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INDUSTRIAL GAZETTE

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MULTISERV PTY LTD NSW INDUSTRIAL RELATIONS AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by The Australian Workers' Union, New South Wales, Industrial Organisation of Employees.

(No. IRC 907 of 2006)

Before Mr Deputy President Grayson

27 February 2006

AWARD**Arrangement**

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1. Introduction

1.1 Title

This award shall be known as the MultiServ Pty Ltd NSW Industrial Relations Award.

1.2 Purpose

The purpose of this award is to regulate the conditions of employment and to describe the enterprise agreements which will exist between MultiServ Proprietary Limited ("the Company") and the AWU/TWU New South Wales ("the Union") at its operations located within the BlueScope Steel Port Kembla Steelworks, Port Kembla.

This award shall apply to employees of MultiServ Proprietary Limited at Port Kembla in the classifications contained herein.

MultiServ Pty Ltd, a specialised Metallurgical Services Company, consistently strives to perfect its cost-competitive materials handling solutions to its customers. This is achieved through professional and skilled Employees who ensure a safe and rewarding workplace in order to maximise growth and profits.

It will be the objective of the parties to create a work environment at the MultiServ operations which will encourage and support a highly skilled, committed and fully flexible workforce, based on team work and employee development as priorities in achieving the success of the business and a positive direction for the future. Changes needed to achieve best business practice and client satisfaction will be discussed and negotiated by consultation with employees.

1.3 Duress

This Award has not been entered into under duress from any parties associated with it.

1.4 Commencement And Term Of The Award

The Award shall come into force from 27 February 2006, and shall apply for a period of two (2) years from that date. There shall be an automatic extension of the term for one (1) more year, unless either

party expresses its written desire to terminate the agreement at the end of two (2) years within three (3) months of the termination. The parties agree that negotiations on a new Award will be initiated within six (6) months of the termination of this Award.

The Award shall rescind and replace the terms and conditions of employment regulated by all other and previous Awards and Agreements.

This award rescinds and replaces the New South Wales MetServ Pty Limited Industrial Relations Award published 29 August 2003 (341 I.G. 230).

2. Employment Conditions

2.1 Contract Of Employment

- (i) Employment shall be on a weekly basis
- (ii) Permanent employment of new employees shall be for a probationary period of thirteen weeks service. Should it be decided that the performance is unsatisfactory, then following discussions with a union representative, the employment of the probationary employee may be terminated on completion of the thirteen week trial. Management will always have the right to terminate an employee for serious breach of rules or policies in consultation with the relevant Team.
- (iii) Subject to Company Disciplinary Procedures, Section 6, employment shall be terminated by a weeks notice on either side, given at any time during the week, or by the payment or forfeiture of a week's wages, as the case may be. Where an employee has been given notice by the Company, he shall, upon request, be granted leave or absence without pay for one day or shift during the period of notice in order to look for alternative employment.
- (iv) Any employee taking unauthorised absence from duty shall not be paid for the actual time of such non-attendance and may be subject to further disciplinary action.
- (v) The obligations of the Company and employees to customers and their employees must be respected by ensuring actions of the company or employees do not adversely affect customers.

2.2 Employment Selection

New Employees

Job applicants will be interviewed by a panel consisting of the designated Area Manager and Shift Team Leader where the vacancy exists. The interview and selection process will follow strict Job Specific Criteria Guidelines to ensure the most suitable candidate is selected for the position. The Selection Panel will make recommendations to the Site General Manager for the appointment of the selected candidate. The Site General Manager must authorise this appointment before the position can be declared as filled. All issues from General Manager against selection will be advised. Probation review criteria will apply. On the job appraisals will involve all parties.

Internal Vacancy

Job applicants will be interviewed by a panel consisting of the designated Area Manager and Shift Team Leader where the vacancy exists. The interview and selection process will follow strict Job Specification and selection guidelines to ensure the most suitable candidate is identified for the position. The Shift Team will be advised of all job applicants, however the selection panel will make recommendations of their preferred applicant based on the selection criteria and needs of the business. The majority of Shift Team members must agree on an applicant before the position can be declared as filled.

It is the policy of the Company to ensure that no person is engaged for any task for which they are not suited. This is to be achieved by the following Pre-Employment Selection Process:

- (a) Definition of the tasks to be performed and the requisite skill requirements;
- (b) Pre-selection of prospective applicants to be interviewed following their completion of the MultiServ Application form;
- (c) Interviewing and selection of applicants will follow the External Recruitment process as defined in Company Procedures;
- (d) Checking of Employment Application for any previous injuries and references with previous employer(s);
- (e) Pre-employment medical examination in accordance with the Company Policy to include a D & A test to BSL requirements
- (f) Pre-employment aptitude and skill tests as required by the Company.
- (g) Pre-employment and interview process to physically confirm reference checks.
- (h) The team personnel selection process is described in Company policies.

2.3 Letter Of Appointment

- (a) Prior to joining the Company, each successful applicant will receive a letter "Offer of Employment" as per Appendix 1 setting out the Conditions of Employment.
- (b) Upon agreement of the conditions and requirements of employment, indicated by signature of the applicant on the Offer of Employment and return to the Company, and on completion of a satisfactory Medical Examination and satisfactory references the prospective candidate will be appointed.

2.4 Team Leader Selection

Team Leaders are to be selected by the Teams from employees who have attained or who have demonstrated the ability to attain Level E. The Team's choice will be confirmed by Site Management following consultation with the Team if there are any issues to be discussed.

The selection of Team Leaders capable to represent the Company when dealing with BlueScope Steel and other parties and to control Team activities to maintain an efficient workplace, is vital the Company's success.

There will be no more than one Team Leader and one Team Leader relief per shift group.

If a Team wishes to deselect a Team leader the case for de-selection will be put to the General Manager for approval or otherwise. Such approval shall not be reasonably withheld. If the Team is of the majority opinion that that approval has been unreasonable withheld, the Team may appeal the decision assisted by the Union.

2.5 Part Time Employment

Part time employees may be engaged to the needs of the business on an ongoing basis for a period of between 15 hours per week but less than 38 hours per week. Part-time employees will be eligible for the entitlements provided in this Award on a pro rata basis. If work practices are to be substantially changed due to this practice, there shall be consultation between parties.

2.6 Casual/Fixed Term Employees

Selection Criteria & Process (refer Clause 2.2 Employment Section)

- (i) Casual employees may be employed from time to time to satisfy fluctuating short-term requirements in manpower and are those employees expressly engaged as such and for whom the contract of hiring shall be deemed to be hiring by the hour. Casual employees may also be hired for fixed terms to be clearly stated in the Offer of Employment. If work practices are to be substantially changed due to this practice, there will be consultation between the parties.
- (ii) For working ordinary time, a casual employee shall be paid per hour 1/38th of the appropriate weekly wage prescribed for the work which they perform plus a 20% loading. The 20% loading incorporates Sick Leave, Annual Leave, Rostered Days Off (RDO) and all other forms of Leave, and Public Holiday allowances.

There shall be a minimum engagement of eight hours for a casual employee. The following terms and benefits will not apply to a casual employee: Termination, Sick Leave and Superannuation. Casual workers will be paid the Superannuation Guarantee Levy as required by law.

- (iii) A fixed term employee means an employee engaged and paid as a full time employee on a weekly basis for a defined period of employment as defined in Appendix 1. The employee should also sign an offer of employment (Fixed Term).
- (iv) At the time of engagement a fixed term employee will be notified in writing that the engagement is on a casual basis.
- (v) No term employee may be engaged for more than two consecutive terms which can be a maximum period of three months and nine months respectively. If work continues for which the term employee was engaged after the two terms then the employee will be engaged permanently. No other term or casual employee may be engaged to continue with such similar work.
- (vi) During any terms of employment casual and term employees will be subject to regular performance appraisals and may be terminated due to poor or unacceptable performance.

2.7 Un-apprenticed Junior Labour

Un-apprenticed junior labour may be employed where permitted by law at work suitable for juniors or work experience according to age. In cases where a junior is capable of performing and does work which ordinarily is regarded as suitable for persons under the age of 21 years, they shall be paid the adult rate while so engaged.

No junior under the age of 18 years will be required to work overtime unless they are willing to do so. Every un-apprenticed junior shall give at least a fortnight's notice of his/her change of age.

2.8 Payment Of Wages

- (i) All employees will be paid by means of Electronic Funds Transfer into a nominated Bank or Credit Union account.
- (ii) Funds shall be deposited weekly into employees' accounts by Thursday of each week except in circumstances beyond the Company's control.
- (iii) Prior to or on the nominated pay day, each employee will be provided with written advice detailing hours worked, all monies earned and all deductions taken on behalf of the employee and any other information as may be considered relevant.
- (iv) Out-of-Shift scheduled work and pay adjustments will be made within the following week of notification and approval.

2.9 Clothing Issue

The Company recognises the need to supply employees with a suitable uniform to meet the safety standards of the workplace and Government Legislation. The guidelines for the type and issue of clothing will be determined by the OH&S Committee and the Company.

Administration personnel will be entitled to two clothing issues per annum, one in winter, the other in summer.

2.10 Requirement To Work In Accordance With The Needs Of The Enterprise

For the purpose of meeting the needs of the enterprise, the employer may require an employee to work a reasonable amount of overtime, including work on Sundays and holidays at the rate prescribed by this award and unless reasonable excuse exists, the employees shall work in accordance with such requirement.

2.11 Security Of Employment

- (i) The Company Policy is to encourage employees to continue working unless the employee suffers from disablement.

At the time of retirement, the following conditions are to apply :

Payment of Superannuation Benefits accrued.

Payment of accrued Long Service Leave.

Payment of any accrued Leave entitlements.

Payment of all accrued Sick Leave.

- (ii) It is proposed that through the limited use of casuals, significant fluctuations in numbers of permanent employees will be limited during the life of this Award.
- (iii) Security of employment is important for improving working relationships, trust and cooperation with change. An environment where everyone is working in fear of losing their employment is not desirable. An environment where people focus on doing their jobs safely and well, implementing improvement actions, adapting swiftly to change and caring for the business is preferred. Real employment security will only be achieved by successful business performance. Working together in implementing change and improvement, will maximise the security for everyone.
- (iv) The Company does not presently foresee any forced retrenchments during the life of this Award. However, should retrenchments become necessary then an employee will receive:
- (a) Four weeks pay plus 10 weeks additional compensation, as defined in Clause 4.1, Rates of Pay.
- (b) 2.5 week's pay, as defined in 4.1 Rates of Pay, for each year of continuous service.
- (c) This scheme has a maximum of 52 weeks pay.
- (d) In addition the employee will receive all accrued sick leave.
- (e) In addition the employee is entitled to receive the following accrued entitlements:

Payment of Superannuation Benefits Accrued

Payment of accrued Long Service Leave

Payment of any accrued Annual Leave entitlements

- (v) While workplace change, new technologies and changes in operations will be ongoing every opportunity will be taken to effect changes through voluntary means and natural attrition. Should this not be possible then both parties shall enter into further discussions with a view of resolving the situation to the satisfaction of both parties.

2.12 Income Protection

Both parties will work towards a mutually agreeable programme based on the existing IRC ruling to address Income Protection of the employee.

Other alternative schemes may be entered into by mutual agreement.

3. Hours of Work

3.1 Ordinary Working Hours

- (i) For all employees, ordinary working hours shall be an average of thirty eight (38) hours per 5 day week over the full cycle of the relevant work roster. Ordinary working hours shall not exceed:
 - (a) Eight during any consecutive twenty-four hours; or
 - (b) 152 in twenty eight (28) consecutive days except for rostering arrangements which provide for the weekly average of 38 ordinary hours to be achieved over a period exceeding 28 consecutive days.
- (ii) The starting and finishing times of ordinary work and shifts shall be determined by the Company taking into account the needs of the client and may be varied following consultation with employee representatives, with adequate notice to employees.
- (iii)
 - (a) Shift workers are employees working a scheduled pattern outside of ordinary day work. Shift workers may work fixed, rotating or alternating shift patterns on a one, two or three shift system.
 - (b) "Day Shift" ordinary working hours shall be worked Monday to Friday inclusive between 6.00 am and 6.00 pm.
 - (c) "Night Shift" means any shift finishing after midnight and at or before 8.00 am.
 - (d) "Afternoon Shift" means any shift finishing after 6.00 pm and at or before midnight.
 - (e) A shift shall be determined as being a Saturday, Sunday or Public Holiday if the major portion of that shift is worked on that day.
- (iv) Mutually agreed shift patterns.

3.2 Overtime

- (i)
 - (a) "Overtime" is work performed in excess of or outside the ordinary working hours and times prescribed by Clause 3.1. and shall be paid at the rate of time and one half for the first two hours and at the rate of double time thereafter.

- (b) Except in the case of urgent breakdown work necessary to secure an immediate resumption of operations, overtime shall be paid for all time worked by day workers in excess of five hours without a meal break.
 - (c) Overtime shall be paid for Shift workers at the rate of time and one half for the first two hours and at the rate of double time thereafter for all time worked:
 - (i) In excess of the ordinary working shift hours prescribed by this award; or
 - (ii) On more than eleven shifts in twelve consecutive days; or
 - (iii) On a rostered shift off: or
 - (iv) In excess of five and one half hours without a Crib break.
 - (d) For shift workers overtime shall be paid at the rate of double time for all time worked on Saturday and Sunday.
- (ii) Where overtime is scheduled on Roster days, and an agreement has been reached to work such overtime:
 - (a) If employees are unavailable to work for personal or other than sickness reasons they must give three (3) days' notice to their Supervisor or Team Leader of this unavailability.
 - (b) The Company may not cancel such programmed work on rostered-off shifts with less than three (3) days' notice or shall pay for a minimum of four (4) hours at the overtime rate.
 - (iii)
 - (a) Overtime is not payable when time is worked by arrangement between the employees themselves. Employees wishing to change their rostered working hours or exchange with other employees must advise the Company beforehand.
 - (b) Overtime is not payable for the purpose of affecting the customary rotation of shifts.
 - (iv)
 - (a) Subject to the Contract of Employment an employee who presents him/herself for their ordinary work without notice that they are not required shall be paid at least four hours pay.
 - (b) Employees
 - (i) recalled to work overtime after leaving the place of work whether notified before or after leaving the premises; or
 - (ii) required to report and who do report for overtime on a public holiday or a day other than an ordinary working day including rostered days off shall be paid for a minimum period of four (4) hours at the appropriate rate for each such occasion, unless the period to be paid overlaps with a rostered shift. Overtime call outs within 2 hours of normal rostered shifts will be paid at double time for that period or the person may choose to work his normal shift hours from the commencement of the call out at the normal shift rate.
 - (iii) Overtime work is not a right or privilege of individuals or groups and, when offering overtime, preference may be given to employees working that function, and then to other employees with necessary skills and training on a fair and equitable basis.

- (iv) When overtime work is necessary, wherever practicable, it shall be arranged that employees have at least eight consecutive hours off duty between the work of successive days. An employee who works overtime such that they do not get eight successive hours off between working days shall, subject to this Clause, be released after completion of such overtime until they have had eight hours off duty without loss of pay for ordinary working time during such absence. No more than 16 consecutive hours shall be worked at any one time.

If, on instruction from the Company, an employee resumes or continues working without eight consecutive hours off duty, he/her shall be paid at double rates until released from duty and then be entitled to be absent until having eight consecutive hours off duty, without loss of pay, for ordinary working time during such a period.

- (v) Either (a) a day worker, required to work on a Saturday, Sunday, a 38-hour week rostered day off, or a public holiday, or (b) a Monday to Saturday shift worker required to on a Sunday, a 38 hour week rostered off day or a Public Holiday, shall be paid for a minimum of four hours' work.

Where the actual time worked is of shorter duration than four hours, the working period shall not be regarded as overtime for the purpose of (iv). above.

Where an employee has transferred from one system of work to another system of work upon instruction from the Company then that employee shall be paid at overtime rates for any shift upon which they are employed as a shift worker in respect of which they have not been given 48 hours notice.

3.3 Day Work And Meal Break

On each day worked, Monday to Friday inclusive, forty-five minutes is allowed to Day workers for an unpaid meal break and, except in the case of urgent/breakdown work needed for an immediate resumption of operations, should be taken between the hours of 11.30 am to 1.20 pm.

3.4 Shift Work And Crib Break

Shift workers shall be allowed twenty (20) minutes, counted as time worked for a Crib break, to be taken at a time convenient to the Plant operations and regard to other shift employees' needs. Shift workers are not permitted to leave the site during this break unless authorised.

3.5 Transfer Between Day Work, Shift Work And Rosters

- (i) For the purpose of meeting the needs of the industry, the Company may require any employee to transfer from one system of work to another system of work prescribed by this Award at the rate applicable thereto and, unless reasonable cause exists, an employee shall transfer in accordance with such requirement.
- (ii) Day workers may be employed as and become shift workers for a period of not less than five shifts when the fifth shift is their 38-hour week rostered off shift and shall be paid accordingly.

Provided that an employee shall at overtime rates for any shift upon which he/she is employed as a shift worker under this Clause in respect of which they have not been given at least 48 hours' notice.

- (iii) A shift worker who is required to work on a shift other than the shift on which he/she would ordinarily have been rostered shall be paid at overtime rates for any such shift in respect of which they have not been given at least 48 hours' notice. This will not apply where the employee reverts to their normal shift pattern or where employees change shifts at their own request.

3.6 Night Work

Subject to Clause 4.2 of this Award, but otherwise notwithstanding anything contained herein:

- (a) A day worker who is required in lieu of ordinary day work; or
- (b) A day worker who is required in lieu of a day shift on which he would ordinarily be rostered to work at night for a period of not less than eight hours on less than five consecutive nights or on less than four consecutive nights when the fifth night is his/her 38-hour week rostered off night shall be paid at the rate of time and one half or the ordinary rate under Section 4, Rates of Pay, except:
- (c) On Saturday, Sunday, 38-hour week rostered off days and holidays; and
- (d) In respect of any night for which he/she has not been given at least 48 hours' notice when they shall be paid at overtime rates for day workers. No shift allowance is payable in respect of night work under this Sub-Clause. In this Clause, "night" means any hours between 6.00pm and 6.00 am, and "day shift workers" means a worker employed on a shift system involving day shift only.

3.7 12 Hour Shift Conditions

Shift work may be performed in either 8-hour or 12-hour shifts. For work in 12-hour shifts the following conditions will apply:

3.7.1 Hours of Duty

- (a) During the life of this Agreement the ordinary hours of duty will be 12 hours per shift. The hours rostered will average 42 per week over the roster cycle of 8 weeks.
- (b) Day shift will commence at 6am and finish at 6pm.
- (c) The first shift of the week will be the Sunday day work.
- (d) Night shift will commence at 6pm and finish at 6am the next day.
- (e) All employees must be on the job and ready for work to have relieved the previous shift by 6am or 6pm as appropriate.
- (f) For the purposes of payment the day upon which any shift commences will determine such penalty rates or benefits that may be paid for that working shift.

3.7.2 Shift Allowances

- (a) A shift allowance as per Appendix 4 shall be paid per shift worked on the rotating 12 hour shift roster.

3.7.3 Penalty Rates

- (a) There is no change in penalty rate entitlements for overtime or for weekend shift work.
- (b) Overtime will not commence until 12 ordinary hours have been worked each shift. Payment for the first two hours of work beyond the 12 hour shift will be at time and a half and thereafter at double time. Overtime worked on Saturday and Sunday will be paid at double time.
- (c) Weekend Shift work:

Saturday - for ordinary 12 hour shift work payment will be paid at the rate of time and a half i.e. 18 hours

Sunday - will be at double time i.e. 24 hours

Public Holiday Work - payment will be at double time and a half i.e. 30 hours.

3.7.4 Training

- (a) Employees will be paid for the time they attend for training and this shall be a minimum payment of four hours.
- (b) A minimum notice period of 48 hours shall be given to the employee to be trained and the trainer of arrangements to train outside ordinary work hours.

3.7.5 Pays

- (a) The hours paid per weekly pay period will be averaged over the roster cycle and pays shall be equal to the average weekly pay regardless of the normal days worked in each pay period subject to variations detailed in b). In addition a shift allowance equivalent as per Appendix 4 per 12 hour shift will apply to all hours worked.

Calculation of Average Hours Paid Per 8 Week Cycle			
	Total Hrs Worked	Total Hrs Paid	Average Hrs Paid
Normal Hours	304	304	38
Sat Loading		24	3
Sun Loading		48	6
Overtime 1.5	6	9	1.125
Overtime 2.0	26	52	6.5
Totals	336	437	54.625

Penalty Rates to be applied are:

Day Shift	13.45 ordinary hours paid/12 hour shift
Night Shift	13.45 ordinary hours paid/12 hour shift
Saturday Shifts	18 ordinary hours paid/12 hour shift
Sunday Shifts	24 ordinary hours paid/12 hour shift

- (b) The only adjustments to averaged weekly pay will be additional overtime worked outside the 12 hour shift roster, absence, Public Holidays or payment for additional days.

3.7.6 Overtime Coverage

- (a) When overtime coverage is required due to unplanned absence on a shift, the supervisor or team leader will in the first instance call on any personnel rostered off but made available through the voluntary overtime roster.
- (b) If no personnel can be made available through the voluntary overtime roster then day shift personnel will be contacted and offered the overtime shift.
- (c) If no rostered off or day shift personnel can be made available then an employee from the previous shift may be required to stop an additional 4 hours to ensure continuity of production to the customer. Another employee from the following shift may be required to attend four hours early and the interim four hours will be covered by attending team members.

3.7.7 Relief on the Job

- (a) Employees shall provide on the job shift changeovers This requires the oncoming relief to be at the place of work, or equipment, before the outgoing person ceases to work.

- (b) In the event that the oncoming shift relief does not arrive then employees may be required to remain on the job for up to four hours or until a replacement is arranged to provide continuity of production and services.

3.7.8 Early Relief

- (a) Employees may continue to relieve to a maximum of one hour before or after the normal shift commencement time by mutual agreement.

3.7.9 Shift Swaps

- (a) Shift swaps by arrangement between employees will still be permissible but will not be approved if the swap will bring about a double 12 hour shift.

3.7.10 Public Holidays

- (a) For the purposes of this agreement, each day is deemed to commence at 6am and extend for a 24 hour period to 6am the next day. The first shift of the week shall be shift commencing Sunday 6am.
- (b) For the purposes of payment the two shifts commencing during the 24 hours of the Public Holiday will attract the Public Holiday payments or penalty rates.
- (c) Public Holidays falling on a rostered day off will be paid at 8 hours.

3.7.11 Meal Breaks

- (a) A maximum of three meal breaks up to sixty minutes may be taken by arrangement with the team and shall be counted as time worked. The breaks should be arranged so that they are taken at regular intervals at a time to best suit the needs of the business.
- (b) 12 hour shift operators are expected to be flexible in working arrangements to allow for shift and meal breaks to be taken by all employees on shift.

3.7.12 Annual Leave

- (a) Basis of Payment:

An employee's annual leave entitlement is governed by the terms of the Annual Leave Act which describes entitlement in "weeks". The act stipulates that an employee is entitled to "4 weeks" annual leave, plus an additional "week" for a year working 7 day roster. Payment for annual leave will continue to be paid according to the days rostered on to work during each week of annual leave (Pay by Roster).

- (b) Annual leave will be credited in hours and when taken will be deducted by the hour.
- (c) Annual leave should be taken by the week (with the exception of added days). A week is defined as four consecutive normal 12 hour shifts totalling 48 working hours. One week may be taken at a time unless this interferes with shift cover arrangements when it would be required to extend 12 hour shift employees to longer periods of holidays. Total annual leave entitlement will be 16 normal 12 hour shifts totalling 192 working hours for added days. The shift Team Leader may at their discretion allow single days if there is no conflict with the needs of the business.
- (d) Annual leave shall be paid on an average pay per day basis. For each day rostered on during the annual leave period, an employee shall be paid an average per day as shown on the schedule attached.

- (e) Added days to Annual Leave:

Added days shall be paid according to the roster being worked at the time the added days are actually taken. If an employee is on 12 hour shifts at the time the added day is taken, the added day will be paid as 12 hours. If the employee is working to an 8 hour roster at the time the days are taken it shall be paid as 8 hours. Employees can accrue no more than 5 added days at anytime the balances of days to be paid out.

- (f) Public Holidays During a Period of Annual Leave:

Clause 5.3(I) of the MultiServ NSW Industrial Relations Award states that "In the case of an employee who was, at the commencement of his/her Annual Leave or Long Service Leave, employed as a seven-day shift worker, shift workers whose working period includes Sundays and Holidays one day shall be added to his/her Annual Leave or Long Service Leave period in respect of any Holiday prescribed which falls within the period of Annual Leave or Long Service Leave to which he/she is entitled under this Agreement". If this added day is a day on which the employee would be rostered to work a 12 hour shift, payment will be made for 12 ordinary hours.

- (g) If the accrued holiday is on a day that would normally have been rostered off, then the employee has a choice of being paid 8 hours for that day OR having an added 8 hours accrued (Refer Clause 5.3).

3.7.13 Sick Leave

- (a) Sick leave will continue to be credited in hours and when taken will be deducted by the hour in accordance with Penalty Rates applied in Clause 10a).
- (b) Two single, non consecutive days per 12 months based on Anniversary, (shift relative) may be taken without a supporting doctor's certificate. Any further days taken must be supported by a medical certificate.

3.7.14 "Special" 12 Hour Shift

To comprise of 6 people operating as two 3 man teams.

These six employees transferring to a 12 hour special day roster from the existing 12 hour day/night shift roster operating as at 19th August 2002, will maintain the existing shift premiums. Future changes to this group will be under the terms of the Award and will undergo a consultative process.

4. Rates of Pay

4.1 Wages And Classifications

Rates of pay have been set with regard to the nature and location of the work, working arrangements, qualifications and skill level required, and includes compensation for any special disabilities, conditions and responsibilities associated with the work, including consideration of climatic work related factors, and the supply of tools, equipment and clothing. Rates of pay are total and inclusive, not subject to rates or allowances other than defined in this Award.

An employee who is required to do work carrying a higher rate than his/her ordinary classification for two hours or more on any day or shift shall be paid at the higher rate for the whole of the day or shift.

It is requirement that employees gain a WorkCover Competency certificate where applicable but in all cases a MultiServ Competent Certificate to receive payment for that skill.

Provided employees fully satisfy all requirements of the Competency test then there should be no restriction to issuing of a Certificate.

Employees must work progressively through all levels of the Classifications within Production, Maintenance or Administration.

Employees can move to higher classifications as defined in this Award as soon as they have gained all relevant qualifications, including Grade A.

- (i) The ordinary and minimum weekly rates to be paid to any classification of adult employee shall be in accordance with the following levels and set out in Appendix 5 - Rates of Pay:

Trainees

Shall mean persons training to be multi-skilled workers for performing skills in Process, Servicing and Maintenance. Trainees will commence at PE Grade A rates.

Production Employee Grade A

Shall mean a multi-skilled person capable of performing and willing to use all skills in Process, Servicing and Maintenance in the following categories:

3B Truck, Backhoe or Equipment Ticket, Basic Oxy Cutting (Hand Torch, Oxy Truck) or Iron Pouring, Forklift (Up to 9T), Site and Departmental Inductions, Personal Isolation (Locks 1) and First Aid on request.

Grade A Employees will be employed on 3 months probation at casual rates of pay during which time they are required to successfully complete all the above qualifications.

Production Employee Grade B

Shall mean a multi-skilled person capable and competent of performing and willing to use all skills in Process, Servicing and Maintenance at PE Grade A and, in addition, proficient in one or more of the following categories:

On-Highway Ro/Ro (Hooklift) Truck (Transport Worker Grade 5), On-Highway Articulated Vehicle Operators (Transport Worker Grade 7), Oxy cutting machines and Lancing, Forklift (Larger than 9T), Kress EP500, Kress EPD 200C, Excavator, Dump Truck, Rubber-tyred Front-end Loaders, CFPP Crane skill (WorkCover ticket)

Production Employee Grade C

Shall mean a multiskilled person capable and competent of performing and willing to use all skills in Process, Servicing and Maintenance at PE Grade A plus 3 skills in Grade B or one of the following crane skills:

Portal Crane Operation (WorkCover Ticket and MultiServ Certificate), Drop Balling Crawler Crane Operations (WorkCover Ticket and MultiServ Certificate).

Production Employee Grade D

Shall mean a multi-skilled person capable and competent of performing and willing to use all skills in Process, Servicing and Maintenance at PE Grade A plus five (5) skills from PE Grade B or PE Grade A plus three (3) skills from PE Grade B plus one (1) crane skill from PE Grade C.

