowances**

- (i) Sufficient suitable and serviceable uniforms shall be provided for each officer required to wear a uniform and such uniforms shall be laundered at the expense of the hospital.
- (ii) Where a hospital requires a uniform to be worn but does not provide such uniform, the following allowances shall be paid:
  - (a) where a full uniform, including special shoes, is required, an amount per week as set in Item 3 of Table 1 - Allowances;
  - (b) in other cases, an amount as also set in Item 3 of Table 1.

### **16. Continuing Medical Education**

- (i) After 12 months employment, a Career Medical Officer shall be entitled to 7 days of paid leave per annum for the purposes of Continuing Medical Education and professional development. This entitlement can accrue to a maximum of 21 days. The value of such leave is not payable on termination.
- (ii) The approval of the employer is required for such leave, which must not interfere with the maintenance of essential services and patient care. Approval shall not be unreasonably withheld.
- (iii) The Continuing Medical Education or professional development activities undertaken during such paid leave must be relevant to the position occupied by the officer.
- (iv) Expenses associated with such leave are to be reimbursed by the employer, provided that no expenses or allowances shall be payable in respect of travel or accommodation outside Australia, except in respect of courses run under the auspices of a recognised Australasian Specialist College in New Zealand. The provisions of the NSW Health Official Travel Circular shall apply to any travel under this clause.
- (v) Expenses shall be reimbursed where the approved Continuing Medical Education or professional development activity falls on days that would not otherwise be working days.

### **17. Settlement of Disputes**

- (i) Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and the supervising staff, it shall be referred to the chief executive officer of the hospital or establishment or his/her nominee, who will arrange for the matter to be discussed with the employees concerned and a local representative or representatives of the Association.
- (ii) Failing settlement of the issue at this level, the matter shall be referred to the Health Administration Corporation and the Head Office of the Association(s). The dispute will then be dealt with pursuant to subclause (v) of this clause.

- (iii) While these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied. Unless agreed otherwise by the parties the status quo before the emergence of the issue must continue while these procedures are being followed. For this purpose "status quo" means the work procedures and practice in place:
  - (a) immediately before the issue arose; or,
  - (b) immediately before any change to those procedures or practices, which caused the issue to arise, was made.
- (iv) The Association(s) reserve(s) the right to vary this procedure where it is considered a safety factor is involved.
- (v) With a view to an amicable and speedy settlement, all disputes that firstly cannot be settled in accordance with subclauses (i) and (ii) of this clause may be submitted to a committee consisting of not more than six members with equal representatives of the Corporation and the Association(s). Such committee shall have the power to investigate all matters in dispute and to report to the Chief Executive Officer and the Association(s) respectively with such recommendation as it may think right and in the event of no mutual decision being arrived at by such committee, the matter in dispute may be referred to the industrial committee.
- (vi) This clause shall not interfere with the rights of either party to institute proceedings for the determination of any matter in accordance with the *Industrial Relations Act 1996*.

#### **18. Travelling Allowances**

- (i) An officer seconded to another hospital may be granted a daily travel allowance at the rate of the difference between the cost of travel by public transport to his/her normal place of employment and travel by public transport to the seconding hospital. Provided that where an officer drives his/her own vehicle, he/she shall, in lieu, be eligible for an allowance equivalent to the transport allowance rate payable to members of the New South Wales Public Service as determined by the Authority from time to time, for the difference between the distance to his/her normal place of employment and the distance to the seconding hospital.
- (ii) An officer who, with the approval of the chief executive officer, uses on official business, a motor vehicle maintained primarily for other than official business, shall be paid the abovementioned allowance from time to time effective. However, where it is estimated that an officer will, with the approval of the chief executive officer, be required to use his/her private vehicle on official business on at least 50 days during any period of 12 months and during that period aggregate at least 805 kilometres of official running, he/she shall be paid at the official business rate prescribed by the Regulation of the Authority at the rate in force from time to time throughout the year.
- (iii) For the purpose of sub-clause (ii) travel on official business:
  - (a) occurs when an officer is required by the chief executive officer as part of his/her duty to use his/her motor vehicle to attend away from his/her normal place of employment or seconding hospital to another clinic, annexe or hospital. Where an officer travels on official business direct from his/her place of residence to a clinic, annexe or hospital, other than his/her normal place of employment he/she shall be paid for the difference between the distance to his/her normal place of employment or seconding hospital and that other annexe, clinic or hospital;
  - (b) does not include "call backs";

- (iv) Nothing in this clause shall make the employer liable for the cost of the officer's daily travel to his/her usual and normal place of employment.

