

**DEPARTMENT OF JUSTICE (YOUTH CUSTODIAL OFFICERS) CSA AGREEMENT  
2021**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

<b>PARTIES</b>	THE DEPARTMENT OF JUSTICE	
	-v-	<b>APPLICANT</b>
	THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED	<b>RESPONDENT</b>
<b>CORAM</b>	PUBLIC SERVICE ARBITRATOR COMMISSIONER T EMMANUEL	
<b>DATE</b>	THURSDAY, 27 JANUARY 2022	
<b>FILE NO</b>	PSAAG 8 OF 2021	
<b>CITATION NO.</b>	2022 WAIRC 00025	

<b>Result</b>	Agreement registered
<b>Representation</b>	
<b>Applicant</b>	Ms J Broderick (as agent)
<b>Respondent</b>	Ms J Moore (as agent)

*Order*

WHEREAS this is an application pursuant to section 41 of the *Industrial Relations Act 1979* (WA) to register an industrial agreement;

AND WHEREAS I am satisfied that the agreement meets the requirements of the *Industrial Relations Act 1979* (WA) and that it should be registered;

AND WHEREAS the parties have requested that this agreement be registered on the papers;

AND HAVING heard from Ms J Broderick as agent on behalf of the applicant and Ms J Moore as agent on behalf of the respondent;

NOW THEREFORE the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), orders –

THAT the agreement made between the parties filed in the Registry on 23 December 2021 entitled *Department of Justice (Youth Custodial Officers) CSA Agreement 2021* as amended by the parties on 7 January 2022 and attached to this order be registered as an

industrial agreement in replacement of the *Department of Justice (Youth Custodial Officers) CSA Agreement 2019*, which by operation of s 41(8) is cancelled.

**(L.S.) (Sgd.) T. EMMANUEL**  
COMMISSIONER T EMMANUEL  
PUBLIC SERVICE ARBITRATOR

DEPARTMENT OF JUSTICE  
(YOUTH CUSTODIAL OFFICERS)  
CSA AGREEMENT 2021

## **Part 1—APPLICATION OF THE AGREEMENT**

### **1. TITLE**

This Agreement shall be known as the Department of Justice (Youth Custodial Officers) CSA Agreement 2021 which cancels and replaces the Department of Corrective Services Youth Custodial Officers' General Agreement 2019.

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### 3 DEFINITIONS

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

- 3.1 “Accrued Day(s) Off” (ADOs) means the paid day(s) off accruing to an Employee resulting from an entitlement to the 38 hours week as prescribed in clause 22 – Hours of Work – Shift Employees of this Agreement.
- 3.2 “Agency” means the Department of Justice.
- 3.3 “Agency Specific Agreement” (ASA) means an industrial agreement developed in accordance with clause 9, which will be read in conjunction with this Agreement and Award.
- 3.4 “Agreement” means the Department of Justice (Youth Custodial Officers) CSA Agreement 2021.
- 3.5 “Award” means the *Juvenile Custodial Officers’ Award*.
- 3.6 “child” and “grandchild” shall be read as including children of a multiple birth or adoption.
- 3.7 “Commutated Shift Work Allowance” means an allowance paid in lieu of shift penalties, weekend penalties and public holiday payment as would otherwise be provided by this Agreement and the Award.
- 3.8 “Employee” means a government officer as defined in the *Industrial Relations Act 1979*, classified as Youth Custodial Officer, Unit Manager or Senior Officer.
- 3.9 “Employer” and “Employing Authority” means the Director General, Department of Justice.
- 3.10 “Headquarters” means the place in which the principal work of an Employee is carried out, as defined by the Employer.
- 3.11 “Ordinary rate” or “Ordinary rate of salary” means the rate of salary as provided for within Schedule 2 – Salaries of this Agreement.
- 3.12 “Partner” means a person who is a spouse or a de facto partner.
- 3.13 “Public Sector” means all agencies, ministerial offices and non-SES organisations as defined in section 3 of the *Public Sector Management Act 1994*.
- 3.14 “Redeployment period” means the redeployment period as defined by regulation 28 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.15 “Registered employee” means a registered employee as defined by section 94(1A) of the *Public Sector Management Act 1994*.
- 3.16 “Registrable employee” means a registrable employee as defined by section 94(1A) of the *Public Sector Management Act 1994*.
- 3.17 “Replacement employee” means an employee specifically engaged to replace an employee proceeding on maternity leave, adoption leave, other parent leave or grandparental leave.

- 3.18 “Senior Officer” has the same definition as that given in the Youth Custodial Rule 103 made pursuant to Section 181 (1) of the *Young Offenders Act 1994*.
- 3.19 “Suitability” means suitable office, post or position or suitable employment as defined by section 94(6) of the *Public Sector Management Act 1994* as read with regulation 7 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.20 “Suitable office, post or position”, and “Suitable employment” have the meaning given in section 94(6) of the *Public Sector Management Act 1994* as read with regulation 7 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.21 “Surplus employee” means either a Registrable employee or a Registered employee.
- 3.22 “Suspend” means to suspend the continuance of an employee’s Redeployment period in accordance with regulation 29 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.23 “Unit Manager” has the same definition as that given in the Youth Custodial Rule 103 made pursuant to Section 181 (1) of the *Young Offenders Act 1994*.
- 3.24 “Union” means the Civil Service Association of Western Australia Incorporated.
- 3.25 “WAIRC” means the Western Australian Industrial Relations Commission.
- 3.26 “Youth Custodial Officer” has the same definition as that given in the Youth Custodial Rule 103 made pursuant to Section 181 (1) of the *Young Offenders Act 1994* (previously known as Juvenile Custodial Officer and Group worker).

#### **4. PURPOSE OF AGREEMENT**

- 4.1 The parties agree that the purpose of this Agreement is to:
- (a) provide salary increases in accordance with this Agreement, for Employees bound by this Agreement;
  - (b) in conjunction with the Award provide a core set of employment conditions for Employees bound by this Agreement;
  - (c) allow the parties to negotiate ASAs in accordance with clause 9 – Agency Specific Agreements of this Agreement; and
  - (d) assist the parties in maximising the efficiency of youth detention centres through formalised rostering, shift management and absence management processes.

#### **5. APPLICATION AND PARTIES BOUND**

- 5.1 The parties bound by this Agreement are the Director General, Department of Justice and the Union.
- 5.2 This Agreement shall apply to all Youth Custodial Officers, Unit Managers and Senior Officers employed by the Director, Department of Justice who are, or are eligible to become,



members of the Union. As at the date of registration the approximate number of Employees bound by this agreement is 253.

5.3 It is the intent of the parties to preserve the Award as it applies to Employees covered by this Agreement at the time of registration, only for the life of this Agreement.

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

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

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

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

## **6. TERM OF AGREEMENT**

6.1 This Agreement shall operate from the date of registration and, in accordance with Section 41 of the *Industrial Relations Act 1979*, will expire on 12 June 2022.

6.2 The parties to this Agreement agree to re-open negotiations for a replacement Agreement at least six months prior to the expiry of this Agreement with a view to implement a replacement Agreement operative on 13 June 2022.

## **7.1 NO FURTHER CLAIMS**

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

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

7.3 Where the parties to this Agreement jointly review the commuted shift work allowance as provided in clause 48 – Commuted Allowances of this Agreement, the parties will incorporate any agreed changes arising out of this review into a replacement industrial agreement, a new award, an award variation, or an order of the WAIRC.

## **8. CORE CONDITIONS**

8.1 The core conditions of employment for Employees covered by this Agreement shall be the terms and conditions provided for in this Agreement, with the exception of clause 22 – Hours of Work - Shift Employees and clause 23 – Hours of Work - Non-Shift Work Employees of this Agreement. Employees provided an average of no more than 38 hours per week is worked as ordinary hours, and the following provisions contained in the Award:

(a) clause 1.7 – Copies of Award

- (b) clause 2.3 – Keeping of and Access to Employment Records
- (c) clause 2.4 – Right of Entry and Inspection by Authorised Representatives
- (d) clause 4.3 – Annual Increments
- (e) clause 5.12 –Salary Packaging Arrangements
- (f) clause 5.13 – Union Facilities for Union Representatives
- (g) clause 6.5 – Public Holidays
- (h) clause 6.6 – Long Service Leave
- (i) clause 6.7 – Bereavement Leave
- (j) clause 6.9 – Leave to Attend Association Business
- (k) clause 6.10 – Trade Union Training Leave
- (l) clause 6.11 – Cultural/ Ceremonial Leave
- (m) clause 6.16 – Witness and Jury Service
- (n) clause 6.17 – Blood/ Plasma Donors Leave
- (o) clause 6.18 – Emergency Services Leave
- (p) clause 6.19 – Defence Force Reserves Leave

## **9. AGENCY SPECIFIC AGREEMENTS**

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

## **PART 2 SALARY RELATED MATTERS**

### **10. SALARIES**

- 10.1 The annual salaries provided for by this Agreement shall be those contained in Schedule 2 – Salaries for Youth Custodial Officers, Unit Managers and Senior Officers of this Agreement.
- 10.2 An Employee who is employed by the Employer on the date of registration of this Agreement will, on registration of the agreement, receive a payment equivalent to the additional \$1,000 annual salary increase that would have been paid had the salaries in Schedule 2 – Salaries for Youth Custodial Officers, Unit Managers and Senior Officers of this Agreement been paid on and from 13 June 2021.
- 10.3 An Employee who resigns or retires or whose employment is otherwise terminated prior to the registration of this Agreement is not entitled to the payment provided in clause 10.2.
- 10.4 The annual salaries provided in Schedule 2 – Salaries for Youth Custodial Officers, Unit Managers and Senior Officers of this Agreement include full and final settlement of productivity improvements up to the date of commencement of the Department of Corrective Services Youth Custodial Officers’ General Agreement 2011.
- 10.5 An Employee’s fortnightly salary shall be:
- (a) determined according to the annual salaries contained in Schedule 2 – Salaries for Youth Custodial Officers, Unit Managers and Senior Officers of this Agreement;
  - (b) calculated to four decimal points; and
  - (c) rounded to the nearest one cent.
- 10.6 Subject to clause 10.3, the Employer will pay the payment provided in clause 10.2 to an Employee who, prior to the registration of this Agreement:
- (a) was employed in the Public Sector under a different industrial agreement to which the Union is respondent; and
  - (b) commenced employment with the Employer within one calendar week of ceasing employment with their previous Public Sector Employer.

### **11. SALARY PACKAGING**

- 11.1 Salaries as prescribed by Schedule 2 – Salaries for Youth Custodial Officers, Unit Managers and Senior Officers of this Agreement are to be applied for the purposes of clause 5.12.3 of the Award, regarding Total Employment Cost, and clause 5.12.6 of the Award, regarding Compulsory Employer Superannuation Guarantee contributions.

### **12. RECOVERY OF UNDERPAYMENTS**

- 12.1 Where an Employee is underpaid in any manner:

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

### **13. RECOVERY OF OVERPAYMENTS**

- 13.1 The Employer has an obligation under the *Financial Management Act 2006* to account for public monies. This requires the Employer to recover overpayments made to an Employee.
- 13.2 Any overpayment will be repaid to the Employer within a reasonable period of time.
- 13.3 Where an overpayment is identified and proven, the Employer will provide the Employee with the written details of the overpayment and notify the Employee of their intent to recover the overpayment.
- 13.4 Where the Employee accepts that there has been an overpayment, arrangements for the recovery of the overpayment will be negotiated between the Employer and Employee.
- 13.5 If agreement on a repayment schedule cannot be reached within a reasonable period of time, the Employer may deduct the amount of the overpayment over the same period of time that the overpayment occurred provided:
- (a) the Employer may not deduct or require an Employee to repay an amount exceeding 5% of the Employee's net pay in any one pay period without the Employee's agreement; and
  - (b) where necessary, an Employer may deduct money over a period of time greater than the period of time over which the overpayment occurred.
- 13.6 If the Employee disputes the existence of an overpayment and the matter is not resolved within a reasonable period of time, the matter should be dealt with in accordance with clause 62 – Dispute Settlement Procedure of this Agreement. No deductions relating to the overpayment shall be made from the Employee's pay while the matter is being dealt with in accordance with the Dispute Settlement Procedure.

- 13.7 Nothing in this clause shall be taken as precluding the Employer's legal right to pursue recovery of overpayments.
- 13.8 Where an Employer alters the pay cycle or pay day, any consequential variations to an Employee's fortnightly salary and/or payments to compensate shall not be considered an overpayment for the purposes of this clause.

### **PART 3 CONTRACT OF EMPLOYMENT**

#### **14. DIRECT AND PERMANENT EMPLOYMENT**

##### **Statements of Government Preference**

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

##### **Reporting FTE Data**

- 14.3 Within 28 days of a written request, the Employer will provide the Union with the current number of employees covered by this Agreement and the relevant FTE.
- 14.4 Every six months, the Employer will provide the Union with the following information:
- (a) number of employees covered by this Agreement who have separated from the Employer within the previous six months and reasons for separation consistent with the data category definitions used by the Employer's HR information system for mandatory reporting (e.g MOIR); and
  - (b) number of employees covered by this Agreement commencing employment over the previous six months.

#### **15. CONTRACT OF SERVICE**

- 15.1 The provisions of this clause replace the relevant provisions of clause 2.2 – Contract of Service of the Award.
- 15.2 **Probation**
- (a) Every Employee appointed to the employ of the Employer shall be on probation for a period not exceeding twelve months, unless otherwise determined by the Employer.

- (b) At any time during the period of probation the Employer may annul the appointment and terminate the services of the Employee by the giving of two weeks' notice or payment in lieu thereof.
- (c) At the expiry of the period of probation the Employer shall:
  - (i) confirm the permanent appointment; or
  - (ii) extend the period of probation for a maximum of a further six months; or
  - (iii) terminate the services of the Employee.
- (d) Where the Employer extends the period of probationary employment the contract of employment may be terminated as set out in clause 15.3(b).
- (e) At the expiry of the extended probation the Employer shall confirm the appointment or terminate the services of the Employee in accordance with clause 15.3(b).

### 15.3 Notice

- (a) No Employee shall leave the employ of the Employer until the expiration of one month's written notice of the Employee's intention to do so, without the approval of the Employer. An Employee who fails to give the required written notice will forfeit one month's pay. Such monies may be withheld from monies due on the approval of termination.
- (b) One month's written notice shall be given by the Employer to an Employee whose services are no longer required. Provided that the Employer may pay the Employee one month's salary in lieu of the said notice.
- (c) Notwithstanding any of the other provisions contained in this clause a lesser period of notice may be negotiated between the Employer and the Employee.
- (d) The Employer may summarily dismiss an Employee deemed guilty of gross misconduct or neglect of duty and the Employee shall not be entitled to any notice or payment in lieu of notice.
- (e) An Employee, having attained the age of 55 years shall be entitled to retire from the employ of the Employer.

### 15.4 Part time Employee and fixed term Employees

- (a) The provisions of clause 15.3 shall also apply in respect to fixed term Employees.
- (b) The provisions of clauses 15.2 and 15.3 shall also apply in respect to permanent part time Employees.

## **16. PART TIME EMPLOYMENT**

- 16.1 The provisions of this clause replace the relevant provisions of clauses 2.2 – Contract of Service and 3.1.3 of the Award.
- 16.2 The provisions of this clause do not prevent an Employee from accessing provisions contained in clause 40 – Maternity Leave, clause 41 – Adoption Leave and clause 42 – Other Parent Leave of this Agreement concerning return to work on a modified basis.
- 16.3 Part time employment is defined as regular and continuing employment of less than an average of 38 hours per week by non-shift work Employees and of less than an average of 120 hours per three week settlement period by shift work Employees.
- 16.4 A part time Employee may be engaged on a permanent or fixed term basis.
- 16.5 The conversion of a full time Employee to part time employment, on both a permanent or temporary basis, can only be implemented with the written consent or by written request of that Employee in agreement with the Employer. No Employee may be converted to part time employment without the Employee's prior agreement.
- 16.6 A part-time Employee shall be entitled to the same salary, leave and other conditions prescribed in this Award for full-time Employees in the proportion to which the Employee's weekly hours bear to the weekly hours of an Employee engaged full time in that class of work.
- 16.7 **Part Time Agreement**
- (a) Each part time arrangement shall be confirmed in writing and shall include:
- (i) the agreed period of the arrangement;
  - (ii) the agreed ordinary hours of duty in accordance with clause 22 – Hours of Work - Shift Employees or clause 23 – Hours of Work - Non-Shift Work Employees (as applicable) of this Agreement, and in consideration of clauses 16.8 and 16.9. This will include the ordinary weekly and daily hours of duty for the Employee including starting and finishing times each day ("ordinary hours").
- (b) All newly appointed permanent part-time Employees must undertake the Entry Level Training Program at full-time hours, being 38 hours per week.
- 16.8 **Employer-Initiated Modification of Part-Time Hours**
- (a) The Employer shall give an Employee one month's notice of any proposed variation to that Employee's starting and finishing times and/or particular days worked. The Employer and Employee may agree to a lesser notice period by consent.
- (b) The Employer shall not vary the Employee's total average weekly hours of duty without the Employee's prior written consent, and in this circumstance a copy of this consent shall be sent to the designated officer at the Union.
- (c) All variations to an Employee's working hours must be agreed to in writing by the part time Employee.

## 16.9 Employee-Initiated Modification of Part Time Hours

- (a) An Employee may request the Employer to permit the Employee to work on a modified basis in their current position or in a position equivalent in pay, conditions and status to their current position and commensurate with the Employee's skills and abilities.
- (b) An Employee may seek to work on a modified basis that involves the Employee working on different days or at different times or both; or on fewer days or for fewer hours or both, than the Employee currently works.
- (c) An Employee-initiated modification of part time hours may be on a permanent or temporary basis.
- (d) The Employer:
  - (i) must give reasonable consideration to an Employee's request to work on a modified basis, particularly where the request relates to an Employee's caring responsibilities or phasing into retirement;
  - (ii) may only refuse an Employee's request to work on a modified basis if there are grounds to refuse relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person; and
  - (iii) has the onus for demonstrating that there are grounds to refuse the Employee's request that would satisfy a reasonable person.
- (e) The Employer is to give the Employee written notice of the Employer's decision on a request to work on a modified basis. If the request is refused, the notice must set out the reasons for the refusal.

## 16.10 Right of reversion of Employees

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



#### 16.11 Effect of Modification of Hours on Pay and Entitlements

- (a) If agreement is reached to vary an Employee's ordinary working hours pursuant to this clause:
- (i) Time worked to the ordinary hours for the Employee's particular class of work (shift or non-shift) on any day is not to be regarded as overtime but an extension of the contract hours for that day and should be paid at the normal rate of pay.
  - (ii) In accordance with clause 16.11 (a) (i), overtime shall not be payable for non-shift work Employees unless the total hours worked on any day exceeds 7.6 hours. Additional days worked, up to a total of five days per week, are also regarded as an extension of the contract and should be paid at the normal rate.
  - (iii) In accordance with clause 16.11 (a) (i), overtime shall not be payable for shift work Employees unless more than 120 hours is worked in a three week roster period or more than 12 hours is worked on any one day.
  - (iv) Where additional hours and/or days worked are considered part of the Employee's ordinary working hours these hours are included in the calculation for leave entitlements.
- (b) Notwithstanding the above, if an Employee is requested to work on a shift other than a rostered shift as a "once-off" arrangement and without notice, clause 26 – Overtime of this Agreement shall apply.

#### 16.12 Salary, Annual Increments, and Leave Accrual

- (a) An Employee who is employed on a part time basis shall be paid a proportion of the appropriate full time salary dependent upon time worked. The salary shall be calculated in the following manner:

$$\frac{\text{Hours worked per fortnight}}{76} \times \frac{\text{Full time fortnightly salary}}{1}$$

- (b) A part time Employee shall be entitled to annual increments in accordance with clause 4.3 – Annual Increments of the Award, subject to meeting the usual performance criteria.
- (c) A part time Employee shall be entitled to the same leave and conditions prescribed in this Agreement and the Award for full time Employees paid on a pro rata basis.
- (d) Payment to an Employee proceeding on accrued annual leave and long service leave shall be calculated on a pro rata basis having regard for any variations to the Employee's ordinary working hours during the accrual period.
- (e) Personal leave and any other paid leave shall be paid at the current salary, but only for those hours or days that would normally have been worked had the Employee not been on leave.

**16.13 Public Holidays for Non-Shift Work Part-Time Employees**

- (a) A part time Employee shall be allowed prescribed public holidays without deduction of pay in respect of each holiday, which is observed on a day ordinarily rostered to work by the part time Employee.

**16.14 Public Holidays for Shift Work Part-Time Employees**

- (a) A part time Employee shall be entitled to public holiday leave days as per Schedule H of the Award on a pro-rata basis as their ordinary hours bear to full time ordinary hours.

**17. FIXED TERM CONTRACT EMPLOYMENT**

17.1 The provisions of this clause replace the relevant provisions of clause 2.2 – Contract of Service of the Award.

17.2 An employer may employ employees for a fixed term.

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

17.4 Notwithstanding clause 17.3 the employing authority will have discretion to renew an existing fixed term contract if the Employee has been in the same or similar role for more than two years and the arrangements are being reviewed for possible conversion under a process referred to at clauses 17.9 to 17.15.

17.5 Where more than one appropriate permanent Surplus employee exists, the following hierarchy shall apply for access to the role or duties:

- (a) internal Surplus employees are considered first;
- (b) if no internal Surplus employees are suitable, Registered employees from other employing authorities are considered; and
- (c) if no Registered employees are suitable, Registrable employees from other employing authorities are considered.