Production Employee Grade E

Shall mean a multi-skilled person capable and competent of performing and willing to use all skills in Process, Servicing and Maintenance at PE Grade A plus six (6) skills from PE Grade B and C (of which at least one must be a crane skill) plus Team Leadership skills.

For an employee to obtain Level E, he must satisfy an assessment criteria and examination to determine leadership capability.

The Company and Union would assess and agree the most appropriate criteria but would include:

Competency test of Policies/Procedures compliance requirements.

It is agreed between the parties that should any employee be able to demonstrate genuine restrictions that totally prevent him/her attaining a crane skill, then they may request to be referred to the Site Management and the team for consideration of an alternative career path to Grade E. Reclassification of any employee who would be under this provision at the time of signing the award will be made from date of the award. Payment for Grade E classification will only be made to those employees duly competent of exercising the function as Team Leader.

Team Leadership skills are defined as Inspections and understanding of: Radiation Alarms, Rail Isolation, Vehicle Escorts, Scrapyard Computer System; Iron Pouring; Incident Reporting & Investigation; Handling of Dangerous & Deleterious Materials; SafeSteel/STOP and Administration, oversize scrap auditing, customer liaison, wet weather procedures.

It is a requirement for payment that employees are willing to use all skills for which they are recognised and paid, at any time for the needs of the team and business.

(ii) Repairpersons

The ordinary and minimum rates to be paid to any trade classification of an adult employee shall be in accordance with the following levels and career paths for Mechanical streams and set out in Appendix 3, Repairperson Relevant Qualifications that Apply to this Award. The Company commits to training for all maintenance employees.

Repairperson shall mean a multi-skilled person who has completed an indenture of apprenticeship in a recognised trade and who performs work in one of the following categories:

Repairperson Grade A

Shall mean a multi-skilled person capable of performing and willing to use all skills in Process, Servicing and Maintenance in the following categories:

Trade Certificate (TAFE or Equivalent), BlueScope Steel and MultiServ Site Inductions, BlueScope Steel Levels 1 & 2 Lockout's and Isolation Procedures, RTA Vehicle Licence.

Grade A Employees will be employed on 3 months probation at casual rates of pay during which time they are required to successfully complete all the above qualifications.

Repairperson Grade B

Shall mean a multi-skilled person capable of performing the functions of a Repairperson Grade A and, in addition, the following:

Current First Aid Certificate. RTA Road Vehicle Ticket (maintenance of brakes, steering, suspension), Caterpillar servicing and maintenance course, Komatsu servicing and maintenance course.

Repairperson Grade C

Shall mean a multi-skilled person capable of performing the functions of Repairperson Grades A and B and, in addition, the following:

Hydraulics or Pneumatics Qualifications (18 Weeks TAFE course), or relevant course as agreed with Maintenance Superintendent and General Manager.

Repairperson Grade D

Shall mean a multi-skilled person capable of performing the functions of Repairperson Grades A, B and C and, in addition, the following:

Mechanical:

Electrical Welding and Oxy Cutting basics (non-structural), Competence on overhead cranes (including Working at Heights and Slings, Aumund Crane isolation) plus one of the following MultiServ/WorkCover Tickets (Forklift, 20 tonne slewing hydraulic crane, Elevating Work Platforms or Confine Space access).

Repairperson Grade E

Shall mean a multi-skilled person capable of performing the functions of Repairperson Grades A, B, C and D and, in addition, the following:

Basic Automotive Electrical course (12v & 24v) (Site Relevant Course, of 3 days) plus three of four of the Following MultiServ/WorkCover Tickets, Forklift, 20 tonne slewing hydraulic crane, Elevating Work Platforms, Truck HR License (including MultiServ ticket).

It is a requirement for payment that employees are willing to use all skills for which they are recognised and paid, at all times to the needs of the team and business.

Appendix 2 defines the relevant trade certificates and TAFE courses that are relevant to this Award.

(iii) Administration

The ordinary and minimum weekly rates to be paid to any classification of adult employee shall be in accordance with the following levels and set out in Appendix 5 - Rates of Pay:

Administration Employee Grade A

Shall mean a multi-skilled person capable of performing and willing to use all skills in the following categories:

Typing, Filing, Receptionist, Faxing and E-Mail, Payroll & Personnel Records, Daily Production and Sales Figures, Purchase Orders and Requisitions and general Administration.

Administration Employee Grade B

Shall mean a multi-skilled person capable of performing and willing to use all skills at AE Grade A and, in addition, proficient in the following category:

Word Processing and Spreadsheet setup.

Administration Employee Grade C

Shall mean a multiskilled person capable of performing and willing to use all skills at AE Grade A and B and, in addition, proficient in the following category:

JDE, Microsoft Office, other dedicated software programs.

4.2 Shift Work Allowances

- (i) Shift workers shall be paid, in addition to the rates payable under this award set out in Appendix 4 - Pay Allowances.

- (ii) Shift workers for their ordinary shift of eight hours performed on Saturday shall be paid at the rate of time and a half.
- (iii) Employees shall be paid at the rate of double time for all work done on Sundays and at the rate of double time and a half for all work done on the holidays prescribed in Clause 18 of this Award.
- (iv) Shift allowances and special rates shall not be subject to any premium or penalty additions.
- (v) For the purposes of night work "night" means any hours between 5.00 pm and 7.00 am, and "day shift workers" means a shift worker employed on a shift system involving day shift only.

4.3 Meal Allowances

Employees required to work overtime for more than one and a half hours after the ordinary cessation of shifts without having been notified 24 hours prior to the day of the requirement to work shall be provided with a meal by the employer or paid as defined in Appendix 4, Pay Allowances.

If an employee, pursuant to notice, has provided a meal and is not required to work overtime or is required to work for less than one-and-a-half hours, he/she shall be recompensed suitably to a maximum value as defined in Appendix 4, Pay Allowances, for a meal which they have provided.

An alternative mutually agreed pay method will be trialled during the first 12 months of the Award.

4.4 Tool Allowance

- (i) Tradesmen classifications in this Award shall be paid an allowance as defined in Appendix 4, Pay Allowances for supplying and maintaining tools ordinarily required in the performance of their work as tradesmen. The allowance shall apply for all purposes of this Award. Any tool replacements shall be made promptly.
- (ii) If the Company should decide to provide all tools ordinarily required by tradesmen in the performance of their work, the Company may continue that practice and, in that event, the allowance prescribed above shall not apply.

4.5 Superannuation

- (i) The employer shall contribute to a superannuation fund which complies with the Superannuation Guarantee Charge legislation on behalf of each eligible employee a superannuation contribution equivalent to not less than seven percent of such eligible employee's ordinary time earnings.

The MultiServ Pty Limited Superannuation Plan has been established with AMP Society to provide Death and Disablement and Retirement benefits for all permanent full-time employees of the Company. The Plan is an Accumulation Plan and contributions are invested in the AMP Society's Capital Guaranteed Fund.

Employees may alternatively join a Superannuation Plan nominated and requested by at least 10% (Request) of MultiServ employees. Should the percentage later drop below 10% employees will not be forced to change back. New employees will be offered the choice of Plans.

- (ii) The contributions of the Members of the Plan and the Company are shown below:

Employee Who Choses To Contribute	Company Contributes
3%	11%
4%	13%
5%	15%

The contributions of the employees and the Company will be based on the defined Wage which is the Weekly Wage rates as defined in Clause 9. Wages and Classifications, plus the additional pays shown below :

Defined = Wage	Basic Weekly + Wage When paid	Productivity + Bonus*	Shift + Allowance	Saturday + Penalty	Sunday Penalty
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Employees have the option to salary sacrifice their wages to meet the standard employee contributions as defined in clause 4.5.ii. The election to make such a salary sacrifice must be made in accordance with the terms and conditions stipulated in Clause 4.5iii. These salary sacrifice contributions will be deducted from the employee's pre-tax wages and remitted to the employee's nominated superannuation account which must be maintained with a Superannuation provider stipulated in Clause 4.5i.

(iii) Agreement for Alternative Remuneration Arrangement

(a)

- (i) Despite any other provisions of this Award, for the purpose of calculating ordinary time earnings, the rate of pay per week described in Clause 4, Rates of Pay, shall be reduced by the amount which an employee elects by notice in writing to the Company to sacrifice in order to enable the Company to make a superannuation contribution for the behalf of the employee.
 - (ii) For an employee's election to be valid the employee must complete an election form provided by the Company.
- (b) The reduced rate of pay and the superannuation contributions provided for in this clause shall apply for periods of annual leave, long service leave, and other periods of paid leave.
 - (c) All other award payments, including termination payments, calculated by reference to the employee's rate of pay shall be calculated by reference to the rate of pay per week specified for the employee in Clause 4, Rates of Pay.
 - (d) Unless otherwise agreed by the Company, an employee may only revoke or vary his or her election once in each twelve months. No less than one month's written notice shall be given by an employee or revocation or variation of the employee's election.
 - (e) If at any time while an employee's election is in force, there are changes in taxation or superannuation laws, practice or rulings, that materially alter the benefit to the employee or the cost to the Company of acting in accordance with the election, either the employee or the Company may, upon one month's notice in writing to the other, terminate the election.
 - (f) The Company shall not use any superannuation contribution made in accordance with an employee's election to meet its minimum employer obligation under the *Superannuation Guarantee Administration Act 1992* (Cth) or any legislation which succeeds or replaces it.
 - (g) When an employee is not eligible or decides not to become a member of the MultiServ Pty Limited Superannuation Plan, the Company will make contributions required under the Superannuation Guarantee legislation to the above mentioned Plan unless the member nominated another Fund which must comply with the Occupational Standards Act and Regulations.
 - (h) The option to Salary Sacrifice on future earnings (including increases) into additional superannuation contributions will be made available to all employees. Salary sacrifice outside of Clause 4.6ii does not attract Company contributions in any form.
 - (i) If an employee elects to Salary Sacrifice a portion of their wages then the dollar amount or percent of future earnings to be so sacrificed must be nominated in writing to the pay office.

- (j) The option to Salary Sacrifice can only be exercised when future earning (including wage increases) can be reasonably determined and before they are payable.
- (k) The nominated amount or percent to be Salary Sacrificed will become a permanent deduction of the employee's gross wage until a variation is lodged in writing by the employee and it is received by the pay office. Variations will be limited to one per 12 month period (except in a period of proven hardship).

4.6 Bonus Payments

4.6.1 Bonus payments may be made to all employees by negotiation measured on set targets to improve safety or other business performance.

4.6.2

- (i) An Incentive Bonus will be calculated on monthly KPI's of production and/or cost related to the Company's Business Plan. Details of which will be presented for negotiation with the intent of finalising six months after the trial of the new bonus system. The Bonus will have a maximum payment of 2.5% and be paid quarterly.
- (ii) An additional quarterly Productivity Payment of 2.5% will be made should employees adhere to Clause 9 "Continuity of Production and Procedure for Resolving Issues and Differences" and maintain essential services during any dispute as defined in Clause 10 "Essential Services Dispensation". This is to be paid weekly, and will be suspended from the first pay period after any lack of adherence to Clause 9.

4.6.3 The Company and the Unions agree to maintain the Current (unmeasured) Incentive Bonus system for a period of 6 months from the date of this Award, while the changed system (of 4.7.2(i) above) is trialled and compared to the current system.

4.7 Team Leader Allowance

The Team Leader shall receive an allowance as defined in Appendix 3 for each 12 hour shift or 8-hour shift worked as a Team Leader, plus a BlueScope Steel Canteen Meal Docket for each 12 hour shift worked or 8 hour shift worked.

The Team Leader Shift Allowance will be paid on a pro-rata basis to each Team Leader when on Annual Leave, based on the number of weeks the Team Leader exercised this function.

4.8 Training Payments

Any operator who is accredited with a formal Train the Trainer qualification or has been nominated by the General Manager and who trains, supervises or assesses other employee will be paid an additional \$1.50 per hour during periods of Training.

5. Leave

5.1 Annual Leave And Loading

- (i) Day workers and Monday to Saturday shift workers are entitled to four weeks' Leave (152 hours) in respect of each year of continuous service with the Company in accordance with the *Annual Holidays Act, 1944*.
- (ii) In addition to the benefits provided by the *Annual Holidays Act, 1944*, with the respect to an annual holiday of four weeks an employee who, during the year of his/her employment with the Company for which he/she becomes entitled to the four weeks also gives service as a seven-day shift worker, shall be entitled to additional leave as specified below:

- (a) If during the year of his/her employment he/she has served the Company continuously as such seven-day shift workers, additional leave with respect to that year shall be one week (38 hours).
 - (b) Subject to sub-paragraph d. of this Clause, if during the year of his/her employment he/she has served for only a portion of it as a seven-day shift worker, the additional leave shall be one day for every thirty three ordinary shifts worked as a seven-day shift worker.
 - (c) Subject to sub-paragraph 'd' of this Clause, an employee shall be paid for such additional leave at the annual leave rate of pay, for the number of ordinary hours of work for which the employee would have been rostered for during the period of additional leave had such an employee not been on leave.
 - (d) Where the additional leave calculated under this Clause is or includes a fraction of a day, such fraction shall not form part of the Leave period and any such fraction shall be discharged by payment only.
 - (e) In this Clause, reference to one week and one day includes holidays and non-working days. Where the employment of a worker has been terminated and he/she thereby becomes entitled under Section 4 of the *Annual Holidays Act, 1994*, to payment in lieu of an annual holiday with respect to a period of employment, he/she also shall be entitled to an additional payment of three and a half hours at the annual leave rate of pay with respect to such twenty one shifts of service as a seven-day shift worker which he/she has rendered during such period of employment.
- (iii) Monday to Saturday shift workers who are regularly rostered for duty on Saturdays as ordinary working days.

In addition to the benefits provided by Section 3 of the *Annual Holidays Act, 1994*, with regard to an annual holiday of four weeks, an employee who during the year of his/her employment with the Company with respect to which such holiday becomes entitled, gives service to the Company as a Monday to Saturday shift worker who is regularly rostered for duty on Saturdays as ordinary working days, shall be entitled to the additional leave as hereunder specified:

- (a) For every thirteen Saturdays upon which the employee worked an ordinary shift as a Monday to Saturday shift worker who is rostered for duty on Saturdays as ordinary working days, the additional leave for that year shall be one day.
 - (b) Where the additional leave calculated under this Sub-Clause is or includes a fraction of a day, such fraction shall not form part of the Leave period and any such fraction shall be discharged by payment only.
- (iv) In respect of a period of annual leave, an employee shall be paid a loading, namely 20%, on:
- (a) His/her ordinary pay pursuant to the *Annual Holidays Act, 1944*, and where applicable, his/her annual leave rate of pay pursuant to this Clause and Clause 20, Days Added to the Period of Annual Leave, of this Agreement; or
 - (b) The sum of his/her award rate of pay for ordinary time at the commencement of his/her annual leave as prescribed in Table 1 - Rates of Pay, provided that an employee who would have worked on shift work had he/she not been on Annual leave shall be paid whichever is the greater of the said loading, or the shift work allowances pursuant to Clause 6, Shift Work Allowances, that would have been payable to him/her in respect of ordinary time during the period of annual leave had he/she not been on Annual Leave.
- (v) The loading prescribed by this Sub-Clause shall apply to payment in lieu of a fully due annual holiday on termination of employment, but shall not apply to proportionate holiday payment on termination of employment.

- (vi) In accordance with the Company's policy, employees are required to take accrued annual leave following each continuous year of service in accordance with the *Annual Holidays Act 1944*.

Such leave shall normally be taken in accordance with the *Annual Leave Act, 1944*, within six months and no more than twelve months of their entitlement. Applications for Annual Leave shall be made in writing on the Company form at least two weeks before the requested date for the start of Leave, except for two single day or one two-day periods of Special Annual Leave where seven days notice or proof of urgency are needed.

- (vii) The timing for taking of accrued annual leave shall be arranged between the Company and the employee, giving consideration to the chronological request for leave by other employees, number of persons and substitutes in a function, previous leave periods taken, etc.

In the event of any final disagreement or conflict of requests, The Company shall decide on the matter. The Company may schedule Annual Leave to be taken in consideration of the work requirements and annual leave arrangements of BlueScope Steel, the client company.

- (viii) Any disagreements regarding Annual Leave allocation or payment should be resolved through the disputes settling procedure (Section 15).
- (ix) Employees whose service is terminated due to serious and wilful misconduct are not entitled to proportional payment on dismissal for Annual Leave loading and Long Service Leave.

5.2 Public Holidays

- (i) The following days or the days upon which they are observed shall for the purposes of this award be nominated public holidays and no deduction shall be made from the wages of employees for such holidays if not worked:

New Year's Day
Australia Day
Good Friday
Easter Monday
Anzac Day
Queen's Birthday
Labour Day
Christmas Day
Boxing Day

This payment also includes New South Wales Gazetted Public Holidays and any BlueScope Steel recognised Public Holiday.

- (ii) The Port Kembla Steelworks Picnic Day shall be taken.
- (iii) This provision for payment does not apply where an employee is absent from his/her employment on the working day before or the working day after a public holiday without reasonable excuse or without the Consent of the Company. If an employee notifies that an absence described above resulted from illness or injury, payment for public holiday will only be made if proof of illness or injury is provided to the Company.

5.3 Days Added To The Period Of Annual Leave Or Long Service Leave

- (i) In the case of an employee who was, at the commencement of his/her Annual Leave or Long Service Leave, employed as a seven-day shift worker whose ordinary working period includes Sundays and Holidays, shall have one day added to their Annual/Long Service Leave in respect of any Holiday prescribed.

- (ii) An employee rostered off duty on a day defined as a holiday under this award and who is not required to work on that day shall:
 - (a) Have one day added to his/her Annual leave; or
 - (b) By mutual consent, be paid, in the pay for the period in which the holiday falls, for the holiday at the rate pursuant to Clause 18, Public Holidays, of this award.

This Sub-Clause shall not apply when the holiday falls either on a Saturday or Sunday, except in the case of employees engaged as seven-day shift workers, or on a Sunday in the case of employees as Monday to Saturday shift workers who are regularly rostered for duty on Saturday as ordinary working days.

- (iii) Any day or days added shall be paid for at the Annual leave rate of pay and, in the case of Long Service Leave, shall be paid for at the Long Service Leave rate of pay.
- (iv) Any day or days added in accordance with Sub-Clause (i) or (ii) of this Clause shall be the working day or working days immediately following the period of Annual Leave or Long Service Leave to which the employee is entitled under Clause 19, Annual Leave and Loading, or Clause 21, Long Service Leave, of this Award.
- (v) For the purposes of Sub-Clause (iv) of this award, working days shall mean:
 - (a) In the case of an employee who, at the commencement of his/her period of Annual Leave or Long Service Leave, was employed as a day worker - any day of the week including a day on which the employee concerned would have been rostered off duty if he/she were not on Annual Leave or Long service Leave, but excluding a Saturday, a Sunday, or a Holiday prescribed by this award.
 - (b) In the case of an employee who, at the commencement of his/her period of Annual Leave or Long Service Leave, as the case may be, was employed as a Monday to Saturday shift worker - any day of the week other than a Sunday or a Public Holiday prescribed by this award including a day on which the employee would have been rostered off duty if he/she were not on Annual/Long Service Leave.
 - (c) In the case of an employee who, at the commencement of his/her period of Annual/Long Service Leave, as the case may be, was employed as a seven-day shift worker - any day of the week including a day on which the employee would have been rostered off had they not been on Annual/Long Service Leave.
- (vi) Where the employment of a worker has been terminated and he/she thereby becomes entitled under Section 4 of the *Annual Holidays Act, 1944*, to payment in lieu of an annual holiday with respect to a period of employment, he/she also shall be entitled to an additional payment for each day accrued to him/her under Sub-Clause ii. of this Clause, at the annual leave rate of pay.

An employee who is employed as a seven-day shift worker who:

- (a) Has a day added to his/her Annual Leave or Long service Leave pursuant to Sub-Clauses (i) and (ii) of this Clause, and
- (b) Such a day falls on a holiday prescribed by Clause 19., Annual Leave and Loading, of this award on which the employee would have been rostered to work an ordinary shift were it not for his/her entitlement to an added day, shall be paid for such day in addition to his/her entitlement under Sub-Clause (iii) of this Clause at the rate prescribed by Clause 18., Public Holidays, of this award.

5.4 Long Service Leave

Employees are entitled to Long Service Leave accumulated per continuing year of service in accordance with the *Long Service Leave Act*, NSW, 1955.

- (i) Inclusion of shift payments after 1 January 2006:
 - (a) The inclusion of shift payments (i.e. as defined in clause '3.1.(iii).a' of this award) in the payment for long service leave actually taken by shift workers, will apply to long service leave taken on or after 1 January 2006.
 - (b) The application of shift payments to long service leave entitlements does not apply where the long service leave is taken as part of an employee's resignation/retirement arrangement.
 - (c) Long service leave that is paid out on termination of employment will be paid at the base 38 hour week rate.

5.5 Parental Leave

Permanent employees with at least twelve months' continuous service with the Company and who provide due notice will be entitled to unpaid Maternity, Paternity or Adoption Leave in accordance with the provisions of the NSW *Industrial Relations Act* 1996.

5.6 Sick Leave

- (i) An employee who is unable to attend for duty during his/her ordinary working hours by reason of personal illness or incapacity shall be entitled to be paid at ordinary time rates of pay which would have been payable had they attended for duty subject to the following:
 - (a) He/she shall not be entitled to be paid leave of absence for any period in respect of which he/she is entitled to workers' compensation.
 - (b) He/she shall notify the Company of his/her inability to attend for duty in accordance with Company procedures and, as far as possible, state the nature and estimated duration of the illness or incapacity.
- (ii) The Company permits up to two (2) separate single day Sick Leave periods per 12 months based on Anniversary without Medical Certificate, but a signed declaration by the employee on the relevant Company Form.

In all other cases a Medical Certificate as proof of illness must be supplied within three (3) days of commencement of that illness.

- (iii) Employees will be subject to the following Sick Leave entitlements:
 - (a) Employees with less than one year's continuous service are entitled to 40 hours Sick Pay at ordinary time.
 - (b) Employees with more than one years' but less than ten years' continuous service are entitled to 64 hours of Sick Pay at ordinary time.
 - (c) Employees with more than ten years service are entitled to 80 hours of Sick Pay at ordinary time.
- (iv) Employees are required to complete a qualifying period of three months of continuous service with the Company in order to be entitled to claim Sick Pay.

- (v) Personal/Carer's Leave (as per Current NSW Legislation. Any material change will be notified as Appendices)
- (1) Use of Sick Leave.
- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person as set out in subparagraph (ii) of paragraph (c) of this subclause who needs the employee's care and support shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for in this clause 5.6, Sick Leave, for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.
- (b) The employee shall, if required, establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.
- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
- (i) the employee being responsible for the care of the person concerned; and
- (ii) the person concerned being:
- (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 purposes of this paragraph:
- (1) "relative" means a person related by blood, marriage or affinity;
- (2) "affinity" means a relationship that one spouse, because of marriage, has to blood relatives of the other; and
- (3) "household" means a family group living in the same domestic dwelling.
- (d) An 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.

(2) Unpaid Leave for Family Purpose - An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph (ii) of paragraph (c) of subclause (1) of this clause who is ill.

(vi) The rights under this clause shall accumulate from year to year so long as the employment continues whether under this or any other award or Agreement.

For the purposes of this Clause, continuous service shall be deemed not to have been broken by:

(a) Any absence from work granted by the Company; or

(b) Any absence from work by reason of personal illness, injury or other reasonable cause proven by the employee.

(vii) Any accumulated sick leave over 120 hours can be paid out on an employee's employment anniversary.

5.7 Compassionate Leave

An employee shall, on production of acceptable proof of the death of a spouse (including a de facto spouse), father, mother, foster father, foster mother, step-father, step-mother, brother, sister, father-in-law, mother-in-law, child or step-child, grandparents, grandchildren or grandparents-in-law be entitled on notice to compassionate leave without deduction from ordinary wages for such period not exceeding two days or as reasonable in the circumstances.

Compassionate leave will not be granted if the period of leave coincides with any period of paid leave.

5.8 Community Service

1. Jury Service

An employee required to attend for jury service:

(i) during his ordinary hours; or

(ii) immediately following an ordinary night shift or immediately preceding an ordinary afternoon shift on which the employee is rostered to work and, as a result of attending jury service, is not reasonably able to report for work on the night or afternoon shift as the case may be:

shall be reimbursed by the Company an amount equal to the difference between the amount paid in respect of this attendance for jury service and the ordinary time they would have worked had they not attended for jury service.

An employee shall notify the company as soon as possible of the date upon which he is required to attend for jury service. Further, the employee shall provide the company proof of his attendance, the duration of such attendance and the amount received in respect of such jury service.

2. Other Service

An employee may request the company to provide special leave due to community service emergencies eg; firefighting, S.E.S., payable at loss of ordinary earnings only. Employees will be entitled to a maximum of 80 hours in any year of such community service emergency leave. Further, the employee shall provide the company proof of his attendance, the duration of such attendance and any amount received in respect of such leave.

6. Disciplinary Policy

6.1 Objectives of Discipline Policy

A clear and effective Discipline Policy is fundamental in achieving production efficiency, safety and sound industrial relations. Disciplinary action is only necessary in most circumstances where the initial counselling of an employee has been unsuccessful. The Unions and the company agree on the following disciplinary procedure to be applied in the event of an employee's unacceptable work performance or behaviour.

6.2 Employee's right to have a witness present at an interview.

Before commencing any disciplinary interview, the employee must be advised of the purpose of the interview and may, if they wish, have a witness present at the interview. The person may be the union delegate or another employee (provided they are available and can be released from the job). The employee's right to have a person of their choice is on the understanding that the attendance and involvement of that person should not unreasonably delay the interview.

If English fluency or language is a problem, an interpreter may be offered.

6.3 Stages of discipline

(i) Stage 1: Verbal Warning

In this process the Team Leader or Manager verbally warns an employee in respect of inappropriate behaviour. It should be indicated to the employee:

- A. What is expected and required of him/her.
- B. Where and how he/she has failed to meet the standard required.
- C. What he/she must do to reach the required standard.
- D. What the consequences will be if he/she failed to improve to the required standard.

Refer to the employee's right to have a witness.

(ii) Stage 2: First Written Warning

Where unacceptable work performance or behaviour continues or the employee has displayed behaviour that in itself warrants an immediate written warning the Manager or Superintendent will issue a written warning in the following form:

As per Stage 1 detailed on a standard Company Form

Refer to the employee's right to have a witness.

In the event that there is no repetition of the same misdemeanour or misconduct for a period of six (6) months the warning will lapse.

(iii) Stage 3: Final Written Warning

Where unacceptable work performance or behaviour continues or the employee has displayed behaviour that in itself warrants an immediate final written warning, the Manager or Superintendent will issue that warning in the following form.

As per Stage 1 detailed on a standard Company Form

Refer to the employee's right to have a witness.

The final written warning will be issued in the presence of a union organiser and/or representative. In the event that there is no repetition of the same misdemeanour or misconduct for a period of twelve (12) months the warning will lapse.

6.4 Repetition of Misdemeanours After Lapse of Warnings

In the case of an employee whose first written warning has lapsed, where there is a repetition of the same misdemeanour or misconduct within a period of four (4) months, he/she will be placed back on a first written warning for six months.

In the case of an employee whose final written warning has lapsed, where there is a repetition of any misdemeanour or any misconduct within a period of six (6) months, he/she will be placed back on a written warning for a further six (6) months.

Should there be occasions where an employee through his/her action, indicates a failure to improve their performance and is abusing the warning system the situation will then be resolved through discussion between the Operations Manager, Union Representatives and the use of ongoing warnings will be reviewed.

6.5 Avoidance of Disputes

In the event there is a disagreement between the parties on what level of disciplinary action is required, the matter will be the subject to further discussion between the parties consistent with the disputes settling procedure in the MultiServ award. Where the parties cannot reach agreement the matter will be referred to the NSW Industrial Relations Commission for resolution.

Both parties shall withhold any form of action until a decision is made by the Commission and both parties will abide by the decision.

6.6 Degree of Discipline.

Appropriate disciplinary action must be chosen for each misdemeanour or case of misconduct. Different circumstances in each case make it impossible to generalise about which action is appropriate.

Listed below however, are some guidelines for the assistance of Team Leaders.

Category 1

Absenteeism

Inefficiency and poor performance

Poor timekeeping

Minor breach of safety regulation

Leaving the workplace without permission

Appropriate Discipline

Work through stages of discipline

Category 2

Negligence

Malingering

Verbal abuse of a work mate or supervisor

Appropriate Discipline

May be necessary to by-pass the verbal stage and give written warning to the employee.

Category 3

Major breach of safety regulations.

Possessing or consuming alcohol or other drugs on the job.