**NOTATION: -**

- (i) For conditions relating to secondments see relevant Departmental circulars.
- (ii) Travelling compensation applies to staff required to work at centres other than their headquarters.

**19. Long Service Leave**

- (i) (a) Each employee shall be entitled to two months long service leave on full pay after ten years of service; thereafter additional long service shall accrue on the basis of five months long service leave on full pay for each ten years service.

Employees with at least seven years service and less than 10 years service are entitled, proportionate to his or her length of service, to proceed on a proportionate period of long service leave on the basis of two months' long service leave for ten years' service on full pay.

- (b) Where the services of an employee with at least five years service and less than seven years service are terminated by the employer for any reason other than the employee's serious and wilful misconduct, or by the employee, on account of illness, incapacity or domestic or other pressing necessity, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service.

Where the services of an employee with at least seven years are terminated by the employer or by the employee, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service. Where the services of an employee with at least 10 years service are terminated by the employer or by the employee, he/she shall be entitled to be paid on the basis of two months' long service leave for ten years' service and thereafter on the basis of five months long service leave for each ten years service.

- (ii) For the purposes of subclause (i) of this clause:
  - (a) service shall mean continuous service in one or more hospitals. For the purpose of this paragraph, continuous service shall have the same meaning as in the *Transferred Officers' Extended Leave Act, 1961*.
  - (b) Broken periods of service in one or more hospitals shall count as service subject to the following:
    - (1) where an officer after ceasing employment in a hospital is re-employed in a hospital subsequent to the 1st July 1974, any service of that officer before he/she was so re-employed shall not be counted for the purpose of determining any long service leave due to that officer in respect of his/her service after he/she was so re-employed.
    - (2) where an officer, after ceasing employment in a hospital is re-employed in a hospital subsequent to the 1st July 1974, any service of that officer before he/she was so re-employed shall not be counted for the purpose of determining any long service leave due to that officer in respect of his/her service after he/she was so re-employed unless he/she has completed at least five years' continuous service from the date of his/her being so re-employed.

- (c) Service shall not include -
  - (1) any period of leave without pay except in the case of employees who have completed at least ten years service (any period of absence without pay being excluded there from) in which case service shall include any period of leave without pay not exceeding six months taken after 1 July, 1974;
  - (2) any period of part-time service, except permanent part-time service.
- (iii) An employee with an entitlement to long service leave may elect to access such entitlement:
  - (a) on full pay;
  - (b) on half pay; or
  - (c) on double pay.
- (iv) When an employee takes long service leave, the leave entitlement will be deducted on the following basis:
  - (a) a period of leave on full pay - the number of days so taken;
  - (b) a period of leave on half pay - half the number of days so taken; or
  - (c) a period of leave on double pay - twice the number of days so taken.
- (v) When taking long service leave and an employee would otherwise have had a rostered shift fall on a public holiday during that period, the amount of long service leave to be deducted is to be reduced by one day for the public holiday.
- (vi) Long Service Leave shall be taken at a time mutually arranged between the employer and the employee.
- (vii) (a) On the termination of employment of an employee, otherwise than by his/her death, an employer shall pay to the employee the monetary value of all long service leave accrued and not taken at the date of such termination and such monetary value shall be determined according to the salary payable to the employee at the date of such termination provided that where an employee is transferring from one hospital to another he/she may, if he/she so desires and by agreement with his/her present employer and his/her proposed employer, be allowed to retain his/her credit to long service leave in lieu of payment of the monetary value under this subclause.
  - (b) Where an employee who has acquired a right to long service leave, or after having had five years service and less than ten years service dies, the widow or the widower of such employee, or if there is no such widow or widower, the children of such employee, or if there is no such widow, widower, or children, such person who, in the opinion of the employer, was at the time of the death of such employee, a dependent relative of such employee, shall be entitled to receive the monetary value of the leave not taken or which would have accrued to such employee, had his/her services terminated as referred to in paragraph (b) of subclause (i) of this clause and such monetary value shall be determined according to the salary payable to the employee at the time of his/her death.

Where there is a guardian of any children entitled under this paragraph the payment, to which such children are entitled, may be made to such guardian for their maintenance, education and advancement.