17.6 In exercising its employing authority the Employer may only employ a person as a fixed term contract Employee in the following circumstances:

- (a) covering one-off periods of relief to maintain the efficiency of the Department's youth custodial service, and to cover one-off duties such as escorts of contractors within the facility;
- (b) work on a project with a finite life, such as the performance of escort/security for building projects;

- (c) work that is seasonal in nature;
- (d) where an Employee with specific skills is not readily available in the Public Sector is required for a finite period; or
- (e) in any other situation as is agreed between the parties to this Agreement.

17.7 Employees appointed for a fixed term shall be advised in writing of the terms of the appointment, including the circumstances of the appointment as provided under clause 17.6 and the dates of commencement and termination of employment.

17.8 The Employer will provide the Union the names and work locations and business email addresses of all fixed term contract employees within two months of registration of this Agreement and subsequently, within 28 days of a request being made in writing.

### **Conversion to Permanency for Fixed Term Employees**

17.9 For the purposes of this clause:

- (a) an 'eligible fixed term Employee' is a fixed term Employee:
  - (i) who has completed two or more years of service:
    - (aa) in the same or a similar role;
    - (bb) under one or more fixed term contracts;
    - (cc) with the same employer or a different employer due to a machinery of government change; and
    - (dd) without a break in service;
  - (ii) who does not have a documented record of unsatisfactory performance in their role; and
  - (iii) who is engaged at a remuneration level below General Division Level 9.1 as per Schedule 2 – General Division Salaries of the Public Sector CSA Agreement 2021.
- (b) a 'break in service' is a break between contracts of more than 30 days, attributable to fluctuating demand or business need, or taken at the request of the Employee.

Any period between contracts for which payment in lieu of leave has been made by the employer does not count towards calculating the 30-day period.

If a question arises in a dispute under this Agreement as to whether a break between contracts constitutes a break in service, it is the responsibility of the Employer to demonstrate the break was attributable to fluctuating demand or business need, or in response to the employee's request, and was not imposed to avoid an obligation to review or permanently appoint an Employee.

17.10 An Employer must, no later than three months after:

- (a) the date on which an employee became an eligible fixed term Employee;
- (b) for an Employee who is an eligible fixed term Employee on the date of registration of this Agreement – that date; and
- (c) for an Employee who continues to be employed on a fixed term contract, which may include consecutive fixed term contracts with the same Employer or a different Employer due to a machinery of government change, in the same or a similar role – each further two years without a break in service from the date referred to in paragraph (a) or (b);

review the contract and the circumstances of the work being performed by the Employee at the time of the review to determine whether the fixed term employment meets a circumstance listed in clause 17.6.

- 17.11 Where there is a change to an Employee’s potential eligibility for permanency due to a change in circumstance listed in clause 17.6 or 17.12, the Employee may request that the Employer undertake a review in accordance with this clause. If so requested by an Employee, the Employer must undertake the review no later than three months after the date of the request.
- 17.12 If, after carrying out a review referred to in clause 17.10 or 17.11, the Employer determines the fixed term employment does not currently meet a circumstance listed in clause 17.6, the employer must appoint the Employee permanently to the same position at their current FTE.
- 17.13 The requirement at 17.12 does not apply if the Employer certifies in writing that the role performed by the fixed term Employee can no longer be funded from within the agency or organisation’s approved salary expense limits. The parties expect that relevant notification and consultation obligations have been complied with prior to this certification, unless new information is identified as part of this review process.
- 17.14 If, after carrying out a review referred to in clause 17.10 and 17.11, the Employer determines the fixed term employment meets a circumstance listed in clause 17.6, the Employer must give the Employee in writing no later than two weeks after the date of completing the review:
- (a) a statement of the review outcome and the detailed reasons for it; and
  - (b) a plain-language summary of an Employer’s obligations under this clause to appoint eligible fixed term employees to permanent employment, and the actions the Employee can take if they disagree with the review outcome.
- 17.15 For the purposes of 17.10 and 17.11, if an eligible fixed term Employee is employed under multiple, concurrent fixed term contracts with the same Employer, each contract and the circumstances of the work being performed under it is to be reviewed individually.
- 17.16 The review mechanisms and processes detailed in clause 17.9 to 17.15 are to be reviewed over the life of this Agreement.

#### Review of Commissioner’s Instruction No. 2 – Filling a Public Sector Vacancy

- 17.17 The Government commits to completing within the life of this Agreement a review of employment practices in the Public Sector as governed by Commissioner’s Instruction No. 2 – Filling a Public Sector Vacancy (CI 2). The CI 2 review will examine, among other things, the

question of long term acting in vacant roles within the Public Sector, secondments, appointment pools, suitability lists and other recruitment practices. The review will be carried out in consultation with stakeholders, including the Union and other Public Sector unions.

- 17.18 Terms of reference for the review will be discussed at the PCF. The final report will be provided to the Minister for Industrial Relations for consideration. The final report, including recommendations for reform arising from the findings of the review, will be tabled and discussed at the PCF.

## **18. CASUAL EMPLOYMENT**

- 18.1 An Employer may only engage a person as a casual Employee if both the following circumstances are met:

- (a) if the hours and patterns of work fluctuate substantially and are not regular or systematic; and
- (b) the Employee is engaged hourly, for a period of up to four consecutive weeks in each engagement.

- 18.2 This clause replaces the relevant provisions of clause 2.2.4 of the Award.

- 18.3 The Employer will provide the Union with the names, work locations and business email addresses of all casual employees within two months of registration of this Agreement and subsequently, within 28 days of a request being made in writing.

- 18.4 Notwithstanding the other provisions contained in this Agreement the Employer may engage Employees on a casual basis. The use of casuals is not to reduce the entitlements of the Department's staff, nor is it the Department's intention to casualise a significant part of its workforce.

- 18.5 The use of casuals will be to meet unplanned workloads and staff absences to maintain operations, and to perform duties such as guard duty, escorts within the centre, security for building projects or in any other situation as may be agreed between the parties to this Agreement.

### **18.6 Salary**

- (a) A casual Employee shall be paid for each hour worked at the appropriate classification contained in Schedule 2 – Salaries for Youth Custodial Officers, Unit Managers and Senior Officers of this Agreement in accordance with the following formula:

Fortnightly Salary

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with the addition of casual loading in lieu of annual leave, personal leave and payment for public holidays. Casual loading will be in accordance with clause 18.7 of this Agreement.

### **18.7 Casual Loading**

- (a) The casual loading payable is 25 per cent.

## 18.8 Conditions of Employment

- (a) Conditions of employment, leave and allowances provided under this Agreement and the Award shall not apply to a casual Employee with the exception of bereavement leave, long service leave, family and domestic violence leave and carer's Leave. However, where expenses are directly and necessarily incurred by a casual Employee in the ordinary performance of their duties, he/she shall be entitled to reimbursement in accordance with the provisions of this Agreement.
- (b) The minimum period of engagement of a casual Employee will be 3 hours on each engagement.
- (c) The Employer will determine the appropriate increments for casual Employees by taking into consideration prior experience within the Public Sector.
- (d) Nothing in this clause shall confer "permanent" or "fixed term contract" Employee status within the meaning of section 64 of the *Public Sector Management Act 1994*. Notwithstanding, permanent positions may be created for appointment in accordance with clauses 18.11 to 18.18.
- (e) The employment of a casual Employee may be terminated at any time by the casual Employee or the Employer giving to the other, one hour's prior notice. In the event of the Employer or casual Employee failing to give the required notice, one hour's salary shall be paid or forfeited.
- (f) The provisions of clause 26 – Overtime of this Agreement do not apply to casual Employees who are paid by the hour for each hour worked. Additional hours are paid at the normal casual rate.
- (g) A casual Employee shall be informed that their employment is casual and that they have no entitlement to paid leave, with the exception of bereavement leave, long service leave, family and domestic violence leave and carers leave before they are engaged.

## 18.9 Caring Responsibilities

- (a) Subject to the evidentiary and notice requirements in clause 30 – Personal Leave of this Agreement, a casual Employee shall be entitled to not be available to attend work or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (b) The Employer and the casual Employee shall agree on the period for which the casual Employee will be entitled to not be available to attend work. In the absence of agreement, the Employee is entitled to not be available to attend work for up to 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 casual Employee accessed the entitlements provided for in this clause. The rights of an Employer to engage or not engage a casual Employee are otherwise not affected.

18.10 Casual Employees will receive an appropriate training program that ensures the safety and security of staff and offenders at the workplace prior to commencement.

### **Conversion and Appointment to Permanency for Casual Employees**

18.11 For the purposes of this clause:

- (a) an 'eligible casual Employee' is an Employee described as a casual Employee who:
  - (i) has completed two or more years of service with the same Employer or a different Employer due to a machinery of government change, in the same or a similar role without a break in service;
  - (ii) who does not have a record of unsatisfactory performance in their role; and
  - (iii) is engaged at a remuneration level below General Division Level 9.1, as per Schedule 2 – General Division Salaries of the Public Sector CSA Agreement 2021.
- (b) a 'break in service' is a period of more than 30 days during which a person is not engaged by the Employer to perform work, attributable to fluctuating demand or business need or taken at the request of the employee.

If a question arises in a dispute under this Agreement as to whether a break between contracts constitutes a break in service, it is the responsibility of the employer to demonstrate the break was attributable to fluctuating demand or business need, or in response to an employee request, and was not imposed to avoid an obligation to review or permanently appoint an employee.

18.12 The Employer must review the circumstances of an eligible casual Employee's employment to determine whether or not they meet a circumstance described in clause 18.1 no later than three months after:

- (a) the date on which the Employee becomes an eligible casual Employee;
- (b) for an Employee who is an eligible casual Employee on the date of registration of this Agreement – that date; and
- (c) for an Employee who has continued to be engaged as a casual Employee with the same Employer or a different Employer due to a machinery of government change without a break in service – each second anniversary of the date referred to in paragraph (a) or (b).

18.13 Following an initial review, where a casual Employee has worked for at least one further year without a break in service and can demonstrate a regular and systematic pattern of hours over a period of 12 months, the Employee may request that the Employer undertake a review in accordance with this clause. If so requested by an Employee, the Employer must undertake the review no later than three months after the date of the request.

18.14 If, after carrying out a review referred to in clause 18.12 or 18.13 the Employer determines an employee's employment does not meet a circumstance listed in clause 18.1, the Employer must:

- (a) establish a new permanent position reflecting the duties of the casual role at the FTE equivalent to the average hours worked by the employee for the preceding six months, or the proportion of FTE worked regularly and systematically without substantial fluctuation, unless the Employer certifies in writing that the role performed by the employee:
  - (i) has been wholly or substantially externally funded and the funding source will no longer be available; or
  - (ii) can no longer be funded from within the agency or organisation's approved salary expense limits.

The parties expect that relevant notification and consultation obligations will already have been complied with prior to this certification unless new information is identified as a part of this review process; and

- (b) no later than two weeks after the date of the review:
  - (i) advise the Employee in writing of the review outcome and the detailed reasons for it; and
  - (ii) if the Employer has established a new position, unless a circumstance in clause 18.14 applies, offer the Employee permanent appointment to the newly established position. The offer must provide sufficient detail for the Employee to consider the implication of the decision to accept or reject permanent employment.

18.15 The Employee whose employment is the subject of a review resulting in the establishment of a new position in accordance with clause 18.14 is entitled to be appointed permanently to that position unless the employee is in Australia on a visa with a fixed duration or a suitable registered employee is able to undertake the role.

18.16 If, after carrying out a review referred to in clause 18.12 and 18.13, the Employer determines the casual engagement meets a circumstance described in clause 18.1, the employer must give the Employee in writing no later than two weeks after the date of completing the review:

- (a) a statement of the review outcome and the detailed reasons for it; and
- (b) a plain-language summary of an Employer's obligations under this clause to establish permanent positions where employees have been working regular and systematic hours over a qualifying two-year period, and the actions the employee can take if they disagree with the review outcome.

18.17 If an Employee does not accept an offer of permanent employment, the Employer may (at the Employer's discretion) continue to engage the Employee as a casual employee in a different position, subject to the requirements of clause 18.1.

18.18 The review mechanisms and processes detailed in clauses 18.11 to 18.17 are to be reviewed over the life of this Agreement.



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

- 19.1 The provisions of this clause are to be read in conjunction with clause 2.2 – Contract of Service of the Award.
- 19.2 The period of notice for an Employee who, at the end of the day the notice is given, is over 45 years of age and has completed at least two years' continuous service with the Employer, is to be increased by one week.
- 19.3 The additional period of notice shall form part of the notice provided under the Award or payment in lieu of notice worked out on the basis of the Employee's ordinary hours of work.

## **20. RE-ENGAGEMENT OF EMPLOYEES**

- 20.1 Where an Employee is re-engaged in employment, the Department has the discretion to:
- (a) Exempt the Employee from all or part of the Entry Level Training Program.
  - (b) Appoint the Employee to a point within the range for the rank of Youth Custodial Officer above the minimum that accounts for the Employee's previous relevant State Juvenile Detention Centre Service.
- 20.2 The above will be undertaken in accordance with Department policy.

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

- 21.1. Where an Employee is obliged to obtain a working with children check in accordance with the *Working with Children (Criminal Record Checking) Act 2004*, payment for the check shall be as follows:
- (a) An Employer must pay the cost for an Employee obliged to obtain a working with children check after their employment has already commenced.
  - (b) A new Employee must pay for their initial working with children check. An Employer has the discretion to reimburse a new Employee who commenced employment after 1 January 2006 and has paid for their initial working with children check.
  - (c) An Employer must pay the cost for an Employee's working with children check renewals.
- 21.2 The provisions of this clause apply to all Employees, including fixed term contract and casual Employees.

## **PART 4 HOURS OF WORK**

### **22. HOURS OF WORK – SHIFT EMPLOYEES**

- 22.1 The provisions of this clause shall replace the provisions of clause 3.1 – Hours of the Award.

## 22.2 Ordinary Hours

- (a) The ordinary hours of duty for a full time Employee shall be, including paid meal breaks, an average of 38 hours per week with the hours actually being 120 hours per three week settlement period in order to accrue days off.
- (b) Subject to the meal break, ordinary hours are to be worked as one continuous period. However, Employees shall not be required to work more than five hours continuously without a break.
- (c) Youth Custodial Officers in designated shift positions will work shifts of no more than twelve hours per shift.
- (d) There shall be at least an eight hour break between the finishing time of one shift and the commencement of the following shift. In cases where such a break is not given, payment at double the normal rate shall be made until such a break is taken.

## 22.3 Meal Break

- (a) Employees working twelve hour shifts shall be allowed two 30 minute meal breaks during the twelve hour shift.

## 22.4 Accrued Days Off

- (a) The ordinary hours shall be worked with two hours of each week's work accruing as an entitlement to a maximum of twelve Accrued Days Off (**ADO**) in each twelve month period. The ADO shall be taken as a minimum period of five consecutive days off in conjunction with annual leave or at a time mutually acceptable to the Employer and Employee.
- (b) The Employer and an Employee may by agreement substitute the ADO the Employee is to take off for another day in which case the ADO shall become an ordinary working day.
- (c) A roster for ADOs shall be posted at least four weeks before the time it comes into operation.
- (d) By agreement between the Employer and an Employee ADOs may be rostered for and taken in advance of the due date.
- (e) ADOs must be cleared in the calendar year in which they accrue. If, to meet the convenience of the Employer, an Employee cannot clear ADOs in the aforementioned calendar year then they shall be cleared in the next succeeding six months.
- (f) Part time Employees working 16 hours and under per week will not accrue time off, but will be paid for all hours worked. Part time Employees working over sixteen hours per week will accrue days off on the same basis as full time Employees, but all benefits therefore will be pro rata in the proportion that the number of hours worked bears to the hours worked by full time Employees. This provision may be renegotiated if job sharing arrangements are introduced for Youth Custodial Officers.

- (g) Time off will not be accrued whilst Employees are on annual leave and long service leave.

## **23. HOURS OF WORK – NON-SHIFT WORK EMPLOYEES**

23.1 The provisions of this clause shall replace the provisions of clause 3.1 – Hours of the Award.

### **23.2 Prescribed Hours**

- (a) The prescribed hours of duty for Youth Custodial Officers who are working in designated non-shift positions will be 38 hours per week (not including the unpaid lunch interval) to be worked between 7.00 a.m. and 6.00 p.m. Monday to Friday as determined by the Employer. There will be no accrual towards accrued days off.
- (b) Subject to the lunch interval prescribed hours are to be worked as one continuous period. However, Employees shall not be required to work more than five hours continuously without a break.
- (c) Start and finish times will be as designated by the manager of the area in which the Youth Custodial Officer is working.
- (d) There is a requirement for some degree of flexibility with regards to start and finish times. To account for this requirement a system of time off in lieu will operate in accordance with clause 26.5. A maximum number of eight hours of time off in lieu will be allowed to accumulate at any one time.
- (e) The Employer may vary the prescribed hours of duty observed by non-shift work Employees in any section of the Department so as to make provision for:
  - (i) the attendance of Employees for duty on a Saturday, Sunday or public holiday, in which case overtime provisions of this Agreement will apply if this results in more than 38 hours being worked in one week;
  - (ii) the performance of shift work including work on Saturdays, Sundays or public holidays, in which case appropriate shift or weekend penalties, or overtime will be paid as applicable;

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

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

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

- (a) Notwithstanding clause 23.2(a), where the Employee requests and the Employer approves, an Employee may work their ordinary hours outside the span of 7.00 a.m. to 6.00 p.m. The working of ordinary hours outside the span of 7.00 a.m. to 6.00 p.m. may only be implemented at an Employee's request.

- (b) Agreements under clause 23.3(a) are to be in writing and must specify the duration of the agreement, and the times during which ordinary hours may be worked.
- (c) On receipt of a written request from the Union, the Employer will provide the Union with details of agreements made under clause 23.3(a), including the work location, the duration of the agreement/s, and the times during which ordinary hours may be worked.
- (d) Where written agreement is reached between an Employer and an Employee for the Employee to work their ordinary hours outside the span of 7.00 a.m. to 6.00 p.m., no overtime or shift work penalties shall be applied to those hours.
- (e) An Employer shall not require an Employee to work outside the span of 7.00 a.m. to 6.00 p.m. without the payment of overtime as per clause 26 – Overtime of this Agreement.

**24. ROSTER DEVELOPMENT AND POSTING FOR SHIFT WORK EMPLOYEES**

24.1 Rosters for twelve hour shifts will comply with the following principles:

- (a) A maximum of four consecutive days will have shifts rostered;
- (b) A maximum of two consecutive night shifts will be rostered as best practice. There may be circumstances where up to three consecutive night shifts will be rostered as per Employee consensus;
- (c) Two consecutive full days off between groups of shifts will be rostered wherever possible;
- (d) A minimum of an eight-hour break will be observed between normal rostered shifts.

24.2 **Rosters will be managed as follows:**

- (a) All operational Youth Custodial Officer positions required to regularly fulfil the daily operational requirements will be identified within the framework of a continuous three-week rotating roster or ‘roster period’;
- (b) The roster period will be posted at least six weeks prior to commencement at an agreed location within the facility;
- (c) Excluding periods of leave, all full-time Employees will be rostered for an aggregate of 120 hours per roster period;
- (d) Part-time/job-share Employees will be rostered on a pro-rata basis per roster period, subject to consideration of operational and individual needs;
- (e) Rosters will be developed and prepared in a consultative manner with staff. It is accepted that the Superintendent is ultimately responsible for the day-to-day management and safety of detainees and staff in the workplace;

- (f) Rosters will be developed giving consideration to adequate gender representation per shift, for the purposes of meeting operational and legislative requirements for the management of young people in custody; and
- (g) When preparing the roster and prior to posting, any excess staff on a particular day will be allocated to offset any staff shortfalls or additional service requirements.

### 24.3 Changes to Posted Rosters

- (a) The parties acknowledge that to ensure effective resource allocation and efficient day-to-day operations, it is imperative Employees retain and maintain current competencies and skills.
- (b) Employer-initiated Roster Changes
  - (i) Employer-initiated roster changes will only take place within a posted roster period due to unforeseen circumstances.
  - (ii) An Employee's rostered hours of duty may be changed by the Employer by providing notice of 36 hours.
  - (iii) Where notice of less than 36 hours is provided, no Employee shall be compelled to work different rostered hours. However, should the Employee agree to work the shift, payment will be at normal time.
  - (iv) An Employee may be required to change work area within the youth detention centre for a rostered shift to meet operational needs. There is no requirement for notice of 36 hours to be given, as long as it does not require a change to the commencement or completion time of the shift.
- (c) Employee-initiated Roster Changes
  - (i) Employees may initiate roster changes through the exchanging of shifts or days off with another Employee for work-life balance purposes.
  - (ii) A request to exchange shifts will be made on the approved form and will be lodged with the Superintendent or his/her delegate for approval.
  - (iii) An exchange of shift cannot occur without the approval of the Superintendent or his/her delegate. An exchange will not be approved retrospectively.
  - (iv) Employee-initiated roster changes will comply with the following:
    - (aa) The exchange is between shifts within the posted roster period of six weeks;
    - (bb) The exchange is between shifts of the same rank and duration;
    - (cc) The exchange of shifts is cost neutral;

- (dd) The exchange of shifts maintains a minimum eight-hour break between the Employees' normal shifts, or a minimum ten-hour break between an Employee's exchanged shift and prior performance of overtime;
- (ee) The exchange of shifts does not result in a double shift being worked, including overtime worked;
- (ff) The exchange of shifts does not result in any period exceeding seven consecutive calendar days where an Employee has worked, including overtime worked;
- (gg) The exchange of shifts does not result in an Employee working more than four consecutive night shifts, including overtime worked;
- (hh) The exchange of shifts does not adversely impact an Employee's operational commitments or procedural responsibilities through their absence;
- (ii) The exchange of shifts does not create circumstances where either gender is inadequately represented as per clause 24.2(f); and
- (jj) A trend of exchanging shifts does not exist where the Superintendent is of the opinion an Employee is avoiding certain duties and/or certain shifts, potentially resulting in the atrophy of skills in any work area.