Deliberately damaging company property and personal property.

Falsifying time sheets or Doctors Certificates.

Physical abuse of a work mate or supervisor.

The theft and/or aiding and abetting the theft of company or customer property.

Abandonment of Employment

Appropriate Discipline

Instant Dismissal

6.7 Employee Assistance Scheme

If during any stages of the disciplinary procedure the company is of the view that an employee might need extra counselling or other professional support the management may offer an employee some form of assistance.

7. Training

7.1 Training Provisions

- (i) The Company has a commitment to provide training to develop employee's skills and competencies and maintain those skills so employees can carry out their duties.
- (ii) Statutory training given off the job, outside normal working hours, will be paid at overtime rates of pay. Other training off the job, outside normal working hours, will be paid at single time rates of pay unless it involves productive work when it will be paid at overtime rates.
- (iii) Employees will be trained in the skills which will be of maximum benefit to the team and needs of the Business.
- (iv) An employee will receive an additional payment for skills only when full accreditation for competency in the applicable level has been given.
- (v) The Teams training route is defined in Company Procedures.
- (vi) Once deemed competent to a skill level employees are required to operate to that skill level whenever there is a need. Multi-skilling is a condition of employment.
- (vii) A company nominated Training Coordinator who is competent may operate equipment when demonstrating its application to an employee in training.
- (viii) Training periods are not to exceed 240 working hours or the period determined in the Training Module.

- (ix) Team Training activities will be initiated by the Company following the development of Team Leader skill training as required in Clause 4.1.

7.2 Appraisals

- (i) All employees will be appraised on an annual basis to gather information on the aspirations and expectations of employees and whether these are being satisfied.
- (ii) Performance appraisals will be used to determine a training, development and career path for those employees who are seeking an opportunity to progress above Grade E or Team Leadership. Formal Appraisals of such employees will be conducted by Management.
- (iii) Each employee is to receive regular feedback from their Team Leader on their performance in the job. Review, appraisal and feedback are to be on both an informal and formal basis.

8. Occupational Health & Safety

The Company and Employees are required to adhere to the requirements of current NSW Occupational Health and Safety Legislation at all times.

9. Continuity of Production and Procedure for Resolving Issues and Differences

9.1 Procedure for Resolving Disputes

- (a) Intent

This procedure provides a series of steps whereby the parties in dispute engage in discussion and problem solving with a view to settling conflict by negotiation.

Work will continue normally and without interruption to the clients (BlueScope Steel) operations whilst the procedures are exercised so as to ensure employees do not lose income and the Company does not lose production, or cause any disruption to BlueScope Steel operations.

- (b) Commencement

Once a dispute is identified, the pre-dispute conditions will be maintained for the duration of the dispute settling procedure unless some other condition is necessary to safeguard the plant and equipment, in which case, the Manager or Superintendent will communicate his reasons to the person representing the personnel involved. Such a decision will be without prejudice to any final solution reached.

- (c) Responsibilities Union Representatives accept their obligation to ensure work continues during the dispute settling procedure.

- (d) Procedure

Step 1

The details of the dispute or claim will be presented to the Team Leader in line with Company Policies and Procedures.

If the Team Leader's immediate response is unacceptable to the aggrieved person or if there is a need to further investigate the situation or to refer it to a senior officer, then an Incident Notification Report will be prepared which will include the employee's version of the dispute.

It will be the Line Manager's obligation to provide a response to the issue as soon as possible. If a response is not given at the end of the Team Leader's next ordinary shift, then he will give a progress report which will include an undertaking as to the time by which a response will be given.

Step 2

If the response provided by way of the Incident Notification Report is not acceptable to the aggrieved person and/or union representative they may seek discussion with the General Manager, with the aim of resolving the dispute to the satisfaction of all parties. This will be done by discussion or a series of discussions where all of the circumstances can be reviewed by the Union and management representatives.

Step 3

If resolution cannot be reached, then either part will refer the matter to the Industrial Relation Commission of NSW for assistance in resolving the matter.

10. Essential Services Dispensation

The intent of the essential services dispensation is that should employees feel that industrial action is a necessary means of resolving a dispute with the Company that this action should not cause physical damage to the customer's plant and equipment, place his employees in danger or seriously damage the reputation of MultiServ and its workforce.

In the event that there is a stoppage of work by MultiServ employees the union and its members will agree to perform essential services that include, but may not necessarily be limited to: pouring hot iron from the blast furnaces at Area 21 as it should arise; removing scrap from rolling mills, casters and tundish aisles that may present a safety hazard; removing BF and BOS dusts and wastes from points of generation; deliver briquettes to BF and BOF as needed; and deliver charged scrap chutes to the BOS plant. In order to achieve this at least five operators per shift should be supplied of which three should be competent in operating Portal Cranes, two of operating a Kress EP500, one of operating a Hooklift and Ro/Ro trucks, one competent in dust and waste removal, and one competent in iron pouring. In addition minimum maintenance staff for the purposes of maintaining the essential service shall be supplied. MultiServ NSW Pty Limited was successful in obtaining the contract for the collection of wastes for briquetting and delivery of briquetted product to the BF and BOF therefore one additional operator, with the required skills to perform these activities, will be supplied.

The Productivity Payment of 2.5% (Clause 4.7.2(i)) will still be made should employees adhere to Clause 9.1 "Continuity of Production and Procedure for Resolving Issues and Differences".

If external factors such as state-wide stoppages and/or blockades or picketing of the site impede the adherence to the Dispute Settling procedures of Clause 9; then provided essential services are maintained, this Productivity payment will continue.

11. Site Employee Representative

11.1 Right of Entry

Officers of the Union will have the right to visit and interview its members on the site at meal times, and other times arranged with the employer that does not interrupt the operations of the Company.

11.2 Union Delegates

An employee appointed as a delegate shall upon notification by the union to the employer and employer site representative, be recognised as the accredited representative of the union to which he belongs and shall be allowed all necessary and reasonable time during working hours to submit to their employer matters affecting the employees they represent on all occasions.

A delegate shall on request be allowed reasonable time during working hours to attend to job matters affecting the union.

A delegate shall be committed to following the dispute resolving procedure under Clause 9 of this Award and shall remind the employees they represent to do so.

11.3 Participation and Communication

The Parties recognise the importance of the involvement and participation of employees in the areas of business which affect them and the need to ensure that communication paths of relevant information from management to employees and from employees to management are maintained, to this end the consultative committee of employees and management has been established.

Communication Meeting

- (a) The company will provide for a paid "communication meeting" quarterly for union members to discuss matters between the union, the Company and its employees. Payments shall be made to members of the union who would normally have been rostered on and working at the time of the meeting provided that:-
- (i) The meeting does not last more than approximately 1 hour.
 - (ii) Employees return to work after the meeting.
 - (iii) Essential services are maintained during the meeting as defined in Clause 10.
 - (iv) Employees continue to abide by Clause 9 of the MultiServ Award entitled "Continuity of Production for Resolving Issues and Differences".
 - (v) Employees continue to abide by Clause 10 of the MultiServ Award entitled "Essential Services Dispensation".

11.4 Delegate Training

Two (2) days per year of an authorised Union training course will be allowed for officially recognised delegates. These days can be accumulated for the life of the Award and pooled between the officially recognised delegates. On provision of an official attendance form to be signed by Site Management, the delegates will be paid at single time for the period of training.

12. No Extra Claims

The Union undertakes not to pursue any extra claims, award or over-award including State Wages Case Decision increases during the period of operation of this award.

APPENDIX 1

Offer Of Employment

To:

We refer to your recent application for employment with MultiServ Pty Ltd wish to advise you that your application has been successful for the position of:-

Your employment will be on a Casual / Fixed Term / Part Time /Full Time basis
(Delete as appropriate)

MultiServ Pty Ltd (The Company) offers you this employment at its Port Kembla Site on the basis set out in this Agreement. If you wish to accept this offer please sign a copy of this letter and return it to the Manager.

MultiServ is a business involved in providing scrap, steel and iron handling and processing services for its customers.

The operation depends upon employees working as part of the MultiServ team to provide the service our customers demand.

The matters listed below are some of the important things which it is expected employees understand and comply with so that this operation can be a success and grow.

MultiServ and its management look forward to a satisfying employment relationship with all its employees.

I agree:

1. To obtain and provide of relevant License for this function prior to commencement of duties.
2. To abide by terms of any industrial award or agreement that is applicable to my employment by the Company.
3. That my employment in the first instance is on probation for a period of three months during which time I can terminate my employment on one weeks notice to the Company or the Company can terminate my employment on one weeks notice.
4. To work in accordance with flexible work practices, including the performance of any work which I am competent to perform, as required by the Company.
5. To work reasonable overtime to meet the Company's requirement.
6. Not to absent myself from work without proper justification and to accept that the Company will strictly enforce the provisions covering absence, including abandonment of employment, particularly as regards notice and substantiation.
7. To abide by the Company's safety rules including the requirements as to the wearing of safety equipment, clothing and footwear.
8. To carry out all reasonable instruction of the Company.
9. To employment on a shift basis if required.
10. To undergo a prior medical examination, the result of which must be satisfactory for the position offered.
11. To accept payment of wages and other monetary entitlements by way of approved electronic funds transfer (EFT).- Any Bank- Illawarra Credit Union, City Coast Credit Union- Illawarra Mutual Building Society (IMB).
12. To abide by rules relating to smoking at the workplace as determined by the Company, which includes no smoking in the lunchroom.
13. To not report for work under the influence of alcohol or drugs and to not consume alcohol or to use prohibited drugs whilst at work.
14. To attend all instruction and training courses as reasonably required by the Company.
15. To comply with the Harsco Code of Conduct at all times.

I have answered entirely truthfully in respect of all questions answered by me either orally during my job interviews or in writing on the application for employment form and health questionnaire form.

I have read and understood this employment agreement and acknowledge that if I fail to comply with it, or any part of it, I render myself liable to disciplinary action or summary dismissal.

.....
Employee's Signature

Date:/...../.....

.....
Witness (Company Officer)

Should you have any further questions concerning this employment or cannot commence duties on the day previously discussed, please contact the undersigned.

Yours sincerely
MultiServ PTY LTD

APPENDIX 2

Repairperson Relevant Qualification That Apply To This Award

1. Mechanical

Trade Certificates: Plant Mechanic (TAFE) or Equivalent

TAFE Courses:

Welding - Manufacturing and Engineering Program (Flexible Delivery)
(Min 16 Hours)

Hydraulic Systems and Pneumatic Systems (72 Hours Total)

Site Specific Course

Basic Automotive Electrical Course (12v & 24v) (24 Hours Total)

2. OEM Courses

Are those with specific relevance to existing site equipment as agreed with Maintenance Superintendent and General Manager.

APPENDIX 3

Rates of Pay

Classification	Current As at 21st February 2006 \$
Production Employee Grade A	775.23
Production Employee Grade B	815.07
Production Employee Grade C	854.96
Production Employee Grade D	889.37
Production Employee Grade E	924.73
Repairperson Grade A	839.75
Repairperson Grade B	885.29

Repairperson Grade C	929.10
Repairperson Grade D	964.44
Repairperson Grade E	999.80
Administration Employee Grade A	775.23
Administration Employee Grade B	815.07
Administration Employee Grade C	854.96

The annual increases will not include any payments which are separate from the weekly/hourly rates, Team Leaders Allowance and peculiar to BlueScope Steel or other companies or industries.

The Annual increase will be paid 3 months in arrears.

Other Rates and Allowances

Team Leader	(when responsible)	\$56.78 per 12-hour shift
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The Team Leader will also receive a BlueScope Steel Canteen Meal Docket for the value of \$9.00 (as at 21/2/06) for each shift worked

5 x 8 hour Day Shift Team Leader	when responsible	(12hr Team Leader allowance x Average weekly shifts 3.5)	$\div 5 = \$38.03$
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The Day Shift Team Leader will also receive a BlueScope Steel Canteen Meal Docket for the value of \$9.00 (as at 21/2/06) for each shift worked.

APPENDIX 4 - PAY ALLOWANCES

Shift Work Allowances (per 38 hour week)

Classification	Hourly Rate Current As at February 2006 \$
5 x 2 Shift Allowance	1.3221
5 x Afternoon Shift	1.3221
12 Hour Rotating Shift	1.5863

Meal Allowance: \$9.00

Tool Allowance (per 38 hour week)

Tool Allowance: \$10.66

J. P. GRAYSON *D.P.*

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STOREMEN AND PACKERS, WHOLESALE DRUG STORES (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by National Union of Workers, New South Wales Branch, Industrial Organisation of Employees.

(No. IRC 5308 of 2005)

Before Commissioner Murphy

4 November 2005

VARIATION

1. Insert in numerical order in the Arrangement of the award published 23 April 1999 (309 I.G. 13) the following new clause number and subject matter:

41A. Anti-Discrimination

2. Insert after clause 41, Enterprise Arrangements the following new clause:

41. Anti-Discrimination

1. It is the intention of the parties bound by this award to seek to achieve the object in s 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
2. It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
3. Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
4. Nothing in this clause is to be taken to affect:
 - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to persons under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under s 56(d) of the *Anti-Discrimination Act 1977*;
 - (d) a party to this agreement from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
5. This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTES

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

(b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

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

This order shall take effect from the first pay period commencing on or after 14 October 2005.

J. P. MURPHY, Commissioner

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SYDNEY WATER AWARD 2004

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Sydney Water Corporation Limited.

(No. IRC 394 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete paragraph (i) of subclause 4.2 of clause 4, Casual Employment of the award published 13 January 2006 (356 I.G. 1) and insert in lieu thereof the following:
 - (i) Casual employees are entitled to unpaid parental leave in accordance with the New South Wales *Industrial Relations Act* 1996. The following subclause (j) shall also apply in addition to the provisions set out in the Act.
2. In after paragraph (i) of subclause 4.2 - of clause 4, the following new subclause:
 - (j) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (i) the employee or employee's spouse is pregnant; or
 - (ii) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.
3. Delete paragraph (a) of subclause 22.3 of clause 22 - Personal/Carers Leave and insert in lieu thereof the following:
 - (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
4. Insert after paragraph (c) of subclause 22.3 of clause 22, the following new paragraph:
 - (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
5. Insert after subclause 22.6 of clause 22 the following new subclause:

22.7 Personal Carers Entitlement For Casual Employees

 - (a) Subject to the evidentiary and notice requirements in 22.1(b) and 22.1(c), 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 22.1(c)(ii) of this clause who is sick and requires care and support, or who requires 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
6. Delete subclause (c) of clause 23 Bereavement Leave and insert in lieu thereof the following:
- (c) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (ii) of subclause 22.1(c) of Clause 22 (Personal/Carer's Leave), provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
7. Insert after subclause (e) of clause 23 the following new subclause:
- (f) Bereavement entitlements for casual employees
- (i) Subject to the evidentiary and notice requirements in (b) and (c), casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subparagraph (ii) of subclause 22.1(c) of Clause 22 (Personal/Carer's Leave)
- (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance
- (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
8. Insert after subclause 24.5 of clause 24, Parental Leave, the following new subclauses:
- 24.6 Right To Request
- (a) An employee entitled to parental leave may request the employer to allow the employee:
- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;
- to assist the employee in reconciling work and parental responsibilities.
- (b) 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.
- (c) Employee's request and the employer's decision to be in writing
- The employee's request and the employer's decision made under 24.6(a)(ii) and 24.6(a)(iii) must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under 24.6(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

24.7 Communication During Parental Leave

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

(i) 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 parental leave; and

(ii) 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 parental leave.

(b) 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 parental 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.

(c) 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 paragraph (a).

9. This variation shall take effect on and from 19 December 2005.

F. L. WRIGHT J , *President*

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INTEGRAL ENERGY CONDITIONS OF EMPLOYMENT AWARD 2005

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Integral Energy.

(No. IRC 416 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert after paragraph 9.6.5, of clause 9, Leave, of the award published 13 January 2006 (356 I.G. 311), the following new paragraph:

9.6.6 Bereavement leave entitlements for casual employee

Subject to the evidentiary and notice requirements in 9.6.2 casual employees are entitled to be not available to work, or to leave work upon the death in Australia of a person prescribed in 9.6.3 of this clause.

The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work for up to 48 hours (i.e. 2 days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

2. Delete paragraph 9.8.1, of the said clause 9, and insert in lieu thereof the following:

9.8.1 Entitlement

Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

3. Insert after paragraph 9.8.5, of the said clause 9, the following new paragraph:

9.8.6 Employer/Employee Obligations in regard to Parental Leave

9.8.6.1 An employer must not fail to re-engage a regular casual employee (see section 53 (2) of the Act) because:

- (a) the employee or employee's spouse is pregnant: or
- (b) the employee is or has been immediately absent on parental leave.

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

9.8.6.2 Right to request

- (a) An employee entitled to parental leave may request the employer to allow the employee:
- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

To assist the employee in reconciling work and parental responsibilities.

- (b) 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.
- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 9.8.6.2 (a)(ii) and 9.8.6.2 (a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 9.8.6.2 (a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

9.8.6.3 Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
- (i) 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 parental leave; and
 - (ii) 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 parental leave.
- (b) 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 parental 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.
- (c) 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 paragraph 9.8.6.3 (a).

4. Delete subclause 11.3, of clause 11, Family/Carers Leave, and insert in lieu thereof the following:

11.3 Single Day absences on annual leave for family/carers leave

An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

11.4 Family/Carers Entitlement for casual employees

11.4.1 Subject to the evidentiary and notice requirements in 11.1.2 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 11.1.3 (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.

11.4.2 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

11.4.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

11.5 Family/Carers Leave - use of annual leave

An employee with family/carers leave responsibilities may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due. Such applications should be made to the General Manager Human Resources"

5. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

OTHER SERVICES (CATHOLIC PERSONAL/CARER'S LEAVE) (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Nurses' Association, Industrial Organisation of Employees.

(No. IRC 6615 of 2005)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in clause 1, Arrangement of the award published 23 August 2002 (335 I.G. 1089) the following new clause 6 Parental Leave and subject matter, and renumber existing clause 6, Area Incidence and Duration to read as clause 7.

6. Parental Leave
7. Area, Incidence and Duration

2. Delete paragraphs (a) and (b) of subclause 3.1 of clause 3 Catholic Personal/Carer's Leave and insert in lieu thereof the following:

- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 3.1 (d) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided the relevant parent award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (b) The employee shall, if required,
 - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

3. Insert after paragraph (e) of subclause 3.1, Use of sick leave to provide care and support of clause 3 the following new paragraph (f):

- (f) Personal Carers Entitlement for casual employees
 - (i) Subject to the evidentiary and notice requirements in (b) 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 (d) 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.
 - (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
4. Insert the end of subclause 3.1 of clause 3 the following notation:
- Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.
- Where the parties are unable to reach agreement the disputes procedure of the relevant parent award should be followed.
5. Delete subclause 3.3, Unpaid Leave for Family and Other Purposes of clause 3, and insert in lieu thereof the following:
- 3.3 An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 3.1 (a) above who is ill or who requires care due to an unexpected emergency.
6. Delete subclause (a) of subclause 3.4 - Annual Leave of clause 3, and insert in lieu thereof the following:
- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
7. Insert after paragraph (c) of subclause 3.4 - Annual Leave, of clause 3 the following new paragraph (d):
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
8. Insert after paragraph (e) of subclause 3.8 of clause 3, Bereavement Leave the following new paragraph (f):
- (f) Bereavement entitlements for casual employees
- (i) Subject to the evidentiary and notice requirements in 3.8 (b) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause (d) of Clause 3.1 Catholic Personal/Carers Leave.
 - (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance
 - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
9. Insert after clause 5, Grievance and Dispute Settling Procedure, in clause 1, Arrangement the following new clause.

6. Parental Leave

- (1) Refer to the *Industrial Relations Act 1996 (NSW)*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996 (NSW)*

(2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

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

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

(3) Right to request

(a) An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

(b) 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.

(c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

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

- (i) 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 parental leave; and
- (ii) 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 parental leave.

(b) 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 parental 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.

- (c) 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 paragraph (a).
- 10. Renumber clause 6 Area, Incidence and Duration to read as clause 7.
- 11. This variation shall take effect on and from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CATHOLIC HEALTH CARE SERVICES NURSES' ENTERPRISE (STATE) AWARD 2001

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Nurses' Association, Industrial Organisation of Employees.

(No. IRC 6616 of 2005)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert after paragraph (f) of subclause (iii) of clause 28, Compassionate Leave of the award published 25 March 2005 (349 I.G. 544) the following new paragraph:
 - (g) Bereavement entitlements for casual employees
 - (i) Subject to the evidentiary and notice requirements in (iii) (b) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause (i)(c)(2) of Clause 29 State Personal/Carer's Leave.
 - (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance
 - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
2. Delete paragraphs (a) and (b) of subclause (i) of Clause 29 - State Personal/Carers Leave and insert in lieu thereof the following:
 - (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 1.(c) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 26 of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
 - (b) The employee shall, if required,
 - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

3. Insert at the end of subparagraph (2) of paragraph (c) of subclause (i) of clause 29 State Personal/Carers the following notation:

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 46 should be followed.

4. Delete paragraph (a) of subclause (iii) of Clause 29 the following new paragraph:

(a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

5. Insert after paragraph (c) of subclause (iii) of Clause 29 the following new paragraph:

(d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

6. Insert after subclause (vi) of Clause 29 the following new subclause (vii):

(vii) Personal Carers Entitlement for casual employees

(a) Subject to the evidentiary and notice requirements in (i)(b) 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)(c)(2) 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

7. Delete subclause (ii) of Clause 30 Parental Leave and insert in lieu thereof the following:

(ii) Eligibility to Parental Leave -

(a) Refer to the *Industrial Relations Act 1996* (NSW) The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

(b) Full Time Employees - To be eligible for paid parental leave a full time employee must have completed at least 40 weeks continuous service prior to the expected date of birth or prior to the date of taking custody of the adopted child.

(c) Part-Time Employees - To be eligible for paid parental leave a part-time employee must have completed at least 40 weeks continuous service prior to the expected date of birth or prior to the date of taking custody of the adopted child.

(d) Regular Casual Employees - a regular casual employee is entitled to 12 months unpaid parental leave only if the employee has had at least 24 months of continuous service with the employer.

- (e) Casual Employees - An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
- (1) the employee or employee's spouse is pregnant; or
 - (2) the employee is or has been immediately absent on parental leave.

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

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

- (1) there has been a break in service where the employee has been re-employed or reappointed after a resignation, medical retirement, or after her/his services have been otherwise dispensed with; or
- (2) 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*.

8. Insert after subclause (x) of clause 30 Parental Leave the following new subclauses (xi) and (xii):

(xi) Right to request

(a) An employee entitled to parental leave may request the employer to allow the employee:

1. to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
2. to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
3. to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

(b) 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.

(c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under (xi)(a)(2) and (3) must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under (xi)(a)(3), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(xii) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
1. 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 parental leave; and
 2. 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 parental leave.
- (b) 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 parental 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.
- (c) 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 paragraph (a).
9. This variation shall take effect on and from 19 December 2005.

F. L. WRIGHT J , *President*

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NURSES, NON-GOVERNMENT SCHOOLS (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Nurses' Association, Industrial Organisation of Employees.

(No. IRC 6618 of 2005)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in Part A of the award published 11 March 05 (349 I.G. 1) the following new clause number and subject matter, and renumber existing clause 27, to read as clause 28.

- 27. Parental Leave
- 28. Area, Incidence and Duration

2. Insert after paragraph (c) of subclause (i) of clause 4, Casual and Part-Time Employees the following new paragraph:

(d) A casual employee shall be entitled to the provisions found in clauses 12, 13, 14 and 15.

3. Delete paragraphs (a) and (b) of subclause (i) of Clause 12 Carer's Leave and replace with the following:

(a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in (i)(c) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 11 Sick Leave, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

(b) The employee shall, if required,

- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

4. Insert at the end of subclause (i) of clause 12, the following notation.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 23 should be followed.

5. Delete paragraph (a) of subclause (i) of clause 12 - and insert in lieu thereof the following:

(a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

6. Insert after paragraph (c) of subclause (iii) of Clause 12, the following new paragraph:
- (d) 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.
7. Insert after subclause (iii) of Clause 12 the following new subclause:
- (iv) Personal Carers Entitlement for casual employees
- (a) Subject to the evidentiary and notice requirements in (i)(b) 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)(c) 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
8. Delete paragraphs (a) and (b) of subclause (i) of Clause 13, Catholic Personal/Carers Leave and insert in lieu thereof the following:
- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in (i)(c) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 11 Sick Leave, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (b) The employee shall, if required,
- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.
- In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.
9. Insert at the end of subclause (i) of clause 13 the following notation:
- Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.
- Where the parties are unable to reach agreement the disputes procedure at clause 23 should be followed.
10. Delete subclause (iv) of Clause 13 and insert in lieu thereof the following:
- (iv) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in subclause (i)(c) above who is ill or who requires care due to an unexpected emergency.

11. Delete paragraph (a) of subclause (v) Clause 13 and insert in lieu thereof the following:
 - (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
12. Insert after paragraph (c) of subclause (iii) of Clause 13, the following new paragraph:
 - (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
13. Insert after subclause (v) of Clause 13 the following new subclause:
 - (vi) Personal Carers Entitlement for casual employees
 - (a) Subject to the evidentiary and notice requirements in (i)(b) 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)(c) 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
14. Delete clause 14, Bereavement Leave and insert in lieu thereof the following:

14. Bereavement Leave

- (a) Upon the death within Australia of an employee's husband or wife, including de facto husband or de facto wife, parent, child including stepchild or ward, brother or sister, mother-in-law or father-in-law, the employee shall be entitled upon notice to leave of absence for two working days. Proof of death of the relative shall lie upon the employee.
- (b) Bereavement leave shall be available to an employee in respect of the death of a member of the employee's immediate family or household as defined in clause 12, Carer's Leave.
- (c) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (d) Bereavement leave may be taken in conjunction with other leave available under subclauses (ii) and (iii) of the said clause 12. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the school.
- (e) Bereavement entitlements for casual employees
 - (i) Subject to the evidentiary and notice requirements in subclause (a) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause (i)(c)(ii) of Clause 12, Personal/Carers Leave
 - (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance

- (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
15. Insert after subclause (e) of Clause 15 Bereavement Leave (Catholic Standard), the following new subclause:
- (f) Bereavement entitlements for casual employees
 - (i) Subject to the evidentiary and notice requirements in subclause (b) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause (i)(c)(ii) of Clause 12, Personal/Carers Leave
 - (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance
 - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
16. Insert after clause 26, Superannuation the following new clause:

27. Parental Leave

- (i) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW)
- (ii) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

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

- (iii) Right to request
 - (a) An employee entitled to parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;
- to assist the employee in reconciling work and parental responsibilities.
- (b) 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.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (iv) Communication during parental leave

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

- (i) 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 parental leave; and
- (ii) 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 parental leave.

- (b) 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 parental 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.

- (c) 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 paragraph (a).

17. This order shall take effect on and from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (RURAL FIRE SERVICE SALARIES AND CONDITIONS OF EMPLOYMENT 2003) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 349 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in the Arrangement Index of the award published 25 June 2004 (345 I.G. 5) after clause 131 the following:

Appendix A
Appendix B

2. Insert after subclause (g) of clause 45 Leave: Adoption Leave the following new subclause (h):
 - (h) Employees entitled to adoption leave shall also have an additional entitlement as set out in Appendix B."
3. Insert after subclause (h) of clause 50, Leave: Maternity Leave the following new subclause (i):
 - (i) Employees entitled to maternity leave shall also have an additional entitlement as set out in Appendix B, Additional parental leave.
4. Insert after subclause (e), of clause 53, Leave: Parental Leave the following new subclause (f):
 - (f) Employees entitled to parental leave shall also have an additional entitlement as set out in Appendix B."
5. Insert after subparagraph (i) of paragraph (2) of subclause (m) of clause 95, Service Support Centre (SSC) the following new paragraph (3):
 - (3) Casuals shall also receive the following entitlements:
 - (a) Personal Carers' and Bereavement entitlement in accordance with sub clauses (v)&(vi) of Clause 12 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006, and as set out in Appendix A of this Award; and
 - (b) Unpaid parental leave in accordance with Appendix B."
6. Insert after clause 131, Part B, Schedule C, NSW Remote Area Boundaries, the following new Appendix A and Appendix B.

APPENDIX A

- (i) Personal Carers entitlement for casual employees
 - (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is

subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).

- (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (d) The casual employee shall, if required,
 - (A) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (B) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (e) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
- (ii) A family member for the purposes of (ii) (a) above is:
 - (a) a spouse of the staff member; or
 - (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or of spouse or of de facto spouse of the staff member; or
 - (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:-

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

- (iii) Bereavement entitlements for casual employees
 - (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).