Where there is no person entitled under this paragraph to receive the monetary value of any leave payable under the foregoing provisions payment in respect thereof shall be made to the legal personal representative of such employee.

- (viii) Rights to long service leave under this clause shall be in replacement of rights to long service leave, if any, which at the 1st July 1974, may have accrued or may be accruing to an officer and shall apply only to persons in the employ of the employer on or after the 1st July 1974. Where an officer has been granted long service leave or has been paid its monetary value prior to the 1st July 1974, the employer shall be entitled to debit such leave against any leave to which the officer may be entitled pursuant to this clause.

## **20. Maternity, Adoption and Parental Leave**

### **A Maternity Leave**

- (i) Eligibility for Paid Maternity Leave

To be eligible for paid maternity leave a full time or permanent part-time employee must have completed at least 40 weeks continuous service prior to the expected date of birth.

An employee who has once met the conditions for paid maternity leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid maternity leave, unless-

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after her services have been otherwise dispensed with: or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act*.

- (ii) Portability of Service for Paid Maternity Leave

Portability of service for paid maternity leave involves the recognition of service in public sector organisations for the purpose of determining an employee's eligibility to receive paid maternity leave. For example, where an employee moves between a Public Sector Department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid maternity leave.

When determining an employee's eligibility for paid maternity leave, continuous service with an organisation that is part of the public sector service as defined in the Public Sector Employment and Management Act 2002 will be recognised, provided that:

- (a) service was on a full-time or permanent part-time basis;
- (b) cessation of service with the former employer was not by reason of dismissal on any ground, except retrenchment or reduction of work;
- (c) the employee commences duty with the new employer on the next working day after ceasing employment with the former employer (there may be a break in service of up to two months before commencing duty with the new employer provided that the new position was secured before ceasing duty with the former employer. However, such a

break in service will not be counted as service for the purpose of calculating any prior service prerequisite for paid maternity leave.)

(iii) Entitlement to Paid Maternity Leave

An eligible employee is entitled to fourteen weeks at the ordinary rate of pay from the date maternity leave commences. This leave may commence up to fourteen weeks prior to the expected date of birth.

It is not compulsory for an employee to take this period off work. However, if an employee decides to work during the nine weeks prior to the date of birth it is subject to the employee being able to satisfactorily perform the full range of normal duties.

Paid maternity leave may be paid:

- on a normal fortnightly basis; or
- in advance in a lump sum; or
- at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of maternity leave on half pay to enable an employee to remain on full pay for that period.

(iv) Unpaid Maternity Leave

- (a) Full time and permanent part time employees who are entitled to paid maternity leave are entitled to a further period of unpaid maternity leave of not more than 12 months after the actual date of birth.
- (b) Full time and permanent part time employees who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.

(v) Applications

An employee who intends to proceed on maternity leave should formally notify her employer of such intention as early as possible, so that arrangements associated with her absence can be made.

Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.

(vi) Variation after Commencement of Leave

After commencing maternity leave, an employee may vary the period of her maternity leave once only without the consent of her employer by giving the employer notice in writing of the extended period at least fourteen days' before the start of the extended period. An employer may accept less notice if convenient.

An employee may extend the period of maternity leave at any time with the agreement of the employer.

The conditions relating to variation of maternity leave are derived from Section 64 of the *Industrial Relations Act 1996*.

(vii) Staffing Provisions

In accordance with obligations established by the *Industrial Relations Act 1996* (Section 69) any person who occupies the position of an employee on maternity leave must be informed that the employee has the right to return to her former position. Additionally, since an employee has the right to vary the period of her maternity leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should be also set down clearly; to a fixed date or until the employee elects to return to duty, whichever occurs first.

(viii) Effect of Maternity Leave on Accrual of Leave, Increments etc.

When the employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual leave, sick leave and long service leave and any period of maternity leave on half pay is taken into account to the extent of one half thereof when determining the accrual of annual leave, sick leave and long service leave.

Except in the case of employees who have completed ten years' service the period of maternity leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years' service the period of maternity leave without pay shall count as service provided such leave does not exceed six months.

Maternity leave without pay does not count as service for incremental purposes. Periods of maternity leave at full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.

Where public holidays occur during the period of paid maternity leave, payment is at the rate of maternity leave received i.e., public holidays occurring in a period of full pay maternity leave are paid at full rate and those occurring during a period of half pay leave are paid at half rate.

(ix) Illness Associated with Pregnancy

If, because of an illness associated with her pregnancy an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.