## 25. OUT OF HOURS CONTACT

25.1 The provisions of this clause shall apply in lieu of clauses 3.2.1 (11) – Overtime, and 3.2.6 – Out of Hours Contact of the Award.

25.2 For the purposes of this clause, the following terms will have the following meanings:

"out of hours contact" shall include the following:

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

telephone or other means outside the Employee’s prescribed ordinary hours of duty in case of a call out requiring an immediate return to duty. The nature of the duties to be performed requires an Employee to be in a state of readiness for immediate return to duty.

- (v) “availability” shall mean a written instruction or other authorised direction by the Employer or a duly authorised officer to an Employee to remain contactable, but not necessarily immediately contactable by telephone or other means, outside the Employee’s normal hours of duty and be available and in a fit state at all such times for recall to duty.
- (vi) “availability” will not include situations in which Employees carry telephones or other means or make their telephone numbers or other contact details available only in the event that they may be needed for casual contact or recall to work. Recall to work under such circumstances would constitute emergency duty in accordance with clause 26.15 – Emergency Duty of this Agreement.
- (vii) “return to duty” shall also include, but is not limited to, situations where an Employee, if recalled to duty, can perform such duty outside the usual Headquarters where the Employee performs ordinary rostered hours.
- (viii) Where out of hours contact is a usual feature of the duties for which Employees are regularly rostered, the issue of a roster is deemed to be a written instruction.

25.3 Except as otherwise agreed between the Employer and the Union, an Employee who is required by the Employer or a duly authorised Employee to be on “out of hours contact” during periods off duty shall be paid an allowance in accordance with the following formulae for each hour or part thereof the Employee is on “out of hours contact”:

standby	current Level 3.1 weekly rate	x	$\frac{1}{38}$	x	$\frac{38}{100}$		
on call	current Level 3.1 weekly rate	x	$\frac{1}{38}$	x	$\frac{19}{100}$		
availability	current Level 3.1 weekly rate	x	$\frac{1}{38}$	x	$\frac{19}{100}$	x	$\frac{50}{100}$

Provided that:

- (a) ‘current level 3.1 weekly rate’ refers to the weekly salary of a level 3.1 Employee as per Schedule 2 – General Division Salaries of the Public Sector CSA Agreement 2021; and

- (b) payment in accordance with this clause shall not be made with respect to any period for which payment is made in accordance with the provisions of clause 26 – Overtime when the Employee is recalled to work.
- 25.4 When an Employee is required to be on call or available the Employer shall provide the Employee with the means of contact free of charge for the purposes of work related activity.
- 25.5 Where the means of contact is to be by landline or satellite telephone fixed at the Employee's residence the Employer shall:
  - (a) where the telephone is not already installed, pay the cost of such installation.
  - (b) where an Employee pays or contributes towards the payment of the rental of such telephone, pay the Employee 1/52nd of the annual rental paid by the Employee for each seven days or part thereof on which an Employee is rostered to be on call or available.
  - (c) provided that where as a usual feature of the duties an Employee is regularly rostered to be on call or available, pay the full amount of the telephone rental.
- 25.6 An Employee shall be reimbursed the cost of all telephone calls made on behalf of the Employer as a result of being on out of hours contact.
- 25.7 Where an Employee rostered for on call or availability is recalled to duty during the period for which the Employee is on out of hours contact then the Employee shall receive payment for hours worked in accordance with clause 26.5(d) of this Agreement.
- 25.8 Where an Employee rostered for on call or availability is recalled to duty, the time spent travelling to and from the place at which duty is to be performed, shall be included with actual duty for the purposes of overtime payment.
- 25.9 Minimum payment provisions do not apply to an Employee rostered for out of hours contact duty.
- 25.10 An Employee in receipt of an out of hours contact allowance and who is recalled to duty shall not be regarded as having performed emergency duty in accordance with subclause 26.15 – Emergency Duty of this Agreement.
- 25.11 Employees subject to this clause shall, where practicable, be periodically relieved from any requirement to hold themselves on standby, on call or availability.
- 25.12 No Employee shall be on out of hours contact after the last working day preceding a period of annual leave or long service leave.

## **26. OVERTIME**

- 26.1 The provisions of this clause shall apply in lieu of clause 3.2 – Overtime of the Award.
- 26.2 For the purposes of this clause, the following terms shall have the following meanings:
  - (a) "overtime" means all work performed only at the direction of the Employer or a duly authorised Employee outside the prescribed hours of duty.



- (b) "emergency duty" means duty performed by an Employee required to return to duty, without prior notice, to meet an emergency at a time that the Employee would not ordinarily have been on duty.
- (c) "prescribed hours of duty" means an Employee's normal working hours as prescribed by the Employer in accordance with clause 22 – Hours of Work – Shift Employees or clause 23 – Hours of Work – Non-Shift Work Employees, of this Agreement.
- (d) "duly authorised Employee" means an Employee or Employees appointed in writing by the Employer for the purpose of authorising overtime.
- (e) "a day" shall mean from midnight to midnight.
- (f) "public holiday" means the days prescribed as public holidays in clause 6.5 – Public Holidays of the Award.
- (g) "ordinary travelling time" means time that an Employee would have ordinarily spent in travelling once daily from the Employee's home to the Employee's usual headquarters and home again.
- (h) "excess travelling time" means all time travelled on official business outside prescribed hours of duty and away from the Employee's usual Headquarters in accordance with clause 26.16 – Excess Travelling Time of this Agreement.
- (i) "fortnightly salary" means an Employee's substantive salary exclusive of any allowances such as the district allowance, personal allowance, qualifications allowance, service allowance, special allowance, or higher duties allowance unless otherwise approved by the Employer. Provided that a special allowance or higher duties allowance shall be included in "fortnightly salary" when overtime is worked on duties for which these allowances are specifically paid.
- (j) "commuted overtime" means an agreed allowance negotiated between the Union and the Employer, paid in lieu of actual overtime worked for a group of Employees occupying positions which require work to be performed consistently and regularly outside and in excess of the prescribed hours of duty.

### 26.3 Reasonable Hours of Overtime

- (a) The Employer may require an Employee to work reasonable overtime at overtime rates as specified in this clause.
- (b) An Employee may refuse to work overtime in circumstances where the working of such overtime would result in the Employee working hours which are unreasonable having regard to:
  - (i) any risk to Employee health and safety;
  - (ii) the Employee's personal circumstances including any family responsibilities;
  - (iii) the needs of the workplace or enterprise;

- (iv) the notice (if any) given by the Employer of the overtime and by the Employee of his or her intention to refuse it; and
- (v) any other relevant matter.

#### 26.4 Restrictions on Overtime

- (a) An Employee substantively appointed under this Agreement who is temporarily acting under an alternate industrial agreement will not perform overtime in occupational groups under this Agreement during the full contracted period of their temporary placement.
- (b) Overtime will not be available to Employees covered by this Agreement in the following circumstances:
  - (i) after a period of personal leave, where the prescribed personal leave application form and applicable evidence as per clause 30.7(b), has not been provided to the nominated delegated authority;
  - (ii) when an Employee is undergoing a period of rehabilitation or is subject to a return to work program;
  - (iii) when an Employee has failed to provide sufficient evidence in relation to planned or unplanned leave to satisfy a reasonable person to explain an absence from duty as per the requirements of clause 30.7;
  - (iv) an Employee undergoing a training program will not be permitted to work overtime on a day that can stop their attendance at the course or active participation in the course;
  - (v) where overtime will result in a double shift being worked;
  - (vi) where it will create a period exceeding seven consecutive days where an Employee has worked;
  - (vii) where it will result in an Employee working more than four consecutive night shifts; and
  - (viii) where the Superintendent can demonstrate that a pattern of personal leave absences for the Employee exists prior to or following overtime.

#### 26.5 Payment of Overtime

- (a) An Employee who works overtime shall be entitled to payment in accordance with clause 26.5(d), or time off in lieu of payment in accordance with clause 26.5(b), or any combination of payment or time off in lieu.
- (b) Time off in Lieu
  - (i) Where the Employee or the Employer or the duly authorised Employee, so elects in writing prior to overtime being worked, time off in lieu of payment

for overtime worked may be taken in accordance with the time ratios in clause 26.5(d).

- (ii) The Employee shall be required to clear accumulated time off in lieu within two months of the overtime being performed, provided that by written agreement between the Employee and the Employer, or duly authorised Employee, time off in lieu of payment for overtime may be accumulated beyond two months from the time the overtime is performed so as to be taken in conjunction with periods of approved leave.
- (iii) If the Agency is unable to release the Employee to clear such leave within two months of the overtime being performed, and no further agreement prescribed in clause 26.5(b)(ii) is reached, then the Employee shall be paid for the overtime worked.

(c) Commuted Allowance

- (i) Any commuted allowance and/or time off in lieu of overtime, other than that provided in clause 26.5(b), shall be negotiated between the Employer and the Union.

(d) Payment for Overtime

- (i) Employees covered by this Agreement who are rostered Employees and who are directed to work overtime shall be paid in accordance with the following formula:

(aa) Monday to Saturday

All time worked outside of or in excess of the ordinary working hours or on a shift other than a rostered shift shall be paid for at the rate of time and one half for the first three hours and double time thereafter.

(bb) Sunday

All time worked outside of or in excess of the ordinary working hours or on a shift other than a rostered shift shall be paid for at the rate of double time.

(cc) Public Holidays

All time worked outside of or in excess of the ordinary working hours or on a shift other than a rostered shift shall be paid for at the rate of double time and one half the Ordinary rate.

26.6 An Employee who reports for duty at the rostered time for either a normal or overtime shift and is advised that the commencing time for such duty has altered since the Employee was last on duty, or the duty is not required, shall be paid a minimum of two hours at the rate applicable for that duty, but this shall not apply to an Employee who was absent from duty on their last rostered shift.

26.7 Overtime payments shall not apply until after the rostered hours have been worked that day or after more than 120 hours have been worked in a three week roster period.

**26.8 Annual Leave/Long Service Leave**

- (a) An Employee directed to return to duty during periods of annual or long service leave shall be deemed to be no longer on leave for the duration of that period of duty.
  - (i) If the Employee is directed to return to duty during a period of leave during prescribed hours of duty, then that Employee shall be re-credited with that leave for the same number of hours of duty performed.
  - (ii) If the Employee is directed to return to duty during a period of leave outside of prescribed hours of duty, then that Employee shall be entitled to payment of overtime in accordance with clause 26.5(d).

**26.9 Time Worked Past Midnight**

- (a) Where an Employee is required to work a continuous period of overtime which extends past midnight into the succeeding day, the time worked after midnight shall be included with that worked before midnight for the purpose of calculation of payment provided for in this subclause.

**26.10 Minimum Periods for Return to Duty**

- (a) An Employee, having received prior notice, who is required to return to duty:
  - (i) on a Saturday, Sunday or public holiday, otherwise than during prescribed hours of duty, shall be entitled to payment at the rate in accordance with clause 26.5(d) for a minimum of three hours;
  - (ii) before or after the prescribed hours of duty on a weekday shall be entitled to payment at the rate in accordance clause 26.5(d) for a minimum period of one and one half hours;
- (b) For the purpose of this subclause, where an Employee is required to return to duty more than once, each duty period shall stand alone in respect to the application of minimum period payment except where the second or subsequent return to duty is within any such minimum period.
- (c) The provisions of this subclause shall not apply in cases where it is customary for an Employee to return to the place of employment to perform a specific job outside the prescribed hours of duty, or where the overtime is continuous (subject to a meal break) with the completion or commencement of prescribed hours of duty.

**26.11 Overtime at a Place Other than Usual Headquarters**

- (a) When an Employee is directed to work overtime at a place other than usual Headquarters, and provided that the place where the overtime is to be worked is situated in the area within a radius of 50 kilometres from usual Headquarters, and the

time spent in travelling to and from that place is in excess of the time which an Employee would ordinarily spend in travelling to and from usual Headquarters, and provided such travel is undertaken on the same day as the overtime is worked, then such excess time shall be deemed to form part of the overtime worked.

- (b) Except as provided in clause 25 – Out of Hours Contact of this Agreement and subclause 25.15 – Emergency Duty, when an Employee is directed to work overtime at a place other than usual Headquarters, and provided that the place where the overtime is to be worked is situated outside the area within a radius of 50 kilometres from usual Headquarters and the time spent in travelling to and from that place is in excess of the time which the Employee would ordinarily spend in travelling to and from usual Headquarters, then the Employee shall be granted time off in lieu of such excess time spent in actual travel in accordance with clause 25.16 – Excess Travelling Time.

#### 26.12 Ten Hour Break

- (a) When overtime is worked, a break of not less than ten hours shall be taken between the completion of work on the overtime shift and the commencement of work on the next rostered shift, without loss of salary for ordinary working time occurring during such absence.
- (b) Provided that where an Employee is directed to return to or continue work without the break provided in clause 26.12(a), then the Employee shall be paid at double the Ordinary rate until released from duty, or until the Employee has had ten consecutive hours off duty without loss of salary for ordinary working time occurring during such absence.
- (c) The provisions of clause 26.12(a) and (b), shall not apply to Employees included in clause 25 – Out of Hours Contact of this Agreement.

#### 26.13 Payment of Commuted Shiftwork Allowance on Overtime

- (a) Employees who were employed up to 27 September 1990 are to be paid in accordance with the following formula:

$$\text{Base rate} + \text{Commutated Allowance} \times \text{Overtime}$$

- (b) Employees who are employed after 27 September 1990 are to be paid in accordance with the following formula:

$$\text{Base rate} \times \text{Overtime}$$

#### 26.14 Meal Breaks

- (a) Except in the case of emergency, an Employee shall not be compelled to work more than five hours overtime duty without a meal break. At the conclusion of a meal break, the calculation of the five hour limit recommences.
- (b) For the purposes of clause 26.14(a), where an Employee is entitled to a meal break the Employer will provide a meal for the Employee.

## 26.15 Emergency Duty

- (a) Where an Employee is required to return to duty to meet an emergency at a time when he or she would not ordinarily have been on duty, and no such notice of such call was given prior to completion of usual duty on the last day of work prior to the day on which they were called on duty, then if called to duty:
  - (i) on a Saturday, Sunday or public holiday, otherwise than during prescribed hours of duty he/she shall be entitled to payment at the rate in accordance with subclause 26.5 of this clause for a minimum period of three hours.
  - (ii) before or after the prescribed hours of duty on a weekday he/she shall be entitled to payment at the rate in accordance with clause 26.5 for a minimum period of two and a half hours.
- (b) Time spent travelling to and from the place of duty where the Employee is recalled to perform emergency duty shall be included with actual duty performed for the purpose of overtime payment.
- (c) An Employee recalled for emergency duty shall not be obliged to work for the minimum period if the work is completed in less time, provided that an Employee called out more than once within any such minimum period shall not be entitled to any further payment for the time worked within that minimum period.
- (d) Where an Employee is required to work beyond the minimum period on the first or subsequent recall for emergency duty, the additional time worked at the conclusion of that minimum period shall be paid in accordance with the appropriate rate in clause 26.5.
- (e) Where an Employee is recalled for a second or subsequent period of emergency duty outside of the initial minimum period, the Employee shall be entitled to payment for a new minimum period, and the provisions of clause 26.15(a) shall be re-applied.
- (f) For the purpose of this clause no claim for payment shall be allowed in respect of any emergency duty, including travelling time, which amounts to less than thirty minutes.

## 26.16 Excess Travelling Time

- (a) An Employee eligible for payment of overtime, who is required to travel on official business outside normal working hours and away from usual Headquarters shall be granted time off in lieu of such actual time spent in travelling at equivalent or Ordinary rates on weekdays and at time and one half rates on Saturdays, Sundays and public holidays, otherwise than during prescribed hours of duty, provided that:
  - (i) such travel is undertaken at the direction of the Employer;
  - (ii) such travel shall not include:
    - (aa) time spent in travelling by an Employee on duty at a temporary Headquarters to the Employee's home for weekends for the Employee's own convenience;

- (bb) time spent in travelling by plane between the hours of 11.00 p.m. and 6.00 a.m.;
  - (cc) time spent in travelling by train between the hours of 11.00 p.m. and 6.00 a.m.;
  - (dd) time spent in travelling by ship when meals and accommodation are provided;
  - (ee) time spent in travel resulting from the permanent transfer or promotion of an Employee to a new location;
  - (ff) time of travelling in which an Employee is required by the Agency to drive, outside ordinary hours of duty, an Agency vehicle or to drive the Employee's own motor vehicle involving the payment of mileage allowance, but such time shall be deemed to be overtime and paid in accordance with clause 25.5. Passengers however are entitled to the provisions of this subclause;
  - (gg) time spent in travelling to and from the place at which overtime or emergency duty is performed, when that travelling time is already included with actual duty time for the payment of overtime.
- (iii) Time off in lieu will not be granted for periods of less than thirty minutes.
  - (iv) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the usual hours of duty, which is in excess of the Employee's ordinary travelling time.
  - (v) Where the urgent need to travel compels an Employee to travel during the Employee's usual lunch interval such additional travelling time is not to be taken into account in computing the number of hours of travelling time due.
  - (vi) In the case of an Employee absent from usual Headquarters, not involving an overnight stay, the time spent by the Employee, outside the prescribed hours of duty, in waiting between the time of arrival at the place of duty and the time of commencing duty, and between the time of ceasing duty and the time of departure by the first available transport shall be deemed to be excess travelling time.
  - (vii) In the case of an Employee absent from usual Headquarters that does involve an overnight stay, the time spent by the Employee, outside the prescribed hours of duty, in waiting between the time of ceasing duty on the last day and the time of departure by the first available transport shall be deemed to be excess travelling time.

## 27. SHIFT WORK PENALTIES

- 27.1 The parties agree that in lieu of this clause, shift work Employees receive a commuted allowance in accordance with clause 48 – Commuted Allowances of this Agreement and

Public Holiday conditions as per Schedule H – Preservation of Public Holidays of the Award. Clause 26.4(h) and clause 26.5 still apply to shift work Employees.

27.2 This clause shall apply to non-shift work Employees who work shifts from time to time as per clause 23.2(e)(ii) and who work on public holidays from time to time as per clause 23.2(e)(i).

27.3 In this clause the following expressions shall have the following meaning:

- (a) "Day shift" means a shift commencing at or after 6.00 a.m. and before 12.00 noon.
- (b) "Afternoon shift" means a shift commencing at or after 12.00 noon and before 6.00p.m.
- (c) "Night shift" means a shift commencing at or after 6.00 p.m. and before 5.59 a.m.
- (d) "public holiday" shall mean a holiday provided in clause 6.5 – Public Holidays of the Award.

27.4 Payment

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

$$\frac{\text{Annual Salary}}{1} \times \frac{12}{313} \times \frac{1}{10} \times \frac{15}{100}$$

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

$$\frac{\text{Annual Salary}}{1} \times \frac{12}{313} \times \frac{1}{10} \times \frac{20}{100}$$

- (c) For the purposes of clause 27.4(a) and (b), "annual salary" is the Ordinary rate of salary payable for the position as prescribed in this Agreement.
- (d) Notwithstanding clause 27.4(a) and (b), where more than 7.6 hours are worked in a shift, the formulae shall be adjusted on a proportionate basis to the hours actually worked, to ensure the penalty percentage rate is preserved.
- (e) Work performed during ordinary rostered hours on public holidays shall be paid at the rate of double time and one half, in lieu of the penalties prescribed in clauses 27.4(a) and (b).
- (f) Provided that in lieu of the provisions of clause 27.4(e) and subject to agreement between the Employer and the Employee, work performed during ordinary rostered hours on a public holidays shall be paid for at the rate of time and one-half and the Employee may, in addition, be allowed a day's leave with pay to be added to annual leave to be taken at some other time within a period of one year.



- (g) Work performed during ordinary rostered hours on a Saturday or Sunday shall be paid in accordance with clause 28 – Weekend Penalty Rates of this Agreement, in lieu of the allowances prescribed in this subclause.
- (h) An Employee rostered off duty on a public holiday shall be paid at Ordinary rates for such day or, subject to agreement between the Employer and the Employee, be allowed a day's leave with pay in lieu of the holiday to be added to the Employee's next annual leave entitlement or taken at a mutually convenient time within a period of one year.
- (i) Additional leave provided by clause 27.4(f) and (h) shall not be subject to the annual leave loading prescribed by clause 35 – Annual Leave of this Agreement.
- (j) Work performed by an Employee in excess of the rostered hours of the Employee's shift or on a rostered day off shall be paid for in accordance with the overtime provisions of clause 26 – Overtime of this Agreement.

27.5 Circumstances Where No Public Transport is Available

- (a) When an Employee begins or ceases a shift between the hours of 11.00 p.m. and 7.00 a.m. and no public transport is available, reimbursement at the appropriate rate of hire prescribed by clause 5.4.4 – Motor Vehicle Allowance of the Award shall be made if the Employee's private motor vehicle or cycle is used for the journey between the Employee's residence and Headquarters and the return journey.
- (b) Provided however, that any Employee who, on or after October 30, 1987, elects to be permanently retained on a fixed or non-rotating shift that begins or ceases between or on the hours of 11.00 p.m. and 7.00 a.m. shall not be eligible to claim this reimbursement.
- (c) The provisions of this subclause shall only be applied to Employees living and working within a radius of 50 km of the Perth City Railway Station.

**28. WEEKEND PENALTY RATES**

28.1 The parties agree that in lieu of this clause, shift work Employees receive a commuted shift work allowance in accordance with clause 48 – Commuted Allowances of this Agreement.

28.2 Work performed during ordinary rostered hours on a Saturday or Sunday shall be paid as follows:

- (a) Saturdays – time and one-half; and
- (b) Sundays – time and three quarters.