- (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence."

APPENDIX B

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW)
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

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

- (3) Right to request
 - (a) An employee entitled to parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) 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.
- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

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

(i) 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 parental leave; and

(ii) 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 parental leave.

(b) 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 parental 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.

(c) 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 paragraph (a).

7. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (HARNESS RACING AUTHORITY) CONDITIONS OF EMPLOYMENT AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 353 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert after Schedule B - Changes made on Review in the Arrangement of the award published 27 June 2003 (340 I.G. 108), the following:

Appendix A
Appendix B

2. Insert after subclause (c), of clause 25, Casual Employment, the following new subclause:

(d) Casuals shall also receive the following entitlements:

- (a) Personal Carer's and Bereavement entitlement in accordance with Appendix A of this Award; and
- (b) Unpaid parental leave in accordance with Appendix B.

3. Insert after subclause (g), of clause 15, Maternity Leave, the following new subclause:

(h) Employees entitled to maternity leave shall also have an additional entitlement as set out in Appendix B.

4. Insert after subclause (e), of clause 16, Parental Leave, the following new subclause:

(f) Employees entitled to adoption leave shall also have an additional entitlement as set out in Appendix B.

5. Insert after subclause (g), of clause 17, Adoption Leave, the following new subclause:

(h) Employees entitled to parental leave shall also have an additional entitlement as set out in Appendix B.

6. Insert after Schedule B - Changes Made on Review, the following new Appendices:

APPENDIX A

- (i) Personal Carers entitlement for casual employees

- (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).

- (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) The Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (d) The casual employee shall, if required,
 - (A) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (B) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (e) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
- (ii) A family member for the purposes of (ii) (a) above is:
 - (a) a spouse of the staff member; or
 - (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or of spouse or of de facto spouse of the staff member; or
 - (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:-

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

- (iii) Bereavement entitlements for casual employees
 - (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
 - (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (c) The Clerks must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.

APPENDIX B

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53 (2) of the Act) because:
 - (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

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

- (3) Right to request
 - (a) An employee entitled to parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age.

to assist the employee in reconciling work and parental responsibilities.
 - (b) 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 Eraring Energy business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
 - (c) Employee's request and the employer's decision to be in writing

Employee's request and Eraring Energy's decision made under 3 (a) (ii) and 3 (a) (iii) must be recorded in writing.
 - (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (4) Communication during parental leave
- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
- (i) 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 parental leave; and
- (ii) 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 parental leave.
- (b) The employee shall take reasonable steps to inform Eraring Energy about any significant matter that will affect the employee's decision regarding the duration of parental 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.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect Eraring Energy's capacity to comply with paragraph (a).
7. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (JENOLAN CAVES RESERVE TRUST) SALARIES AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 354 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert after Schedule F - Enterprise Negotiations - Productivity Off-Sets in clause 1, Arrangement of the award published 25 February 2005 (348 I.G. 670), the following:

Schedule G. Other Casual Entitlements

2. Insert after subclause 14.10, of clause 14, Casual Employment, the following new subclause:

14.11 Casuals shall also receive the following entitlements in accordance with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006:

- (a) Unpaid parental leave in accordance with Clause 12 (iv) (d) (of the renumbered Award);
- (b) Personal Carer's entitlement in accordance with Clause 12 (v) (of the renumbered Award);
and
- (c) Bereavement entitlement in accordance with Clause 12 (vi) (of the renumbered Award).

This entitlement is also set out at Schedule G of this Award.

3. Insert after Schedule F - Enterprise Negotiations - Productivity Off-Sets, the following new Schedule:

SCHEDULE G

OTHER CASUAL ENTITLEMENTS

- (i) Casual employees are entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, section 54, Entitlement to Unpaid Parental Leave, in accordance with the *Industrial Relations Act 1996*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
 - (a) The Department Head must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (A) the employee or employee's spouse is pregnant; or
 - (B) the employee is or has been immediately absent on parental leave.

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

(ii) Personal Carers entitlement for casual employees

- (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).
- (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) The Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (d) The casual employee shall, if required,
 - (A) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (B) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (e) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.

(iii) A family member for the purposes of (ii) (a) above is:

- (a) a spouse of the staff member; or
- (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or of spouse or of de facto spouse of the staff member; or
- (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:-

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

- (iv) Bereavement entitlements for casual employees
- (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
 - (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (c) The Clerks must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
 - (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
4. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (LORD HOWE ISLAND BOARD SALARIES AND CONDITIONS 2004) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 356 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert at the end of clause 22, Family and Community Service Leave, Personal/Carer's Leave and Flexible Use of Other Leave Entitlements, of the award published 25 February 2005 (348 I.G. 707), the following new paragraphs:
 - (i) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
 - (ii) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
2. Insert after subclause (i) of clause 27, Parental Leave, the following new subclauses:
 - (ii) Right to request
 - (i) An employee entitled to parental leave may request the employer to allow the employee:
 - (a) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (b) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (c) to return from a period of 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) Employee's request and the employer's decision made under (b) and (c) are to be in writing.
 - (iv) Where an employee wishes to make a request to return to work part-time, such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (iii) Communication during parental leave
 - (v) Where an employee is on 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 parental leave; and
 - (b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
 - (vi) 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 parental 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.
 - (vii) 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 the notification requirements of this clause.
- 3. Delete subclause (iii), of clause 33, Casual Employment, and insert in lieu thereof the following:
 - (iii) Casual staff are not entitled to any form of leave specified in this Award except as prescribed in subclauses (iv), (v), (vi) and (vii) of this clause.
 - (iv) 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 person prescribed in subclause A of clause 22 Family and Community Service Leave, Personal/Carers Leave and Flexible Use of Other Leave Entitlements, on production of satisfactory evidence (if required by the employer).
 - (b) The employer and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance
 - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
 - (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
 - (v) Personal Carers Entitlement for casual employees
 - (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause A of clause 22 Family and Community Service Leave, Personal/Carer's Leave and Flexible Use of Other Leave Entitlements who is sick and requires care and support, or who requires care due to an unexpected emergency, or birth of a child.

- (b) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
 - (c) The employer and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (d) The casual employee shall, if required, establish by production of a medical certificate, a statutory declaration or other documentation acceptable to the employer, the illness of the person concerned and that the illness is such as to require care by another person, or the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.
 - (e) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (vi) Parental Leave entitlement for casual employees
- (a) Casual employees are entitled to unpaid parental leave in accordance with the *Industrial Relations Act 1996*. Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
 - (b) The Department Head must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (A) the employee or employee's spouse is pregnant; or
 - (B) the employee is or has been immediately absent on parental leave.
 - (c) The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.
- (vii) Casual employees shall receive long service leave in accordance with the *Long Service Leave Act 1955*.
4. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

CROWN EMPLOYEES (TIPSTAVES TO JUSTICES) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 360 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert after Schedule B - Changes made on Review in the Arrangement of the award published 3 December 2004 (347 I.G. 574), the following:

Appendix A
Appendix B

2. Insert after subclause 9.3, of clause 9, Military Leave, the following new subclause:

9.4 Casuals shall also receive the following entitlements:

- (a) Personal Carer's and Bereavement entitlement in accordance with subclauses (v) & (vi) of Clause 12 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006, and as set out in Appendix A of this Award; and
- (b) Unpaid parental leave in accordance with Appendix B.

3. Insert after subclause 11.11, of clause 11, Maternity Leave, the following new subclause:

11.2 Employees entitled to maternity leave shall also have an additional entitlement as set out in Appendix B.

4. Insert after paragraph 12.1.8, of clause 12, Adoption Leave, the following new paragraph:

12.1.9 Employees entitled to adoption leave shall also have an additional entitlement as set out in Appendix B.

5. Insert after subclause 13.3, of clause 13, Parental Leave, the following new subclause:

13.4 Employees entitled to parental leave shall also have an additional entitlement as set out in Appendix B.

6. Insert after Schedule B - Changes Made on Review, the following new Appendices:

APPENDIX A

- (i) Personal Carers entitlement for casual employees
 - (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).
 - (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is

entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (d) The casual employee shall, if required,
 - (A) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (B) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (e) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.

(ii) A family member for the purposes of paragraph (ii) (a) above is:

- (a) a spouse of the staff member; or
- (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or of spouse or of de facto spouse of the staff member; or
- (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:-

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

(iii) Bereavement entitlements for casual employees

- (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
- (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.

APPENDIX B

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

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

- (3) Right to request
 - (a) An employee entitled to parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.
 - (b) 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.
 - (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.
 - (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (4) Communication during parental leave
- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
- (i) 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 parental leave; and
- (ii) 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 parental leave.
- (b) 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 parental 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.
- (c) 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 paragraph (a).
7. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (NSW DEPARTMENT OF TOURISM, SPORT AND RECREATION - PROGRAM OFFICERS) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 361 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert after Schedule 1 - Centre and Academy Locations in clause 1, Arrangement of the award published 11 February 2005 (348 I.G. 432), the following:

Appendix 1

2. Delete subclause 7.4, of clause 7, Temporary and Casual Employment, and insert in lieu thereof the following:

7.4 The casual rates of pay for Program Officer specified at Part B, Table 2 include a loading and represent full remuneration for employment (including recreation leave), with the exception of entitlements provided in Clause 13 and at Appendix 1.

3. Insert after Schedule 1 - Centre and Academy Locations, the following new Appendix:

APPENDIX 1

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

- (a) The Department Head must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

(A) the employee or employee's spouse is pregnant; or

(B) the employee is or has been immediately absent on parental leave.

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

- (ii) Personal Carers entitlement for casual employees

- (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).

- (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (d) The casual employee shall, if required,
 - (A) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (B) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (e) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
- (iii) A family member for the purposes of paragraph (ii) (a) above is:
- (a) a spouse of the staff member; or
 - (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or of spouse or of de facto spouse of the staff member; or
 - (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:-
 - "relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;
 - "affinity" means a relationship that one spouse or partner has to the relatives of the other; and
 - "household" means a family group living in the same domestic dwelling.
- (iv) Bereavement entitlements for casual employees
- (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
 - (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

- (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
4. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (KINGSFORD SMITH AIRPORT TRAVEL CENTRE) AWARD 2003

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 363 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert after Annexure B - Formula for Determining All Incidence Allowance in clause 1, Arrangement of the award published 23 April 2004 (344 I.G. 124), the following:

Appendix A

2. Insert after paragraph 6.2.2, of clause 6, Salary, the following new paragraph:

6.2.3 Casuals shall also receive the following entitlements in accordance with the Crown Employees (public Service Conditions of Employment) Reviewed Award 2006:

- (a) Unpaid parental leave in accordance with Clause 12 (iv)(d);
- (b) Personal Carer's entitlement in accordance with Clause 12(v); and
- (c) Bereavement entitlement in accordance with Clause 12 (vi).

This entitlement is also set out in Appendix A of this Award.

3. Insert after Annexure B - Formula for Determining All Incidence Allowance, the following new Appendix:

APPENDIX A

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

- (a) The Department Head must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (A) the employee or employee's spouse is pregnant; or
 - (B) the employee is or has been immediately absent on parental leave.

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

- (ii) Personal Carers entitlement for casual employees

- (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is

subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).

- (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (d) The casual employee shall, if required,
 - (A) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (B) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (e) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
- (iii) A family member for the purposes of paragraph (ii) (a) above is:
- (a) a spouse of the staff member; or
 - (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or of spouse or of de facto spouse of the staff member; or
 - (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:-

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

- (iv) Bereavement entitlements for casual employees
- (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
 - (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is

entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
 - (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
4. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES DEPARTMENT OF JUVENILE JUSTICE - DIRECT CARE STAFF (CENTRES) 2004 AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 364 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in clause 1, Arrangement, of the award published 21 January 2005 (348 I.G. 1), the following new Part:

PART C

Casual Leave Entitlements

2. Insert after subclause (vii), of clause 6, Casual Employees, the following new subclause:
- (viii) Casuals shall also receive the following entitlements in accordance with the Crown Employees (public Service Conditions of Employment) Reviewed Award 2006:
- (a) Unpaid parental leave in accordance with Clause 12 (iv)(d);
 - (b) Personal Carer's entitlement in accordance with Clause 12(v); and
 - (c) Bereavement entitlement in accordance with Clause 12 (vi).

This entitlement is also set out in this Award at Part C, Casual Leave Entitlements.

3. Insert after Table 3, Allowances, of Part B, Monetary Rates, the following new Part:

PART C

CASUAL LEAVE ENTITLEMENTS

- (1) Casual employees are entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, section 54, Entitlement to Unpaid Parental Leave, in accordance with the *Industrial Relations Act 1996*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (i) The Department Head must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
- (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

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

(2) Personal Carers entitlement for casual employees

- (i) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).
- (ii) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (iii) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (iv) The casual employee shall, if required,
 - (a) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (b) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (v) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.

(3) A family member for the purposes of paragraph (ii) (a) above is:

- (a) a spouse of the staff member; or
- (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or of spouse or of de facto spouse of the staff member; or
- (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:-

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

- (4) Bereavement entitlements for casual employees
- (i) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
 - (ii) The Clerks and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (iii) The Clerks must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
 - (iv) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
4. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (DEPARTMENT OF JUVENILE JUSTICE - DETENTION CENTRES 2005) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 365 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in clause 1, Arrangement of the award published 10 March 2006 (357 I.G. 1177), the following new Appendix:

Appendix C

2. Insert after subclause 5.7, of clause 5, Casual Employment, the following new subclause:

5.8 Casuals shall also receive the following entitlements in accordance with the Crown Employees (public Service Conditions of Employment) Reviewed Award 2006:

- (a) Unpaid parental leave in accordance with Clause 12 (iv)(d);
- (b) Personal Carer's entitlement in accordance with Clause 12(v); and
- (c) Bereavement entitlement in accordance with Clause 12 (vi).

This entitlement is also set out in Appendix C of this Award.

3. Insert after Appendix B - Transition Of Existing Classifications, the following new Appendix:

APPENDIX C

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

- (a) The Department Head must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

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

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

- (ii) Personal Carers entitlement for casual employees

- (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is

subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).

- (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (d) The casual employee shall, if required,
 - (A) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (B) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (e) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
- (iii) A family member for the purposes of (ii) (a) above is:
- (a) a spouse of the staff member; or
 - (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or of spouse or of de facto spouse of the staff member; or
 - (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:-

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

- (iv) Bereavement entitlements for casual employees
- (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
 - (b) The Clerks and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled

to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (c) The Clerks must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
 - (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
4. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

**CROWN EMPLOYEES (DOMESTIC SERVICES OFFICERS -
DEPARTMENT OF AGRICULTURE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 367 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert at the end of clause 10, Leave, of the award published 231 May 2004 (344 I.G. 596), the following

In addition to the leave entitlements set out above, the following provisions shall also apply.

- (a) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (i) the employee or employee's spouse is pregnant; or
 - (ii) the employee is or has been immediately absent on parental leave.

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

- (b) Right to Request
 - (i) An employee entitled to parent leave may request the employer to allow the employee:
 - (A) extend the period of simultaneous unpaid parent leave use up to a maximum of eight weeks;
 - (B) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (C) return from a period of parent leave on a part time basis until the child reaches school age;to assist the staff member 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) Employee's request and the employer's decision made under paragraph 31.3 (b) (i) (B) and 31.3 (b) (i) (C) above, must be recorded in writing.

(iv) Request to return to work part-time

Where an employee wished to make a request under 31.1 (b) (i) (C) above, such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(c) Communication during Parental Leave

(i) Where an employee is on 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 parental leave; and

(B) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental 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 parental 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 paragraph 31.3 (i).

2. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (MUSEUM OF APPLIED ARTS AND SCIENCES - CASUAL GUIDE LECTURERS) AWARD 2004

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 369 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert at the end of the Arrangement, of the award published 15 October 2004 (346 I.G. 834), the following:

Appendix A

2. Insert after the first paragraph of clause 4, Wage Rates, the following new subclause:
 - (a) Casuals shall also receive the following entitlements in accordance with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006.
 - (i) Unpaid parental leave in accordance with Clause 12 (iv) (d);
 - (ii) Personal Carer's entitlement in accordance with Clause 12 (v); and
 - (iii) Bereavement entitlement in accordance with Clause 12 (vi).

This entitlement is also set out at Appendix A of this Award

3. Insert after Table 1, Wages, of Part B, Monetary Rates, the following new Appendix:

APPENDIX A

- (i) Casual employees are entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, section 54, Entitlement to Unpaid Parental Leave, in accordance with the *Industrial Relations Act 1996*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
 - (a) The Department Head must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (A) the employee or employee's spouse is pregnant; or
 - (B) the employee is or has been immediately absent on parental leave.

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

- (ii) Personal Carers entitlement for casual employees
 - (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is

subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).

- (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (d) The casual employee shall, if required,
 - (A) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (B) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (e) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
- (iii) A family member for the purposes of (ii) (a) above is:
- (a) a spouse of the staff member; or
 - (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or of spouse or of de facto spouse of the staff member; or
 - (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:-

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

(vii) Bereavement entitlements for casual employees

- (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
- (b) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is

entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (c) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
 - (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
4. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (HOME CARE SERVICE OF NEW SOUTH WALES - ADMINISTRATIVE STAFF) AWARD 2004

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 376 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete paragraphs 3(i) and (iii), of clause 31, Personal/Carer's Leave, of the award published 6 May 2005 (350 I.G. 951), and insert in lieu thereof the following:
 - (i) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
 - (iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least ten consecutive days are taken.
2. Insert after subclause 6, of the said clause 31, the following new subclauses:
 - (7) Personal Carers Entitlement for Casual employees
 - (i) Subject to the evidentiary and notice requirements in subclause 1(ii) and subclause 1(iv) 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 1.1.3(ii) 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.
 - (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
 - (8) Bereavement entitlements for Casual employees
 - (i) Subject to the evidentiary and notice requirements in subclause (1) (ii) and (iv), casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 1 (iii) of clause 31 Personal/Carers Leave.
 - (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

3. Delete subclause 3, of clause 32, Parental Leave, and insert in lieu thereof the following subclauses:

3. Other Parent Leave

An employee, other than a casual employee, who has completed 12 months' continuous service with the employer prior to the commencement of 'other parent' leave, shall be entitled to unpaid 'other parent' leave under the following conditions:

- (i) Up to a maximum of eight week's simultaneous unpaid leave;
- (ii) A further continuous period of unpaid leave to become the primary care giver for a period not exceeding 12 months less any leave already taken by the staff member as provided for in paragraph (i) of this subclause.
- (iii) Provided that an employee shall:
 - (a) give 10 weeks' notice of his or her intention to take 'other parent' leave;
 - (b) make a statutory declaration:

that he or she is applying for leave to become the primary caregiver;

detailing maternity or adoption leave sought or taken by his or her spouse;

that he or she will take another job or in any other way contravene his or her contract of employment while on 'other parent' leave,

4. Right to request

- (i) An employee entitled to either maternity, adoption or 'other parent' leave, other than a casual employee, may request the employer to allow the employee:
 - (a) to extend the period of unpaid maternity, adoption or 'other parent' leave for a further continuous period of leave not exceeding 12 months;
 - (b) to return from a period of maternity, adoption or 'other parent' 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.

5. Communication during maternity, adoption or 'other parent' leave

- (i) Where an employee is on maternity, adoption or 'other parent' 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 maternity, adoption or other parent 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 maternity, adoption or 'other parent' 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 maternity, adoption or 'other parent' 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 change of address or other contact details which might affect the employer's capacity to comply with paragraph (i).

6. Casual Employees

- (i) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

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

4. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

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**SUPERANNUATION ADMINISTRATION CORPORATION
(SALARIES AND CONDITIONS 2004) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 368 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in clause 1 Arrangement, of Part B, Monetary Rates the following new clause numbers and subject matter:
 78. Appendix A
 79. Appendix B
2. Delete subclause (vi) of clause 14 Categories of Employment, and insert in lieu thereof the following:
 - (vi) Casuals have access to unpaid parental leave in accordance with Appendix A of this Award.
3. Insert after subclause (vi) of clause 14 the following new subclause (vii).
 - (vii) Casuals shall also receive Personal Carers' and Bereavement entitlement in accordance with Appendix B of this Award.
4. Insert after paragraph (b) of subclause 42.1 of clause 42 Adoption Leave, the following new subclause (c):
 - (c) An employee shall be entitled to special adoption leave (without pay) for up to 2 days to attend interviews or examinations for the purposes of adoption. Special adoption leave may be taken as a charge against recreation leave, extended leave, flexitime or family and community service leave.
5. Insert after subclause 42.8, of clause 42 the following new clause:
 - 42.9 An employee who has taken no more than 12 months full time adoption leave or its part time equivalent is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on parental leave) for another period of such leave regardless of whether they resume their normal hours of work before proceeding on leave for another pregnancy or adoption.
6. Insert after subclause 42.9 of clause 42, the following new subclause:
 - 42.10 Employees entitled to adoption leave in accordance with this clause shall also have an additional entitlement as set out in Appendix A.
7. Insert after paragraph (b) of subclause 47.7 of clause 47, Maternity Leave the following new subclause (c):
 - (c) An employee who has taken no more than 12 months full time maternity leave or its part time equivalent is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on parental leave) for another period of such leave regardless of whether they resume their normal hours of work before proceeding on leave for another pregnancy or adoption.

8. Insert after subclause 47.13 of clause 47 the following new subclause:
- 47.14 Employees entitled to maternity leave in accordance with this clause shall also have an additional entitlement as set out in Appendix A.
9. Insert after subclause 48.5 of clause 48 the following new subclause:
- 48.6 Employees entitled to parental leave in accordance with this clause shall also have an additional entitlement as set out in Appendix A.
10. Insert after clause 77, Table 3 - Settlement Periods for Work Hours System, of Part B, Monetary Rates the following new clause 78:

78. Appendix A

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW)
- (2) The CEO must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

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

- (3) Right to request
- (a) An employee entitled to parental leave may request the CEO to allow the employee:
- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;
- to assist the employee in reconciling work and parental responsibilities.
- (b) The CEO 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 CEO's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (c) Employee's request and the CEO's decision to be in writing
- The employee's request and the CEO's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.
- (d) Request to return to work part-time
- Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (4) Communication during parental leave
- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the CEO shall take reasonable steps to:
 - (i) 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 parental leave; and
 - (ii) 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 parental leave.
 - (b) The employee shall take reasonable steps to inform the CEO about any significant matter that will affect the employee's decision regarding the duration of parental 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.
 - (c) The employee shall also notify the CEO of changes of address or other contact details which might affect the CEO's capacity to comply with paragraph (a).

11. Insert after clause 78, Appendix A, the following new clause:

79. Appendix B

- (1) Personal Carers entitlement for casual employees
- (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in clause 51.4(d) of this Award who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).
 - (b) The CEO and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (c) A CEO must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of the CEO to engage or not to engage a casual employee are otherwise not affected.
 - (d) The casual employee shall, if required,
 - (A) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (B) establish by production of documentation acceptable to the CEO or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.
- In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.
- (e) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the CEO of their inability to attend for duty. If it is not reasonably practicable to inform the CEO during the ordinary hours of the first day or shift of such absence, the employee will inform the CEO within 24 hours of the absence.

- (2) Bereavement entitlements for casual employees
- (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the CEO).
 - (b) The CEO and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (c) A CEO must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of the CEO to engage or not engage a casual employee are otherwise not affected.
 - (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the CEO of their inability to attend for duty. If it is not reasonably practicable to inform the CEO during the ordinary hours of the first day or shift of such absence, the employee will inform the CEO within 24 hours of the absence."
12. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

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LANDCOM (CONDITIONS OF EMPLOYMENT 2004) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 370 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in clause 1 Arrangement, of the award published 3 June 2005 (351 I.G. 528) the following new Appendix A.

Appendix A

2. Delete subclause (4) Leave of clause 13A. Casual Employment and insert in lieu thereof the following:

- (4) Leave

- (a) Except as provided under this clause, Casual employees are not entitled to any other paid or unpaid leave.
- (b) As set out in subclause (2) (c) of this clause, casual employees will be paid a 1/12th of the ordinary hourly rate of pay additional payment in lieu of annual leave.
- (c) Casual employees will be entitled to Long Service Leave in accordance with the provisions of the *Long Service Leave Act 1955*.
- (d) Casual employees are entitled to unpaid parental leave in accordance with Appendix A.
- (e) Personal Carers entitlement for casual employees
 - (1) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in sub clause 39 (iv) of this Award who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (4), and the notice requirements set out in (5).
 - (2) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (3) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
 - (4) The casual employee shall, if required,
 - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or

- (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (5) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.
- (f) Bereavement entitlements for casual employees
- (1) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
 - (2) The Department Head and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (3) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
 - (4) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.

3. Insert after subclause (7) of clause 40 Maternity Leave, the following new subclause (8):

- (8) Employees entitled to maternity leave shall also have an additional entitlement as set out in Appendix A.

4. Insert after subclause (6) of clause 41 Parental Leave, the following new subclause (7):

- (7) Employees entitled to parental leave shall also have an additional entitlement as set out in Appendix A."

5. Insert after subclause (7) of clause 42 the following new subclause (8)

- (8) Employees entitled to adoption leave shall also have an additional entitlement as set out in Appendix A.

6. Insert after clause 71, Monetary Rates Table the following new Appendix A:

APPENDIX A

- (1) Refer to the *Industrial Relations Act 1996 (NSW)*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996 (NSW)*

- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
- (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

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

(3) Right to request

- (a) An employee entitled to parental leave may request the employer to allow the employee:
- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) 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.
- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
- (i) 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 parental leave; and
 - (ii) 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 parental leave.
- (b) 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 parental 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.

- (c) 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 paragraph (a).
7. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J, *President*

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DELTA ELECTRICITY EMPLOYEES AWARD 2005

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Delta Electricity .

(No. IRC 391 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in the Arrangement of the award published 13 January 2006 (356 I.G. 81) the following new clause number 20, Parental Leave, and renumber existing clauses 21 to 28 accordingly:

- 20. Parental Leave
- 21. Public Holidays and Picnic Day
- 22. Standby Allowance
- 23. Travelling Time and Fares
- 24. Working Away from Headquarters
- 25. Local Workplace Flexibility
- 26. Grievance and Disputes Procedures
- 27. Redundancy
- 28. Miscellaneous

2. Delete subclause 19.6 of clause 19 Personal/Carer's Leave and Bereavement Leave and insert in lieu thereof the following:

19.6

- (a) An employee may elect, with the consent of the Delta Electricity, to take annual Leave not exceeding ten days in single-day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) An employee may elect with Delta Electricity's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

3. Insert after subclause 19.21 of clause 19 the following new subclauses:

19.22 Bereavement entitlements for casual employees

- (a) Subject to the evidentiary and notice requirements in subclauses 19.1 and 19.2 of this clause, casual employees are entitled to not be available to attend work, or to leave work, upon the death in Australia of a person prescribed in paragraph (b) of the said subclause 19.3;
- (b) Delta Electricity 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance;
- (c) Delta Electricity must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

19.23 Personal Carer's entitlements for casual employees

- (a) Subject to the evidentiary and notice requirements in the said subclauses 19.1 and 19.2, 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 paragraph (b) of the said subclause 19.3 who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (b) Delta Electricity 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) Delta Electricity must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this subclause. The rights of Delta Electricity to engage or not to engage a casual employee are otherwise not affected."

4. Insert after clause 19 Personal/Carer's Leave and Bereavement Leave, the following new clause:

20. Parental Leave

- 20.1 Refer to the *Industrial Relations Act 1996*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996*.
- 20.2 Delta Electricity must not fail to re-engage a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*) because:

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

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

20.3 Right to request

- (a) An employee entitled to parental leave may request Delta Electricity to allow the employee:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age,

to assist the employee in reconciling work and parental responsibilities.

- (b) Delta Electricity 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 Delta Electricity's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (c) Employee's request and Delta Electricity's decision to be in writing

The employee's request and Delta Electricity's decision made under subparagraphs (ii) and (iii) of paragraph (a) of this subclause must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under subparagraph (iii) of paragraph (a) of this subclause, such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

20.4 Communication during parental leave

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

- (i) 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 parental leave; and
- (ii) 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 parental leave.

(b) The employee shall take reasonable steps to inform Delta Electricity about any significant matter that will affect the employee's decision regarding the duration of parental 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.

(c) The employee shall also notify Delta Electricity of changes of address or other contact details which might affect Delta Electricity's capacity to comply with paragraph (a) of this subclause."