Where an employee is entitled to paid maternity leave, but because of illness, is on sick, annual, long service leave, or sick leave without pay prior to the birth, such leave ceases nine weeks prior to the expected date of birth. The employee then commences maternity leave with the normal provisions applying.

(x) Transfer to a More Suitable Position

Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. This obligation arises from Section 70 of the *Industrial Relations Act 1996*. A position to which an employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.

(xi) Miscarriages

In the event of a miscarriage any absence from work is to be covered by the current sick leave

provisions

(xii) Stillbirth

In the case of a stillbirth, (as classified by the Registry of Births, Deaths and Marriages) an employee may elect to take sick leave, subject to production of a medical certificate, or maternity leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.

(xiii) Effect of Premature Birth on Payment of Maternity Leave

An employee who gives birth prematurely and prior to proceeding on maternity leave shall be treated as being on maternity leave from the date leave is commenced to have the child. Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

(xiv) Right to Return to Previous Position

In accordance with the obligations set out in Section 66 of the *Industrial Relations Act 1996*, an employee returning from maternity leave has the right to resume her former position.

Where this position no longer exists the employee is entitled to be placed in a position nearest in status and salary to that of her former position and to which the employee is capable or qualified.

(xv) Further Pregnancy While on Maternity Leave

Where an employee becomes pregnant whilst on maternity leave a further period of maternity leave shall be granted. If an employee enters on the second period of maternity leave during the currency of the initial period of maternity leave, then any residual maternity leave from the initial entitlement ceases

An employee who commences a subsequent period of maternity leave while on unpaid maternity leave under subclause (iv)(a) of Part A of this clause or subclause (i)(b) of Part D of this clause is entitled to be paid at their normal rate (ie the rate at which they were paid before proceeding on maternity leave).

An employee who commences a subsequent period of maternity leave during the first 12 months of a return to duty on a part time basis as provided under subclause (i)(c) of Part D of this clause is entitled to be paid at their substantive full time rate for the subsequent period of maternity leave..

An employee who commences a subsequent period of maternity leave more than 12 months after returning to duty on a part time basis under subclause (i)(c) of Part D of this clause, will be entitled to paid maternity leave for the subsequent period of maternity leave at their part time rate.

**B Adoption Leave**

(i) Eligibility

All full time and permanent part time employees who are adopting a child and are to be the primary care giver of the child are eligible for unpaid adoption leave.

To be eligible for paid adoption leave a full time or permanent part-time employee must also have completed at least 40 weeks continuous service prior to the date of taking custody of the child.

An employee who has once met the conditions of paid adoption leave, will not be required to again work the 40 weeks continuous service in order to qualify for further periods of paid adoption leave, unless

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with; or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the Worker's Compensation Act.

(ii) Portability of Service for Paid Adoption Leave

As per maternity leave conditions.

(iii) Entitlement

(a) Paid Adoption Leave

Eligible employees are entitled to paid adoption leave of fourteen weeks at the ordinary rate of pay from and including the date of taking custody of the child.

Paid adoption leave may be paid:-

- on a normal fortnightly basis; or
- in advance in a lump sum; or
- at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of adoption leave at half pay to enable an employee to remain on full pay for that period.

(b) Unpaid Adoption Leave

Eligible employees are entitled to unpaid adoption leave as follows: -

- where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;
- where the child is over the age of 12 months and under 18 years old - a period of up to 12 months, such period to be agreed upon by both the employee and the employer.

(iv) Applications

Due to the fact that an employee may be given little notice of the date of taking custody of a child, employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify the employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.

(v) Variation after Commencement of Leave

After commencing adoption leave, an employee may vary the period of leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.

(vi) **Staffing Provisions**

As per maternity leave conditions.

(vii) **Effect of Adoption Leave on Accrual of Leave, Increments, etc**

As per maternity leave conditions.

(viii) **Right to return to Previous Position**

As per maternity leave conditions.

**C Parental Leave**

(i) **Eligibility**

To be eligible for parental leave a full time or permanent part-time employee must have completed at least 40 weeks continuous service prior to the expected date of birth or to the date of taking custody of the child.

An employee who has once met the conditions for paid parental leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid parental leave, unless-

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with: or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987*.

(ii) **Portability of Service for Paid Parental Leave**

As per maternity leave conditions.