28.3 Weekend Penalty Rates for Casual Employees

- (a) Casual Employees are entitled to weekend shift penalties. Work performed during ordinary rostered hours on the following days shall be paid for at the following rates:

- (i) Saturdays and public holidays – time and one-half (casuals are already paid a loading in lieu of public holidays); and
  - (ii) Sundays – time and three quarters.
- (b) These rates are paid in addition to but not compounded on the casual loading provided for in clause 18.6 – Casual Employment of this Agreement.

**PART 5 – LEAVE**

**29. ADDITIONAL LEAVE FOR SHIFT WORK EMPLOYEES**

- 29.1 Shift work Employees who are rostered to work regularly on Sundays and/or public holidays shall be entitled to five day’s leave in addition to the Employee’s normal entitlement to annual leave.
- 29.2 For the purposes of this clause, ‘regularly rostered’ means the Employee is rostered to and works on at least eleven Sundays and/or public holidays in a period of up to twelve months’ continuous service.
- 29.3 This entitlement accrues according to the following table, provided that the maximum accrual will not exceed five days (38 hours) for each completed twelve month period of continuous service.

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

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

29.9 The loading payable upon proceeding on this additional leave is provided in clause 35 – Annual Leave of this Agreement.

### 30. PERSONAL LEAVE

#### 30.1 Introduction

- (a) The provisions of this clause replace clause 6.4 – Short Leave, clause 6.3 – Carer’s Leave, and clause 6.2 – Sick Leave, with the exception of clause 6.2.12 – War Caused Illnesses of the Award.
- (b) The intention of personal leave is to give Employees and the Employer greater flexibility by providing leave on full pay for a variety of personal purposes. Personal leave replaces sick, paid carer's leave and short leave.
- (c) The Employer recognises that mental health is taken seriously for frontline staff and a legitimate reason to request personal leave.
- (d) This clause commenced on 30 July 2004. An Employee’s pre-existing sick leave anniversary date is maintained for the purposes of the personal leave entitlement.
- (e) Personal leave is not for circumstances normally met by other forms of leave.
- (f) This clause does not apply to casual Employees.
- (g) An Employee employed on a fixed term contract for a period of twelve months or more shall be credited with the same entitlement as a permanent Employee. An Employee on a fixed term contract for a period less than twelve months shall be credited on a pro rata basis for the period of the contract.
- (h) A part time Employee shall be entitled to the same personal leave credits as a full time Employee but on a pro rata basis according to the number of hours worked each fortnight. Payment for personal leave shall only be made for those hours that would normally have been worked had the Employee not been on personal leave.

#### 30.2 Entitlement

- (a) The Employer shall credit each permanent, full time Employee with 114 hours of personal leave credits for each year of continuous service of which 98.8 are cumulative and 15.2 hours are non-cumulative as follows:

	Personal Leave: Cumulative	Personal Leave: Non-cumulative
On the day of initial appointment	49.4 hours	15.2 hours
On completion of 6 months continuous service	49.4 hours	0 hours
On the completion of 12 months continuous service	98.8 hours	15.2 hours
On the completion of each	98.8 hours	15.2 hours

further period of 12 months continuous service		
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- (b) Where Employees access personal leave, it shall be deducted from their non-cumulative entitlement in the first instance.
- (c) In the year of accrual the 114 hours personal leave entitlement may be accessed for illness or injury, carer's leave, unanticipated matters or planned matters in accordance with the provisions of this clause. On completion of each year of accrual, unused personal leave from that year up to a maximum of 98.8 hours will be cumulative and added to personal leave accumulated from previous years. Unused non-cumulative leave will be lost on completion of each anniversary year.
- (d) Whilst Employees are able to access personal leave in accordance with clause 30.6 – Application for Personal Leave, to ensure compliance with the *Minimum Conditions of Employment Act 1993* a minimum of 76 hours must be available to Employees for the purposes of an Employee's entitlement to paid leave for illness or injury; or carer's leave.
- (e) Personal leave arrangements for absences on public holidays are:
  - (i) For non-shift Employees, leave will not be debited for public holidays that the Employee would have observed.
  - (ii) For shift work Employees, personal leave will not be debited for public holidays falling on a rostered day off.
  - (iii) If the shift work Employee has been rostered to work on a public holiday, they will need to make application for personal leave for that day, as it forms part of the Employee's normal shift work hours. Personal leave will be applied for and debited in accordance with the provisions of this clause. Taking of personal leave on a day a public holiday falls will not affect the Employee's entitlement to public holiday leave in accordance with Schedule H – Preservation of Public Holidays of the Award.
- (f) Personal leave may be taken on an hourly basis

### 30.3 Variation of Ordinary Working Hours

- (a) When an Employee's ordinary working hours change during an anniversary year, personal leave credits are adjusted to reflect the pro rata portion for that anniversary year.
- (b) At the time ordinary working hours change, personal leave credits are adjusted to reflect ordinary working hours up to that point in time as a proportion of the total ordinary working hours for the anniversary year.
- (c) Personal leave is credited pro rata on a weekly basis from the time ordinary working hours change until the next anniversary date such that total hours credited for that anniversary year is on a pro rata basis according to the number of ordinary working hours for the period.

#### 30.4 Reconciliation

- (a) At the completion of an anniversary year, where an Employee has taken personal leave in excess of their current and accrued entitlement the unearned leave must be debited at the commencement of the following anniversary year/s.
- (b) The requirements of the *Minimum Conditions of Employment Act 1993* must be met at the commencement of the following anniversary year. The remaining portion of debited personal leave that exceeds the leave credited is to be debited at the commencement of the subsequent and where necessary following anniversary year/s.
- (c) Where an Employee ceases duty and has taken personal leave that exceeds the leave credited for that anniversary year, the Employee must refund the value of the unearned leave, calculated at the rate of salary as at the date the leave was taken. No refund is required in the event of the death of the Employee.

#### 30.5 Access

- (a) An Employee is unable to access personal leave while on any period of leave without pay; maternity leave, adoption leave or other parent leave, except as provided in those clauses; or annual or long service leave, except as provided for in clauses 30.8 – Re-crediting Annual Leave, and 30.9 – Re-crediting Long Service Leave.
- (b) If an Employee has exhausted all accrued personal leave the Employer may allow the Employee who has at least twelve months' service to anticipate up to 38 hours personal leave from next year's credit. If the Employee ceases duty before accruing the leave, the value of the unearned portion must be refunded to the Employer, calculated at the wage rate as at the date the leave was taken, but no refund is required in the event of the death of the Employee.
- (c) In exceptional circumstances the Employer may approve the conversion of an Employee's personal leave credits to half pay to cover an absence on personal leave due to illness.

#### 30.6 Application for Personal Leave

- (a) Reasonable and legitimate requests for personal leave will be approved subject to available credits. Subject to clause 30.2 – Entitlement, the Employer may grant personal leave in the following circumstances:
  - (i) where the Employee is ill or injured;
  - (ii) to provide care or support to a member of the Employee's family or household who requires care or support because of an illness or injury to the member; or an unexpected emergency affecting the member;
  - (iii) for unanticipated matters of a compassionate or pressing nature which arise without notice and require immediate attention;

- (iv) by prior approval of the Employer having regard for Agency requirements and the needs of the Employee, planned matters where arrangements cannot be organised outside of normal working hours or be accommodated by the utilisation of flexi time credits by Employees working according to approved flexible working hours arrangements or other leave. Planned personal leave will not be approved for regular ongoing situations.
- (b) An Employer may grant two days unpaid personal leave per occasion to an Employee to provide care and support to a member of the Employee's family or household due to the birth of a child to the member. This entitlement does not of itself limit an Employee's access to paid personal leave as provided by clause 30.6(a) or partner leave as provided for by clause 43 – Partner Leave of this Agreement. This leave may also be substituted with accrued annual leave, long service leave, time off in lieu of overtime to which the Employee is entitled or, subject to the requirements of clause 22.4 – Accrued Days Off of this Agreement.
- (c) Employees must complete the necessary application form to be paid for personal leave and will clearly identify which of the above circumstances apply to their personal leave request.
- (d) Formal applications for personal leave must be submitted as soon as possible on the day of the Employee's return to duty after the absence.
- (e) The definition of family shall be the definition contained in the *Equal Opportunity Act 1984* for "relative". That is, a person who is related to the Employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the Employee.
- (f) Where practicable, the Employee must give reasonable notice prior to taking leave. Where prior notice cannot be given, notice must be provided as early as possible on the day of absence. An estimate of the period of absence from work and the circumstances causing the absence shall be provided by the Employee.

### 30.7 Evidence

- (a) An application for personal leave exceeding two consecutive working days shall be supported by evidence that would satisfy a reasonable person of the entitlement.
- (b) The minimum level of evidence for each circumstance applicable to personal leave is:
  - (i) Illness or injury – a medical certificate from a certified medical practitioner indicating the Employee was or is unfit for work which complies with Administrative Instruction 601 – Sick Leave. Where the Employee is unable to obtain a medical certificate, a signed statement as per the relevant Department template will be required as an alternate;
  - (ii) Care or support to a family or household member – a medical certificate or signed statement as per the Department template, outlining the name of the person requiring care or support, the Employee's relationship to the person and the reason for the person requiring care or support;

- (iii) Unanticipated matter of a compassionate or pressing nature – a signed statement as per the Department template outlining the nature of the unanticipated matter and justification for requiring immediate attention; and
  - (iv) Planned matter – a signed statement as per the Department template outlining the nature of the planned matter and justifying the requirement to use personal leave as a result.
- (c) In general, supporting evidence is not required for single or two consecutive day absences. However, evidence will be required where the Employer has good reason to believe that the absence may not be reasonable or legitimate, the Employer may request evidence be provided. The Employer must provide the Employee with reasons for requesting the evidence. The leave shall not be granted where the absence is not reasonable or legitimate.
- (d) Personal leave will not be granted where an Employee is absent from duty because of personal illness attributable to the Employee's serious and wilful misconduct in the course of the Employee's employment.
- (e) Where there is doubt about the cause of an Employee's illness, the Employer may require the Employee to submit to a medical examination by a medical practitioner of the Employer's choice, which the Employee must attend. Where it is reported that the absence is because of illness caused by the Employee's serious and wilful misconduct in the course of the Employee's employment, or the Employee fails without reasonable cause to attend the medical examination, the fee for the examination must be deducted from the Employee's salary and personal leave will not be granted.
- (f) If the Employer has reason to believe that an Employee is in such a state of health as to render a danger to themselves, fellow Employees or the public, the Employee may be required to obtain and furnish a report as to the Employee's condition from a registered medical practitioner nominated by the Employer. The Employer shall pay the fee for any such examination.
- (g) Where the Employer has received a complaint or has reason to believe that an Employee has taken personal leave without genuine cause, or has taken personal leave without providing satisfactory evidence, the Employer may:
- (i) inquire into the matter; and/or
  - (ii) require an explanation in writing from the Employee concerned; and/or
  - (iii) conduct an interview with the Employee at the Employee's place of work, or at the Employee's home should that be the Employee's preference; and/or
  - (iv) where appropriate direct the Employee to attend a medical practitioner nominated by the Department of Justice for a medical examination to determine the Employee's fitness for duty; and/or
  - (v) refer the Employee to the Employee Welfare Services Branch for counselling.

### 30.8 Re-crediting Annual Leave

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

### 30.9 Re-crediting Long Service Leave

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

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

- (a) Employees who have exhausted all of their personal leave entitlements and are ill or injured may apply for personal leave without pay. Employees are required to complete the necessary application and provide evidence as described in clause 30.7(b). The Employer shall not unreasonably withhold this leave.
- (b) Personal leave without pay not exceeding a period of three months in a continuous absence does not affect salary increment dates, anniversary date of personal leave credits, long service leave entitlements or annual leave entitlements. Where a period of personal leave without pay exceeds three months in a continuous absence, the period in excess of three months is excised from qualifying service.
- (c) Personal leave without pay is not available to Employees who have exhausted all of their personal leave entitlements and are seeking leave for circumstances outlined in clauses 30.6(a)(ii), (iii) and (iv) or (b). However, other forms of leave including unpaid carer's leave and leave without pay may be available.

### 30.11 Other Conditions

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

### 30.12 Workers' Compensation

Where an Employee suffers an "injury" within the meaning of section 5 of the *Workers' Compensation and Injury Management Act 1981* which necessitates that Employee being absent from duty, personal leave with pay shall be granted to the extent of personal leave



credits. In accordance with section 80 (2) of the *Workers' Compensation and Injury Management Act 1981* where the claim for workers' compensation is decided in favour of the Employee, personal leave credit is to be reinstated and the period of absence shall be granted as personal leave without pay.

### 30.13 Portability

- (a) The Employer shall credit an Employee additional personal leave credits up to those held at the date that Employee ceased previous employment provided:
  - (i) immediately prior to commencing employment the Employee was employed in the service of:
    - (aa) the Western Australian Public Service;
    - (bb) the Commonwealth Government of Australia;
    - (cc) any other State or Territory of Australia; or
    - (dd) in a State body or statutory authority prescribed by Administrative Instruction 611; and
  - (ii) the Employee's employment commenced no later than one week after ceasing previous employment; and
  - (iii) the personal leave credited shall be no greater than that which would have applied had the entitlement accumulated whilst employed in a State body or statutory authority prescribed by Administrative Instruction 611.
- (b) The maximum break in employment permitted by clause 30.13(a)(ii), may be varied by the approval of the Employer provided that where employment commenced more than one week after ceasing the previous employment, the period in excess of one week does not exceed the amount of accrued and pro rata annual leave paid out at the date the Employee ceased with the previous Employer.

## 31. FAMILY AND DOMESTIC VIOLENCE LEAVE

- 31.1 In recognition that Employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work the Employer has agreed to the leave which is the subject of this clause. The Employer is committed to providing support to Employees that experience family and domestic violence.
- 31.2 An Employee will not be discriminated against or have adverse action taken against them because of their disclosure of, experience of, or perceived experience of, family and domestic violence.
- 31.3 The Employer does not tolerate Employees perpetrating family and domestic violence in or from the workplace. Employees must not use work facilities to perpetrate family and domestic violence. Any such conduct is a breach of employment obligations and any Employees who do so will face disciplinary action.

## Definition of Family and Domestic Violence

- 31.4 (a) The meaning of family and domestic violence is in accordance with the definition of “family violence” in the *Restraining Orders Act 1997* (section 5A).
- (b) To avoid doubt, this definition includes behaviour that:
- (i) is physically or sexually abusive;
  - (ii) is emotionally or psychologically abusive;
  - (iii) is economically abusive;
  - (iv) is threatening;
  - (v) is coercive;
  - (vi) in any other way controls or dominates the family or household member and causes that person to feel fear for their safety or wellbeing or that of another person; or
  - (vii) causes a child to hear or witness, or otherwise be exposed to the effects of, such behaviour.

## Access to Family and Domestic Violence Leave

- 31.5 In accordance with the following subclauses, an Employee, including a casual Employee, may make application for leave to deal with activities related to family and domestic violence. The Employer will assess each application and give consideration to the personal circumstances of the Employee seeking the leave.
- 31.6 Such activities related to family and domestic violence may include attendance at medical appointments; legal proceedings; counselling; appointments with a medical or legal practitioner; relocation or making other safety arrangements; and other matters of a compassionate or pressing nature related to the family and domestic violence which arise without notice and require immediate attention.
- 31.7 Subject to clauses 30.5 and 30.6, an Employee experiencing family and domestic violence will have access to 10 non-cumulative days per year of paid family and domestic violence leave, in addition to their existing leave entitlements.
- 31.8 Upon exhaustion of the leave entitlement in clause 31.7, Employees will be entitled to up to two days’ unpaid family and domestic violence leave on each occasion.
- 31.9 Family and domestic violence leave does not affect salary increment dates, personal leave entitlements, long service leave entitlements or annual leave entitlements.
- 31.10 Subject to the Employer’s approval of the application, family and domestic violence leave may be taken as whole or part days off.

31.11 Application of the leave entitlement for casual Employees will apply to the extent of their agreed working arrangements.

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

31.12 The Employee shall give his or her Employer notice as soon as reasonably practicable of their request to take leave under this clause.

31.13 Supporting evidence of family and domestic violence may be required to access paid leave entitlements however this should not be onerous on the Employee. Leave can be granted without supporting documentation when the manager/ supervisor is satisfied that it is not required.

31.14 Evidence may include a document issued by the police, a court, a legal service, a health professional, a counsellor, a financial institution, a family violence support service or a refuge service. A statutory declaration may also be provided.

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

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

31.16 Subject to the leave provisions of this Agreement and Award, an Employee experiencing family and domestic violence may use other leave entitlements.

31.17 Subject to the Employer's approval of the application, and sufficient leave credits being available, leave may be taken as whole or part days off.

31.18 Forms of other paid leave include:

- (a) personal leave entitlements;
- (b) annual leave;
- (c) accrued long service leave;
- (d) purchased leave; and/or
- (e) accrued time off in lieu of overtime, flexi leave or banked hours.

31.19 Approval of leave without pay is subject to the provisions of this Agreement and Award.

#### **Confidentiality**

31.20 The Employer will take all reasonable steps to ensure any information disclosed by Employees regarding family and domestic violence is kept strictly confidential. Disclosure will be on a need-to-know basis only and only to maintain safety. Where possible, disclosure will only occur with the express consent of the Employee.

- 31.21 The Employer will take reasonable steps to ensure any information or documentation provided by an Employee regarding family and domestic violence is kept confidential. Generally speaking, only the Employee will retain a copy of evidence for accessing family and domestic violence leave and information will not be kept on an employee's personnel file.
- 31.22 Subsequent disclosure within an organisation should be on a need-to-know basis, for example if there is a potential for workplace safety to be impacted and generally with the consent of the Employee.
- 31.23 This clause does not override any legal obligations to disclose information.

#### **Contact Person**

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

#### **Individual Support**

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

#### **Workplace Safety**

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

### **32. PURCHASED LEAVE – 42/52 ARRANGEMENT**

- 32.1 The provisions of this clause replace clause 6.12 – Purchased Leave – 44/52 Salary Arrangement of the Award.
- 32.2 The Employer and the Employee may agree to enter into an arrangement whereby the Employee can purchase up to ten weeks' additional leave.

- 32.3 Purchased Leave arrangements commence on 1 January each year.
- 32.4 The Employer will assess each application for a 42/52 salary arrangement on its merits and give consideration to the personal circumstances of the Employee seeking the arrangement.
- 32.5 Where an Employee is applying for purchased leave of between five and ten weeks, the Employer will give priority access to those Employees with caring responsibilities.
- 32.6 In order to access approved purchased leave, an Employee must:
- (a) satisfy the Agency's accrued leave management policy; and
  - (b) take one week annual leave if purchasing nine weeks' leave; or
  - (c) take two weeks' annual leave if purchasing ten weeks' leave.
- 32.7 Notwithstanding clause 32.6(b) and (c), the Employer may allow an Employee to access purchased leave before they have accessed one or two week's annual leave, whichever applies, where the Employee requests it. Any such request may only be refused by the Employer if there are reasonable grounds to do so.
- 32.8 The provisions of clause 32.6(b) and (c) do not apply to an Employee who purchases less than nine weeks leave.
- 32.9 An agreement to take a reduced salary spread over the 52 weeks of the year will yield the following amounts of purchased leave:

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

- 32.10 Purchased leave is not able to be accrued. The Employee is entitled to pay in lieu of any purchased leave not taken. In the event that the Employee is unable to take such purchased leave, their salary will be adjusted in the last pay period in February to take account of the fact that time worked during the previous year was not included in their salary.
- 32.11 Untaken purchased leave will be paid out at the rate at which it was purchased.

### 32.12 **Effect on Higher Duties Allowances**

- (a) Where an Employee who is in receipt of an allowance provided for in clause 47 – Higher Duties Allowance of this Agreement proceeds on any period of purchased leave, the Employee shall not be entitled to receive payment of the allowance for any period of purchased leave.
- (b) Other than when an Employee is on a period of purchased leave, the higher duties allowance component of an Employee’s salary shall not be affected by an agreement to reduce the Employee’s salary for purchased leave purposes.

32.13 In the event that a part time Employee’s ordinary working hours are varied during the year, the salary paid for such leave will be adjusted in the last pay in February to take account of any variations to the Employee’s ordinary working hours during the previous year.

32.14 Overtime is paid at the Ordinary rate and not the reduced rate. This will also apply where overtime is referred to as a percentage of salary.

### **33. PURCHASED LEAVE – DEFERRED SALARY**

33.1 This clause replaces the provisions of clause 6.13 – Purchased Leave – Deferred Salary Arrangement of the Award.

33.2 With the written agreement of the Employer, an Employee may elect to receive, over a four-year period, 80% of the salary they would otherwise be entitled to receive in accordance with the Award.

33.3 The Employer will assess each application for deferred salary on its merits and give consideration to the personal circumstances of the Employee seeking the leave.

33.4 On completion of the fourth year, an Employee will be entitled to twelve months leave and will receive an amount equal to 80% of the salary they were otherwise entitled to in the fourth year of deferment.

33.5 Where an Employee completes four years of deferred salary service and is not required to attend duty in the following year, the period of non-attendance shall not constitute a break in service and shall count as service on a pro-rata basis for all purposes.

33.6 An Employee may withdraw from this arrangement prior to completing a four-year period by written notice. The Employee will receive a lump sum payment of salary forgone to that time but will not be entitled to equivalent absence from duty.

33.7 The Employer will ensure that superannuation arrangements and taxation effects are fully explained to the Employee by the Employing Authority. The Employer will put any necessary arrangements into place.

### **Variation of the Arrangements**

33.8 (a) As an alternative to clause 33.6, and only by mutual agreement of the Employer and the Employee, the provisions of the deferred arrangement may be varied subject to the following:

- (i) the term of the arrangement will not extend beyond that contemplated by this clause;
- (ii) the variation will not result in any consequential monetary or related gain or loss to either the Employer or the Employee; and
- (iii) the percentage of salary to apply during the twelve months leave as specified in subclause 33.4 will be calculated as 80% of the average ordinary prescribed hours worked over the previous four years.