5. Renumber clauses 20 to 27 as clauses 21 to 28 (including subclause numbers and references) accordingly.

6. Amend the references to clause numbers in the following subclauses:

Subclause Number	Current reference	Amended reference
3.6	24	25
10.22	20	21
10.39(e)	24	25
11.5	21	22
11.7	22	23
11.17	21	22

7. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J, *President*

TEACHERS (INDEPENDENT SCHOOLS) (STATE) AWARD 2004

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Independent Education Union, Industrial Organisation of Employees.

(No. IRC 32 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete subclause 10.3, of clause 10, Leave, of the award published 17 June 2005 (351 I.G. 872), and insert in lieu thereof the following:

10.3 Carer's Leave

(a) Use of Sick Leave

- (i) A teacher, other than a casual teacher, with responsibilities in relation to a class of person set out in 10.3 (a) (iii) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, ten days of his or her current and 30 days of his or her accrued sick leave entitlement, provided for at Clause 10.1 of the award, for absences to provide care and support, for such persons when they are ill or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (ii) The teacher shall, if required,
- (a) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (b) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the teacher.

In normal circumstances, a teacher must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (iii) The entitlement to use sick leave in accordance with this subclause is subject to: -
- (A) the teacher being responsible for the care of the person concerned; and
- (B) the person concerned being: -
- (1) a member of the teacher's immediate family; or
- (2) a member of the employee's household.

The term "immediate family" includes:

- (aa) a spouse (including former spouse, a de facto spouse and a former de facto spouse) of the teacher. A de facto spouse, in relation to a person, means 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 the person; and

- (bb) a child or adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), a parent (including a foster parent or legal guardian), grandparent, grandchild or sibling of the teacher or spouse of the teacher.
 - (iv) The teacher shall not be entitled to paid carer's leave unless he or she notifies the Principal of the school (or a person deputised by the Principal) of the need for carer's leave and the estimated period of absence at the first available opportunity and, where possible, before the first organised activity at the school on the day of absence. The teacher will have sick leave credits available to the extent of the leave to be taken.
 - (v) Notwithstanding clause 10.3 (a), a part-time teacher is only entitled to an amount of carer's leave in the same proportion the teaching hours of a part-time teacher bears to the teaching hours which a full-time teacher at the school is normally required to teach.
 - (vi) Any carer's leave taken in accordance with this clause shall be deducted from the sick leave entitlement of the teacher in accordance with Clause 10.1 Sick Leave.
- (b) Unpaid Leave for Family Purpose
- A teacher may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in 10.3 (a) (iii) above who is ill or who requires care due to an unexpected emergency.
- (c) Personal Carers entitlement for casual teachers
- (i) Subject to the evidentiary and notice requirements in subparagraphs (ii) and (iv) of paragraph (a) of this subclause, casual teachers are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause (iii) of paragraph (a) of this clause who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.
 - (ii) The employer and the teacher shall agree on the period for which the teacher will be entitled to not be available to attend work. In the absence of agreement, the teacher is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual teacher is not entitled to any payment for the period of non-attendance.
 - (iii) An employer must not fail to re-engage a casual teacher because the teacher accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual teacher are otherwise not affected.

2. Insert after paragraph 10.4 (c), of the said clause 10, the following new paragraphs:

(d) Casual Teachers

An employer must not fail to re-engage a regular casual teacher (see section 53(2) of the *Industrial Relations Act 1996* (NSW)) because:

- (i) the teacher or teacher's spouse is pregnant; or
- (ii) the teacher is or has been immediately absent on parental leave.

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

- (e) Right to request
- (i) A teacher entitled to parental leave may request the employer to allow the teacher:
- (A) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;
- (B) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (C) to return from a period of parental leave on a part-time basis until the child reaches school age;
- to assist the teacher in reconciling work and parental responsibilities.
- (ii) The employer shall consider the request having regard to the teacher's circumstances and, provided the request is genuinely based on the teacher'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) Teacher's request and the employer's decision to be in writing
- The teacher's request and the employer's decision made under subparagraphs (i) (B) and (C) of this paragraph must be recorded in writing.
- (iv) Request to return to work part-time
- Where a teacher wishes to make a request under subparagraph (i) (C), such a request must be made as soon as possible before the date upon which the employee is due to return to work from parental leave.
- (f) Communication during parental leave
- (i) Where an employee is on 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 teacher held before commencing parental leave; and
- (B) provide an opportunity for the teacher to discuss any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing parental leave.
- (ii) The teacher shall take reasonable steps to inform the employer about any significant matter that will affect the teacher's decision regarding the duration of parental leave to be taken, whether the teacher intends to return to work and whether the teacher intends to request to return to work on a part-time basis.
- (iii) The teacher shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with subparagraph (i).

3. Insert at the end of subclause 10.7, of the said clause 10, the following:

Subject to the evidentiary and notice requirements in this subclause, casual teachers are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 10.3 Carer's Leave

The employer and the teacher shall agree on the period for which the teacher will be entitled to not be available to attend work. In the absence of agreement, the teacher is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual teacher is not entitled to any payment for the period of non-attendance

An employer must not fail to re-engage a casual teacher because the teacher accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual teacher are otherwise not affected.

4. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CHARITABLE INSTITUTIONS CATHOLIC PERSONAL/CARER'S LEAVE (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Catholic Commission for Employment Relations.

(No. IRC 338 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete paragraphs (a) and (b) of subclause 3.1 of Clause 3 Catholic Personal/Carer's Leave of the award published 7 May 1999 (309 I.G. 200) and insert in lieu thereof the following:
 - (a) An employee, other than a casual employee, with responsibilities in relation to a family member as set out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use, in any year, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 4, Sick Leave, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day."
 - (b) The employee shall, if required:
 - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care and support by another person, or
 - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person."

2. Insert the following notation at the end of subclause 3.1, Use of Sick Leave to Provide Care and Support for a Family Member, of clause 3.

"Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 5 should be followed."

3. Delete paragraph (a) of subclause 3.4 of Clause 3, and insert in lieu thereof the following:
 - (a) With the consent of the employer, an employee may elect to take unpaid leave for the purpose of providing care and support to a person referred to in subparagraph (ii) of paragraph (c) of subclause 3.1 or paragraph (c) of subclause 3.2 of this clause who is ill or who requires care due to an unexpected emergency."

4. Delete paragraph (a) of subclause 3.5 of Clause 3 and insert in lieu thereof the following:
 - (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties."
5. Insert after paragraph (c) of subclause 3.5 of Clause 3 the following new paragraph (d).
 - (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due."
6. Delete subclause 3.9 of Clause 3 and insert in lieu thereof the following:
 - 3.9 Catholic Personal/Carer's Entitlement for casual employees
 - (a) Subject to the evidentiary and notice requirements in paragraph (b) of subclause 3.1 and subclause 3.3 of Clause 3 Catholic Personal / Carer's Leave, 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 subparagraph (ii) of paragraph (c) or paragraph (c) of subclause 3.2 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."
7. Insert after subclause 3.9 of clause 3 the following new subclauses:
 - 3.10 Bereavement Leave
 - (a) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in paragraph (c) of this subclause.
 - (b) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
 - (c) Bereavement leave shall be available to the employee in respect to the death of a person in relation to whom the employee could have utilised Catholic Personal/ Carer's Leave or equivalent in this clause, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
 - (d) An employee shall not be entitled to bereavement leave under this subclause during any period in respect of which the employee has been granted other leave.
 - (e) Bereavement leave may be taken in conjunction with other leave available as set out in this clause. Where such other available leave is to be taken in conjunction with bereavement leave, consideration will be given to the circumstances of the employee and the reasonable operational requirements of the employer.

3.11 Bereavement Entitlement 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 person in relation to whom the employee could have utilised Catholic Personal/Carer's Leave in subclause 3.9, provided that for the purpose of this bereavement entitlement, the employee need not have been responsible for the care of the person concerned. A casual employee must notify the employer as soon as practicable of the intention to access this entitlement and may be required to provide the employer with satisfactory evidence of such death.
 - (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 (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 employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."
8. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CLERICAL AND ADMINISTRATIVE EMPLOYEES (CATHOLIC PERSONAL CARER'S LEAVE) (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Catholic Commission for Employment Relations.

(No. IRC 338 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete paragraphs (a) and (b) of subclause 3.1 of Clause 3 Catholic Personal/Carer's Leave of the award published 8 June 2001 (325 I.G. 281), and insert in lieu thereof the following:
 - (a) An employee, other than a casual employee, with responsibilities in relation to a family member as set out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 5, Sick Leave, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
 - (b) The employee shall, if required:
 - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care and support by the employee, or
 - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person."

2. Insert the following notation at the end of subclause 3.1, Use of Sick Leave to Provide Care and Support for a Family Member, of clause 3.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 6 should be followed."

3. Delete paragraph (a) of subclause 3.4 of Clause 3 Catholic Personal/Carer's Leave and insert in lieu thereof the following:
 - (a) With the consent of the employer, an employee may elect to take unpaid leave for the purpose of providing care and support to a person referred to in subparagraph (ii) of paragraph (c) of subclause 3.1 or paragraph (c) of subclause 3.2 of this clause who is ill or who requires care due to an unexpected emergency."

4. Delete paragraph (a) of subclause 3.5 of Clause 3 Catholic Personal/Carer's Leave and insert in lieu thereof the following:
 - (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties."
5. Insert after paragraph (c) of subclause 3.5 of clause 3 the following new paragraph (d):
 - (d) 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.
6. Insert after subclause 3.8 of clause 3, the following new subclause 3.9:
3.9 Catholic Personal / Carer's Entitlement for casual employees
 - (a) Subject to the evidentiary and notice requirements in paragraph (b) of subclause 3.1 and subclause 3.3 of Clause 3 Catholic Personal/Carer's Leave, 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 subparagraph (ii) of paragraph (c) of subclause 3.1 or paragraph (c) of subclause 3.2 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."
7. Delete clause 4 Bereavement Leave and insert in lieu thereof the following:

4. Bereavement Leave

4.1 Entitlement to Bereavement Leave

- (a) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in subparagraph (ii) of paragraph (c) of subclause 3.1 of Clause 3, Catholic Personal/Carer's Leave.
- (b) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- (c) Bereavement leave shall be available to the employee in respect to the death of a person to whom the employee could have utilised Catholic Personal/ Carer's Leave or equivalent in the said clause 3 Catholic Personal/ Carer's Leave, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (d) An employee shall not be entitled to bereavement leave under this subclause during any period in respect of which the employee has been granted other leave.
- (e) Bereavement leave may be taken in conjunction with other leave available as set out in this clause. Where such other available leave is to be taken in conjunction with bereavement leave, consideration will be given to the circumstances of the employee and the reasonable operational requirements of the employer.

4.2 Bereavement Entitlement 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 person in relation to whom the employee could have utilised Catholic Personal/Carer's Leave in subclause 3.9, provided that for the purpose of this bereavement entitlement, the employee need not have been responsible for the care of the person concerned. A casual employee must notify the employer as soon as practicable of the intention to access this entitlement and may be required to provide the employer with satisfactory evidence of such death.
 - (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 (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 employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."
8. This variation shall take effect from 19 December 2005.

F. L. WRIGHT *J, President.*

Printed by the authority of the Industrial Registrar.

MISCELLANEOUS WORKERS (CATHOLIC PERSONAL/CARER'S LEAVE) (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Catholic Commission for Employment Relations.

(No. IRC 338 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete paragraphs (a) and (b) of subclause 3.1 of Clause 3 Catholic Personal/Carer's Leave of the award published 7 May 1999 (309 I.G. 196) and insert in lieu thereof the following:
 - (a) An employee, other than a casual employee, with responsibilities in relation to a family member as set out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use, in any year, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 5, Sick Leave, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
 - (b) The employee shall, if required:
 - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care and support by another person, or
 - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person."

2. Insert the following notation at the end of subclause 3.1, Use of Sick Leave to Provide Care and Support for a Family Member, of clause 3.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 6 should be followed.

3. Delete paragraph (a) of subclause 3.4 of Clause 3, and insert in lieu thereof the following:
 - (a) With the consent of the employer, an employee may elect to take unpaid leave for the purpose of providing care and support to a person referred to in subparagraph (ii) of paragraph (c) of subclause 3.1 or paragraph (c) of subclause 3.2 of this clause, who is ill or who requires care due to an unexpected emergency."

4. Delete paragraph (a) of subclause 3.5 of Clause 3 and insert in lieu thereof the following:
 - (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties."
5. Insert after paragraph (c) of subclause 3.5 of Clause 3 the following new paragraph (d):
 - (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due."
6. Insert after subclause 3.8 of clause 3 the following new subclause 3.9.
 - 3.9 Catholic Personal/Carer's Entitlement for casual employees
 - (a) Subject to the evidentiary and notice requirements in paragraph (b) of subclause 3.1 and subclause 3.3 of Clause 3 Catholic Personal/Carer's Leave 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 subparagraph (ii) of paragraph (c) of subclause 3.1 or paragraph (c) of subclause 3.2 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."
7. Delete clause 4 Bereavement Leave and insert in lieu thereof the following:

4. Bereavement Leave

4.1 Entitlement to Bereavement Leave

- (a) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in paragraph (c) of this subclause.
- (b) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- (c) Bereavement leave shall be available to the employee in respect to the death of a person to whom the employee could have utilised Catholic Personal/Carer's Leave or equivalent in the said Clause 3, Catholic Personal/ Carer's Leave, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (d) An employee shall not be entitled to bereavement leave under this subclause during any period in respect of which the employee has been granted other leave.
- (e) Bereavement leave may be taken in conjunction with other leave available as set out in the said Clause 3, Catholic Personal/ Carer's Leave. Where such other available leave is to be taken in conjunction with bereavement leave, consideration will be given to the circumstances of the employee and the reasonable operational requirements of the employer.

4.2 Bereavement entitlement 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 person in relation to whom the employee could have utilised Catholic Personal/Carer's Leave in subclause 3.9, provided that for the purpose of this bereavement entitlement, the employee need not have been responsible for the care of the person concerned. A casual employee must notify the employer as soon as practicable of the intention to access this entitlement and may be required to provide the employer with satisfactory evidence of such death.
 - (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 (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 employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."
8. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

MISCELLANEOUS WORKERS' - INDEPENDENT SCHOOLS AND COLLEGES, &c. (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Catholic Commission for Employment Relations.

(No. IRC 338 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in clause 2, Arrangement of the award published 4 May 2001 (324 I.G. 579) the following new clause number and subject matter:

18A. Parental Leave

2. Insert after clause 18 Sick Leave, the following new clause:

18A. Parental Leave

- (i) Entitlement to Parental Leave

Refer to the *Industrial Relations Act 1996 (NSW)* The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996 (NSW)*.

- (ii) Casual employees

An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

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

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

- (iii) Right to Request

- (a) An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) 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.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under (a)(ii) and (a)(iii) of this subclause 18A(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under (a)(iii) of this subclause, such a request must be made as soon prior to the date upon which the employee is due to return to work from parental leave.

- (iv) Communication during parental leave

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

- (i) 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 parental leave; and
- (ii) 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 parental leave.

- (b) 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 parental 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.

- (c) 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 paragraph (a).

3. Delete paragraphs (a) and (b) of subclause (i) of clause 19 Carer's Leave and insert in lieu thereof the following:

- (a) An employee, other than a casual employee, with responsibilities in relation to a family member as set out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 18, Sick Leave, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day."

- (b) The employee shall, if required:

- (i) establish either by production of a medical certificate or statutory declaration the illness of the person concerned and that the illness is such as to require care by another person, or
- (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person."

4. Insert the following notation at the end subclause (i) Use of Sick Leave of clause 19.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the Dispute and Industrial Grievance Procedure at Clause 32 should be followed."

5. Delete subclauses (ii) and (iii) of clause 19 Carer's Leave and insert in lieu thereof the following:

- (ii) Unpaid Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a person referred to in 19(i) (c) (ii) of this clause who is ill or who requires care due to an unexpected emergency."

- (iii) Annual Leave

(a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

(b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.

(c) An employee and employer may agree to defer payment of annual leave loading in respect of single day absences, until at least five annual leave days are taken.

(d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due".

6. Insert after subclause (vii) of clause 19, the following new subclause:

- (vii) Personal / Carer's Entitlement for casual employees

(a) Subject to the evidentiary and notice requirements in paragraph (b) and (d) of subclause (i) 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 subparagraph (ii) of paragraph (c) of subclause 19 (i) 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."

7. Delete paragraphs (a) and (b) of subclause (i) of Clause 20- Catholic Personal/ Carer's Leave and insert in lieu thereof the following:

(a) An employee, other than a casual employee, with responsibilities in relation to a family member as set out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use in any year, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 18, Sick Leave, for absences to provide

care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day."

- (b) The employee shall, if required:
- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care and support by the employee, or
 - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person."

8. Insert the following notation at the end of subclause (i) Use of Sick Leave to Provide Care and Support for a Family Member, of clause 20.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the Dispute and Industrial Grievance Procedure at Clause 32 should be followed.

9. Delete subclauses (iv) (and (v)) of Clause 20 and insert in lieu thereof the following:

- (iv) Unpaid Leave for Family Purpose-

With the consent of the employer, an employee may elect to take unpaid leave for the purpose of providing care and support to a person referred to in 20 (i)(c)(ii) of this clause who is ill or who requires care due to an unexpected emergency."

- (v) Annual Leave

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of annual leave loading in respect of single day absences, until at least five annual leave days are taken.
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due".

10. Insert after subclause (viii) of Clause 20, the following new subclause:

- (ix) Catholic Personal/Carer's Entitlement for casual employees

- (a) Subject to the evidentiary and notice requirements in paragraph (b) of subclause (i) and subclause (iii) 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 subparagraph (ii) of paragraph (c) of subclause (i) or paragraph (c) of subclause (ii) 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."

11. Delete clause 29 Bereavement Leave and insert in lieu thereof the following:

29. Bereavement Leave

- (i) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a parent-in-law or on the death of a member of the employee's immediate family or household, as defined in subparagraph (ii) of paragraph (c) of subclause 19(i) of clause 19, Carer's Leave.
- (ii) The rights to such paid leave shall be dependent on compliance with the following conditions:
 - 1. satisfactory evidence of death shall be furnished by the employee to the employer; and
 - 2. the employee shall not be entitled to leave under this clause in respect of any period which coincides with any other period of leave entitlement under this award or otherwise.
- (iii) Bereavement leave may be taken in conjunction with other leave available under subclauses 19(i), 19(ii), 19(iv), 19(v) and 19(vi) of the said clause 19. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (iv) Bereavement entitlement 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 person prescribed in subparagraph (ii) of paragraph (c) of subclause 19 (i) of Clause 19- Carer's Leave. The employee must notify the employer as soon as practicable of the intention to access this entitlement, and, if required by the employer, provide to the satisfaction of the employer proof of death.
 - (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 (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 employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."

12. Delete clause 30 Bereavement Leave (Catholic Standard) and insert in lieu thereof the following:

30. Bereavement Leave (Catholic Standard)

This clause only applies to employees who are employed under this award by a body which has been established by the Catholic Church to propagate religion, excepting employees employed by Chevalier College, Bowral; Kincoppal, Rose Bay; and Loretto, Kirribilli. Where this clause applies, clause 29, Bereavement Leave, shall not apply.

- (a) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person as prescribed in subclause (c) of this clause.

- (b) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
 - (c) Bereavement leave shall be available to the employee in respect to the death of a person in relation to whom the employee could have utilised Catholic Personal/ Carer's Leave as set out in Clause 20-Catholic Personal/Carer's Leave, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
 - (d) An employee shall not be entitled to leave under this clause in respect of any period in respect of which the employee has been granted other leave.
 - (e) Bereavement leave may be taken in conjunction with other leave available under the said clause 20. Where such other available leave is to be taken in conjunction with bereavement leave, consideration will be given to the circumstances of the employee and the reasonable operational requirements of the employer.
 - (f) Bereavement entitlement for casual employees (Catholic Standard)
 - (i) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person in relation to whom the employee could have utilised Catholic Personal/Carer's Leave in subclause 20(ix) of Clause 20 Catholic Personal/Carer's Leave, provided that for the purpose of this bereavement entitlement, the employee need not have been responsible for the care of the person concerned. A casual employee must notify the employer as soon as practicable of the intention to access this entitlement and may be required to provide the employer with satisfactory evidence of such death.
 - (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."
13. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

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**MISCELLANEOUS WORKERS KINDERGARTENS AND CHILD
CARE CENTRES FAMILY LEAVE (CATHOLIC KINDERGARTENS,
CHILD CARE CENTRES AND OTHERS AND INDEPENDENT
SCHOOLS) (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Catholic Commission for Employment Relations.

(No. IRC 338 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete paragraphs (a) and (b) of subclause 3.1 of Clause 3 Catholic Personal/ Carer's Leave of the award published 21 May 2004 (344 I.G. 514) and insert in lieu thereof the following:

(a) An employee, other than a casual employee, with responsibilities in relation to a family member as set out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use, in any year, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 4, Sick Leave, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day."

(b) The employee shall, if required:

(i) establish the illness of the person concerned either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care and support by another person, or

(ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person."

2. Insert the following notation at the end of subclause 3.1, Use of Sick Leave to Provide Care and Support for a Family Member, of clause 3.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the Grievance and Disputes Settling Procedure at Clause 5 should be followed."

3. Delete subclause 3.4 of Clause 3 and insert in lieu thereof the following:

3.4 Unpaid Leave for Family Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a person referred to in subparagraph 3.1(c)(ii) or paragraph 3.2(c) of this clause who is ill or who requires care due to an unexpected emergency."

4. Delete paragraph (a) of subclause 3.5 of Clause 3 and insert in lieu thereof the following:
 - (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties."
5. Insert after paragraph (c) of subclause 3.5 of Clause 3 the following new paragraph:
 - (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due."
6. Insert after subclause 3.7 of clause 3, the following new subclause 3.7A:
3.7A Catholic Personal/Carer's Entitlement for casual employees
 - (a) Subject to the evidentiary and notice requirements in paragraph (b) of subclause 3.1 and subclause 3.3 of Clause 3 Catholic Personal / Carer's Leave, 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 subparagraph 3.1(c)(ii) or paragraph (c) of subclause 3.2 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."
7. Insert after subclause 3.8 the following new subclause 3.9:
3.9 Bereavement Entitlement for casual employees (Catholic Standard)
 - (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person in relation to whom the employee could have utilised Catholic Personal/ Carer's Leave in subclause 3.7A, provided that for the purpose of this bereavement entitlement, the casual employee need not have been responsible for the care of the person concerned. The employee must notify the employer as soon as practicable of the intention to access this entitlement, and if required by the employer, provide to the satisfaction of the employer proof of death.
 - (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 (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 employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."
8. Delete paragraphs (a) and (b) of subclause 3A.1 of Clause 3A Carer's Leave and insert in lieu thereof the following:
 - (a) An employee, other than a casual employee, with responsibilities in relation to a class of person out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 4, Sick Leave, for absences to provide care and support

for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day."

- (b) The employee shall, if required:
- (i) establish by production of a medical certificate or statutory declaration the illness of the person concerned and that the illness is such as to require care by another person, or
 - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person."

9. Insert the following notation at the end of subclause 3A.1, Use of Sick Leave:

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the Grievance and Disputes Settling Procedure at Clause 5 should be followed.

10. Delete subclause 3A.2 of Clause 3A and insert with the following:

3A.2 Unpaid Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a person referred to in subparagraph (ii) of paragraph (c) of subclause 3A.1 of this clause who is ill or who requires care due to an unexpected emergency."

11. Delete paragraph (a) of subclause 3A.3 of Clause 3A and insert in lieu thereof the following:

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties."

12. Insert after paragraph (c) subclause 3A.3 of Clause 3 the following new paragraph:

- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due."

13. Insert after subclause 3A.6 of clause 3, the following new subclause 3A.7:

3A.7 Personal/Carer's Entitlement for casual employees

- (a) Subject to the evidentiary and notice requirements in paragraphs (b) and (d) of subclause 3A.1, 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 subparagraph (ii) of paragraph (c) of subclause 3A.1 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."
14. Insert after subclause 3B.5 of clause 3B, Bereavement Leave the following new subclause 3B.6:
- 3B.6 Bereavement Entitlement 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 member of the employees immediate family or household, as defined in paragraph (ii) of subclause 3A(c) of clause 3A Carer's Leave. The employee shall notify the employer as soon as practicable of the intention to access this entitlement, and, if required by the employer, provide to the satisfaction of the employer proof of death.
- (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 (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 employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."
15. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

SHOP EMPLOYEES (CATHOLIC PERSONAL/CARER'S LEAVE) (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Catholic Commission for Employment Relations.

(No. IRC 338 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete paragraphs (a) (b) of subclause 3.1 of Clause 3 Catholic Personal/Carer's Leave of the award published 15 December 1995 (289 I.G. 1405) and insert in lieu thereof the following:
 - (a) An employee, other than a casual employee, with responsibilities in relation to a family member as set out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use, in any year, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 5, Sick Leave, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day."
 - (b) The employee shall, if required:
 - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (ii) establish by production of documentation acceptable to the employer or statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee is not entitled to family leave under this subclause where another person has taken leave to care for the same person."

2. Insert the following notation at the end of subclause 3.1, Use of Sick Leave to Provide Care and Support for a Family Member, of clause 3.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the Grievance and Disputes Settling procedure at Clause 6 should be followed."

3. Delete paragraph (a) of subclause 3.4 of Clause 3 and insert in lieu thereof the following:
 - (a) With the consent of the employer, an employee may elect to take unpaid leave for the purpose of providing care and support to a person referred to in subparagraph (ii) of paragraph (c) of subclause 3.1 or paragraph (c) of subclause 3.2 of this clause who is ill or who requires care due to an unexpected emergency."

4. Delete paragraph (a) of subclause 3.5 of Clause 3 and insert in lieu thereof the following:
 - (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties."
5. Insert after paragraph (c) of subclause 3.5 of Clause 3 the following new paragraph (d):
 - (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due."
6. Insert after subclause 3.8 of clause 3, the following new subclause 3.9:
 - 3.9 Catholic Personal/Carer's Entitlement for casual employees
 - (a) Subject to the evidentiary and notice requirements in paragraph (b) of subclause 3.1 and subclause 3.3 of Clause 3 Catholic Personal / Carer's Leave, 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 subparagraph (ii) of paragraph (c) of subclause 3.1 or paragraph (c) of subclause 3.2 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."
7. Delete clause 4 Bereavement Leave, and insert in lieu thereof the following:

4. Bereavement Leave

- 4.1 Entitlement to Bereavement Leave
 - (a) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in paragraph (c) of this subclause.
 - (b) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
 - (c) Bereavement leave shall be available to the employee in respect to the death of a person to whom the employee could have utilised Catholic Personal/Carer's Leave or equivalent as set out in Clause 3, Catholic Personal/ Carer's Leave, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
 - (d) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
 - (e) Bereavement leave may be taken in conjunction with other leave available under the said Clause 3. Where such other available leave is to be taken in conjunction with bereavement leave, consideration will be given to the circumstances of the employee and the reasonable operational requirements of the employer.

4.2 Bereavement Entitlement 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 person in relation to whom the employee could have utilised Catholic Personal/Carer's Leave in subclause 3.9, provided that for the purpose of this bereavement entitlement, the casual employee need not have been responsible for the care of the person concerned. The employee must notify the employer as soon as practicable of the intention to access this entitlement, and if required by the employer, provide to the satisfaction of the employer proof of death.
 - (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 (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 employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."
8. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

SOCIAL AND COMMUNITY SERVICES CATHOLIC PERSONAL/CARER'S LEAVE (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Catholic Commission for Employment Relations.

(No. IRC 338 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete paragraphs (a) and (b) of subclause 3.1 of Clause 3 Catholic Personal/Carer's Leave of the award published 7 May 1999 (309 I.G. 204) and insert in lieu thereof the following:
 - (a) An employee, other than a casual employee, with responsibilities in relation to a family member as set out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use, in any year, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 4, Sick Leave, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day."
 - (b) The employee shall, if required:
 - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care and support by another person, or
 - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take family leave under this subclause where another person has taken leave to care for the same person."

2. Insert the following notation at the end of subclause 3.1, Use of Sick Leave to Provide Care and Support for a Family Member, of clause 3:

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the Grievance and Disputes Settling procedure at Clause 5 should be followed."

3. Delete paragraph (a) of subclause 3.4 of Clause 3 and insert in lieu thereof the following:
 - (a) With the consent of the employer, an employee may elect to take unpaid leave for the purpose of providing care and support to a person referred to in subparagraph (ii) of paragraph (c) of subclause 3.1 or paragraph (c) of subclause 3.2 of this clause who is ill or who requires care due to an unexpected emergency."