(iii) **Entitlements**

Eligible employees whose spouse or partner (including a same sex partner) is pregnant or is taking custody of a child, are entitled to a period of leave not exceeding 52 weeks, which includes one week of paid leave, and may be taken as follows:

- (a) an unbroken period of up to one week at the time of the birth of the child, taking custody of the child or other termination of the pregnancy (short parental leave), and
- (b) a further unbroken period in order to be the primary caregiver of the child (extended parental leave).

- (c) The entitlement of one week's paid leave may be taken at anytime within the 52 week period and shall be paid:
  - at the employees ordinary rate of pay for a period not exceeding one week on full pay, or
  - two weeks at half pay or the period of parental leave taken, whichever is the lesser period.
- (d) Extended parental leave cannot be taken at the same time as the employee's spouse or partner is on maternity or adoption leave except as provided for in subclause (i)(a) of Part D Right to Request of this clause.

Annual and/or long service leave credits can be combined with periods of parental leave on half pay to enable an employee to remain on full pay for that period.

(iv) Applications

An employee who intends to proceed on parental leave should formally notify their employer of such intention as early as possible, so that arrangements associated with their absence can be made.

- (a) In the case of extended parental leave, the employee should give written notice of the intention to take the leave.
- (b) The employee must, at least four weeks before proceeding on leave, give written notice of the dates on which they propose to start and end the period of leave, although it is recognised in situations of taking custody of a child, little or no notice may be provided to the employee. In such an instance, the employee should notify the employer as early as practicable.
- (c) The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that their spouse or partner is pregnant and the expected date of birth, or in the case of an adoption, an official form or notification on taking custody of the child.
- (d) In the case of extended parental leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
  - (1) if applicable, the period of any maternity leave sought or taken by his spouse, and
  - (2) that they are seeking the period of extended parental leave to become the primary care giver of the child.

(v) Variation after Commencement of Leave -

After commencing parental leave, an employee may vary the period of her/his parental leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.

(vi) Effect of Parental Leave on Accrual of Leave, Increments etc.

As per maternity leave conditions.

(vii) **Right to Return to Previous Position**

As per maternity leave conditions.

**D Right to Request**

(i) An employee entitled to maternity, adoption or parental leave may request the employer to allow the employee:

- (a) to extend the period of simultaneous maternity, adoption or parental leave use up to a maximum of eight weeks;
- (b) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
- (c) to return from a period of maternity, adoption or parental leave on a part time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

(ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(iii) The employee's request and the employer's decision made under subclauses (i)(b) and (c) must be recorded in writing.

(iv) Where an employee wishes to make a request under subclause (i)(c):

- (a) the employee is to make an application for leave without pay to reduce their full time weekly hours of work
- (b) such application must be made as early as possible to enable the employer to make suitable staffing arrangements. At least four weeks notice must be given;
- (c) salary and other conditions of employment are to be adjusted on a basis proportionate to the employee's full time hours of work ie for long service leave the period of service is to be converted to the full time equivalent and credited accordingly.
- (d) employees who return from leave under this arrangement remain full time employees. Therefore the payment of any part time allowance to such employees does not arise.

**E Communication During Leave**

(i) Where an employee is on maternity, adoption or parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing the leave; and

- (b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing the leave.
- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of the leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part time basis.
- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with subclause (i).

NOTE:

- (a) The entitlement to Maternity, Adoption and Parental leave for part-time employees who receive an adjusted hourly rate (as defined in clause 6, Part 2, in this award), along with casual employees, are in accordance with the provisions of Part 4, Parental Leave of the *Industrial Relations Act 1996* and/or Corporation Determination.
- (b) Where a casual employee is entitled to parental leave under the Industrial Relations Act 1996, the following provisions shall also apply in addition to those set out in the Act.

An employer must not fail to re-engage a casual employee because:

- the employee or employee's spouse is pregnant; or
- the employee is or has been immediately absent on parental leave.

The rights of the employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (c) Part time employees who receive an adjusted hourly rate are also entitled to the provisions of Part D Right to Request and Part E Communication During Leave of this clause.
- (d) Liability for Superannuation Contributions

During a period of unpaid maternity, adoption or parental leave, the employee will not be required to meet the employer's superannuation liability.

## **21. Trade Union Leave**

- (i) Eligibility

Applies to members of the Association(s) accredited by the Association(s) as delegates.