#### **34. EARLY ACCESS TO PRO-RATA LONG SERVICE LEAVE**

- 34.1 This clause is to be read in conjunction with clause 6.6 – Long Service Leave of the Award.
- 34.2 Subject to clause 34.5, Employees within seven years of their preservation age under Western Australian Government superannuation arrangements may, by agreement with the Employer, choose early access to their long service leave at the rate of 9.28 days per completed twelve month period of continuous service for full time Employees.
- 34.3 Part time, casual and job-share Employees have the same entitlement as full time Employees:
- (a) for part time Employees their entitlement calculated on a pro rata basis according to any variations to their ordinary working hours during the accrual period; and
  - (b) For casual Employees their entitlement is calculated on a pro rata basis according to the average hours worked during the accrual period.
- 34.4 Early access to pro rata long service leave does not include access to long service leave to which the Employee has become entitled, or accumulated prior to being within seven years of their preservation age.
- 34.5 Under this clause, long service leave can only be taken as paid leave and there is no capacity for payment in lieu of leave.
- 34.6 Employees may, by agreement with their Employer:
- (a) clear pro rata long service leave in minimum periods of one day; and/or
  - (b) access pro rata long service leave at half, full or double pay;
- 34.7 Where Employees access pro rata long service leave early, any period of leave taken will be excised for the purpose of continuous service in accordance with clause 6.6.4 – Long Service Leave of the Award.

#### **35. ANNUAL LEAVE**

35.1 The provisions of this clause replace clause 6.1 – Annual Leave of the Award.

##### **35.2 Definitions**

- (a) accrued leave – is the leave an Employee is entitled to from a previous calendar year.

- (b) pro-rata leave – is the proportion of leave that an Employee is entitled to in the current year, either from the date of commencement, or to the date of cessation.

### 35.3 Entitlement

- (a) Each Employee is entitled to four weeks paid leave for each year of service. Annual leave shall be calculated on a calendar year basis commencing on January 1 in each year.
- (b) To assist Employees in balancing their work and family responsibilities, an Employee may elect, with the consent of the Employer, to accrue and carry forward a maximum of two years annual leave from the date of the entitlement.
- (c) An Employee employed on a fixed term contract for a period greater than twelve months, shall be credited with the same entitlement as a permanent Employee. An Employee employed on a fixed term contract or on a part time basis for a period less than twelve months, shall be credited with the same entitlement on a pro-rata basis for the period of the contract.
- (d) On written application, an Employee shall be paid salary in advance when proceeding on annual leave.
- (e) The provisions of this clause do not apply to casual Employees.

### 35.4 Pro rata Annual Leave

#### (a) Entitlement

- (i) An Employee employed after the first day of January in any year is entitled to pro rata annual leave for that year calculated on a daily basis. At the end of each calendar day of the year the Employee will accrue 0.416 hours of paid annual leave provided the maximum accrual will not exceed 152 hours for each completed calendar year of service.
  - (ii) Where Employers have systems in place which record and report pro rata accrual of annual leave entitlements in a manner other than prescribed by this clause, that method of accrual may continue provided the system provides the same accrual over a full year. Employers must ensure that upon the cessation of employment, all pro rata annual leave entitlements accrued are equivalent to the pro rata annual leave entitlement provided by clause 35.4(a)(i).
- (b) An Employee who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave, must refund the value of the unearned pro rata portion, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an Employee.
  - (c) An Employee may take annual leave during the calendar year in which it accrues or anytime thereafter, but the time during which the leave may be taken is subject to the approval of the Employer.



**35.5 Part-Time Entitlement**

A part-time Employee shall be granted annual leave in accordance with this clause, however payment to a part-time Employee proceeding on annual leave shall be calculated having regard for any variations to the Employee's ordinary working hours during the accrual period.

**35.6 Compaction of Annual Leave**

An Employee who, during an accrual period was subject to variations in ordinary working hours or whose ordinary working hours during the accrual period are less than the Employee's ordinary working hours at the time of commencement of annual leave, may elect to take a lesser period of annual leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of annual leave.

**35.7 Portability**

- (a) Where an Employee was, immediately prior to being employed in the Public Sector, employed in any Western Australian State body or statutory authority as prescribed in Administrative Instruction 611, the Employer shall approve portability of accrued and pro rata annual leave entitlements held at the date the Employee ceased that previous employment, provided that:
  - (i) the Employee's employment with the Public Sector commenced no later than one week after ceasing the previous employment; and
  - (ii) the Employee was not paid out all or part of the accrued and pro rata annual leave entitlements held at the time of ceasing that previous employment.

35.8 The Employer may direct an Employee to take accrued annual leave and may determine the date on which such leave shall commence. Should the Employee not comply with the direction, disciplinary action may be taken against the Employee.

**35.9 Effect on Accrued Days Off for Shift Work Employees**

- (a) When an Employee proceeds on the first four weeks of any annual leave there will be no accrual towards an accrued days off.
- (b) Accrual towards an accrued days off will continue during any other period such as the extra week for shift workers.

35.10 Any annual leave entitlements as at June 1st 1986 shall be adjusted in hours in the ratio of 38 to 40.

35.11 Leave Loading for Non-Shift Work Employees.

- (a) Subject to the provisions of clauses 35.11(c) and (d), a loading of 17.5% calculated on an Employee's normal rate of salary is payable to Employees in the first pay period in December in the calendar year in which the leave accrues.

(b) The leave loading to be paid to Employees who are in the service of the Employer prior to or engaged after 1 January in each year shall be paid the leave loading anticipated to be due on 31 December of that year.

(c) Maximum Loading

(i) The loading is paid on a maximum of four weeks annual leave. Payment of the loading is not made on additional leave granted for any other purpose (eg. to Employees whose Headquarters are located North of the 26 degree south latitude).

(ii) The maximum payment for the loading provided for in clause 35.11(a) shall not exceed a rate equivalent to 17.5% of four weeks' salary of a Level 8.1 Employee as per Schedule 2 – General Division Salaries under the Public Sector CSA Agreement 2021 as at 1 January in the calendar year in which the leave accrues, in accordance with the following:

	Maximum leave loading for annual leave:	Maximum
(aa)	Maximum leave loading payment in December 2021	\$1,815.47
(bb)	Commencing on or after 1 January 2022	\$1,828.90

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

$$\begin{array}{r}
 \text{Average hours of work per fortnight} \\
 \text{in the calendar year in which the} \\
 \text{leave accrues} \\
 \hline
 76
 \end{array}
 \times
 \begin{array}{r}
 \text{Maximum loading in accordance} \\
 \text{with clause 35.11(c)(ii)} \\
 \hline
 1
 \end{array}$$

(d) Applicable Salary

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

(ii) Any allowance paid to an Employee for undertaking higher duties is only included if the allowance is payable during any period of leave taken during the calendar year as provided for under clause 47 – Higher Duties Allowance of this Agreement.

(e) The salary referred in clause 35.11(d) excludes commuted allowance paid as per clause 48 – Commuted Allowances of this Agreement.

(f) An Employee must refund any leave loading paid in December if the Employee resigns, or ceases employment, or where an Employee is dismissed prior to 31 December of

that year. This provision does not apply in the event of death of an Employee or if the Employee retires.

- (g) Where payment in lieu of accrued or pro rata annual leave is made on the death or retirement of an Employee, a loading calculated in accordance with the terms of this clause is to be paid on accrued and pro rata annual leave.
- (h) When an Employee resigns, or ceases employment, or where an Employee is dismissed under Part 8 – Responsibilities and Discipline of Employees, of the *Young Offenders Regulations 1995*, an annual leave loading shall be paid as follows:
  - (i) Accrued entitlements to annual leave – a loading calculated in accordance with the terms of this clause for accrued leave is to be paid.
  - (ii) Pro rata annual leave – no loading is to be paid.

### 35.12 Annual Leave Loading for Shift Employees

- (a) Subject to the provisions of clauses 35.14(c) and (h), a loading equivalent to 17.5% of normal salary is payable to shift Employees proceeding on annual leave, including accumulated annual leave.
- (b) Subject to the provisions of clauses 35.14(c) and (h), shift Employees who are granted up to an additional week’s penalty leave when proceeding on annual leave, including accumulated annual leave, shall be paid:
  - (i) the commuted allowance amount as provided in clause 48 – Commuted Allowances of this Agreement; and
  - (ii) a loading equivalent to 20% of normal salary for five weeks’ leave.
- (c) Maximum Loading
  - (i) The maximum payment for the loading provided for in clause 35.14(a) shall not exceed a rate equivalent to 17.5% for four weeks’ salary of a General Division Level 8.1 Employee as per Schedule 2 – General Division Salaries of the Public Sector CSA Agreement 2021 as at 1 January in the calendar year in which the leave commences, in accordance with the following:

	Maximum leave loading for annual leave:	Maximum
(aa)	Commencing on or after the date of registration of this Agreement	\$1,815.47
(bb)	Commencing on or after 1 January 2022	\$1,828.90

- (ii) The maximum payment to shift Employees who are granted an additional week’s penalty leave shall not exceed 5/4th of the rates prescribed in clause 35.14(c)(i), in accordance with the following:

	Maximum leave loading for annual leave:	Maximum
(aa)	Commencing on or after the date of registration of this Agreement	\$2,269.34
(bb)	Commencing on or after 1 January 2022	\$2,286.13

- (iii) Payment of the loading is not made on additional leave granted for any other purpose.
- (d) Annual leave commencing in any year and extending without a break into the following year attracts the loading calculated on the salary applicable on the day the leave commenced.
- (e) The loading payable on approved accumulated annual leave shall be at the rate applicable at the date the leave is commenced. Under these circumstances an Employee can receive up to the maximum loading for the approved accumulated annual leave in addition to the loading for the current year's entitlement.
- (f) A pro rata loading is payable on periods of approved annual leave that are less than five weeks in the case of shift workers who qualify for an additional week of shift worker leave.
- (g) Part-time Employees shall be paid a proportion of the annual leave loading at the salary rate applicable, provided that the maximum loading payable shall be calculated in accordance with the following:

$$\frac{\text{Hours of work per fortnight}}{76} \times \frac{\text{Maximum loading in accordance with 35.14 (c)(i) or (ii)}}{1}$$

- (h) Applicable Salary
  - (i) The loading is calculated on the rate of the normal fortnightly salary including any allowances, which are paid as a regular fortnightly or annual amount.
  - (ii) Any allowance paid to an Employee for undertaking higher duties is only included if the allowance is payable during any period of leave taken during the calendar year as provided for under clause 47 – Higher Duties Allowance of this Agreement.
- (i) The salary referred in paragraph 35.14(g) excludes commuted allowance paid as per clause 48 – Commuted Allowances of this Agreement.
- (j) Where payment in lieu of accrued or pro rata annual leave is made on the death or retirement of an Employee, a loading calculated in accordance with the terms of this clause is to be paid on accrued and pro rata annual leave.
- (k) When an Employee resigns, or ceases employment, or where an Employee is dismissed under Part 8 – Responsibilities and Discipline of Employees, of the *Young Offenders Regulations 1995*, an annual leave loading shall be paid as follows:

- (i) Accrued entitlements to annual leave – a loading calculated in accordance with the terms of this clause for accrued annual leave is to be paid.
  - (ii) Pro rata annual leave – no loading is to be paid.
- (l) An Employee who has been permitted to proceed on annual leave and who ceases duty other than by resignation or dismissal under Part 8 – Responsibilities and Discipline of Employees of the *Young Offenders Regulations 1995*, before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion of leave loading but no refund is required in the event of the death of an Employee.
- (m) An Employee who has been permitted to proceed on annual leave and who resigns or is dismissed under Part 8 – Responsibilities and Discipline of Employees of the *Young Offenders Regulations 1995* must refund the value of the loading paid for leave other than accrued leave.

### **36. EMPLOYEE INITIATED CASH OUT OF ANNUAL LEAVE**

- 36.1 The parties agree on the importance of Employees taking annual leave for the purposes of rest and recreation.
- 36.2 This clause, however, recognises that notwithstanding the importance of the leave referred to in clause 36.1 some Employees may have excess and overdue accrued annual leave.
- 36.3 This clause, at the initiative of the Employee, provides for Employees to receive payment in lieu of taking their unutilised accrued annual leave.
- 36.4 Subject to clause 36.8, the Employer and the Employee may agree that the Employee forego part of the Employee's entitlement to accrued annual leave in exchange for equivalent payment at the rate which would have applied had the leave been taken at the time the agreement is made.
- 36.5 Payment will be at the Employee's current annual salary as at the date the annual leave is cashed out.
- 36.6 For Shift Employees, payment is inclusive of commuted shift work allowance and a 20% leave loading, subject to the maximum leave loading provisions, and as set out in clause 35.14 of this Agreement.
- 36.7 For Non-Shift Work Employees cash out of any annual leave accrued prior to the 2011 calendar year, will include payment of a 17.5% leave loading, subject to maximum leave loading provisions, and as set out in clause 35.12(e) of this Agreement.
- 36.8 The following criteria shall apply to the cashing out of accrued annual leave:
- (a) The Employee initiates a written request to the Employer, to cash out accrued annual leave;
  - (b) The Employer agrees in writing to the request by the Employee;
  - (c) There is an annual leave entitlement that has accrued in previous years;

- (d) No more than 50% of the Employee's total accrued annual leave entitlement can be cashed out;
- (e) The remaining entitlements are not less than two weeks accrued annual leave;
- (f) Each instance of cashing out of annual leave must be a separate written agreement between the Employer and the Employee; and
- (g) Annual leave accruing in the year the request for cashing out is made cannot be cashed out in that year.

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

### **37. PUBLIC SERVICE HOLIDAYS**

37.1 The two days in lieu of the repealed public service holidays as provided for in the Public Sector Commissioner's Circular 2009-32 apply to Employees covered by this Agreement where they would normally be expected to work these days.

37.2 Subject to the provisions of the Public Sector Commissioner's Circular 2009-32, days in lieu of the repealed public service holidays:

- (a) are made available on the date of the relevant repealed public service holiday;
- (b) are not available to an Employee who is on any period of leave without pay;
- (c) are paid at the rate of ordinary time;
- (d) can be added to annual leave or taken individually;
- (e) must be taken in the calendar year in which they occur;
- (f) will be forfeited if not taken in the year in which they occur; and
- (g) are not to be paid out on termination of employment.

37.3 By prior agreement with the Employer the day may be taken on the date of the relevant repealed public service holiday.

#### **Easter Sunday**

37.4 Permanent and fixed term contract Employees will be provided an additional day of paid leave for Easter Sunday.

37.5 The day of paid leave will be made available to the Employee regardless of whether the Employee would normally be expected to work on that date.

37.6 The day of paid leave accrues on the date that Easter Sunday falls each calendar year.

37.7 Employee access to the day of leave is subject to the conditions set out in clause 37.2 (b)-(g).

## **38. BEREAVEMENT LEAVE**

38.1 The provisions contained in this clause replace those contained in clause 6.7 – Bereavement Leave of the Award.

38.2 Employees, including casuals, shall on the death of:

- (a) the spouse or de-facto partner of the Employee;
- (b) a former spouse or former de-facto partner of the Employee;
- (c) a child, step-child, foster child or grandchild of the Employee (including an adult child, step-child or grandchild);
- (d) a parent, step-parent, foster parent or grandparent of the Employee;
- (e) a parent in law or former parent in law of the Employee;
- (f) a brother, sister, step brother or step sister of the Employee; or
- (g) any other person who, immediately before that person's death, lived with the Employee as a member of the Employee's household;

be eligible for up to three days paid bereavement leave.

38.3 The Employer will not unreasonably withhold approval to grant bereavement leave to an Employee in respect of some other person with whom the Employee had a special relationship, on the request of the Employee.

38.4 The three days need not be consecutive.

38.5 Bereavement leave is not to be taken during any other period of leave.

38.6 Payment of such leave may be subject to the employee providing evidence, if so requested by the employer, of the death or relationship to the deceased that would satisfy a reasonable person.

38.7 An employee requiring more than three days bereavement leave in order to travel interstate or overseas in the event of a death of a person referred to in clause 38.2 or 38.3 may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave or leave without pay provided all accrued leave is exhausted.

### **38.8 Travelling time for Regional Employees**

- (a) Subject to prior approval from the employer, an employee entitled to bereavement leave and who, as a result of such bereavement, travels to a location within Western Australia that is more than 240 km from their workplace will be granted paid time off for the travel period undertaken in the Employee's ordinary working hours up to a maximum of 15 hours per bereavement. The Employer will not unreasonably withhold approval.

- (b) The Employer may approve additional paid travel time within Western Australia where the Employee can demonstrate to the satisfaction of the Employer that more than two days travel time is warranted.
- (c) The provisions of clauses 38.8 (a) and (b) apply as follows.
  - (i) An Employee employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent Employee for each full year of service and pro rata for any residual portion of employment.
  - (ii) An Employee employed on a fixed term contract for a period less than 12 months shall be credited with the same entitlement on a pro rata basis for the period of employment.
  - (iii) A part time Employee shall be entitled to the same entitlement as a full time employee for the period of employment, but on a pro rata basis according to the number of ordinary hours worked each fortnight.
  - (iv) For casual Employees, the provisions apply to the extent of their agreed working arrangements.

### **39. CULTURAL LEAVE FOR ABORIGINAL AND TORRES STRAIT ISLANDERS**

- 39.1 Employees who identify as Aboriginal or Torres Strait Islanders (ATSI) are entitled to paid cultural leave which can be accessed to participate in any of the following:
- (a) cultural and ceremonial obligations under ATSI lore, customs or traditional law; and
  - (b) community cultural events such as NAIDOC Week activities, Reconciliation Week or Coming of the Light festivals.
- 39.2 Up to five days of paid cultural leave per calendar year will be available under this clause. The leave need not be taken in one continuous period. Paid cultural leave will not accrue from year to year and will not be paid out on termination.
- 39.3 The Employer will assess each application for cultural leave on its merits and give consideration to the personal circumstances of the Employee seeking the leave.
- 39.4 The Employer may request reasonable evidence of the legitimate need for the Employee to be allowed time off.
- 39.5 If an Employer requires an Employee to attend to business associated with an ATSI organisation, or an organisation that works to facilitate ATSI interests, the attendance is considered to be a part of the Employee's normal duties and the Employee need not access leave under this or any other clause to enable it.
- 39.6 Cultural leave granted under this clause is in addition to the leave provided by clause 38 – Bereavement Leave of this Agreement and clause 6.11 – Cultural/Ceremonial Leave of the Applicable Award.



## PART 6 – PARENTAL LEAVE

### 40. MATERNITY LEAVE

40.1 This clause replaces the parental leave provisions contained in clause 6.8 – Parental Leave of the Award.

#### 40.2 Eligibility

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

40.3 (a) A pregnant eligible casual employee is entitled to unpaid maternity leave only.

- (b) For the purposes of this clause an "eligible casual employee" means a casual Employee employed by the Employer:
  - (i) on a regular and systematic basis for several periods of employment with a break of no more than three months between each period of employment and where the combined length of the periods of employment are at least twelve months and the breaks of employment were the result of the Employer's initiative; or
  - (ii) on a regular and systematic basis for a sequence of periods of employment during a period of at least twelve months; and, but for the birth or adoption of a child, the Employee has a reasonable expectation of continuing engagement on a regular and systematic basis.
- (c) Service performed by an eligible casual employee for a Public Sector Employer shall count as service for the purposes of determining twelve months' continuous service as per clauses 40.2 and 40.3 where:
  - (i) the eligible casual employee has become a permanent or fixed term contract Employee with the same Employer; and

- (ii) the break between the period of eligible casual employment and permanent or fixed term contract employment is no more than three months.

#### 40.4 Notice Requirements

- (a) An eligible employee shall give at least eight weeks' written notice of:
  - (i) their intention to proceed on paid or unpaid maternity leave;
  - (ii) the date the employee proposes to commence paid or unpaid maternity leave; and
  - (iii) the period of leave to be taken.
- (b) An employee who has given their Employer notice of their intention to take maternity leave shall provide the Employer with a medical certificate from a registered medical practitioner naming the employee, confirming the pregnancy and the estimated date of birth.
- (c) An employee is not in breach of clause 40.4(a) by failing to give the required period of notice if such failure is due to the birth of the child taking place prior to the date the employee had intended to proceed on maternity leave.
- (d) An employee proceeding on maternity leave may elect to take a shorter period of maternity leave to that provided by this clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks' written notice is provided.

#### 40.5 General Entitlement to Maternity Leave

- (a) Subject to the requirements of this clause an eligible employee is entitled to 52 weeks' unpaid maternity leave.
- (b)
  - (i) Subject to the requirements of this clause an eligible employee is entitled to 14 weeks' paid maternity leave that will form part of the 52 week unpaid entitlement;
  - (ii) The 14 week period of paid maternity leave is inclusive of any public holidays or repealed Public Service days in lieu falling within that time;
  - (iii) The period of paid maternity leave can be extended by the employee taking double the leave on a half-pay basis and its effect is in accordance with clause 33.16.
- (c) An employee must take maternity leave in one continuous period with the exception of:
  - (i) special temporary employment or special casual employment pursuant to clause 40.14 – Employment During Unpaid Maternity leave; and
  - (ii) clause 40.9 – Unpaid Special Maternity Leave.