4. Delete paragraph (a) of subclause 3.5 of Clause 3 and insert in lieu thereof the following:
 - (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties."
5. Insert after paragraph (c) of subclause 3.5 of Clause 3, the following new paragraph (d).
 - (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due."
6. Delete subclause 3.8 clause 3, and insert in lieu thereof the following:
 - 3.8 Catholic Personal/Carer's Entitlement for casual employees
 - (a) Subject to the evidentiary and notice requirements in paragraph (b) of subclause 3.1 and subclause 3.3 of Clause 3 Catholic Personal/Carer's Leave, 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 subparagraph (ii) of paragraph (c) of subclause 3.1 or paragraph (c) of subclause 3.2 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."
7. Insert after subclause 3.8 of clause 3, the following new subclause 3.9:
 - 3.9 Bereavement Leave
 - (a) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in paragraph (c) of this subclause.
 - (b) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
 - (c) Bereavement leave shall be available to the employee in respect to the death of a person to whom the employee could have utilised Catholic Personal/ Carer's Leave in this clause, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
 - (d) An employee shall not be entitled to bereavement leave under this subclause during any period in respect of which the employee has been granted other leave.
 - (e) Bereavement leave may be taken in conjunction with other leave available as set out in this clause. Where such other available leave is to be taken in conjunction with bereavement leave, consideration will be given to the circumstances of the employee and the reasonable operational requirements of the employer.

8. Insert a new subclause 3.10 in clause 3 as follows:

3.10 Bereavement Entitlement 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 person in relation to whom the employee could have utilised Catholic Personal/Carer's Leave in subclause 3.8, provided that for the purpose of this bereavement entitlement, the casual employee need not have been responsible for the care of the person concerned. The employee must notify the employer as soon as practicable of the intention to access this entitlement, and if required by the employer, provide to the satisfaction of the employer proof of death.
 - (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 (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 employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."
9. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

THE CATHOLIC PRESS NEWSPAPER COMPANY PTY LIMITED (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Catholic Commission for Employment Relations.

(No. IRC 338 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in the Arrangement of the award published 17 November 2000 (320 I.G. 377) the following new clause number and subject matter:

7A. Parental Leave

2. Delete subclause (5) Parental Leave of clause 7 Leave.

3. Insert after clause 7 Leave, the following new clause:

7A. Parental Leave

- (1) Entitlement to Parental Leave

Refer to the *Industrial Relations Act 1996* (NSW) The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

- (2) Casual employees

An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

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

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

- (3) Right to Request

(a) An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) 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.
- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
 - (i) 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 parental leave; and
 - (ii) 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 parental leave.
- (b) 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 parental 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.
- (c) 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 paragraph (a).

4. Delete paragraphs (a) and (b) of subclause 9.1 of Clause 9 Catholic Personal/Carer's Leave and insert in lieu thereof the following:

- (a) An employee, other than a casual employee, with responsibilities in relation to a family member as set out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use, in any year, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 8, Sick and Incapacity Pay, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day."
- (b) The employee shall, if required:
 - (i) establish either by production of a medical certificate or a statutory declaration, the illness of the person concerned and that the illness is such as to require care and support by another person, or
 - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee is not entitled to family leave under this subclause where another person has taken leave to care for the same person."

5. Insert the following notation at the end of subclause 9.1, Use of Sick Leave to Provide Care and Support for a Family Member, of clause 9.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the Grievance procedure at Clause 30 should be followed."

6. Delete subclause 9.4 of Clause 9 and insert in lieu thereof the following:

With the consent of the employer, an employee may elect to take unpaid leave for the purpose of providing care and support to a person referred to in subparagraph (ii) of paragraph (c) of subclause 3.1 or paragraph (c) of subclause 3.2 of this clause who is ill or who requires care due to an unexpected emergency."

7. Delete paragraph (a) of subclause 9.5 of Clause 9 and insert in lieu thereof the following:

(a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties."

8. Insert after paragraph (c) of clause of subclause 9.5 of Clause 9 the following new paragraph (d)

(d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due."

9. Delete clause 10 Bereavement Leave and insert in lieu thereof the following:

10. Bereavement Leave

- (a) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in 10(c) below.
- (b) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- (c) Bereavement leave shall be available to the employee in respect to the death of a person to whom the employee could have utilised Catholic Personal/ Carer's Leave in Clause 3, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (d) An employee shall not be entitled to bereavement leave under this subclause during any period in respect of which the employee has been granted other leave.
- (e) Bereavement leave may be taken in conjunction with other leave available as set out in this clause. Where such other available leave is to be taken in conjunction with bereavement leave, consideration will be given to the circumstances of the employee and the reasonable operational requirements of the employer.
10. Insert after subclause (k) of Clause 13 Casuals the following new subclauses (l) and (m)
- (l) Personal/Carer's Entitlement for casual employees

- (i) Subject to the evidentiary and notice requirements in paragraph (b) of subclause 9.1 and subclause 9.3 of Clause 9 Catholic Personal/Carer's Leave 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 subparagraph 9.1(c)(ii) or paragraph 9.2(c) of Clause 9- Catholic Personal/Carer's Leave, who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
 - (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."
- (m) Bereavement Entitlement for casual employees
- (i) Subject to the evidentiary and notice requirements in paragraph 9.1(b) and subclause 9.3 of Clause 9 Catholic Personal/Carer's Leave, Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person in relation to whom the employee could have utilised Catholic Personal/ Carer's Leave in subclause 13(l), provided that for the purpose of this bereavement entitlement, the casual employee need not have been responsible for the care of the person concerned. The employee must notify the employer as soon as practicable of the intention to access this entitlement, and if required by the employer, provide to the satisfaction of the employer proof of death.
 - (ii) 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this subclause. The rights of an employer to engage or not engage a casual employee are otherwise not affected."
11. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

PUBLIC HOSPITALS (MEDICAL SUPERINTENDENTS) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Administration Corporation.

(No. IRC 384 of 2006)

Before The Honourable Justice Wright, President

13 February 2006

VARIATION

1. Delete the words "16. Personal/Carer's Leave Family and Community Services Leave", appearing in the Arrangement, of the award published 3 March 2006 (357 I.G. 757), and insert in lieu thereof the following:

16. Family and Community Services Leave and
Personal/Carer's Leave

2. Delete clause 7, Maternity, Adoption and Parental Leave, and insert in lieu thereof the following:

7. 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 1987*.

- (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 days¹ 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 may 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 (i.e. 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 the 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 1987*.
- (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 i.e. 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.

- 3. Delete clause 16, Personal/Carer's Leave, Family and Community Services Leave, and insert in lieu thereof the following

16. Family and Community Services Leave and Personal/Carers' 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) Use of make-up time

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.

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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (b) 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.
4. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

PUBLIC HOSPITAL (MEDICAL OFFICERS) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 385 of 2006)

Before The Honourable Justice Wright, President

13 February 2006

VARIATION

1. Delete the words "16. Personal/Carer's Leave Family and Community Services Leave", appearing in the Arrangement, of the award published 10 March 2006 (357 I.G. 898), and insert in lieu thereof the following:

16. Family and Community Services Leave and
Personal/Carer's Leave

2. Delete clause 15, Maternity, Adoption and Parental Leave, and insert in lieu thereof the following:

15. 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 1987*.

- (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 may 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 (i.e. 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 the 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 1987*.
- (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 i.e. 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.

- (c) 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.

3. Delete clause 16, Personal/Carer's Leave, Family and Community Services Leave, and insert in lieu thereof the following

16. Family and Community Services Leave and Personal/Carers' 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 10, Overtime.
- (v) Use of make-up time

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.

- (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 (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 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 (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 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.

4. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J, *President*

Printed by the authority of the Industrial Registrar.

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

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Administration Corporation.

(No. IRC 390 of 2006)

Before The Honourable Justice Wright, President

13 February 2006

VARIATION

1. Delete "14. Personal/Carer's Leave, Family and Community Services Leave" appearing in clause 1, Arrangement, of the award published 10 March 2006, and insert in alphabetical order the following:

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

2. Delete clause 14, Personal/Carer's Leave, Family and Community Services Leave, and insert in lieu thereof the following:

14. Family and Community Services Leave and Personal/Carers' 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 (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 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 (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 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.

3. Delete clause 20, Maternity, Adoption and Parental Leave, and insert in lieu thereof the following:

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 1987*.

(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 may be granted. Should this second period of maternity leave commence during the currency of the existing period of maternity leave, then any residual maternity leave from the existing entitlement lapses.

An employee who has taken no more than 12 months full time equivalent maternity leave is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on maternity leave) for another period of such leave regardless of whether they resume their normal hours of work before proceeding on the second period of maternity leave.

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 1987*.

(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 i.e. 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.

4. This variation shall take effect on and from 19 December 2005.

F. L. WRIGHT J, *President*

**PUBLIC HOSPITALS (PROFESSIONAL AND ASSOCIATED STAFF)
CONDITIONS OF EMPLOYMENT (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Administration Corporation.

(No. IRC 393 of 2006)

Before The Honourable Justice Wright, President

13 February 2006

VARIATION

1. Delete the words in the Arrangement "Personal/Carer's Leave, Family and Community Services Leave, of the award published 3 March 2006 (I.G. 708) and insert in lieu thereof the following:

Attachment A

25. Family and Community Services Leave and Personal/Carer's Leave

2. Delete clause 27, Maternity, Adoption and Parental Leave in the Arrangement and insert in lieu thereof the following

Attachment B

27. Maternity, Adoption and Parental Leave

3. Insert after clause 24, Disputes and insert in lieu thereof the following new clause:

ATTACHMENT A

25. Family and Community Services Leave and Personal/Carers' 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 8, 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 2 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 (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 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.

4. Insert after clause 26, General Conditions, the following new clause:

ATTACHMENT B

27. 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 (i.e. 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.

5. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

OPERATIONAL AMBULANCE OFFICERS (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Administration Corporation.

(No. IRC 383 of 2006)

Before The Honourable Justice Wright, President

13 February 2006

VARIATION**SCHEDULE 1**

1. Delete the words "28. Personal/Carer's Leave, Family and Community Services Leave" and "Schedule B - Personal/Carer's leave, Family and Community Service Leave (Policy Directive 2005_431)", appearing in clause 2, Arrangement, of the award published 16 June 2006 (359 I.G. 948), and insert in lieu thereof the following:

28. Family and Community Services Leave and
Personal/Carer's Leave
Schedule B - Family and Community Services Leave and
Personal/Carer's Leave

2. Delete clause 28, Personal/Carer's Leave, Family and Community Services Leave, and insert in lieu thereof the following:

28. Family and Community Services Leave and Personal/Carer's Leave

Employees shall be granted family and community services leave and personal/carer's leave in accordance with the provisions at Schedule B - Family and Community Services Leave and Personal/Carer's Leave of this award.

3. Delete clause 29, Maternity, Adoption and Parental Leave, and insert in lieu thereof the following:

29. Maternity, Adoption and Parental Leave

This clause is to be read in conjunction with the Service's Instructional Circular 05/16 or subsequent replacement Instructional Circulars as issued by the Service.

A. Maternity Leave**(a) Eligibility for Paid Maternity Leave****(i) Full time employees**

Female employees who prior to the expected date of birth, have completed at least forty (40) weeks continuous service (of not less than 31.25 hours per week) are eligible for paid maternity leave.

(ii) Permanent part-time employees

Permanent part-time employees are employees engaged on a permanent part-time basis as defined by their Award. Female employees employed on this basis are entitled to pro-rata paid maternity leave after forty (40) weeks continuous service.

- (iii) An employee who has once met conditions for paid maternity leave will not be required to again work the forty (40) weeks continuous service in order to qualify for a further period of paid maternity leave, unless:
 - (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
 - (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.
- (b) Entitlements to Paid Maternity Leave
 - (i) Eligible employees are entitled to fourteen (14) weeks at the ordinary rate of pay from the date maternity leave commences. This leave may commence up to fourteen (14) weeks prior to the expected date of birth.
 - (ii) 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 (28) 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.

- (iii) Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.
- (c) Entitlements to Unpaid Maternity Leave
 - (i) An employee entitled to paid maternity leave is entitled to a further period of unpaid maternity leave of not more than twelve (12) months from the actual date of birth. The leave therefore does not extend beyond the child's first birthday.
 - (ii) Full time or permanent part time female employees who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.
- (d) Applications for Maternity Leave
 - (i) An employee who intends to proceed on maternity leave should formally notify their Operations Manager/Operations Centre Manager (in writing) of such intention as early as possible however, not less than eight (8) weeks prior to the commencement of leave. This notice must include a statement of:
 - (1) The intention to proceed on maternity leave;
 - (2) The expected date of birth certified by a medical practitioner;
 - (3) The period of leave to be taken;
 - (4) The date on which maternity leave is to commence;

- (5) You must also attach a Statutory Declaration stating any period of parental leave sought or taken by your spouse. This declaration must also state that the applicant is the child's primary caregiver for the period of leave sought.
- (6) Your entitlement to maternity leave is reduced by any period of parental leave taken by your spouse. Apart from parental leave of one (1) week at the time of birth, maternity leave is not to be taken concurrently with parental leave except as otherwise provided at subclause (a)(i) of Part D of this clause.
- (e) Applications for Further Maternity Leave
- (i) Where an employee becomes pregnant whilst on maternity leave, a further period of maternity leave may 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.
- (ii) An employee who has taken no more than 12 months full time equivalent maternity leave is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on maternity leave) for another period of such leave regardless of whether they resume their normal hours of work before proceeding on the second period of maternity leave.
- (iii) 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 (a)(iii) of Part D of this clause is entitled to be paid at their substantive full time rate for the subsequent period of maternity leave.
- (iv) 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 (a)(iii) 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.
- (f) Variations of Maternity Leave
- After commencing maternity leave, an employee may vary the period of her maternity leave -
- (i) once without the consent of the Service, but with a minimum of fourteen (14) days notice in writing; and
- (ii) otherwise with the consent of the Service, with a minimum of fourteen (14) days notice in writing.
- However, more advanced notice is encouraged, especially for uniformed staff because of roster arrangements.
- (g) 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.
- (h) Effect of Maternity Leave on Accrual of Leave, Increments, etc
- (i) Unpaid maternity leave does not count as service for the purposes of accruing sick leave (unless the period of unpaid leave is less than one month, although it is unlikely that

unpaid maternity leave would be for such a lesser period), annual leave (unless the period of unpaid maternity leave is less than 28 calendar days) or long service leave (unless the employee has completed ten years service and the period of unpaid maternity leave is less than six months).

- (ii) Unpaid maternity leave is not to be counted as service for determining incremental progression. 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. Notwithstanding the foregoing, increments based on age must be paid on attainment of the appropriate age.
 - (iii) During a period of unpaid maternity leave the employee will not be required to meet the employer's superannuation liability. The employee will, however, be required to make any necessary arrangements for their own contributions.
 - (iv) When the employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual 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.
 - (v) Except in the case of employees who have completed ten (10) 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 (10) years service, the period of maternity leave without pay shall count as service provided such leave does not exceed six (6) months.
 - (vi) 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.
- (i) **Illness Associated with Pregnancy**
- (i) 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 any sick leave without pay.
 - (ii) Where an employee is entitled to paid maternity leave but, because of illness or injury, is on workers' compensation, sick, annual, long service leave, or sick leave without pay prior to the birth, such leave will cease nine (9) weeks prior to the expected date of birth. The employee will then commence on maternity leave with the normal provisions applying.
- (j) **Effect of Premature Birth on Payment of Maternity Leave**
- An employee who gives birth prematurely prior to proceeding on maternity leave, shall be treated as being on maternity leave from the date she enters on leave to give birth to the child.
- (k) **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 or maternity leave, subject to production of a medical certificate. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.
- (l) **Miscarriage**
- In the event of a miscarriage, any absence from work is to be covered by the current sick leave provisions.

(m) Fitness to Continue Working During Pregnancy and Alternative Work

- (i) Whilst an employee may commence maternity leave up to fourteen (14) weeks, prior to the expected date of birth, this is not compulsory. However, if an employee decides to continue working prior to taking maternity leave, she must be able to satisfactorily perform her normal duties.
- (ii) Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obligated, as far as practicable, to provide alternative employment in some other position that she is able to satisfactorily perform, until maternity leave commences. 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.
- (iii) Pregnant Ambulance Officers and Patient Transport Officers may take up their entitlement to alternative duties at any time during their pregnancy if their medical condition determines they are unable to carry out normal duties.

(n) Medical Certificate Requirement

In the case of Ambulance Officers and Patient Transport Officers a medical certificate must be provided at 24 weeks gestation to their supervisor, confirming fitness and ability to continue working in normal duties.

(o) Right to Return to Previous Position

- (i) An employee who returns to work after maternity leave has a right to return to her former position.
- (ii) 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 and/or qualified.

(p) Portability of Service 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:

service was on a full time or permanent part time (as specified) basis;

cessation of service with the former employer was not by reason of dismissal on any ground, except retrenchment or reduction of work;

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 2 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.)

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 Service Department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid maternity leave.

B. Adoption Leave**(a) Eligibility for Adoption Leave**

- (i) 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 entitled to unpaid adoption leave .
- (ii) Employees who are adopting a child and are to be the primary care giver of the child are entitled to paid adoption leave as follows:

Full time employees

Employees who, prior to the date of taking custody of the child, have completed 40 weeks continuous service (of not less than 31.25 hours per week) are eligible for paid adoption leave.

Permanent part-time employees

Permanent part-time employees are employees engaged in a permanent part-time basis as defined by their Award. These employees are entitled to pro-rata paid adoption leave after forty (40) weeks continuous service.

- (iii) An employee who has once met conditions for paid adoption leave will not be required to again work the forty (40) weeks continuous service in order to qualify for a further period of paid adoption leave, unless:
 - (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
 - (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

(b) Entitlements**(i) Paid Adoption Leave**

Eligible employees are entitled to fourteen (14) weeks at the ordinary rate of pay. This leave may commence from 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 (28) 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.

(ii) 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.

(c) Applications for Adoption Leave

(i) 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, normally 8 weeks prior. This will allow arrangements associated with the adoption leave to be made.

(ii) A statement must also be provided from the adoption agency or appropriate body/government authority confirming that the applicant/ employee is to have custody and the expected date of placement of the child.

(d) Applications for Further Adoption Leave

Same provisions as maternity leave.

(e) Variations of Adoption Leave

Same provisions as maternity leave.

(f) Staffing Provisions

Same provisions as maternity leave.

(g) Effect of Adoption Leave on Accrual of Leave, Increments, etc

Same provisions as maternity leave.

(h) Right to Return to Previous Position

Same provisions as maternity leave.

(i) Portability of Service for Paid Adoption Leave

Same provisions as maternity leave.

C. Parental Leave

(a) Eligibility for Parental Leave

(i) Full time employees

Employees who, prior to the expected date of birth or to the date of taking custody of the child, have completed 40 weeks continuous service (of not less than 31.25 hours per week) are eligible for parental leave.

(ii) Permanent part-time employees

Permanent part-time employees are employees engaged in a permanent part-time basis as defined by their Award. These employees are entitled to pro-rata paid parental leave after forty (40) weeks continuous service.

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

- (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
- (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

(b) 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:

- (i) 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).
- (ii) 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.
- (iii) A further unbroken period of unpaid parental leave not exceeding 52 weeks when added to short parental leave in order to be the primary caregiver of the child (extended parental leave).
- (iv) 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 otherwise provided at subclause (a)(i) of Part D of this clause.

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

(c) Applications for Parental Leave

- (i) 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.
- (ii) The employee should give written notice of the intention to take the leave, at least four weeks before proceeding on leave, and should detail the dates on which they propose to start and end the period of leave. 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.

- (iii) 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.
 - (iv) In the case of extended parental leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
 - if applicable, the period of any maternity leave sought or taken by his spouse, and
 - that they are seeking the period of extended parental leave to become the primary caregiver of the child.
 - (d) Variations of Parental Leave
 - Same provisions as maternity leave.
 - (e) Staffing Provisions
 - Same provisions as maternity leave.
 - (f) Effect of Parental Leave on Accrual of Leave, Increments, etc.
 - Same provisions as maternity leave.
 - (g) Right to Return to Previous Position
 - Same provisions as maternity leave.
 - (h) Portability of Service for Paid Parental Leave
 - Same provisions as maternity leave.
- D. Right to Request
- (a) An employee entitled to maternity, adoption or parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) 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.
 - (b) 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.
 - (c) The employee's request and the employer's decision made under subclauses (a)(ii) and (iii) of this Part must be recorded in writing.

- (d) Where an employee wishes to make a request under subclause (a)(iii) of this Part:
 - (i) the employee is to make an application for leave without pay to reduce their full time weekly hours of work;
 - (ii) 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
 - (iii) salary and other conditions of employment are to be adjusted on a basis proportionate to the employee's full time hours, that is for long service leave the period of service is to be converted to the full time equivalent and accredited accordingly.
- E. Communication During Leave
 - (a) 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:
 - (i) 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 leave; and
 - (ii) 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 leave.
 - (b) 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 leave to be taken, whether the employee intends to request to return to work on a part time basis.
 - (c) 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 (a) of this Part.
- 4. Delete Schedule B - Family and Community Services Leave and Personal/Carer's Leave, and insert in lieu thereof the following:

SCHEDULE B

Family and Community Services Leave And Personal/Carers' Leave

Family and Community Services (FACS) Leave and Personal/Carer's Leave are separate, stand alone entitlements.

A. FACS Leave

(a) FACS Leave - General

- (i) 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.

- (ii) A manager 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).
- (iii) FACS leave replaces compassionate leave.
- (iv) An employee is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the Chief Executive Officer 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.

(b) FACS Leave - entitlement

- (i) 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.

- (ii) For the purposes of calculating entitlements under (b)(i)(1) and (2) above, a working day for employees working 38 hours per week shall be deemed to consist of 8 hours. For shift workers 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, 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.

- (iii) 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.

- (c) 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 (a) (i) of Part A of this clause.

- (d) Use of other leave entitlements

A manager 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

- (a) 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:

- (i) a spouse of the employee; or
- (ii) 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
- (iii) 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
- (iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (v) 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.

- (b) Use of sick leave to care for the person concerned - entitlement
- (i) 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 (a) of Part B of this clause.
- (ii) Other than an 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.
- (iii) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (ii) 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.
- (iv) A manager 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 (iii) above.
- (v) 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.
- (vi) 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.
- (vii) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
- (viii) 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.
- (ix) In normal circumstances, the employee must not take leave under this part where another person has taken leave to care for the same person.

(c) Use of other leave entitlements

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

- (i) 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.
- (ii) long service leave; or
- (iii) leave without pay for the purpose of providing care and support to the person concerned as defined in subclause (a) of Part B of this clause.

- (d) Time off in lieu of payment of overtime
- (i) 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
 - (ii) 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.
 - (iii) If, having elected to take time as leave in accordance with (d)(i) 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.
 - (iv) Where no election is made in accordance with paragraph (d)(i) above, the employee shall be paid overtime rates in accordance with the provisions of clause 13, Overtime.
- (e) Use of make-up time
- (i) 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 clauses 10 and 11 of this Award, at the ordinary rate of pay.
 - (ii) 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.

5. This variation shall take effect on and from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

HOSPITAL SCIENTISTS (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Administration Corporation.

(No. IRC 386 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete clause 32 Maternity, Adoption and Parental Leave in Part A of the award published 3 March 2006 (357 I.G. 774) and insert in lieu thereof the following:

ATTACHMENT A

32. Maternity, Adoption and Parental Leave

2. Delete clause 34, Personal/Carer's Leave, Family and Community Services Leave, and insert in lieu thereof the following:

ATTACHMENT B

34. Family and Community Services Leave and Personal/Carer's Leave

3. Insert after clause 31, Board and Lodgings, and insert in lieu thereof the following:

ATTACHMENT A**32. 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 may be granted. Should this second period of maternity leave commence during the currency of the existing period of maternity leave, then any residual maternity leave from the existing entitlement lapses.

An employee who has taken no more than 12 months full time equivalent maternity leave is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on maternity leave) for another period of such leave regardless of whether they resume their normal hours of work before proceeding on the second period of 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 i.e. 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.

4. Insert after clause 33, Redundancy-Managing Displaced Employees, and insert in lieu thereof the following:

ATTACHMENT B

34. Family and Community Services Leave and Personal/Carers' 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 4 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 (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 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.
5. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

HEALTH EMPLOYEES' CONDITIONS OF EMPLOYMENT (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Administration Corporation.

(No. IRC 387 of 2006)

Before The Honourable Justice Wright, President

13 February 2006

VARIATION

1. Delete in clause 1, Arrangement the words "28. Personal/Carer's Leave, Family and Community Services Leave", of the award published 24 February 2006 (357 I.G. 424) and insert in lieu thereof the following:

Attachment A

28. Family and Community Services Leave and
Personal/Carer's Leave

2. Delete in clause 1, clause 41 Maternity, Adoption and Parental Leave, and insert in lieu thereof the following:

Attachment B

41. Maternity Adoption and Parental Leave

3. Insert after clause 27, Anti-Discrimination, the following new Attachment A:

ATTACHMENT A

28. Family and Community Services Leave and Personal/Carers' 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 3 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 (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 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.

3. Insert after clause 40 Exemptions, the following new Attachment B.

ATTACHMENT B

41. 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 may 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 (i.e. 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:
 - (i) if applicable, the period of any maternity leave sought or taken by his spouse, and
 - (ii) 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.

4. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

AMBULANCE SERVICE OF NEW SOUTH WALES ADMINISTRATIVE AND CLERICAL EMPLOYEES (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Administration Corporation.

(No. IRC 388 of 2006)

Before The Honourable Justice Wright, President

13 February 2006

VARIATION

1. Delete in clause 1, Arrangement the words "Personal/Carer's, Family and Community Services Leave of the award published 25 May 2001 (324 I.G. 1210) and insert in lieu thereof the following:

Attachment A

22. Family and Community Services Leave and Personal/Carer's Leave

2. Delete in clause 23, Maternity, Adoption and Parental Leave, and insert in lieu thereof the following:

Attachment B

23. Maternity, Adoption and Parental Leave

3. Insert after clause 21, Public Holidays the following new clause:

ATTACHMENT A

22. Family and Community Services Leave And Personal/Carers' Leave

Family and Community Services (FACS) Leave and Personal/Carer's Leave are separate, stand alone entitlements.

A. FACS Leave

- (a) FACS Leave - General

- (i) 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.

- (ii) A manager 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).
- (iii) FACS leave replaces compassionate leave.
 - (iv) An employee is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the Chief Executive Officer 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.

(b) FACS Leave - entitlement

- (i) 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.
- (ii) For the purposes of calculating entitlements under (b)(i)(1) and (2) above, a working day for employees working 38 hours per week shall be deemed to consist of 8 hours. For shift workers 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, 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.

- (iii) 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.

(c) 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 (a) (i) of Part A of this clause.

(d) Use of other leave entitlements

A manager 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

(a) 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:

- (i) a spouse of the employee; or
- (ii) 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
- (iii) 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
- (iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (v) 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.

(b) Use of sick leave to care for the person concerned - entitlement

- (i) 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 (a) of Part B of this clause.
- (ii) Other than an 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.
- (iii) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (ii) 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.

- (iv) A manager 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 (iii) above.
- (v) 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.
- (vi) 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.
- (vii) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
- (viii) 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.
- (ix) In normal circumstances, the employee must not take leave under this part where another person has taken leave to care for the same person.

(c) Use of other leave entitlements

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

- (i) 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.
- (ii) long service leave; or
- (iii) leave without pay for the purpose of providing care and support to the person concerned as defined in subclause (a) of Part B of this clause.

(d) Time off in lieu of payment of overtime

- (i) 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
- (ii) 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.
- (iii) If, having elected to take time as leave in accordance with (d)(i) 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.
- (iv) Where no election is made in accordance with paragraph (d)(i) above, the employee shall be paid overtime rates in accordance with the provisions of clause 9, Overtime.

(e) Use of make-up time

- (i) 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 7 and 8 of this Award, at the ordinary rate of pay.

- (ii) 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.

4. Insert after clause 22, Family and Community Services Leave and Personal/Carer's Leave, the following:

ATTACHMENT B

23. Maternity, Adoption and Parental Leave

This clause is to be read in conjunction with the Service's Instructional Circular 05/16 or subsequent replacement Instructional Circulars as issued by the Service.

A. Maternity Leave

- (a) Eligibility for Paid Maternity Leave

- (i) Full time employees

Female employees who prior to the expected date of birth, have completed at least forty (40) weeks continuous service (of not less than 31.25 hours per week) are eligible for paid maternity leave.

- (ii) Permanent part-time employees

Permanent part-time employees are employees engaged on a permanent part-time basis as defined by their Award. Female employees employed on this basis are entitled to pro-rata paid maternity leave after forty (40) weeks continuous service.