- (ii) Paid Special Leave

Paid special leave is available for attendance at:

- (a) annual or bi-annual conferences of the delegate's union; and
- (b) meetings of the union's executive/committee of management;
- (c) authorised union delegate meetings;

- (d) annual conference of the Labor Council of NSW;
- (e) bi-annual conference of the Australian Council of Trade Unions.

(iii) Limits

There is no limit on the special leave that could be applied for or granted.

(iii) Responsibilities of the Union Delegate

Responsibilities of the union delegate are:

- (a) to establish accreditation as a delegate with the union;
- (b) to provide sufficient notice of absence to the employer; and,
- (c) to lodge a formal application for special leave.

(v) Responsibilities of the relevant Association

Responsibilities of the relevant Association are:

- (a) to provide documentary evidence to the employer about an accredited delegate in sufficient time to enable the employer to make arrangements for performance of duties;
- (b) to meet all travelling, accommodation and any other costs incurred by the accredited delegate; and,
- (c) to provide the employer with confirmation of attendance of attendance of the accredited delegate.

(vi) Responsibilities of the Employer

Responsibilities of the employer are:

- (a) to release the accredited delegate for the duration of the conference or meeting;
- (b) to grant special leave (with pay); and,
- (c) to ensure that the duties of the absent delegate are performed in his/her absence, if appropriate.

(vii) Period of Notice

Generally, dates of conferences or meetings are known well in advance and it is expected that employers would be notified as soon as accreditation has been given to a delegate or at least two weeks before the date of attendance.

Where extraordinary meetings are called at short notice, a shorter period of notice would be acceptable, provided such notice is given to the employer as soon as advice of the meeting is received by the accredited delegate.

(viii) Travel Time

Where a delegate has to travel to Sydney, inter or intra state, to attend a conference or meeting, special leave will also apply to reasonable travelling time to and from the venue of the conference or meeting.

No compensation, such as time off in lieu, is to be provided if travel can be and is taken on an accredited delegate's non-working day or before or after their normal hours of work.

(ix) Payment of Allowances

No allowances will be claimable in cases of special leave granted for attendance at union conferences or executive meetings covered by this Clause – see also subclause (v) above.

## 22. Labour Flexibility

- (i) An employer may direct an employee to carry out such duties as are reasonable, and within the limits of the employee's skill, competence and training consistent with employee's classification, grouping and/or career stream provided that such duties are not designed to promote deskilling.
- (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained or has otherwise acquired the necessary skills in the use of such tools and equipment.
- (iii) Any direction issued by an employer pursuant to sub-clause (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy work environment.
- (iv) Existing provisions with respect to the payment of mixed functions/higher duties allowances shall apply in such circumstances. In no circumstances shall an employee's salary be reduced by the application of this clause.

## 23. Anti-Discrimination

- (i) It is the intention of the parties bound by this award to seek to achieve the object in section 3 (f) of the *Industrial Relations Act* 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfillment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act* 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;

- (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
- (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

**NOTES –**

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

“Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion:

**24. Redundancy – Managing Displaced Employees**

Employees shall be entitled to the provisions of Health Department Policy Directive PD2005\_517 ‘Displaced Employees – Managing’, as amended from time to time.

**25. Area, Incidence and Duration**

- (i) This Award rescinds and replaces the Public Hospital Career Medical Officers (State) Award published 12 August 2005 (353 IG 1) and all variations thereof.
- (ii) This Award shall apply to persons employed in classifications contained herein employed in or in connection with the New South Wales Health Service as defined in section 16 of the Health Services Act 1997, or their successors, assignees or transmittes.
- (iii) This Award takes effect from 1 December 2005, and shall remain in force until 30 June 2008.

**PART B**

**Table 1 – Allowances**

<b>Item No.</b>	<b>Clause No.</b>	<b>Description</b>	<b>Rate From 1.7.2005 \$</b>	<b>Rate From 1.7.2006 \$</b>	<b>Rate From 1.7.2007 \$</b>
1	5	In Charge Allowance	23.90	24.90	25.90
2	10(iii)	On-call Allowance per on-call period which coincides with a day rostered on duty	26.00	27.00	28.10
		On-call allowance per on-call period which coincides with a rostered day off	52.00	54.10	56.30
		per week	182.00	189.30	196.90
4	15(ii)(a)	Uniform and Laundry Allowance			
		- Full uniform including special shoes if required (p/week)	2.30	2.30	2.30
		- Other cases (p/week)	1.70	1.70	1.70