- (d) Except for leave provided under clause 42.4 (f) and clause 43 – Partner Leave of this Agreement, only one parent can proceed on maternity, adoption or other parent leave at any one time.
- (e) Where less than the 52 weeks’ maternity leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (f)
  - (i) Notwithstanding clause 40.5(c) above, paid maternity leave may be taken in more than one period by an employee who meets the requirements of clause 40.6(d).
  - (ii) Unpaid maternity leave may be taken in more than one continuous period where the employee undertakes special temporary employment or special casual employment in accordance with clause 40.14 – Employment During Unpaid Maternity Leave. In these circumstances, the provisions of clause 40.14 – Employment During Unpaid Maternity Leave shall apply.
- (g)
  - (i) Where both parents are employed in the Public Sector an entitlement to paid or unpaid maternity leave, adoption leave or other parent leave or parental leave provided for by another industrial agreement can be shared; and
  - (ii) the entitlement provided to the employees shall not exceed the paid maternity, adoption or other parent leave quantum for one employee or its half pay equivalent; and
  - (iii) the employees may only proceed on paid and/or unpaid maternity, adoption or other parent leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under clause 40.6(d). This does not prevent an employee from taking paid or unpaid partner leave as prescribed by clause 36 – Partner Leave of this Agreement.

#### 40.6 **Payment for Paid Maternity Leave**

- (a)
  - (i) Subject to clause 40.6(c) a full time employee proceeding on paid maternity leave is to be paid according to their ordinary working hours at the time of commencement of maternity leave. Shift and weekend penalty payments are not payable during paid maternity leave.
  - (ii) Subject to clause 40.6(c) payment for a part time employee is to be determined according to an average of the hours worked by the employee over the preceding twelve months; or their ordinary working hours at the time of commencement of maternity leave, exclusive of shift and weekend penalties, whichever is greater.
- (b) An employee may elect to receive pay in advance for the period of paid maternity leave at the time the maternity leave commences, or may elect to be paid the entitlement on a fortnightly basis over the period of the paid maternity leave.
- (c)
  - (i) An employee in receipt of a higher duties allowance for a continuous period of twelve months immediately prior to commencing paid maternity leave, is to

continue to receive the higher duties allowance for the first four weeks of paid maternity leave.

- (ii) An employee who is entitled to be paid higher duties allowance in accordance with clause 40.6(c)(i) and elects to take paid maternity leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only
- (d) An employee is entitled to remain on paid maternity leave if the pregnancy results in other than a live child; or the employee is incapacitated following the birth of the child; or the child dies or is hospitalised such that the employee or the employee's Partner is not providing principal care to the child.
- (e) Where an employee is on a period of half pay maternity leave and their employment is terminated through no fault of the employee, the employee shall be paid out any period of unused paid maternity leave equivalent to the period of leave the employee would have accessed had they been on full pay maternity leave when their termination occurred.
- (f) An employee eligible for a subsequent period of paid maternity leave as provided for under clause 40.2(a)(iii) shall be paid the maternity leave as follows:
  - (i) According to the employee's status, classification and ordinary working hours at the time of commencing the original period of paid maternity leave; and
  - (ii) Not affected by any period of special temporary employment or special casual employment undertaken in accordance with clause 40.14.

#### 40.7 Commencement of Maternity Leave

- (a) The period of paid leave can commence up to six weeks prior to the expected date of birth of the child.
- (b) The period of unpaid leave can commence up to six weeks prior to the expected date of birth of the child or earlier if the Employer and employee so agree, but most not start later than the birth of the child.
- (c)
  - (i) If the Employer has reason to believe that the continued performance of duties by a pregnant employee renders danger to herself, fellow employees or the public, the employee may be required to obtain and provide a medical certificate stating that the employee is fit to work in her present position for a stated period.
  - (ii) The Employer shall pay the fee for any such examination.
  - (iii) Where an employee is deemed to be unfit to work in her present position, the provisions of clause 40.8 – Modification of Duties and Transfer to a Safe Job may apply.
- (d)
  - (i) Where the pregnancy of an employee terminates other than by the birth of a living child, not earlier than 20 weeks before the expected date of the birth, the entitlement to paid maternity leave remains intact and subject to the eligibility requirements of this clause.

- (ii) Such paid maternity leave cannot be taken concurrently with any paid personal leave taken in this circumstance.
- (e) The period of paid maternity leave must be concluded within twelve months of the birth of the child.
- (f) (i) The Employer may, in exceptional circumstances, allow an employee to take paid maternity leave that will result in the employee being on paid maternity leave more than twelve months after the birth of the child.
- (ii) An Employer may require evidence that would satisfy a reasonable person that the circumstances warrant allowing the employee to take their period of paid maternity leave such that it would result in the employee being on paid maternity leave more than twelve months after the birth of the child.

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

- (a) (i) A pregnant employee may work part time in one or more periods whilst she is pregnant where she provides her Employer with a medical certificate from a medical practitioner advising that part time employment is, because of her pregnancy, necessary or preferable.
- (ii) The terms of part time employment undertaken in accordance with clause 40.8(a)(i) shall be in writing.
- (iii) Such employment shall be in accordance with clause 16 – Part Time Employment of this Agreement.
- (b) In the absence of an alternative requirement, and unless otherwise agreed between an Employer and Employee, an Employee shall provide their Employer with four weeks' written notice of an intention to:
  - (i) vary part time work arrangements made under clause 40.8 (a); or
  - (ii) revert to full time employment during the Employee's pregnancy.
- (c) An Employee reverting to full time employment in accordance with clause 40.8(b)(ii) will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the Employee's skill and abilities as the substantive position held immediately prior to undertaking part time employment.
- (d) If an Employee gives her Employer a medical certificate from a medical practitioner, or some other form of evidence that would satisfy a reasonable person, and it contains a statement to the effect that the Employee is fit to work, but that it is inadvisable for her to continue in her present position for a stated period because of:
  - (i) illness, or risks, arising out of her pregnancy; or
  - (ii) hazards connected with that position;

then the Employer must modify the duties of the position or alternatively transfer the Employee to a safe job at the same classification level for the period during which she is unable to continue in her present position.

- (e) If an Employee's Employer does not think it to be reasonably practicable to modify the duties of the position or transfer the Employee to a safe job:
  - (i) the Employee is entitled to be absent from the workplace on full pay for the period during which she is unable to continue in her present position.
  - (ii) An entitlement to be absent from the workplace on full pay as at subparagraph 40.8 (e)(i) applies to an eligible casual Employee.
  - (iii) An Employee who is absent from work pursuant to this subclause shall be paid the amount she would reasonably have expected to be paid if she had worked during that period.
- (f) An entitlement to be absent from the workplace on full pay is in addition to any leave entitlement the Employee has.
- (g) An entitlement to be absent from the workplace on full pay ends at the earliest of whichever of the following times is applicable:
  - (i) the end of the period stated in the medical certificate;
  - (ii) if the Employee's pregnancy results in the birth of a living child – the end of the day before the date of birth; or
  - (iii) if the Employee's pregnancy ends otherwise than with the birth of a living child – the end of the day before the end of the pregnancy.

#### 40.9 Unpaid Special Maternity Leave

- (a) A pregnant Employee is entitled to a period of unpaid special maternity leave if the Employee is not fit for work during that period because the Employee:
  - (i) has a pregnancy related illness; or
  - (ii) has been pregnant and the pregnancy ends within 28 weeks of the expected date of birth of the child otherwise than by a living child; and
  - (iii) has not utilised personal leave for the period.
- (b) An Employee must give the Employer notice of the taking of unpaid special maternity leave.
- (c) The notice must:
  - (i) be given to the Employer as soon as practicable (which may be a time after the leave has started); and
  - (ii) advise the Employer of the period, or expected period, of the leave.

- (d) An Employee who has given notice of the taking of unpaid special maternity leave must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for a reason specified in 40.9(a).
- (e) Without limiting 40.9(d), an Employer may require the evidence referred to in that subsection to be a medical certificate.
- (f) An Employee's entitlement to 12 months of unpaid maternity leave provided at 40.5 is not reduced by the amount of any unpaid special maternity leave taken by the Employee while the Employee was pregnant.

#### 40.10 Interaction with Other Leave Entitlements

- (a) An Employee proceeding on unpaid maternity leave may elect to substitute any part of that leave with accrued annual and/or accrued long service leave.
- (b) Where annual and/or long service leave is substituted that leave shall form part of the 52 weeks maternity leave entitlement.
- (c) An Employee proceeding on unpaid maternity leave may elect to substitute all or part of that leave with accrued time off in lieu of overtime, or accrued days off to which the Employee is entitled subject to the provisions of clause 26 – Overtime Allowance, Clause 22 – Hours of Work - Shift Employees and Clause 23 – Hours of Work – Non-Shift Work Employees of this Agreement, where applicable.
- (d) Personal leave is not payable on a period of paid or unpaid maternity leave.

#### 40.11 Extended Unpaid Maternity Leave

- (a) An Employee is entitled to apply for leave without pay following maternity leave (“extended unpaid maternity leave”) to extend their leave by up to two years.
- (b) Approval for an extension to unpaid maternity leave will be subject to all other available leave entitlements being exhausted.
- (c) Where both parents work for the Public Sector the total combined period of extended unpaid maternity, adoption and extended other parent leave shall not exceed two years.
- (d) The Employer is to agree to a request for extended unpaid maternity leave unless:
  - (i) the Employer is not satisfied that the request is genuinely based on the Employee’s parental responsibilities; or
  - (ii) agreeing to the request would have an adverse impact on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person.
- (e) The Employer is to give the Employee written notice of the Employer’s decision on a request for extended unpaid maternity leave under clause 40.11(a). If the request is refused, the notice is to set out the reasons for the refusal.

- (f) An Employee who believes their request for extended unpaid maternity leave under clause 40.11 has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.

#### 40.12 **Communication During Maternity Leave**

- (a) If the Employer makes a decision that will have a significant effect on the status, responsibility level, pay or location of an Employee's position whilst on maternity leave, the Employer must take all reasonable steps to give the Employee information about, and an opportunity to discuss, the effect of the decision on that position.
- (b) An Employee shall also notify the Employer of changes of address or other contact details that might affect the Employer's capacity to comply with clause 40.12(a).

#### 40.13 **Replacement Employee**

- (a) Should a Replacement Employee be engaged, the Replacement Employee is to be informed prior to engagement of the fixed-term nature of the employment and of the rights of the Employee, who is being replaced, including that the engagement may be subject to variation according to clause 40.4(d) and ability to extend unpaid maternity leave as provided for under clause 40.11.

#### 40.14 **Employment During Unpaid Maternity Leave**

- (a) Special Temporary Employment
  - (i) For the purposes of this subclause, "temporary" means employment of an intermittent nature; for a limited, specified period; and undertaken during unpaid maternity leave or extended unpaid maternity leave.
  - (ii) Notwithstanding any other provision of the maternity leave clause, an Employee may be employed by their Employer on a temporary basis provided that:
    - (aa) both parties agree in writing to the special temporary employment;
    - (bb) Public Service officers are only employed on a temporary basis in connection with their substantive office, post or position;
    - (cc) any such period of service shall not change the Employee's employment status in regard to their substantive employment; and
    - (dd) any period of special temporary employment shall count as qualifying service for all purposes under the Award and this Agreement.
- (b) Special Casual Employment
  - (i) Employees can be engaged on special casual employment during unpaid or extended unpaid maternity leave.



- (ii) For the purposes of clause 40.14, “casual” means employment on an hourly basis, for a period not exceeding four weeks in any period of engagement, for which a casual loading is paid. It excludes employment undertaken in accordance with clause 40.14(a) – Special Temporary Employment.
- (iii) An Employee can be engaged on special casual employment provided that:
  - (aa) both parties agree in writing to the special casual employment;
  - (bb) Employees are employed at the level commensurate to the level of the available position under this Agreement;
  - (cc) in the case of a fixed term contract Employee, the period of the casual employment is within the period of the current fixed term contract;
  - (dd) any such period of service shall not break the Employee’s continuity of service nor change the Employee’s employment status in regard to their substantive employment; and
  - (ee) any period of special casual employment shall not count as qualifying service other than with respect to entitlements a casual Employee would ordinarily be entitled to for any other purpose under any relevant award, agreement or industrial instrument.
- (c) The provisions of this clause only apply to employment during unpaid maternity leave, and extended unpaid maternity leave taken in conjunction with maternity leave as provided for in clause 40.11 – Extended Unpaid Maternity Leave.
- (d) An Employer cannot engage an Employee in special temporary employment or special casual employment whilst the Employee is on a period of paid maternity leave, annual leave, or long service leave taken concurrently with a period of unpaid maternity leave.
- (e) Effect of special temporary employment and special casual employment on unpaid maternity leave.
  - (i) Subject to clause 40.14(e)(ii), a period of special temporary employment or special casual employment shall be deemed to be part of the Employee’s period of unpaid maternity leave or extended unpaid maternity leave as originally agreed to by the parties.
  - (ii) An Employee who immediately resumes unpaid maternity leave or extended unpaid maternity leave following the conclusion of a period of special temporary employment or special casual employment:
    - (aa) is entitled, on written notice, to extend their period of unpaid maternity leave or extended unpaid maternity leave by the period of time in which they were engaged in special temporary employment or special casual employment; and

- (bb) shall give not less than four weeks' notice in writing to their Employer of the new date they intend to return to work and so conclude their period of maternity leave or extended unpaid maternity leave.
- (iii) An Employee who does not immediately resume their period of unpaid maternity leave or extended unpaid maternity leave at the conclusion of a period of special temporary employment or special casual employment cannot preserve the unused portion of leave for use at a later date.

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

- (a) (i) An Employee shall confirm their intention in writing to conclude their maternity leave not less than four weeks prior to the expiration of maternity leave or extended unpaid maternity leave.
- (ii) An Employee who intends to return to work on a modified basis in accordance with clause 40.15(d) shall advise their Employer of this intention by notice in writing not less than four weeks prior to the expiration of maternity leave or extended unpaid maternity leave.
- (b) An Employee on return to work following the conclusion of maternity leave or extended unpaid maternity leave will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the Employee's skill and abilities as the substantive position held immediately prior to proceeding on maternity leave.
- (c) Where an Employee was transferred to a safe job or was absent from the workplace on full pay as provided for in clause 40.8 – Modification of Duties and Transfer to a Safe Job, the Employee is entitled to return to the position occupied immediately prior to the transfer or their absence from the workplace on full pay.
- (d) Right to Return to Work on a Modified Basis
  - (i) An Employee may return on a part time or job share basis to the substantive position occupied prior to the commencement of leave or to a different position as determined by the Employer at the same classification level in accordance with the part time employment provisions of the Award and this Agreement.
  - (ii) An Employee may return on a modified basis that involves the Employee working on different days or at different times, or both; or on fewer days or for fewer hours or both, than the Employee worked immediately before starting maternity leave.
- (e) Right to Revert
  - (i) An Employee who has returned on a part time or modified basis in accordance with clause 40.15(d) may subsequently request permission from the Employer to resume working on the same basis as the Employee worked immediately before starting maternity leave or full time work at the same classification level.

- (ii) A request made under clause 40.15(e)(i) must be in writing and must be made at least four weeks before the day on which the Employee wishes to resume working on the same basis as the Employee worked immediately before starting maternity leave or full time work at the same classification level.
  - (iii) An Employer is to agree to a request to revert made under clause 40.15(e)(i) unless there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person.
  - (iv) An Employer is to give the Employee written notice of the Employer's decision on a request to revert under clause 40.15(e)(i). If the request is refused, the notice is to set out the reasons for the refusal
  - (v) An Employee who believes their request to revert under clause 40.15(e)(i) has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.
- (f) Employer Requirement to Revert
- (i) If, on finishing maternity leave, an Employee has returned to work on a modified basis in accordance with clause 40.15(d) the Employer may subsequently require the Employee to resume working on the same basis as the Employee worked immediately before starting maternity leave
  - (ii) A requirement can be made under clause 40.15(f)(i) only if:
    - (aa) the requirement is made on grounds relating to the adverse effect that the Employee continuing to work on a modified basis would have on the conduct of the operations or business of the Employer and those grounds would satisfy a reasonable person; or
    - (bb) the Employee no longer has a child who has not reached the compulsory education period as defined in section 6 of the *School Education Act 1999*.

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

- (a) (i) Paid maternity leave will count as qualifying service for all purposes under the Award and this Agreement.
- (ii) Qualifying service for any purpose under the Award or this Agreement is to be calculated according to the number of weeks of paid maternity leave that were taken at full pay or would have been had the Employee not taken paid maternity leave at half pay. Employees who take paid maternity leave on half pay do not accrue Award, agreement or other entitlements beyond those that would have accrued had they taken the leave at full pay.
- (b) (i) Absence on unpaid maternity leave or extended unpaid maternity leave shall not break the continuity of service of Employees.

- (ii) Where an Employee takes a period of unpaid maternity leave or extended unpaid maternity leave exceeding 14 calendar days in one continuous period, the entire period of such leave shall not be taken into account in calculating the period of service for any purpose under the Award, agreement or industrial instrument. Periods of unpaid leave of 14 days or less shall, however, count for service.
- (c) An Employee on maternity leave may terminate employment at any time during the period of leave by written notice in accordance with clause 15 – Contract of Service of this Agreement.
- (d) An Employer shall not terminate the employment of an Employee on the grounds of the Employee’s application for maternity leave or absence on maternity leave but otherwise the rights of the Employer in respect of termination of employment are not affected.

#### **41. ADOPTION LEAVE**

41.1 This clause replaces the parental leave provisions contained in clause 6.8 – Parental Leave of the Award.

##### **41.2 Eligibility**

- (a) (i) A permanent Employee, fixed term contract Employee or eligible casual employee is entitled to 52 weeks unpaid adoption leave on the placement of a child for adoption as provided for under this clause.
- (ii) The period of leave granted to a fixed term contract Employee shall not extend beyond the term of that contract.
- (iii) An Employee is eligible, without concluding their adoption leave and resuming duty, for subsequent periods of adoption leave, including paid adoption leave, in accordance with the provisions of this clause.
- (b) A permanent or fixed term contract Employee must have completed twelve months’ continuous service in the Public Sector immediately preceding the adoption leave in order to receive the forms of paid leave as provided for by this clause.
- (c) An Employee on a period of leave without pay unrelated to maternity leave, adoption leave or other parent leave must resume duties prior to being entitled to paid adoption leave in accordance with the eligibility entitlements.
- (d) An eligible casual employee as defined under clause 40.3 is entitled to unpaid adoption leave as provided by this clause.

##### **41.3 General entitlement to Adoption Leave**

- (a) Subject to the requirements of this clause an eligible Employee is entitled to 52 weeks unpaid adoption leave.

- (b) (i) Subject to the requirements of this clause an eligible Employee is entitled to 14 weeks paid adoption leave that will form part of the 52 week unpaid entitlement.
- (ii) The 14 week period of paid adoption leave is inclusive of any public holidays or repealed public service days in lieu falling within that time.
- (iii) The period of paid adoption leave can be extended by the Employee taking double the leave on a half-pay basis and its effect is in accordance with clause 40.16 – Effect of Maternity Leave on the Contract of Employment.
- (c) An Employee must take adoption leave in one continuous period with the exception of special temporary employment or special casual employment pursuant to clause 40.14 – Employment During Unpaid Maternity Leave.
- (d) Except for leave provided under clause 42.4 (f) and clause 43 – Partner Leave of this Agreement only one parent can proceed on maternity, adoption or other parent leave at any one time.
- (e) Where less than the 52 weeks’ adoption leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (f) Unpaid adoption leave may be taken in more than one continuous period where the Employee undertakes special temporary employment or special casual employment in accordance with the provisions at clause 40.14 – Employment During Unpaid Maternity Leave. In these circumstances, the provisions of clause 40.14 – Employment During Unpaid Maternity Leave, shall apply.
- (g) (i) Where both parents are employed in the Public Sector an entitlement to paid or unpaid maternity leave, adoption leave or other parent leave or parental leave provided for by another industrial agreement can be shared;
- (ii) the entitlement provided to the Employees shall not exceed the paid maternity, adoption or other parent leave quantum for one Employee or its half pay equivalent; and
- (iii) the employees may only proceed on paid and/or unpaid maternity, adoption or other parent leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under clause 40.6 (d). This does not prevent an Employee from taking paid or unpaid partner leave as prescribed by clause 43 – Partner Leave of this Agreement

#### 41.4 Payment for Paid Adoption Leave

- (a) (i) Subject to clause 41.4(c) a full time Employee proceeding on paid adoption leave is to be paid according to their ordinary working hours at the time of commencement of adoption leave. Shift and weekend penalty payments are not payable during paid adoption leave.
- (ii) Subject to clause 41.4(c), payment for a part time Employee is to be determined according to an average of the hours worked by the Employee over the preceding twelve months; or their ordinary working hours at the time of

commencement of adoption leave, exclusive of shift and weekend penalties, whichever is greater.

- (b) An Employee may elect to receive pay in advance for the period of paid adoption leave at the time the adoption leave commences, or may elect to be paid the entitlement on a fortnightly basis over the period of the paid adoption leave.
- (c)
  - (i) An Employee in receipt of a higher duties allowance for a continuous period of twelve months immediately prior to commencing paid adoption leave, is to continue to receive the higher duties allowance for the first four weeks of paid adoption leave.
  - (ii) An Employee who is entitled to be paid higher duties allowance in accordance with clause 41.4(c)(i) and elects to take paid adoption leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.
- (d) Where an Employee is on a period of half pay adoption leave and their employment is terminated through no fault of the Employee, the Employee shall be paid out any period of unused paid adoption leave equivalent to the period of leave the Employee would have accessed had they been on full pay adoption leave when their termination occurred.
- (e) An Employee eligible for a subsequent period of paid adoption leave as provided for under clause 41.2(a)(iii) shall be paid the adoption leave as follows:
  - (i) According to the Employee's status, classification and ordinary working hours at the time of commencing the original period of paid adoption leave; and
  - (ii) Not affected by any period of special temporary employment or special casual employment undertaken in accordance with clause 41.14.
- (f) Where less than the 52 weeks' adoption leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (g) An eligible casual employee provided for under clause 41.2(d) is not entitled to paid adoption leave.
- (h) The "day of placement", in relation to the adoption of a child by an Employee, means the earlier of the following days:
  - (i) the day on which the Employee first takes custody of the child for the adoption; or
  - (ii) the day on which the Employee starts any travel that is reasonably necessary to take custody of the child for the adoption.
- (i) An Employee is not entitled to adoption-related leave unless the Child that is, or is to be, placed with the Employee for adoption:
  - (i) is, or will be, under 16 years old as at the day of placement, or the expected day of placement, of the child;

- (ii) has not, or will not have, lived continuously with the Employee for a period of six months or more as at the day of placement, or the expected day of placement, of the child; and
  - (iii) is not (otherwise than because of the adoption) a child or stepchild of the Employee or the Employee's Partner.
- (j)
- (i) An Employee seeking to adopt a child is entitled to two days' unpaid leave to attend interviews or examinations required for the adoption procedure.
  - (ii) An Employee working or residing outside of the Perth metropolitan area is entitled to an additional day's unpaid leave.
  - (iii) The Employee may take any paid leave entitlement to which the Employee is entitled to in lieu of this leave.
- (k)
- (i) If an application for adoption leave has been granted for the adoption of a child, which does not eventuate, then the period of paid or unpaid adoption leave is terminated.
  - (ii) Employees may take any other paid leave entitlement to which they are entitled in lieu of the terminated adoption leave or return to work.