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

- (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
- (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

- (b) Entitlements to Paid Maternity Leave

- (i) Eligible employees are entitled to fourteen (14) weeks at the ordinary rate of pay from the date maternity leave commences. This leave may commence up to fourteen (14) weeks prior to the expected date of birth.

- (ii) 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 (28) 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.

(iii) Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

(c) Entitlements to Unpaid Maternity Leave

(i) An employee entitled to paid maternity leave is entitled to a further period of unpaid maternity leave of not more than twelve (12) months from the actual date of birth. The leave therefore does not extend beyond the child's first birthday.

(ii) Full time or permanent part time female employees who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.

(d) Applications for Maternity Leave

(i) An employee who intends to proceed on maternity leave should formally notify their manager (in writing) of such intention as early as possible however, not less than eight (8) weeks prior to the commencement of leave. This notice must include a statement of:

(1) The intention to proceed on maternity leave;

(2) The expected date of birth certified by a medical practitioner;

(3) The period of leave to be taken;

(4) The date on which maternity leave is to commence;

(5) A Statutory Declaration stating any period of parental leave sought or taken by the employee's spouse. This declaration must also state that the applicant is the child's primary caregiver for the period of leave sought.

(6) The entitlement to maternity leave is reduced by any period of parental leave taken by the employee's spouse. Apart from parental leave of one (1) week at the time of birth, maternity leave is not to be taken concurrently with parental leave except as otherwise provided at subclause (a)(i) of Part D of this clause.

(e) Applications for Further Maternity Leave

(i) Where an employee becomes pregnant whilst on maternity leave, a further period of maternity leave may 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.

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

(iii) 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 (a)(iii) of Part D of this clause is entitled to be paid at their substantive full time rate for the subsequent period of maternity leave.

- (iv) 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 (a)(iii) 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.

(f) Variations of Maternity Leave

After commencing maternity leave, an employee may vary the period of her maternity leave -

- (i) once without the consent of the Service, but with a minimum of fourteen (14) days notice in writing; and
- (ii) otherwise with the consent of the Service, with a minimum of fourteen (14) days notice in writing.

However, more advanced notice is encouraged, especially for uniformed staff because of roster arrangements.

(g) 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.

(h) Effect of Maternity Leave on Accrual of Leave, Increments, etc

- (i) Unpaid maternity leave does not count as service for the purposes of accruing sick leave (unless the period of unpaid leave is less than one month, although it is unlikely that unpaid maternity leave would be for such a lesser period), annual leave (unless the period of unpaid maternity leave is less than 28 calendar days) or long service leave (unless the employee has completed ten years service and the period of unpaid maternity leave is less than six months).
- (ii) Unpaid maternity leave is not to be counted as service for determining incremental progression. 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. Notwithstanding the foregoing, increments based on age must be paid on attainment of the appropriate age.
- (iii) During a period of unpaid maternity leave the employee will not be required to meet the employer's superannuation liability. The employee will, however, be required to make any necessary arrangements for their own contributions.
- (iv) When the employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual 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.
- (v) Except in the case of employees who have completed ten (10) 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 (10) years service, the period of maternity leave without pay shall count as service provided such leave does not exceed six (6) months.
- (vi) 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.

(i) Illness Associated with Pregnancy

- (i) 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 any sick leave without pay.
- (ii) Where an employee is entitled to paid maternity leave but, because of illness or injury, is on workers' compensation, sick, annual, long service leave, or sick leave without pay prior to the birth, such leave will cease nine (9) weeks prior to the expected date of birth. The employee will then commence on maternity leave with the normal provisions applying.

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

An employee who gives birth prematurely prior to proceeding on maternity leave, shall be treated as being on maternity leave from the date she enters on leave to give birth to the child.

(k) 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 or maternity leave, subject to production of a medical certificate. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.

(l) Miscarriage

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

(m) Fitness to Continue Working During Pregnancy and Alternative Work

- (i) Whilst an employee may commence maternity leave up to fourteen (14) weeks, prior to the expected date of birth, this is not compulsory. However, if an employee decides to continue working prior to taking maternity leave, she must be able to satisfactorily perform her normal duties.
- (ii) Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obligated, as far as practicable, to provide alternative employment in some other position that she is able to satisfactorily to perform, until maternity leave commences. 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.

(n) Right to Return to Previous Position

- (i) An employee who returns to work after maternity leave has a right to return to her former position.
- (ii) 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 and/or qualified.

(o) Portability of Service 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:

service was on a full time or permanent part time (as specified) basis;

cessation of service with the former employer was not by reason of dismissal on any ground, except retrenchment or reduction of work;

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 2 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.)

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 Service Department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid maternity leave.

B. Adoption Leave

(a) Eligibility for Adoption Leave

- (i) 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 entitled to unpaid adoption leave.
- (ii) Employees who are adopting a child and are to be the primary care giver of the child are entitled to paid adoption leave as follows:

Full time employees

Employees who, prior to the date of taking custody of the child, have completed 40 weeks continuous service (of not less than 31.25 hours per week) are eligible for paid adoption leave.

Permanent part-time employees

Permanent part-time employees are employees engaged in a permanent part-time basis as defined by their Award. These employees are entitled to pro-rata paid adoption leave after forty (40) weeks continuous service.

- (iii) An employee who has once met conditions for paid adoption leave will not be required to again work the forty (40) weeks continuous service in order to qualify for a further period of paid adoption leave, unless:
 - (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
 - (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

(b) Entitlements

(i) Paid Adoption Leave

Eligible employees are entitled to fourteen (14) weeks at the ordinary rate of pay. This leave may commence from 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 (28) 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.

(ii) 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.

(c) Applications for Adoption Leave

(i) 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, normally 8 weeks prior. This will allow arrangements associated with the adoption leave to be made.

(ii) A statement must also be provided from the adoption agency or appropriate body/government authority confirming that the applicant/ employee is to have custody and the expected date of placement of the child.

(d) Applications for Further Adoption Leave

Same provisions as maternity leave.

(e) Variations of Adoption Leave

Same provisions as maternity leave.

(f) Staffing Provisions

Same provisions as maternity leave.

(g) Effect of Adoption Leave on Accrual of Leave, Increments, etc

Same provisions as maternity leave.

(h) Right to Return to Previous Position

Same provisions as maternity leave.

(i) Portability of Service for Paid Adoption Leave

Same provisions as maternity leave.

C. Parental Leave

(a) Eligibility for Parental Leave

(i) Full time employees

Employees who, prior to the expected date of birth or to the date of taking custody of the child, have completed 40 weeks continuous service (of not less than 31.25 hours per week) are eligible for parental leave.

(ii) Permanent part-time employees

Permanent part-time employees are employees engaged in a permanent part-time basis as defined by their Award. These employees are entitled to pro-rata paid parental leave after forty (40) weeks continuous service.

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

- (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
- (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

(b) 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:

- (i) 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).
- (ii) 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.
- (iii) a further unbroken period of unpaid parental leave not exceeding 52 weeks when added to short parental leave in order to be the primary caregiver of the child (extended parental leave).
- (iv) 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 otherwise provided at subclause (a)(i) of Part D of this clause.

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

(c) Applications for Parental Leave

- (i) 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.
- (ii) The employee should give written notice of the intention to take the leave, at least four weeks before proceeding on leave, and should detail the dates on which they propose to start and end the period of leave. 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.
- (iii) 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.
- (iv) In the case of extended parental leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:

if applicable, the period of any maternity leave sought or taken by his spouse, and

that they are seeking the period of extended parental leave to become the primary caregiver of the child.

(d) Variations of Parental Leave

Same provisions as maternity leave.

(e) Staffing Provisions

Same provisions as maternity leave.

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

Same provisions as maternity leave.

(g) Right to Return to Previous Position

Same provisions as maternity leave.

(h) Portability of Service for Paid Parental Leave

Same provisions as maternity leave.

D. Right To Request

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

- (i) to extend the period of simultaneous parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) 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.

- (b) 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.
- (c) The employee's request and the employer's decision made under subclauses (a)(ii) and (iii) of this Part must be recorded in writing.
- (d) Where an employee wishes to make a request under subclause (a)(iii) of this Part:
 - (i) the employee is to make an application for leave without pay to reduce their full time weekly hours of work;
 - (ii) 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
 - (iii) salary and other conditions of employment are to be adjusted on a basis proportionate to the employee's full time hours, that is for long service leave the period of service is to be converted to the full time equivalent and accredited accordingly.

E. Communication During Leave

- (a) 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:
 - (i) 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 leave; and
 - (ii) 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.
 - (b) 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 request to return to work on a part time basis.
 - (c) 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 (a) of this Part.
5. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

(009)

SERIAL C4871

AMBULANCE SERVICE OF NEW SOUTH WALES SUPERINTENDENT/OPERATIONAL MANAGERS (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Administration Corporation.

(No. IRC 392 of 2006)

Before The Honourable Justice Wright, President

13 February 2006

VARIATION

1. Delete the words in clause 2, Arrangement of clause 17, "Personal/Carer's, Family and Community Service Leave" of the award published 31 March 2006 (358 I.G. 668) and insert in lieu thereof the following:

17. Family and Community Services Leave and
Personal/Carer's Leave

2. In Clause 2, Arrangement, delete the words "Schedule 'A' - Personal/Carer's leave, Family and Community Services Leave (Policy Directive 2005_431)" and insert in lieu thereof the following:

"Schedule 'A' - Family and Community Services Leave and
Personal/Carer's Leave"

3. Delete Clause 17, Personal/Carer's, Family and Community Services Leave and insert in lieu thereof the following:

17. Family and Community Services Leave and Personal/Carer's Leave

Employees shall be granted family and community services leave and personal/carer's leave in accordance with the provisions at Schedule A - Family and Community Services Leave and Personal/Carer's Leave of this award."

4. Delete Clause 18, Maternity, Adoption and Parental Leave and insert in lieu thereof the following Attachment A.
5. Delete Schedule - A, Personal Carer's Leave, Family and Community Services Leave and replace with the following Attachment B.
6. Insert after clause 17, Personal/Carer's, Family and Community Service Leave, the following new Attachment A.

ATTACHMENT A

18. Maternity, Adoption and Parental Leave

This clause is to be read in conjunction with the Service's Instructional Circular 05/16 or subsequent replacement Instructional Circulars as issued by the Service.

A. Maternity Leave

- (a) Eligibility for Paid Maternity Leave

(i) Full time employees

Female employees who prior to the expected date of birth, have completed at least forty (40) weeks continuous service (of not less than 31.25 hours per week) are eligible for paid maternity leave.

(ii) Permanent part-time employees

Permanent part-time employees are employees engaged on a permanent part-time basis as defined by their Award. Female employees employed on this basis are entitled to pro-rata paid maternity leave after forty (40) weeks continuous service.

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

- (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
- (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

(b) Entitlements to Paid Maternity Leave

(i) Eligible employees are entitled to fourteen (14) weeks at the ordinary rate of pay from the date maternity leave commences. This leave may commence up to fourteen (14) weeks prior to the expected date of birth.

(ii) 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 (28) 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.

(iii) Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

(c) Entitlements to Unpaid Maternity Leave

(i) An employee entitled to paid maternity leave is entitled to a further period of unpaid maternity leave of not more than twelve (12) months from the actual date of birth. The leave therefore does not extend beyond the child's first birthday.

(ii) Full time or permanent part time female employees who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.

(d) Applications for Maternity Leave

- (i) An employee who intends to proceed on maternity leave should formally notify their Divisional Manager (in writing) of such intention as early as possible however, not less than eight (8) weeks prior to the commencement of leave. This notice must include a statement of:
- (1) The intention to proceed on maternity leave;
 - (2) The expected date of birth certified by a medical practitioner;
 - (3) The period of leave to be taken;
 - (4) The date on which maternity leave is to commence;
 - (5) You must also attach a Statutory Declaration stating any period of parental leave sought or taken by your spouse. This declaration must also state that the applicant is the child's primary caregiver for the period of leave sought.
 - (6) Your entitlement to maternity leave is reduced by any period of parental leave taken by your spouse. Apart from parental leave of one (1) week at the time of birth, maternity leave is not to be taken concurrently with parental leave except as otherwise provided at subclause (a)(i) of Part D of this clause.

(e) Applications for Further Maternity Leave

- (i) 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.
- (ii) An employee who commences a subsequent period of maternity leave whilst on unpaid maternity leave under subclause (c)(i) of Part A of this clause or subclause (a)(ii) of Part D of this clause is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on maternity leave).
- (iii) 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 (a)(iii) of Part D of this clause is entitled to be paid at their substantive full time rate for the subsequent period of maternity leave.
- (iv) 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 (a)(iii) 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.

(f) Variations of Maternity Leave

After commencing maternity leave, an employee may vary the period of her maternity leave -

- (i) once without the consent of the Service, but with a minimum of fourteen (14) days notice in writing; and
- (ii) otherwise with the consent of the Service, with a minimum of fourteen (14) days notice in writing.

However, more advanced notice is encouraged, especially for uniformed staff because of roster arrangements.

(g) 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.

(h) Effect of Maternity Leave on Accrual of Leave, Increments, etc

- (i) Unpaid maternity leave does not count as service for the purposes of accruing sick leave (unless the period of unpaid leave is less than one month, although it is unlikely that unpaid maternity leave would be for such a lesser period), annual leave (unless the period of unpaid maternity leave is less than 28 calendar days) or long service leave (unless the employee has completed ten years service and the period of unpaid maternity leave is less than six months).
- (ii) Unpaid maternity leave is not to be counted as service for determining incremental progression. 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. Notwithstanding the foregoing, increments based on age must be paid on attainment of the appropriate age.
- (iii) During a period of unpaid maternity leave the employee will not be required to meet the employer's superannuation liability. The employee will, however, be required to make any necessary arrangements for their own contributions.
- (iv) When the employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual 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.
- (v) Except in the case of employees who have completed ten (10) 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 (10) years service, the period of maternity leave without pay shall count as service provided such leave does not exceed six (6) months.
- (vi) 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.

(i) Illness Associated with Pregnancy

- (i) 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 any sick leave without pay.
- (ii) Where an employee is entitled to paid maternity leave but, because of illness or injury, is on workers' compensation, sick, annual, long service leave, or sick leave without pay prior to the birth, such leave will cease nine (9) weeks prior to the expected date of birth. The employee will then commence on maternity leave with the normal provisions applying.

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

An employee who gives birth prematurely prior to proceeding on maternity leave, shall be treated as being on maternity leave from the date she enters on leave to give birth to the child.

(k) 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 or maternity leave, subject to production of a medical certificate. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.

(l) Miscarriage

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

(m) Fitness to Continue Working During Pregnancy and Alternative Work

(i) Whilst an employee may commence maternity leave up to fourteen (14) weeks, prior to the expected date of birth, this is not compulsory. However, if an employee decides to continue working prior to taking maternity leave, she must be able to satisfactorily perform her normal duties.

(ii) Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obligated, as far as practicable, to provide alternative employment in some other position that she is able to satisfactorily to perform, until maternity leave commences. 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.

(n) Right to Return to Previous Position

(i) An employee who returns to work after maternity leave has a right to return to her former position.

(ii) 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 and/or qualified.

(o) Portability of Service 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:

service was on a full time or permanent part time (as specified) basis;

cessation of service with the former employer was not by reason of dismissal on any ground, except retrenchment or reduction of work;

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 2 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.)

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 Service Department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid maternity leave.

B. Adoption Leave

(a) Eligibility for Adoption Leave

- (i) 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 entitled to unpaid adoption leave .
- (ii) Employees who are adopting a child and are to be the primary care giver of the child are entitled to paid adoption leave as follows:

Full time employees

Employees who, prior to the date of taking custody of the child, have completed 40 weeks continuous service (of not less than 31.25 hours per week) are eligible for paid adoption leave.

Permanent part-time employees

Permanent part-time employees are employees engaged in a permanent part-time basis as defined by their Award. These employees are entitled to pro-rata paid adoption leave after forty (40) weeks continuous service.

- (iii) An employee who has once met conditions for paid adoption leave will not be required to again work the forty (40) weeks continuous service in order to qualify for a further period of paid adoption leave, unless:
 - (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
 - (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

(b) Entitlements

(i) Paid Adoption Leave

Eligible employees are entitled to fourteen (14) weeks at the ordinary rate of pay. This leave may commence from 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 (28) 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.

(ii) 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.

(c) Applications for Adoption Leave

- (i) 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, normally 8 weeks prior. This will allow arrangements associated with the adoption leave to be made.
- (ii) A statement must also be provided from the adoption agency or appropriate body/government authority confirming that the applicant/employee is to have custody and the expected date of placement of the child.

(d) Applications for Further Adoption Leave

Same provisions as maternity leave.

(e) Variations of Adoption Leave

Same provisions as maternity leave.

(f) Staffing Provisions

Same provisions as maternity leave.

(g) Effect of Adoption Leave on Accrual of Leave, Increments, etc

Same provisions as maternity leave.

(h) Right to Return to Previous Position

Same provisions as maternity leave.

(i) Portability of Service for Paid Adoption Leave

Same provisions as maternity leave.

C. Parental Leave

(a) Eligibility for Parental Leave

(i) Full time employees

Employees who, prior to the expected date of birth or to the date of taking custody of the child, have completed 40 weeks continuous service (of not less than 31.25 hours per week) are eligible for parental leave.

(ii) Permanent part-time employees

Permanent part-time employees are employees engaged in a permanent part-time basis as defined by their Award. These employees are entitled to pro-rata paid parental leave after forty (40) weeks continuous service.

- (iii) An employee who has once met conditions for parental leave will not be required to again work the forty (40) weeks continuous service in order to qualify for a further period of parental leave, unless:
 - (1) there has been a break in service where the employee has been re-employed or re-appointed after resignation, medical retirement, or after her services have been otherwise dispensed with; or
 - (2) the employee has completed a period of leave without pay of more than forty (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 workers' compensation legislation.

(b) 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:

- (i) 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).
- (ii) 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.
- (iii) a further unbroken period of unpaid parental leave not exceeding 52 weeks when added to short parental leave in order to be the primary caregiver of the child (extended parental leave).
- (iv) 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 otherwise provided at subclause (a)(i) of Part D of this clause.

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

(c) Applications for Parental Leave

- (i) 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.
- (ii) The employee should give written notice of the intention to take the leave, at least four weeks before proceeding on leave, and should detail the dates on which they propose to start and end the period of leave. 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.
- (iii) 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.
- (iv) In the case of extended parental leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:

if applicable, the period of any maternity leave sought or taken by his spouse, and

that they are seeking the period of extended parental leave to become the primary caregiver of the child.

- (d) Variations of Parental Leave
Same provisions as maternity leave.
- (e) Staffing Provisions
Same provisions as maternity leave.
- (f) Effect of Parental Leave on Accrual of Leave, Increments, etc.
Same provisions as maternity leave.
- (g) Right to Return to Previous Position
Same provisions as maternity leave.
- (h) Portability of Service for Paid Parental Leave
Same provisions as maternity leave.

D. Right to Request

- (a) An employee entitled to maternity, adoption or parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) 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.
- (b) 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.
- (c) The employee's request and the employer's decision made under subclauses (a)(ii) and (iii) of this Part must be recorded in writing.
- (d) Where an employee wishes to make a request under subclause (a)(iii) of this Part:
 - (i) the employee is to make an application for leave without pay to reduce their full time weekly hours of work;
 - (ii) 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;
 - (iii) salary and other conditions of employment are to be adjusted on a basis proportionate to the employee's full time hours, that is for long service leave the period of service is to be converted to the full time equivalent and accredited accordingly.

E. Communication During Leave

- (a) 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:
- (i) 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 leave; and
 - (ii) 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 leave.
- (b) 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 leave to be taken, whether the employee intends to request to return to work on a part time basis.
- (c) 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 (a) of this Part.
7. Delete Schedule A, Personal Carer's Leave, Family and Community Services Leave and insert in lieu thereof the following:

ATTACHMENT B**SCHEDULE A****Family and Community Services Leave And Personal/Carers' Leave**

Family and Community Services (FACS) Leave and Personal/Carer's Leave are separate, stand alone entitlements.

A. FACS Leave

- (a) FACS Leave - General
- (i) 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.
 - (ii) A manager 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).
- (iii) FACS leave replaces compassionate leave.
- (iv) An employee is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the Chief Executive Officer 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.

(b) FACS Leave - entitlement

- (i) 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.

- (ii) For the purposes of calculating entitlements under (b)(i)(1) and (2) above, a working day for employees working 38 hours per week shall be deemed to consist of 8 hours. For shift workers 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, 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.

- (iii) 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.

(c) 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 (a) (i) of Part A of this clause.

(d) Use of other leave entitlements

A manager 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

(a) 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:

- (i) a spouse of the employee; or
- (ii) 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
- (iii) 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
- (iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (v) 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.

(b) Use of sick leave to care for the person concerned - entitlement

- (i) 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 (a) of Part B of this clause.
- (ii) Other than an 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.
- (iii) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (ii) 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.
- (iv) A manager 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 (iii) above.

- (v) 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.
 - (vi) 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.
 - (vii) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
 - (viii) 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.
 - (ix) In normal circumstances, the employee must not take leave under this part where another person has taken leave to care for the same person.
- (c) Use of other leave entitlements

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

- (i) 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.
 - (ii) long service leave; or
 - (iii) leave without pay for the purpose of providing care and support to the person concerned as defined in subclause (a) of Part B of this clause.
- (d) Use of make-up time

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.

8. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

CROWN EMPLOYEES (TEACHERS IN TAFE CHILDREN'S CENTRES) SALARIES AND CONDITIONS AWARD 2005

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Training.

(No. IRC 327 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert after paragraph 3.6.4 of subclause 3.6 Casual Teachers of clause 3 Salaries and Allowances of the award published 2 June 2006 (359 I.G. 458) the following new paragraphs.

3.6.5 Bereavement Leave

- (i) Subject to the evidentiary and notice requirements in subclause 8.5.1.2 and 8.5.1.4 casual teachers are entitled to not be available to attend work, or to leave work on the death in Australia of a person prescribed in subclause 8.5.1.3.2 of clause 8.5 Personal/Carer's Leave.
- (ii) The employer and the casual teacher 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 casual teacher is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual teacher is not entitled to any payment for the period of non attendance.
- (iii) The employer must not fail to re-engage a casual teacher because the casual teacher accessed the entitlements provided for in this clause. The rights of the employer to engage or not engage a casual teacher are otherwise not affected.

3.6.6 Personal/Carer's leave

- (i) Subject to the evidentiary and notice requirements in subclause 8.5.1.2 and 8.5.1.4 casual teachers are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 8.5.1.3.2 of clause 8.5 Personal/Carer's Leave who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.
- (ii) The employer and the casual teacher shall agree on the period for which the casual teacher will be entitled to not be available to attend work. In the absence of agreement, the casual teacher is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual teacher is not entitled to any payment for the period of non attendance.
- (iii) The employer must not fail to re-engage a casual teacher because the casual teacher accessed the entitlements provided for in this clause. The rights of the employer to engage or not engage a casual teacher are otherwise not affected.

2. Delete subparagraph 8.5.3.1 of paragraph 8.5.3 of clause 8, Leave and insert in lieu thereof the following:

8.5.3.1 A teacher may elect, with the consent of the employer and subject to the *Annual Holidays Act 1944*, to take annual leave not exceeding ten days in single-day periods or part thereof in any calendar year at a time or times agreed by the parties.

3. Insert after subparagraph 8.5.3.3 of clause 8, the following new subparagraph.

8.5.3.4A teacher 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.

4. The variation shall take effect on and from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (SATURDAY SCHOOL OF COMMUNITY LANGUAGES) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Training.

(No. IRC 330 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in clause 1, Arrangement of the award published 23 December 2005 (355 I.G. 628) the following new clause number 12. Parental Leave and Other Entitlements and renumber existing clauses accordingly:

12. Parental Leave and Other Entitlements
13. Dispute Resolution Procedures
14. No Further Claims
15. Goods and Services Tax
16. Deduction of Union Membership Fees
17. Leave Reserved
18. Area, Incidence and Duration

2. Insert after clause 11, Anti-Discrimination the following new clause:

12. Parental Leave and Other Entitlements

- 12.1 Employees will be entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, Section 54 Entitlement to Unpaid Parental leave, Industrial Relations Act 1996, if they meet the definition of a regular casual employee (see section 53(2) of the Industrial Relations Act 1996). The following provisions shall also apply in addition to those set out in the Industrial Relations Act 1996 (NSW).

12.4.1 The Director-General must not fail to re-engage an employee who meets the definition of a regular casual employee because:

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

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

12.2 Personal Carers Entitlements

12.2.1 Employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in 12.4.2 below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in 12.2.4, and the notice requirements set out in 12.2.5.

12.2.2 The Director-General 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 (i.e. two days) per occasion. The employee is not entitled to any payment for the period of non-attendance.

12.2.3 The Director-General must not fail to re-engage an employee because the employee accessed the entitlements provided for in this clause. The rights of the Director-General to engage or not to engage a employee are otherwise not affected.

12.2.4 The employee shall, if required,

- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (i) establish by production of documentation acceptable to the Director-General or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

12.2.5 The employee must, as soon as reasonably practicable and during the ordinary hours of the first day of such absence, inform the Director-General of their inability to attend for duty. If it is not reasonably practicable to inform the Director-General during the ordinary hours of the first day of such absence, the employee will inform the Director-General within 24 hours of the absence.

12.3 Bereavement entitlements

12.3.1 Employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the Director-General).

12.3.2 The Director-General 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 (i.e. two days) per occasion. The employee is not entitled to any payment for the period of non-attendance.

12.3.3 The Director-General must not fail to re-engage a employee because the employee accessed the entitlements provided for in this clause. The rights of the Director-General to engage or not to engage a employee are otherwise not affected.

12.3.4 The employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Director-General of their inability to attend for duty. If it is not reasonably practicable to inform the Director-General during the ordinary hours of the first day or shift of such absence, the employee will inform the Director-General within 24 hours of the absence.

12.4 The entitlement in accordance with this clause is subject to:

12.4.1 the employee being responsible for the care and support of the person concerned; and

12.4.2 the person concerned being:

- (i) a spouse of the employee; or
- (ii) a de facto spouse, being a person of the opposite sex to the employee who lives with the employee as her husband or his wife on a bona fide domestic basis although not legally married to that employee; or
- (iii) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or of the spouse or of the de facto spouse of the employee; or

- (iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (v) a relative of the employee who is a member of the same household where, for the purposes of this definition:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

2 Renumber Clause 12, Dispute Resolution Procedures as Clause 13.

3 Renumber Clause 13, No Further Claims as Clause 13.

4 Renumber Clause 14, Goods and Services Tax as Clause 15.

5 Renumber Clause 15, Deduction of Union Membership Fees as Clause 16.

6 Renumber Clause 16, Area, Incidence and Duration as Clause 17.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

**CROWN EMPLOYEES NSW ADULT MIGRANT ENGLISH SERVICE
(TEACHERS AND RELATED EMPLOYEES) AWARD 2004**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Training.

(No. IRC 332 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in clause 1, Arrangement, of the award published 23 December 2005 (355 I.G. 573), the following new clause number and subject matter and renumber the existing clauses as follows:

- 20. Adoption, Maternity and Parental Leave
- 21. Conditions of Employment - Casual Teachers
- 22. Professional Development
- 23. AMES Year
- 24. Transfer Procedures
- 25. Anti-Discrimination
- 26. Dispute Resolution Procedures
- 27. Goods and Services Tax
- 28. Flexible Working Arrangements
- 29. Deduction of Union Membership Fees
- 30. No Further Claims
- 31. Leave Reserved
- 32. Area, Incidence and Duration

2. Delete paragraph 19.3.1, of clause 19, Personal/Carer's Leave, of the award and insert in lieu thereof the following:

19.3.1 An employee may elect, with the consent of the Director, subject to the *Annual Holidays Act 1944*, to take annual leave not exceeding ten days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.

3. Insert after paragraph 19.3.2, of the said clause 19, the following new paragraph:

19.3.3 An employee may elect with the Director-General's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

4. Insert after the said clause 19, the following new clause and renumber the clauses in the body of the award to reflect the new Arrangement:

20. Adoption, Maternity and Parental Leave

- 20.1 Adoption, maternity and parental leave conditions of employees under this Award shall be regulated in accordance with the provisions contained within the *Public Sector Employment and Management Act 2002* and Regulation and will be in addition to those set out in the *Industrial Relations Act 1996* (NSW) and Regulation.

20.2 Right to Request

20.2.1 An employee entitled to adoption, maternity and parental leave may request the Director-General to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

20.2.2 The Director-General 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 Director-General's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

20.2.3 The employee's request and the Director-General's decision made under 20.2.1 (ii) and 20.2.1 (iii) must be recorded in writing.

20.2.4 Where an employee wishes to make a request under 20.2.1(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

20.3 Communication During adoption, maternity and parental Leave

20.3.1 Where an employee is on parental leave and a definite decision has been made to introduce a significant change at the workplace, the Director-General shall take reasonable steps to:

- (i) 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 parental leave; and
- (ii) 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 parental leave.

20.3.2 The employee shall take reasonable steps to inform the Director-General about any significant matter that will affect the employee's decision regarding the duration of parental 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.

20.3.3 The employee shall also notify the Director-General of changes of address or other contact details which might affect the Director-General's capacity to comply with 20.3.1.

5. Delete subclause 21.6, of clause 21, Conditions of Employment - Casual Teachers, and insert in lieu thereof the following:

21.6

21.6.1 Employees will be entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, Section 54 Entitlement to Unpaid Parental leave, *Industrial Relations Act* 1996, if they meet the definition of a regular casual employee (see section 53(2) of the *Industrial*

Relations Act 1996). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

21.6.2 The Director-General must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

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

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

6. Insert after subclause 21.8, of the said clause 21, the following new subclause 21.9, and renumber the existing subclause 21.9 to read as 21.11.

21.9 Personal Carers Leave

21.9.1 Casual staff members are entitled to not be available to attend work, or to leave work if they need to care for a family member described in clause 19.1.3 (b) of the Award who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out in 21.9.4(a), and the notice requirements set out in 21.9.4(b).

21.9.2 The Department and the casual staff member shall agree on the period for which the staff member will be entitled to not be available to attend work. In the absence of agreement, the staff member is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual staff member is not entitled to any payment for the period of non-attendance.

21.9.3 The Department must not fail to re-engage a casual staff member because the staff member accessed the entitlements provided for in this clause. The rights of the department to engage or not to engage a casual staff member are otherwise not affected.

21.9.4 The casual staff member shall, if required,

- (a) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (b) establish by production of documentation acceptable to the Director-General or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the staff member.

In normal circumstances, a casual staff member must not take carer's leave under this subclause where another person had taken leave to care for the same person.

21.9.5 The casual staff member must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Director-General of their inability to attend for duty. If it is not reasonably practicable to inform the Director-General during the ordinary hours of the first day or shift of such absence, the staff member will inform the Director-General within 24 hours of the absence.

7. Insert after subclause 21.9, of the said clause 21, the following new subclause 21.10, and renumber the existing subclause 21.10 to read as 21.12.

21.10 Bereavement entitlements for casual staff members

- 21.10.1 Casual staff members are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the Director-General).
- 21.10.2 The Director-General and the casual staff member shall agree on the period for which the staff member will be entitled to not be available to attend work. In the absence of agreement, the staff member is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual staff member is not entitled to any payment for the period of non-attendance.
- 21.10.3 The Director-General must not fail to re-engage a casual staff member because the staff member accessed the entitlements provided for in this clause. The rights of the Director-General to engage or not engage a casual staff member are otherwise not affected.
- 21.10.4 The casual staff member must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Director-General of their inability to attend for duty. If it is not reasonably practicable to inform the Director-General during the ordinary hours of the first day or shift of such absence, the staff member will inform the Director-General within 24 hours of the absence.

8. This variation shall take effect on and from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (NATIONAL ART SCHOOL, ACADEMIC STAFF) SALARIES AND CONDITIONS AWARD 2004

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Training.

(No. IRC 333 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert after subclause 13.9 of clause 13, Casual Lecturers of the award published 27 January 2006 (356 I.G. 736) the following new subclause:

13.10 Personal Carers entitlement for Casual Lecturers

13.10.1 Casual lecturers are entitled to not be available to attend work, or to leave work if they need to care for a family member described in clause 15.7.1.3(b) of the Award who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in 13.10.4, and the notice requirements set out in 13.10.5.

13.10.2 The Department and the casual lecturer shall agree on the period for which the staff member will be entitled to not be available to attend work. In the absence of agreement, the casual lecturer is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual staff member is not entitled to any payment for the period of non-attendance.

13.10.3 The Department must not fail to re-engage a casual lecturer because the casual lecturer accessed the entitlements provided for in this clause. The rights of the department to engage or not to engage a casual staff member are otherwise not affected.

13.10.4 The casual lecturer shall, if required,

- (a) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (b) establish by production of documentation acceptable to the Director General or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the staff member.

In normal circumstances, a casual lecturer must not take carer's leave under this subclause where another person had taken leave to care for the same person.

13.10.5 The casual lecturer must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Director General of their inability to attend for duty. If it is not reasonably practicable to inform the Director General during the ordinary hours of the first day or shift of such absence, the casual lecturer will inform the Director General within 24 hours of the absence (drawn from AIRC order [PR964989]).

13.11 Bereavement entitlements for Casual Lecturers

- 13.11.1 Casual lecturers are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the Director General).
- 13.11.2 The Director General and the casual lecturer shall agree on the period for which the casual lecturer will be entitled to not be available to attend work. In the absence of agreement, the casual lecturer is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual lecturer is not entitled to any payment for the period of non-attendance.
- 13.11.3 The Director General must not fail to re-engage a casual lecturer because the casual lecturer accessed the entitlements provided for in this clause. The rights of the Director-General to engage or not engage a casual lecturer are otherwise not affected.
- 13.11.4 The Casual Lecturer must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Director General of their inability to attend for duty. If it is not reasonably practicable to inform the Director General during the ordinary hours of the first day or shift of such absence, the casual lecturer will inform the Director General within 24 hours of the absence (Drawn from AIRC order [PR964989]).

13.12 Parental Leave for Casual Lecturers members

- 13.12.1 Casual Lecturers will be entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, Section 54 Entitlement to Unpaid Parental leave, *Industrial Relations Act 1996*, if they meet the definition of a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- 13.12.2 The Director General must not fail to re-engage a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*) because:
- (a) the casual lecturer or casual lecturer spouse is pregnant; or
 - (b) the casual lecturer is or has been immediately absent on parental leave.

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

2. Delete the word "five" in subparagraph 15.7.3.1 of clause 15, Leave and insert in lieu thereof the following:

"Ten"

3. Insert after subparagraph 15.7.3.3 of clause 15 the following new subparagraph 15.7.3.4.

15.7.3.4 An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

4. Insert after subclause 15.9 of clause 15 the following new subclause:

15.10 Maternity, Adoption and Parental Leave

- 15.10.1 Maternity, adoption and parental leave conditions of employees under this Award shall be regulated in accordance with the provisions contained within the *Public Sector Employment and Management Act 2002* and Regulation and will be in addition to those set out in the *Industrial Relations Act 1996* (NSW) and Regulation.

15.10.2 Right to Request

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

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

15.10.3 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.

15.10.4 The employee's request and the employer's decision made under 15.10.2.1 (ii) and 15.10.2.1 (iii) must be recorded in writing.

15.10.5 Where an employee wishes to make a request under 13.3.1 (iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

15.10.6 Communication during Maternity, Adoption or Parental Leave

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

- (i) 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 parental leave; and
- (ii) 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 parental leave.

15.10.6.2 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 parental 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.

15.10.6.3 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 15.10.6.

5. This variation shall take effect on and from 19 December 2005.

F. L. WRIGHT J , *President*

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SERIAL C4881

**NEW SOUTH WALES TAFE COMMISSION (GRAPHIC ARTS
SECTION, SYDNEY INSTITUTE) WAGES AND CONDITIONS
AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Training.

(No. IRC 334 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert after paragraph (iii) of subclause (a) Use of Sick Leave, of clause 8, Personal/Carer's Leave of the award published 11 March 2005 (349 I.G. 82) the following new subclauses:
 - (iv) Subject to the evidentiary and notice requirements in 8 (a) (ii) and 8 (a) (iii) (5) (iv), 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 8 (a) (iii) of 8. Personal/Carer's Leave who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.
 - (v) The employer and the employee shall agree on the period for which the employee will not be entitled to be available to attend work. In the absence of agreement, the employee is entitled to not be available for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non attendance.
 - (vi) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
2. Delete paragraph (i) and (ii) subclauses (c) Annual Leave of clause 8, and insert in lieu thereof the following:
 - (c) Use of Annual (Recreation) Leave
 - (i) An employee may elect with the employer's agreement to take annual leave not exceeding ten days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties to care for a person prescribed in subclause 8 (a) (iii) of 18. Personal/Carer's Leave who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.
 - (ii) 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.
 - (iii) Access to annual leave, as prescribed in paragraph (i) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
3. Delete paragraph (i) (ii) and (iii) of subclause (g) Bereavement Leave of clause 8 and insert in lieu thereof the following:
 - (i) An employee other than a casual employee shall be entitled up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed for the purposes of Personal Carers Leave in subclause 8 (a) (iii) (b).

- (ii) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
 - (iii) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of Personal/Carer's Leave in subclause 8 (a) (iii) (b), provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
4. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J, *President*

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BRADFIELD COLLEGE (DEPARTMENT OF EDUCATION AND TRAINING) SALARIES AND CONDITIONS AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Training.

(No. IRC 335 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete subclause 14.1 of clause 14 Casual Employees of the award published 23 December 2005 (355 I.G. 614) and insert in lieu thereof the following:
 - 14.1 Payment and working conditions of casual employees will be in accordance with the provisions contained in the Crown Employees (Teachers in TAFE and Related Employees) Salaries and Conditions Award 2006 provided that payment will be made for approved hours of attendance. Relevant rates are extracted and contained in Schedule 2 of Part B, Schedules of this award.
2. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

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CROWN EMPLOYEES (GENERAL ASSISTANTS IN SCHOOLS - DEPARTMENT OF EDUCATION AND TRAINING) (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Training.

(No. IRC 337 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in clause 1. Arrangement of the award published 21 May 2004 (344 I.G. 562) the following new clause number 11, and renumber existing clauses 12 and 13 accordingly.

11. Entitlements for Short Term Temporary Employees
12. No Further Claims
13. Area, Incidence and Duration

2. Insert after clause 10, Deduction of Union Membership Fees, the following new clause:

11. Entitlements for Short Term Temporary Employees

- 11.1 Other than as described under subclauses 11.3, 11.4, 11.5 and 11.6 of this clause, short term temporary employees are not entitled to any other paid or unpaid leave.
- 11.2 As set out in subclause 5.3, the short term temporary rates of pay incorporate a payment in lieu of a recreation leave entitlement.
- 11.3 Short term temporary employees will be entitled to Long Service Leave in accordance with the provisions of the Long Service Leave Act 1955.
- 11.4 Short term temporary employees will be entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, Section 54 Entitlement to Unpaid Parental leave, *Industrial Relations Act 1996*, if they meet the definition of a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
 - 11.4.1 The Director-General must not fail to re-engage a short term temporary employee who meets the definition of a regular casual employee because:
 - (i) the employee or employee's spouse is pregnant; or
 - (ii) the employee is or has been immediately absent on parental leave.

The rights of the Director-General in relation to engagement and re-engagement of short term temporary employees are not affected, other than in accordance with this clause.

- 11.5 Personal Carers entitlement for short term temporary employees

- 11.5.1 Short term temporary employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in 11.8.2 below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in 11.5.4, and the notice requirements set out in 11.5.5.

11.5.2 The Director-General and the short term temporary employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The short term temporary employee is not entitled to any payment for the period of non-attendance.

11.5.3 The Director-General must not fail to re-engage a short term temporary employee because the employee accessed the entitlements provided for in this clause. The rights of the Director-General to engage or not to engage a short term temporary employee are otherwise not affected.

11.5.4 The short term temporary employee shall, if required,

- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (i) establish by production of documentation acceptable to the Director-General or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a short term temporary employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

11.5.5 The short term temporary employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Director-General of their inability to attend for duty. If it is not reasonably practicable to inform the Director-General during the ordinary hours of the first day or shift of such absence, the employee will inform the Director-General within 24 hours of the absence.

11.6 Bereavement entitlements for short term temporary employees

11.6.1 Short term temporary employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the Director-General).

11.6.2 The Director-General and the short term temporary employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The short term temporary employee is not entitled to any payment for the period of non-attendance.

11.6.3 The Director-General must not fail to re-engage a short term temporary employee because the employee accessed the entitlements provided for in this clause. The rights of the Director-General to engage or not engage a short term temporary employee are otherwise not affected.

11.6.4 The short term temporary employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Director-General of their inability to attend for duty. If it is not reasonably practicable to inform the Director-General during the ordinary hours of the first day or shift of such absence, the employee will inform the Director-General within 24 hours of the absence.

11.7 The entitlement in accordance with this clause is subject to:

11.7.1 the employee being responsible for the care and support of the person concerned; and

11.7.2 the person concerned being:

- (i) a spouse of the employee; or

- (ii) a de facto spouse, being a person of the opposite sex to the employee who lives with the employee as her husband or his wife on a bona fide domestic basis although not legally married to that employee; or
- (iii) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or of the spouse or of the de facto spouse of the employee; or
- (iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (v) a relative of the employee who is a member of the same household where, for the purposes of this definition:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

- 3. Renumber Clause 11, No Further Claims to read as clause 12, and clause 12, Area, Incidence and Duration to read as clause 13.
- 4. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

Printed by the authority of the Industrial Registrar.

TRANSGRID EMPLOYEES AWARD 2006

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Electricity Transmission Authority t/as Transgrid.

(No. IRC 172 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Delete subclauses 15.16, 15.17, 15.18, 15.19, 15.20 and 15.21 of clause 15, Forms of Employment, of the award published 3 February 2006 (356 I.G. 1058), and insert in lieu thereof the following:

15.16 Bereavement entitlements for casual employees

- (a) Subject to the evidentiary and notice requirements in clause 29.2 of the Award, casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in (definitions of affinity contained under clause 29.3 of the Award).
- (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 (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 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.

15.17 Personal Carers Entitlement for casual employees

- (a) Subject to evidentiary and notice requirements in clause 29.2 of the Award, casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed under clause 29.3 of this Award, 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 (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 employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

Temporary**15.18 Who is a temporary employee?**

A temporary employee is any employee who works set and regular hours for a period of limited duration on a full-time or part-time basis.

The maximum duration of temporary employment is 12 months. If the position is not held by a permanent employee and is still required, the position must then be advertised and filled on a permanent basis.

15.19 Hours of work

The commencing and finishing times for each day are determined by local management.

15.20 Rates of pay

Temporary employees are paid the hourly rate for their classification.

15.21 Overtime

Overtime must be paid in accordance with 20. Overtime - Day Work but only when nominated hours are exceeded or work is performed outside the spread of ordinary hours.

15.22 Termination

The services of a temporary employee will be terminated:

- (a) at the end of the period of employment; or
- (b) by local management or employee giving at least one week's notice.

15.23 Entitlements

Temporary employees receive the same entitlements that are contained in the Award for full-time employees. These entitlements are in proportion to the number of ordinary hours worked to full-time ordinary working hours.

2. Delete subclause 26.5, of clause 26, Annual Leave, and insert in lieu thereof the following:

26.5 When an employee takes annual leave for family care reasons an employee may elect with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

The number of "separate periods" may then be increased in addition to the 1, 2, or 3 separate periods in 26.4 above.

3. Delete subclause 29.1, of clause 29, Leave for Family Care, and insert in lieu thereof the following:

29.1 Purpose

To provide care and support for persons who are ill and in need of an employee's personal care, or who will require care due to an unexpected emergency.

4. Delete subclause 29.7, of the said clause 29, and insert in lieu thereof the following:

29.7 Subject to the *Annual Leave Act*, 1944, employees may apply for annual leave:

- (a) when they have an annual leave credit to cover the requested period of absence; and
- (b) for periods not exceeding ten days in single day periods, or part thereof, in any calendar year, at a time(s) agreed to by local management. The number of "separate periods" of

annual leave may be increased beyond the 1, 2 or 3 separate periods shown in 26. Annual Leave.

5. Delete clause 35, Parental Leave, and insert in lieu thereof the following:

35.1 Parental Leave

The provisions of the *Industrial Relations Act 1996* shall apply. Employees who are eligible for maternity or adoption leave under the *Industrial Relations Act 1996* shall be entitled to receive up to fourteen (14) weeks paid leave (or twenty-eight (28) weeks at half pay) at their ordinary rate of remuneration.

Employees who are eligible for paternity leave under the *Industrial Relations Act 1996* shall be entitled to receive up to one (1) week of paid leave (or two (2) weeks at half pay) at their ordinary rate of remuneration.

The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

35.2 Entitlement of Eligible Casual Employees to Unpaid Parental Leave

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

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

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

35.3 Right to Request

- (a) An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) 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.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 35.3 (a)(ii) and 35.3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 35.3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

35.4 Communication During Parental Leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
- (a)(i) 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 parental leave; and
 - (a)(ii) 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 parental leave.
- (b) 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 parental 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.
- (c) 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 paragraph (a).

6. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

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ERARING ENERGY EMPLOYEES CONSENT AWARD 2004

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Eraring Energy.

(No. IRC 305 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in the Arrangement of the award published 13 August 2004 (345 I.G. 940), the following new clause number and subject matter and renumber the existing clauses accordingly:

- 22. Parental Leave
- 23. Public Holidays and Picnic Day
- 24. Standby Allowance
- 25. Travelling Time and Fares
- 26. Working Away from Headquarters
- 27. Grievance and Disputes Procedures
- 28. Anti-Discrimination
- 29. Telecommuting
- 30. Miscellaneous
- 31. Appendix A

2. Delete clause 20, Family Carer's Leave, and insert in lieu thereof the following:

20. Family Carer's Leave

Use of sick leave

- 20.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 20.3 (ii) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 19 of the award, for absences to provide care and support for such persons with they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes Eraring Energy and the employee shall discuss appropriate arrangements which, as far as practicable, take account of Eraring Energy's and the employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 27 should be followed.

Proof of illness

- 20.2 The employee shall, if required,
- (a) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (b) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

Definitions

20.3 The entitlement to use sick leave in accordance with subclauses 20.1 to 20.2 is subject to:

- (i) The employee being responsible for the care of the person concerned; and
- (ii) The person concerned being:
 - (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 purposes of this paragraph:
 - 1. 'relative' means a person related by blood, marriage or affinity;
 - 2. 'affinity' means a relationship that one spouse because of marriage has to blood relatives of the other; and
 - 3. 'household' means a family group living in the same domestic dwelling.

Notice of absence

20.4 An employee shall, wherever practicable, give Eraring Energy 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 Eraring Energy by telephone of such absence at the first opportunity on the day of absence.

Unpaid Leave for Family Purpose

20.5 An employee may elect, with the consent of Eraring Energy, to take unpaid leave for the purpose of providing care and support to a class of person set out in 20.3 (ii) above who is ill or who requires care due to an unexpected emergency.

Annual Leave

20.6 An employee may elect, with the consent of Eraring Energy to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

20.7 An employee may elect with Eraring Energy's agreement to take annual leave any time within a period of 24 months from the date at which it falls due.

20.8 Family Carer's Entitlement for casual employees

- (a) Subject to the evidentiary and notice requirements in 20.2 and 20.4 employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in 20.3(ii) who are sick and require care and support, or who require care due to an unexpected emergency or the birth of a child.

- (b) Eraring Energy 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) Eraring Energy must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of Eraring Energy to engage or not to engage a casual employee are otherwise not affected.

Time off in lieu of payment for overtime

- 20.9 An employee may elect, with the consent of Eraring Energy to take time off in lieu of payment for overtime at a time or times agreed with Eraring Energy, within twelve (12) months of the said election.
- 20.10 Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- 20.11 If, having elected to take time as leave in accordance with subclause 20.9, 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, or on termination.
- 20.12 Where no election is made in accordance with subclause 20.9, the employee shall be paid overtime rates in accordance with this Award.

Make-up Time

- 20.13 An employee may elect, with the consent of Eraring Energy to work 'make-up time', under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in this Award, at the ordinary rate of pay.
- 20.14 An employee on shift work may elect, with the consent of Eraring Energy to work 'make-up time' (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

Rostered Days off

- 20.15 An employee may elect, with the consent of Eraring Energy to take a rostered day off at any time, in accordance with subclause 3.6 of this Award.

3. Delete subclause 21.5, of clause 21, Bereavement Leave, and insert in lieu thereof the following:

- 21.5 Bereavement leave may be taken in conjunction with other leave available under subclauses 20.5, 20.6, 20.9, 20.10, 20.11, 20.12, 20.13, 20.14 and 20.15 in the said clause 20, Family Carer's Leave. In determining such a request Eraring Energy will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

21.6

- (a) Subject to the evidentiary and notice requirements in 21.2 and 21.3 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in 20.3 Family/Carers Leave.
- (b) Eraring Energy 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 (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (a) Eraring Energy must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
4. Insert after clause 21, Bereavement Leave, the following new clause and renumber the existing clauses to reflect the new Arrangement:

22. Parental Leave

- 22.1 Refer to the *Industrial Relations Act 1996 (NSW)*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996 (NSW)*.
- 22.2 Eraring Energy must not fail to re-engage a regular casual employee (see section 53 (2) of the Act) because:
- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

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

Right to request

22.3

- (a) An employee entitled to parental leave may request Eraring Energy to allow the employee:
- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age.
- to assist the employee in reconciling work and parental responsibilities.
- (b) Eraring Energy 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 Eraring Energy business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

Employee's request and Eraring Energy's decision to be in writing

- (c) Employee's request and Eraring Energy's decision made under 22.3 (a) (ii) and 22.3 (a) (iii) must be recorded in writing.

Request to return to work part-time

- (d) Where an employee wishes to make a request under 22.3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

22.4 Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, Eraring Energy shall take reasonable steps to:
 - (i) 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 parental leave; and
 - (ii) 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 parental leave.
 - (b) The employee shall take reasonable steps to inform Eraring Energy about any significant matter that will affect the employee's decision regarding the duration of parental 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.
 - (c) The employee shall also notify Eraring Energy of changes of address or other contact details which might affect Eraring Energy's capacity to comply with paragraph (a).
5. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

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SERIAL C2331

CLOTHING TRADES (STATE) INDUSTRIAL COMMITTEE

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Transport Workers Union, New South Wales, industrial organisation of employees.

(No. IRC 5545 of 2003)

Before Commissioner Macdonald

23 October 2003

ORDER

The Commission orders that -

1. The Clothing Trades (State) Industrial Committee published 7 July 2000 (316 IG 1318), be extended.
2. This order shall take effect on and from 2 September 2001 and shall remain in force for a period of three years thereafter to 2 September 2004.

A. W. MACDONALD, Commissioner.

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ENTERPRISE AGREEMENTS APPROVED BY THE INDUSTRIAL RELATIONS COMMISSION

(Published pursuant to s.45(2) of the *Industrial Relations Act 1996*)

EA06/288 - Saunders International Pty Limited (Kurnell Refinery - NSW) Enterprise Agreement 2006-2009

Made Between: Saunders International Pty Ltd -&- the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, The Australian Workers' Union, New South Wales .

New/Variation: Replaces EA03/213.

Approval and Commencement Date: Approved 29 March 2006 and commenced 11 March 2006.

Description of Employees: The agreement applies to all employees employed by Saunders International Pty Limited located at 271 Edgar Street, Condell Park NSW 2200, who are engaged in maintenance services and/or miscellaneous work except for Managerial, Supervisory, Staff or Administrative roles at the Caltex Refinery, Solander Street, Kurnell NSW 2231, who fall within the Metal, Engineering and Associated Industries (State) Award

Nominal Term: 36 Months.

EA06/289 - Bartter Enterprises Pty Limited Beresfield Operations Livestock Transport Agreement 2005-2008

Made Between: Bartter Enterprises Pty Limited -&- the Transport Workers' Union of New South Wales.

New/Variation: Replaces EA03/127.

Approval and Commencement Date: Approved 21 April 2006 and commenced 1 July 2005.

Description of Employees: The agreement applies to all employees employed by Bartter Enterprises Pty Limited who are engaged in Tenam live bird pick up at the company's Beresfield site, who fall within the coverage of the Transport Industry - Mixed Enterprises Interim (State) Award.

Nominal Term: 36 Months.

EA06/290 - Bartter Enterprises Beresfield Feed Mill (Distribution) Agreement 2005-2008

Made Between: Bartter Enterprises Pty Limited -&- the Transport Workers' Union of New South Wales.

New/Variation: Replaces EA03/133.

Approval and Commencement Date: Approved 21 April 2006 and commenced 1 July 2005.

Description of Employees: The agreement applies to all employees employed by Bartter Enterprises Pty Limited, who are engaged in the distribution of feed to company and contract growers' farms and activities incidental thereto at the company's Beresfield Feed Mill site, who fall within the coverage of the Transport Industry - Mixed Enterprises Interim (State) Award.

Nominal Term: 36 Months.

EA06/291 - Bartter Enterprises Limited Beresfield Operations (Engineering) Agreement 2005-2008

Made Between: Bartter Enterprises Pty Limited, Steggle's Foods Products Pty Ltd -&- the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, Electrical Trades Union of Australia, New South Wales Branch.

New/Variation: Replaces EA00/17.

Approval and Commencement Date: Approved 7 April 2006 and commenced 1 July 2005.

Description of Employees: The agreement applies to all employees employed by Bartter Enterprises Pty Limited and Steggle's Foods Products Pty Ltd., who are engaged in engineering and maintenance work in the automotive, electrical, mechanical and utilities areas and activities incidental thereto at the company's Beresfield site, who fall within the coverage of the Metal, Engineering and Associated Industries (State) Award and the Electricians, &c. (State) Award.

Nominal Term: 36 Months.

EA06/292 - Linfox - NWU (Commonwealth Bank of Australia/Collins Debden Logistics - Smithfield) Enterprise Agreement 2006

Made Between: Linfox (Australia) Pty Ltd -&- the National Union of Workers, New South Wales Branch.

New/Variation: Replaces EA05/170.

Approval and Commencement Date: Approved 24 March 2006 and commenced 1 January 2006.

Description of Employees: The agreement applies to all employees employed by Linfox Australia Pty Ltd., located at the Linfox-Commonwealth Bank of Australia/Collins Debden Logistics Operation at Smithfield, who fall within the coverage of the Storemen and Packers, General (State) Award and the Storemen and Packers Bond and Free Stores (State) Award.

Nominal Term: 24 Months.

EA06/293 - HBL Chemtrans Enterprise Agreement for Sydney Based Drivers 2005

Made Between: HBL Chemtrans Pty Ltd -&- the Transport Workers' Union of New South Wales.

New/Variation: Replaces EA02/206.

Approval and Commencement Date: Approved 24 March 2006 and commenced 1 July 2005.

Description of Employees: The agreement applies to all Drivers employed by HBL Chemtrans Pty Ltd., located at 55 Davies Road, Padstow NSW 2211, who are ordinarily based within Sydney, who fall within the coverage of the Transport Industry (State) Award.

Nominal Term: 36 Months.

EA06/294 - Blue Line Cruises General Purpose Hand's Enterprise Agreement 2005

Made Between: Blue Line Cruises Ltd -&- The Seamens' Union of Australia, New South Wales Branch.

New/Variation: Replaces EA02/17.

Approval and Commencement Date: Approved and commenced 24 March 2006.

Description of Employees: The agreement applies to employees employed by Blue Line Cruises, 32 The Promenade, King Street Wharf 5, Sydney NSW 2000, who are engaged as General Purpose Hands on Port Jackson, who fall within the coverage of the Charter Vessel Award.

Nominal Term: 13 Months.

EA06/295 - Mrs Crocket's Kitchen Enterprise Agreement 2006

Made Between: Mrs Crocket's Kitchen Pty Ltd -&- the National Union of Workers, New South Wales Branch.

New/Variation: Replaces EA04/309.

Approval and Commencement Date: Approved and commenced 24 March 2006.

Description of Employees: The agreement applies to all employees employed by Mrs Crocket's Kitchen Pty Ltd., at the company's operations located at 115-117 Jemma Road, Preston NSW 2170, who fall within the coverage of the Storemen and Packers, General (State) Award.

Nominal Term: 26 Months.

EA06/296 - Linfox Pty Ltd Kellog's Contract Enterprise Agreement 2006

Made Between: Linfox Australia Pty Ltd -&- the National Union of Workers, New South Wales Branch.

New/Variation: Replaces EA05/54.

Approval and Commencement Date: Approved and commenced 24 March 2006.

Description of Employees: The agreement applies to all employees employed by Linfox Australia Pty Ltd., 30 Sturt Street, Smithfield NSW 2164, who are engaged directly on the Linfox/Kellog's contract at the following locations: 34 Airs Road, Minto NSW 2560, despatch area's of the Kellog's Production Plant, Swinbourne Street, Botany NSW 2019 and Linfox Botany Distribution Centre, Stephen Road, Botany NSW 2019, who fall within the coverage of the Storemen and Packers, General (State) Award.

Nominal Term: 24 Months.

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