#### 41.5 Commencement of Adoption Leave

- (a) An eligible Employee can commence adoption leave from the day of placement of the child.
- (b) The period of paid adoption leave must conclude within twelve months of the day of placement except under exceptional circumstances as provided under clause 40.7(e) of the maternity leave clause, but as it relates to adoption leave.

#### 41.6 Notice and Variation Requirements

- (a) An Employee shall give no less than eight weeks' written notice to the Employer of:
  - (i) the date the Employee proposes to commence paid or unpaid adoption leave; and
  - (ii) the period of leave to be taken.
- (b) An Employee is not in breach of clause 41.6(a) by failing to give the required period of notice if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.
- (c) An Employee proceeding on adoption leave may elect to take a shorter period of adoption leave to that provided by this clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks' written notice is provided.

#### 41.7 Other Provisions

The following provisions, as provided under clause 40 – Maternity Leave of this Agreement, have application to adoption leave:

- (a) clause 40.10 – Interaction with Other Leave Entitlements;
- (b) clause 40.11 – Extended Unpaid Maternity Leave;
- (c) clause 40.12 – Communication During Maternity Leave;
- (d) clause 40.13 – Replacement Employee;
- (e) clause 40.14 – Employment During Unpaid Maternity Leave;
- (f) clause 40.15 – Return to Work on Conclusion of Maternity Leave; and
- (g) clause 40.16 – Effect of Maternity Leave on the Contract of Employment.

#### 42. OTHER PARENT LEAVE

42.1 This clause replaces the Parental Leave provisions, contained in clause 6.8 – Parental Leave of the Award.

42.2 For the purposes of this clause:

- (a) The “Other Parent” may or may not be the biological parent, and does not necessarily have to be the Partner of the birth parent and has a responsibility for the care of the child.
- (b) The “primary care giver” means the Employee will assume the principal role for the care and attention of a child aged under twelve months or a newly adopted child
- (c) Only one person can be the primary care giver of the child at any one time.

#### 42.3 Eligibility

- (a)
  - (i) Where an eligible Employee, other than an Employee entitled to paid maternity leave under clause 40.3 or adoption leave under clause 41.2, is the other parent and has a responsibility for the care of the child under the age of twelve months or a newly adopted child the provisions of this clause will apply.
  - (ii) An Employee must be the primary care giver of the child to access paid other parent leave.
  - (iii) An employer may require an employee to provide confirmation of their primary carer status with evidence that would satisfy a reasonable person.
- (b) An eligible casual employee, as defined under clause 40.3 of the maternity leave clause, is entitled to unpaid other parent leave as provided by this clause.



- (c) (i) A permanent Employee, fixed term contract Employee or eligible casual employee is entitled to 52 weeks unpaid other parent leave in accordance with this clause.
- (ii) An eligible permanent or fixed term contract Employee is entitled to 14 weeks' paid other parent leave in accordance with this clause if they are the primary caregiver of the child.
- (iii) An Employee employed on a fixed term contract shall have the same entitlement to other parent leave; however, the period of leave granted shall not extend beyond the term of that contract.
- (iv) An Employee is eligible, without concluding their other parent leave and resuming duty, for subsequent periods of other parent leave, including paid other parent leave, in accordance with the provisions of this clause.
- (d) A permanent or fixed term contract Employee must have completed twelve months continuous service in the Public Sector as defined under the *Public Sector Management Act 1994* immediately preceding the other parent leave in order to receive the forms of paid leave as provided for by this clause.
- (e) An Employee on a period of leave without pay unrelated to maternity leave, adoption leave or other parent leave must resume duties prior to being entitled to paid other parent leave in accordance with the eligibility entitlements.

#### 42.4 General Entitlement to Other Parent Leave

- (a) Subject to the requirements of this clause an eligible Employee is entitled to 52 weeks unpaid other parent leave.
- (b) (i) Subject to the requirements of this clause an eligible Employee is entitled to 14 weeks paid other parent leave that will form part of the 52 week unpaid entitlement if they are the primary caregiver of the child.
- (ii) The 14 week period of paid other parent leave is inclusive of any public holidays or repealed public service days in lieu falling within that time.
- (iii) The period of paid other parent leave can be extended by the Employee taking double the leave on a half-pay basis and its effect is in accordance with clause 40.16 – Effect of Maternity Leave on the Contract of Employment.
- (c) An Employee must take other parent leave in one continuous period with the exception of special temporary employment or special casual employment pursuant to clause 40.14 – Employment During Unpaid Maternity Leave.
- (d) Where less than the 52 weeks' other parent leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (e) Except for leave provided under clause 42.4(f) and clause 43 – Partner Leave of this Agreement, only one parent can proceed on maternity, adoption or other parent leave at any one time.

- (f) (i) An Employee, whose Partner is not employed, or is employed and does not intend to take unpaid parental related leave for a child under the age of twelve months or placement of a newly adopted child as provided for in clause 41– Adoption Leave of this Agreement, may access unpaid other parent leave where:
  - (aa) where the Employee will have a responsibility for the care of a child; and
  - (bb) the Partner has responsibility for the care of the child for the period between the date of birth or placement of the child and the start date of the Employee’s leave.
- (ii) The leave application must ensure that the leave commences within 12 months of the date of birth or placement of the child.
- (iii) This entitlement forms part of an Employee’s 52 week unpaid Other Parent leave entitlement and may not be extended beyond 24 months after the date of birth or date of placement of a newly adopted child as provided for in clause 41 – Adoption Leave of this Agreement.
- (g) Unpaid other parent leave may be taken in more than one continuous period where the Employee undertakes special temporary employment or special casual employment in accordance with the provisions at clause 40.14 – Employment During Unpaid Maternity Leave. In these circumstances, the provisions of clause 40.14 – Employment During Unpaid Maternity Leave, shall apply.
- (h) (i) Where both parents are employed in the Public Sector an entitlement to paid or unpaid maternity leave, adoption leave or other parent leave or parental leave provided for by another industrial agreement can be shared; and
  - (ii) the entitlement provided to the Employees shall not exceed the paid maternity, adoption or other parent leave quantum for one Employee or its half pay equivalent; and
  - (iii) the employees may only proceed on paid and/or unpaid maternity, adoption or other parent leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under clause 42.4(i). This does not prevent an Employee from taking paid or unpaid partner leave as prescribed by clause 43 – Partner Leave of this Agreement.
- (i) If both parents work in the Public Sector and the mother is able to remain on paid parental leave despite her incapacity to be her child’s primary giver, the Employees may choose which parent will access the paid leave.
  - (i) If the mother chooses to remain on paid maternity leave, the other parent may access unpaid other parent leave for the period they are their child’s primary care giver.

- (ii) If the other parent chooses to be the primary care giver of the child and accesses paid other parent leave the mother may access unpaid maternity leave.
- (iii) Where the other parent accesses paid leave in accordance with this subclause, the mother is entitled to resume paid maternity leave if/when she becomes her child's primary care giver, subject to the provisions of clause 42.4(i).
- (j) An eligible casual employee provided for under clause 42.3(b) is entitled to unpaid other parent leave only.

#### 42.5 Payment for Paid Other Parent Leave

- (a) (i) Subject to clause 42.4(c) a full time Employee proceeding on paid other parent leave is to be paid according to their ordinary working hours at the time of commencement of other parent leave. Shift and weekend penalty payments are not payable during paid other parent leave.
- (ii) Subject to clause 42.4(c) payment for a part time Employee is to be determined according to an average of the hours worked by the Employee over the preceding twelve months; or their ordinary working hours at the time of commencement of other parent leave, exclusive of shift and weekend penalties, whichever is greater.
- (b) An Employee may elect to receive pay in advance for the period of paid other parent leave at the time the other parent leave commences, or may elect to be paid the entitlement on a fortnightly basis over the period of the paid other parent leave.
- (c) (i) An Employee in receipt of a higher duties allowance for a continuous period of twelve months immediately prior to commencing paid other parent leave, is to continue to receive the higher duties allowance for the first four weeks of paid other parent leave.
- (ii) An Employee who is entitled to be paid higher duties allowance in accordance with clause 42.5(c)(i) and elects to take paid other parent leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.
- (d) An Employee is entitled to remain on Paid other parent leave where the mother is incapacitated following the birth of the child; or the child dies or is hospitalised such that the Employee or the Employee's Partner is not providing principal care to the child.
- (e) Where an Employee is on a period of half pay other parent leave and their employment is terminated through no fault of the Employee, the Employee shall be paid out any period of unused paid other parent leave equivalent to the period of leave the Employee would have accessed had they been on full pay other parent leave when their termination occurred.
- (f) An Employee eligible for a subsequent period of paid other parent leave as provided for under clause 42.3(c)(iv) shall be paid the other parent leave as follows:

- (i) According to the Employee's status, classification and ordinary working hours at the time of commencing the original period of paid other parent leave; and
  - (ii) Not affected by any period of special temporary employment or special casual employment undertaken in accordance with clause 40.14 – Employment During Unpaid Maternity Leave.
- (g) Where less than the 52 weeks' other parent leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (h) An eligible casual employee provided for under clause 42.2(b) is not entitled to paid other parent leave.

#### 42.6 Commencement of Other Parent Leave

- (a) An eligible Employee who has a responsibility for the care of the child can commence other parent leave from the child's birth date or placement, or a later date nominated by the Employee.
- (b) The period of paid other parent leave must conclude within twelve months of the birth or placement of the child except under exceptional circumstances as per clause 40.7(e) of the maternity leave clause, but as it relates to other parent leave.

#### 42.7 Notice and Variation Requirements

- (a) An Employee shall give no less than eight weeks' written notice to the Employer of:
  - (i) the date the Employee proposes to commence paid or unpaid other parent leave; and
  - (ii) the period of leave to be taken.
- (b) (i) An Employee is not in breach of clause 42.6(a) by failing to give the required period of notice if such failure is due to the requirement of the Employee to take on the role of primary care giver due to the birth parent or other adoptive parent being incapacitated to take on the principal caring role.
- (ii) In such circumstances the Employee shall give notice as soon as reasonably possible.
- (c) The granting of leave under this clause is subject to the Employee providing the Employer with evidence that would satisfy a reasonable person detailing the reasons for and the circumstances under which the leave application is made and the relationship the Employee has with the child.

- (d) An Employee proceeding on other parent leave may elect to take a shorter period of Other Parent Leave to that provided by this clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks' written notice is provided.

#### 42.8 Other Provisions

The following provisions, as provided under clause 40 – Maternity Leave of this Agreement have application to other parent leave:

- (a) clause 40.10 – Interaction with Other Leave Entitlements;
- (b) clause 40.11 – Extended Unpaid Maternity Leave;
- (c) clause 40.12 – Communication During Maternity Leave;
- (d) clause 40.13 – Replacement Employee;
- (e) clause 40.14 – Employment During Unpaid Maternity Leave;
- (f) clause 40.15 – Return to Work on Conclusion of Maternity Leave; and
- (g) clause 40.16 – Effect of Maternity Leave on the Contract of Employment.

#### 43. PARTNER LEAVE

43.1 An Employee who is not taking maternity leave, adoption leave or other parent leave is entitled to one week's partner leave as prescribed by this clause in respect of the:

- (a) birth of a child to the Employee's Partner; or
- (b) adoption of a child who is not the child or the stepchild of the Employee and/or the Employee's Partner; is under the age of 16; and has not lived continuously with the Employee for six months or longer.

43.2 Subject to available credits, the entitlement to one week's partner leave may be taken as:

- (a) paid personal, subject to clause 43.7;
- (b) paid annual and/or long service leave;
- (c) paid accrued time off in lieu of overtime or, subject to the provisions of clause 22.4 – Accrued Days Off of this Agreement; and/or
- (d) unpaid partner leave.

43.3 Partner leave must be taken immediately following the birth or, in the case of adoption, the placement of the child.

- 43.4 Subject to clause 43.5, the taking of partner leave by an Employee shall have no effect on their Partner's entitlement, where applicable, to access paid maternity leave as provided by clause 40 – Maternity Leave, paid adoption leave as provided for by clause 41 – Adoption Leave or paid other parent leave as provided for by clause 42 – Other Parent Leave of this Agreement.
- 43.5 Where applicable, unpaid partner leave taken by an Employee shall be counted as part of the Employee's other parent leave entitlement.
- 43.6 Any public holidays or days in lieu of the repealed public service holidays that fall during partner leave shall be counted as part of the partner leave and do not extend the period of partner leave.
- 43.7 The taking of accrued time off in lieu of overtime or accrued days off for partner leave purposes shall be subject to the provisions of clause 26 – Overtime and clause 22 – Hours of Work - Shift Employees and clause 23 – Hours of Work - Non-Shift Work Employees of this Agreement, where applicable.

#### **Personal Leave**

- 43.8 (a) An Employee may access their accrued personal leave entitlements for partner leave purposes, subject to the requirements of the *Minimum Conditions of Employment Act 1993* being met. That is, a minimum of 76 hours personal leave must be kept available for an Employee to access for the purposes of an Employee's entitlement to paid leave for illness or injury; or carer's leave.
- (b) The right to access personal leave credits for partner leave purposes does not affect an Employee's right to take more than five days personal leave for the purposes provided for in clause 30 – Personal Leave of this Agreement.

#### **Right to Request Additional Unpaid Partner Leave**

- 43.9 (a) The total period of partner leave provided by this clause shall not exceed eight weeks.
- (b) An Employee is entitled to request an extension to the period of unpaid partner leave up to a maximum of eight weeks. The additional weeks' leave shall be unpaid and the eight week maximum is inclusive of any period of partner leave already taken in accordance with clause 43.2.
- 43.10 (a) The extended unpaid partner leave may be taken in separate periods, but, unless the Employer agrees, each period must not be shorter than two weeks.
- (b) The period of extended unpaid partner leave must be concluded within twelve months of the birth or placement of the child.
- 43.11 The Employer is to agree to an Employee's request to extend their unpaid partner leave made under clause 43.9(b) unless:
- (a) having considered the Employee's circumstances, the Employer is not satisfied that the request is genuinely based on the Employee's parental responsibilities;  
or

- (b) there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person. These grounds include, but are not limited to:
  - (i) cost;
  - (ii) lack of adequate replacement staff;
  - (iii) loss of efficiency; and
  - (iv) impact on the production or delivery of products or services by the Employer.

43.12 The Employer is to give the Employee written notice of the Employer's decision on a request to extend their unpaid partner leave. If the Employee's request is refused, the notice is to set out the reasons for the refusal.

43.13 An Employee who believes their request to extend unpaid partner leave has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.

43.14 Where an Employer agrees to an Employee's request to extend their period of unpaid partner leave under clause 43.9(b), the Employer must allow an Employee to elect to substitute any part of that period of unpaid partner leave with accrued annual leave, long service leave, time off in lieu of overtime, or, subject to the provisions of clause 22.4 – Accrued Days Off of this Agreement.

43.15 An Employee on unpaid partner leave is not entitled to paid personal leave.

#### **Notice**

43.16 (a) The Employee shall give not less than four weeks' notice in writing to the Employer of the date the Employee proposes to commence partner leave, stating the period of leave to be taken.

(b) An Employee who has given their Employer notice of their intention to take partner leave shall provide the Employer with a medical certificate from a registered medical practitioner naming the Employee, or the Employee's Partner, confirming the pregnancy and the estimated date of birth.

#### **Effect of Partner Leave on the Contract of Employment**

43.17 The provisions of clause 40.16 of the maternity leave clause concerning the effect of maternity leave on the contract of employment shall apply to Employees accessing partner leave, with such amendment as necessary.

#### **Eligible Casual Employees**

43.18 An eligible casual employee, as defined in clause 40.3 – Maternity Leave, is only entitled to unpaid partner leave.

#### **44. UNPAID GRANDPARENTAL LEAVE**

44.1 For the purposes of this clause “primary care giver” means the Employee who will assume the principal role for the care and attention of a grandchild.

44.2 An Employee is entitled to a period of up to 52 weeks continuous unpaid grandparental leave in respect of the:

- (a) birth of a grandchild of the Employee; or
- (b) adoption of a grandchild of the Employee, being a child who is not the grandchild or grand-stepchild of the Employee, is under the age of five and has not lived continuously with its adoptive parents for six months or longer.

#### **44.3 Primary Care Giver Status**

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

#### **44.4 Commencement, Notice and Variation of Leave**

- (a) Commencement of unpaid grandparental leave may occur any time within 24 months following the birth or placement of the Employee’s Grandchild.
- (b) The Employee shall give not less than four weeks’ notice in writing to the Employer of the date the Employee proposes to commence unpaid grandparental leave, stating the period of leave to be taken.
- (c) The notice period in clause 44.4(b) may be waived by the Employer in exceptional circumstances.

44.5 An Employee may request and an Employer may agree to an Employee taking grandparental leave on a part time basis provided:

- (a) the Employee is their grandchild’s primary care giver on those days for which care is provided by the Employee; and
- (b) the Employee’s leave concludes no later than 52 weeks after the commencement of the period of grandparental leave.



#### 44.6 Other Entitlements

- (a) The following provisions contained in clause 33 – Maternity Leave of this Agreement shall be read in conjunction with this clause, with such amendment as is necessary.
  - (i) clause 40.11 – Communication During Maternity Leave.
  - (ii) clause 40.12 – Replacement Employee.
- (b) clauses 40.14(a)(ii) and (b) – Return to Work on Conclusion of Maternity Leave.
- (c) clause 40.15 – Effect of Maternity Leave on the Contract of Employment.

44.7 The entitlement to grandparental leave is as prescribed in this clause. Other than as specified in clause 44.6, an Employee has no entitlement to the provisions contained in clause 40 – Maternity Leave of this Agreement with respect to the birth or adoptive placement of their grandchild.

#### 45. SUPERANNUATION ON UNPAID PARENTAL LEAVE

45.1 In this clause, “unpaid parental leave” means:

- (a) unpaid maternity leave, which includes unpaid maternity leave, unpaid special maternity leave and extended unpaid maternity leave under clause 40;
- (b) unpaid adoption leave under clause 41; and
- (c) unpaid other parent leave under 42 of this Agreement.

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

45.3 Superannuation contributions made under this clause will be calculated:

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

- (iii) for eligible casual employees – an average of the hours worked by the eligible casual employee over the preceding 12 months; exclusive of shift and weekend penalties.

45.4 Superannuation contributions will be paid:

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

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

**PART 7 – ALLOWANCES**

**46. FIRST AID ALLOWANCE**

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

- (a) ‘appointed’ means the Employer has formally assigned an Employee, who is suitably qualified in first aid, to the position of first aid officer and the Employee has agreed to take on the responsibilities of providing first aid in the workplace, as determined by the Employer;
- (b) ‘deputy first aid officer’ means an Employee who has been appointed by the Employer to take on first aid responsibilities in a workplace when the first aid officer is unable to do so;
- (c) ‘suitably qualified in first aid’ means holding a current statement of attainment that satisfies the national training requirement HLTAID011 – Provide First Aid. This includes, but is not limited to, the successful completion of the two day Provide First Aid – St John Ambulance Association; or the Provide First Aid – Australian Red Cross Society training courses;
- (d) ‘workplace’ means the direct area in which the Employee has been employed to work in the ordinary course of their employment.

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

Effective date	13 June 2021
Rate (per hour)	\$0.32

*The hourly rate is calculated based as 1 per cent of the gross hourly salary of a level 1.4 of the applicable year as per Schedule 2 – General Division Salaries of the Public Sector CSA Agreement 2021.*

46.3 An eligible part time Employee is entitled to this allowance on a pro rata basis.

- 46.4 The first aid allowance shall be paid to either the appointed first aid officer or the deputy first aid officer in a workplace. The deputy first aid officer shall not be paid the first aid allowance for any period in which the allowance is paid to the appointed first aid officer.
- 46.5 A deputy first aid officer is to be paid the first aid allowance where the Employer has agreed to them taking on the first aid responsibilities in a workplace due to the inability of the appointed first aid officer to do so. For example, where the appointed first aid officer is on annual or long service leave, or extended personal leave.

#### **47. HIGHER DUTIES ALLOWANCE**

- 47.1 This clause shall replace clause 5.1 – Higher Duties Allowance of the Award.
- 47.2 A non-shift Employee who is directed by the Employer to act in an office which is classified higher than the Employee's own substantive office and who performs the full duties and accepts the full responsibility of the higher office for a continuous period of five consecutive working days or more, shall, subject to the provisions of this clause, be paid an allowance equal to the difference between the Employee's own salary and the salary the Employee would receive if the Employee was permanently appointed to the office in which the Employee is so directed to act.
- 47.3 A shift Employee who is directed by the Employer to act in an office which is classified higher than the Employee's own substantive office and who performs the full duties and accepts the full responsibility of the higher office for a continuous period of six consecutive hours or more, shall, subject to the provisions of this clause, be paid an allowance equal to the difference between the Employee's own salary and the salary the Employee would receive if the Employee was permanently appointed to the office in which the Employee is so directed to act.
- 47.4 Where the full duties of a higher office are temporarily performed by two or more Employees they shall each be paid an allowance as determined by the Employer.
- 47.5 An Employee who is directed to act in a higher classified office but who is not required to carry out the full duties of the position and/or accept the full responsibilities, shall be paid such proportion of the allowance provided for in clause 47.2 or 47.3, whichever is applicable, as the duties and responsibilities performed bear to the full duties and responsibilities of the higher office. Provided that the Employee shall be informed, prior to the commencement of acting in the higher classified office, of the duties to be carried out, the responsibilities to be accepted and the allowance to be paid.
- 47.6 The allowance paid may be adjusted during the period of higher duties.
- 47.7 Where an Employee who has qualified for payment of higher duties allowance under this clause is required to act in another office or other offices classified higher than the Employee's own for periods less than the relevant period specified in clause 44.2 or 44.3, whichever is applicable, without any break in acting service, such Employee shall be paid a higher duties allowance for such periods: provided that payment shall be made at the highest rate the Employee has been paid during the term of continuous acting or at the rate applicable to the office in which the Employee is currently acting – whichever is the lesser.

- 47.8 Where an Employee is directed to act in an office which has an incremental range of salaries such an Employee shall be entitled to receive an increase in the higher duties allowance equivalent to the annual increment the Employee would have received had the Employee been permanently appointed to such office; provided that acting service with allowances for acting in offices for the same classification or higher than the office during the 18 months preceding the commencement of such acting shall aggregate as qualifying service towards such an increase in the allowance.
- 47.9 Where an Employee who is in receipt of an allowance granted under this clause and has been doing so for a continuous period of twelve months or more, proceeds on any period of paid leave and:
- (a) resumes in the office immediately on return from leave, the Employee shall continue to receive the allowance for the period of leave; or
  - (b) Does not resume in the office immediately on return from leave, the Employee shall continue to receive the allowance for the period of leave accrued during the period of higher duties.
- 47.10 Where an Employee who is in receipt of an allowance granted under this clause for less than twelve months proceeds on a period of paid leave, whether in excess of the normal entitlement or not, the Employee shall continue to receive the allowance for the period of normal leave provided that:
- (a) during the Employee's absence, no other Employee acts in the office in which the Employee was acting immediately prior to proceeding on leave; and
  - (b) the Employee resumes in the office immediately on return from leave.
- 47.11 For the purpose of clause 47.10, 'normal leave' means the period of paid leave an Employee would accrue in twelve months. It shall also include any public holidays and leave in lieu accrued during the preceding twelve months taken in conjunction with such paid leave.
- 47.12 **Part Time Higher Duties Allowance Arrangements**
- (a) Where a part time Employee acts in a higher office, the allowance shall be payable after the completion of 38 hours service in that position. The 38 hours service in the higher position must be worked consecutively according to the hours the part time Employee normally works.
  - (b) Where the higher office is a part time position, the allowance shall be payable after the completion of 38 hours service in that position. The 38 hours service in the higher position must be worked consecutively according to the normal working hours of the part time position for which the allowance is being paid.

## **48. COMMUTED ALLOWANCES**

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

48.2 The parties have agreed that the quantum of the commuted shift allowance be 19%, effective the date of registration of this Agreement.

### **48.3 Review of the Existing Commuted Shift Work Allowance**

(a) The parties have agreed that the quantum of the commuted shift allowance be reviewed again as at the amalgamation of the two detention centre sites.

(b) Should any review of the agreed commuted allowance during the life of this Agreement result in a change to the commuted shift allowance quantum or to the application of the commuted shift work allowance then the change will be effective from the beginning of the first pay period commencing on or after the commencement date of the agreed change. Any change will be incorporated into a replacement industrial agreement, a new award, an Award variation, or an order of the WAIRC in accordance with clause 7.3 – No Further Claims of this Agreement.

48.4 If as a result of the review the parties cannot reach agreement on any proposed changes to the commuted shift work allowance or to its application the parties reserve their rights at any time to progress the matter in accordance with clause 62 – Dispute Settlement Procedure of this Agreement.

48.5 Non-shift work Employees do not access the commuted shift work allowance provided for in clause 48.2.

## **PART 8 WORKFORCE MANAGEMENT**

### **49. OCCUPATIONAL SAFETY AND HEALTH REPRESENTATIVES RECORDS**

49.1 The Employer shall maintain an Occupational Safety and Health (OSH) Representative Register (Register).

49.2 The Register is to record the following information for each OSH representative in the Department/Organisation:

(a) name;

(b) work branch/division (as appropriate);

(c) work location;

(d) job title/occupation;

(e) date of election as an OSH representative; and

(f) training details on completion of relevant OSH training courses, including initial and refresher training dates.

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

49.4 The Register is to be submitted to Government Sector Labour Relations on 31 January each year, for the previous year.

## 50. REDEPLOYMENT AND REDUNDANCY

- 50.1 The parties acknowledge that the *Public Sector Management Act 1994* (PSMA) and the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* (Regulations) provide the legislative framework for redeployment and redundancy for all Employees covered by this Agreement. If the provisions of this Agreement and the Regulations are inconsistent, the provision of the Regulations shall prevail.
- 50.2 The Employer and prospective Employer will assess the Suitability of a Surplus employee broadly which includes, but is not limited to:
- (a) acknowledging that the Employee's classification level illustrates core competencies for that classification level;
  - (b) providing sufficient weight to the Employee's knowledge, skills and experience; and
  - (c) recognising the transferability of skills to roles where a direct fit may not exist.
- 50.3 The Employer and prospective Employer will seek to place Surplus employees in suitable positions in accordance with clause 50.2.
- 50.4 The Employer will provide Surplus employees with direct access to priority vacancies through the online Recruitment Advertising Management System.
- 50.5 The Employer will provide Surplus employees with case management in line with the Public Sector Commission's Redeployment and Redundancy Guidelines and the Public Sector Commission's Redeployment and Redundancy Guidelines Appendix A – Case Management or any revised arrangement subsequent to the review of the redeployment and redundancy provisions. The Employer will ensure that Surplus employees are provided with an appropriately skilled case manager/s, a skills audit and continual support to find Suitable employment.
- 50.6 Upon notification of registration, the Employer shall provide an Employee who is notified of the Employer's intention to register them under regulation 18 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* with the written reason/s for the intended registration and the possible employment, placement and training options available to them.
- 50.7 Where the Employer is able to do so consistent with Commissioner's Instruction No. 12 – Redeployment and Redundancy, the Employer may Suspend the Redeployment period of a Registered employee for the duration that the Employee is participating in retraining, a secondment or other employment placement arrangement. Where suspension of the total duration would exceed the allowable duration under Commissioner's Instruction No. 12 – Redeployment and Redundancy, the Employer may Suspend the Redeployment period for the portion allowable.
- 50.8 The Employer will notify the Union prior to a Registered employee entering the last three months of their Redeployment period.

## 51. WORKLOAD MANAGEMENT

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

- (n) exit information regarding workload if raised; and
  - (o) summary information on the results of employee workload surveys if conducted.
- 51.6 Where Employee performance issues are identified these will be managed in accordance with the Agency's performance management policy and should take into account:
- (a) training and development;
  - (b) application of skill and competencies;
  - (c) capacity to perform at a required level;
  - (d) individual accountability; and
  - (e) communication and feedback.
- 51.7 With the exception of identified Employee performance issues, any workload issues, including workload indicators and the associated monitoring and recording of those indicators, shall be dealt with as a function of the JCC.
- 51.8 Any disputes in relation to this clause will be resolved in accordance with clause 62 – Dispute Settlement Procedure of this Agreement.
- 51.9 Where potential workload issues are identified by the Union or the Employer, a review team will be convened within 21 days of a written request from either party. The review team will be made up of representatives nominated by the Employer and the Union.
- 51.10 Once established, the review team will conduct a workload survey of affected Employees covered by this Agreement.
- 51.11 The review team will determine the content and scope of the workload survey based upon relevant criteria stated in clause 51.5.
- 51.12 A workload survey may only be conducted where one has not been completed in the previous 12 months.
- 51.13 The collated results of the survey, together with the report outlining the findings of the review team, will be provided to the parties to the Agreement within two months of the commencement of the survey.
- 51.14 Broader consultation on the workload survey results, and the findings of the review team may be undertaken through the JCC.

## **52. WORKPLACE TRAINING**

- 52.1 The Employer is committed to the ongoing training and skill development of Employees. All Employees will be provided with training that enables them to effectively undertake the requirements of their position, including duties and powers in accordance with section 11B and 11C of the *Young Offenders Act 1994*.



- 52.2 The Employer is committed to providing all Employees with appropriate training, as determined by the Employer in consultation with the Union, that ensures the safety and security of Employees, visitors, and detainees.
- 52.3 The Employer will ensure that, prior to any Employee undertaking a primary response team, intensive support unit, recovery or similar role or duties, the Employee has received the necessary training to undertake the role or duties safely.
- 52.4 Ongoing training will be scheduled to ensure that Employees' training is kept up to date. Employees will be released to attend training.
- 52.5 In addition to the entry level training program, the Employer will continue to offer training and skill development for custodial Employees that focusses on the management of detainees including the avoidance and de-escalation of incidents.

### **53. INFORMATION TECHNOLOGY RESOURCES**

- 53.1 The parties recognise that information technology resources have major implications for industrial and human resources functions within the workplace.
- 53.2 The Employer recognises the need to provide appropriate information to all Employees, so it is accessible in the workplace in either electronic or hard copy format.
- 53.3 Where the Employer utilises information technology as the means of communicating to Employees, the Employer must ensure that where Employees do not have access to technology, then alternative methods of providing this information will be used.
- 53.4 The information includes, but is not limited to policies and practice guidelines, human resource manuals, awards and agreements, internal Agency news bulletins and updates and job opportunities.

### **54. REMOVAL OF REGIONAL PROVISIONS**

- 54.1 The parties acknowledge that references to regional provisions and allowances have been removed from this Agreement as there are no Employees currently substantively employed in regional WA.
- 54.2 However, the Employer agrees that should regional Headquarters be established during the life of this Agreement, regional provisions contained in the Public Sector CSA Agreement 2021 or its successor, or applicable Award provisions, will be applied.
- 54.3 Regional Provisions include Pro-rata Annual Leave for North West Employees, District Allowance, Remote and Isolated Locations, and Regional Training and Development.

## **PART 9 CONSULTATIVE MECHANISMS AND REVIEWS**

### **55. CONSULTATION AND JOINT CONSULTATIVE COMMITTEE**

#### **Consultation on Proposals for Change**

- 55.1 The provisions of this clause are to be read in conjunction with clause 58 – Notification of Change of the Award.
- 55.2 For the purposes of this clause the expressions below have the following meanings:
- (a) “change” means situations where the Employer proposes to make a change or changes likely to affect existing practice/s, working conditions or employment prospects of Employees;
  - (b) “consultation” means a process that involves the timely exchange of relevant information and the opportunity for discussions between the parties on matters relevant to a proposed change. These discussions are to provide the Union and Employees with a genuine opportunity to contribute to the decision making process.
- 55.3 The parties acknowledge that decisions will continue to be made by the Employer who is responsible and accountable to Government for the effective, efficient and safe operation of Youth Custodial Centres.
- 55.4 The parties agree that:
- (a) Consultation must occur prior to the Employer’s decision to make a change.
  - (b) The Employer shall, in writing, notify the Union and Employees who may be affected by a proposed change as soon as practicable. To enable genuine consultation to occur, the notification should include, at a minimum, the nature of the proposed change and the effects it is likely to have on Employees.
  - (c) The consultation discussion shall commence as soon as possible after the Employer notifies the Union and affected Employees of the proposed change.
  - (d) The consultation process will be open and transparent, and the following principles will apply:
    - (i) Employers will ensure appropriate mechanisms and communication channels are in place to facilitate consultation;
    - (ii) the Employer and the Union are to provide all reasonable and relevant information except confidential commercial, business or personal information, the release of which may seriously harm a party or individual;
    - (iii) information provided will be clear and with sufficient background information available so that issues are understood;
    - (iv) Employers will assess the impacts of change broadly;
    - (v) throughout the consultation process, the Employer will provide adequate time, resources and support for information to be considered by affected Employees and the Union and for consultation to occur; and
    - (vi) once a change is implemented, the Employer will evaluate and review the change and inform the Union of the review outcomes.

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

#### **Joint Consultative Committee**

- 55.6 The parties recognise the need for effective communication to improve the business/operational performance and working environment in agencies.
- 56.7 The parties confirm their ongoing commitment to the JCC process.
- 55.8 Each Agency will have a JCC, for the purposes of consultation under this Agreement, comprising of the Employer or their nominee, Employer nominated representatives and Union nominated representatives unless it is otherwise agreed between Employer and the Union to effect Consultation through some other means.
- 55.9 The JCC will convene within 28 days of a written request being received from either party.
- 55.10 The JCC will determine its own operating procedures.
- 55.11 JCCs will be a forum for consultation on issues such as:
- (a) development of workload management tools within the Agency;
  - (b) industrial issues;
  - (c) fixed term contract employment, casual employment and labour hire usage;
  - (d) changes to work organisation and/or work practices occurring in the workplace;
  - (e) Agency implementation of recommendations from Government decisions, policies and initiatives; and
  - (f) Agency implementation of other aspects of this Agreement.
- 55.12 The consultation process shall comply with the parameters set out in clause 55.4.

55.13 Matters not resolved through the JCC can be referred to the provisions of clause 62 – Dispute Settlement Procedure.

#### **Consultation on safe staffing levels**

- 55.14 (a) The Employer acknowledges its commitment to maintain staffing levels within youth detention centres which provide safety for employees and detainees.
- (b) For the purposes of this clause, any changes to staffing levels which depart from existing arrangements will be discussed at the JCC. To avoid doubt, the provisions of subclause 55.4 will apply to the discussion.
- (c) Over the life of the Agreement, the Employer and Employees will hold discussions within the JCC to develop a best practice guideline for staffing.

### **56. UNION FACILITIES**

#### **Inductions**

56.1 In addition to clause 5.13.5 (5) of the Award, the Employer shall provide the Union with time to discuss the benefits of Union membership with new Employees as part of the Employees' formal induction program. Where the induction is wholly online, the Union will be afforded the opportunity to provide content on the benefits of union membership for inclusion in the online induction program.

#### **Union meetings**

56.2 Subject to reasonable notice being provided to the Employer:

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

### **57. REVIEW OF COMMON USE AGREEMENTS AND CONTRACTS**

#### **Employer Reviews**

57.1 Consistent with the preference for directly employed public sector employees to provide public services at clause 14 of this Agreement, during the life of this Agreement, Employers are to review any contracts for service including contracts which utilise a CUA, falling into any of the following categories:

- (a) tendered contracts for services with a term of four years or more, including any extension to the original term; and

- (b) contracts with a term of 12 months or more for the provision of payroll, human resource management services, internal audit services, financial advice or ICT services, the annual value of which exceeds \$1 million;

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

57.2 When undertaking the review described in clause 57.1, Employers will examine:

- (a) the procurement planning process, including consideration of whether there are non-financial risks and benefits to the State and whether the CUA currently provides value for money. In particular:
  - (i) an estimate of the cost of direct delivery of the service;
  - (ii) the capacity of the agency to continue to deliver the service in the event the contractor becomes unable to; and
  - (iii) the availability of labour and expertise within the employing authority and/or the broader public sector, including registered and registrable employees;
- (b) whether the efficacy of each contract has been regularly assessed, including the outcome of any audit of whether suppliers under the CUA have met their contractual obligations; and
- (c) whether there is adequate expertise within agencies to provide oversight and evaluation of the contractual arrangement and use of the contract, including effective records management and data storage to inform future contracts. In particular:
  - (i) that the agency is resourced to manage the contract for its duration (considering any relevant requirements of the *Procurement Act 2020*); and
  - (ii) whether agency records management and data storage processes are sufficient to assess the contracting decision was compliant with Approved Procedure 5, and recommendations to address any gaps.

57.3 Within 3 months of the registration of this Agreement, Employers are to advise the JCC where one is established or the Union of the contracts to be reviewed under this clause; and a target date for submission of a final report to the JCC or Union.

57.4 During the life of this Agreement, Employers are to provide relevant information from the review, the review report and the review outcome in relation to the contracts reviewed under this clause to the union.

57.5 Employers are to notify the Union of the expiry date of any of the following contracts to which they are a party:

- (a) a contract referred to in clause 57.1:

- (i) if the Employer does not intend to extend the contract before it expires – 18 months before the expiry date; or
    - (ii) in any other case – when the contract is extended; and
  - (b) a contract referred to in clause 57.1 (b) – 6 months before the expiry date.
- 57.6 The requirements of clauses 57.1 – 57.4 do not apply to any contract that an Employer and the Union agree does not involve the delivery of services that are core public sector functions.
- 57.7 A JCC, or any member of that Committee, may refer to the PCF for review any proposal by an Employer to enter into a contract of a kind referred to in clause 57.1 (a) or (b).
- 57.8 The parties acknowledge the review report tabled at the PCF by the Department of Finance at the conclusion of the PSCA 2019 Clause 58.1-58.3 review into CUAs. During the life of this Agreement, the PCF commits to identifying actionable items for Employers in the Replacement Agreement arising from the Department of Finance report referred to in this clause.
- 57.9 The parties acknowledge that decisions will continue to be made by Employers, who are responsible and accountable to Government for the effective and efficient operation of the Agency. Nothing in this clause prevents the Employer from using contracts for service where it is appropriate to do so.

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

- 57.10 Consistent with the requirements in clause 55 – Consultation and Joint Consultative Committee, Employers will provide the Union with the business case for, and all relevant information and data pertaining to, any proposed contracting out of any service or function currently performed by classifications of Employees employed by an Employer.

#### **Confidentiality**

- 57.11 Employers are not required to supply any information to the Union, the JCC or the PCF from the reviews under clause 57.1 if doing so would disclose confidential, commercial in confidence, or personal information.

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

- 58.1 Government recognises that increased use of public transport has environmental, social and economic benefits and seeks to implement a scheme for Employees that provides more affordable access to public transport. Government wishes to consider options that deliver benefits to Employees and attract minimal implementation, ongoing compliance monitoring and other costs.
- 58.2 Options identified as practicable by the Public Transport Scheme Working Group as established under clause 59.1 and 59.2 of the Public Sector CSA Agreement 2019 will be evaluated according to:

- (a) the overall estimated cost of each option, taking into account costs of implementation and ongoing administration, and any quantifiable environmental, social and economic benefits associated with increased use of public transport; and
- (b) the financial benefit to individual Employees each option would provide.

58.3 A final evaluation report, including recommendations, will be provided by the Working Group to Government for consideration and implementation of appropriate recommendations.

## **59. PUBLIC SECTOR DELIVERY OF PUBLIC SERVICES**

59.1 The Government and Employers prefer the delivery of public services to be undertaken by Employees.

59.2 Only in exceptional circumstances, and following Government having considered the public interest, will work or functions currently undertaken by Employees be privatised or outsourced. Meaningful consultation will occur with the Union and affected Employees at the earliest possible opportunity.

59.3 If Government identifies work carried out by persons external to the Public Sector which can be returned to the Public Sector in line with its stated preference the Union will be consulted at the earliest opportunity.

## **60. AMALGAMATION OF PUBLIC SECTOR CSA AGREEMENTS**

60.1 The parties acknowledge that significant work has been undertaken with the aim of restructuring and amalgamating existing public sector CSA agreements. The shared aim is to provide consistent conditions across the sector where possible.

60.2 The parties will explore opportunities to facilitate this consistency in the replacement to this agreement.

## **61. RESERVED MATTERS/LIBERTY TO APPLY**

61.1 Notwithstanding clause 7 – No Further Claims of this Agreement, the parties agree to negotiate the following possible variations to this Agreement during its life:

- (a) variations to clause 55 – Consultation and Joint Consultative Committee of this Agreement;
- (b) inclusion of a new provision relating to foster care leave; and
- (c) revision to drafting of parental leave clauses to enhance clarity.

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

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

## **PART 10           DISPUTE SETTLEMENT PROCEDURE**

### **62.       DISPUTE SETTLEMENT PROCEDURE**

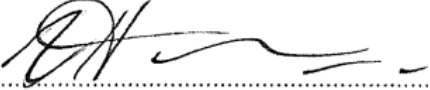
- 62.1 Any questions, difficulties or disputes arising in the course of the employment of Employees covered by this Agreement shall be dealt with in accordance with this clause.
- 62.2 The Employee may be accompanied by a Union representative during all stages of this procedure.
- 62.3 The Employee/s and the manager with whom the dispute has arisen shall discuss the matter and attempt to find a satisfactory solution within three working days.
- 62.4 If the dispute cannot be resolved at this level, the matter shall be referred to, and be discussed with, the relevant manager's superior and an attempt made to find a satisfactory solution within a further three working days.
- 62.5 If the dispute is still not resolved, it may be referred by the Employee/s or Union representative to the Employer or his/her nominee.
- 62.6 Where the dispute cannot be resolved within five working days of the Union representative's referral of the dispute to the Employer or his/her nominee, either party may refer the matter to the WAIRC.
- 62.7 The period for resolving a dispute may be extended by agreement between the parties.
- 62.8 Notwithstanding the operation of clauses 62.3 – 62.6, questions, difficulties or disputes involving multiple employees may be raised by the Union directly with the Employer or the Employer's nominated representative.
- 62.9 If a dispute is raised by the Union via clause 62.8, the parties will make a genuine attempt to reach an agreed solution. If the dispute cannot be resolved, either party may refer the dispute to the WAIRC for conciliation or, where appropriate, arbitration.
- 62.10 Nothing in this clause constitutes a referral agreement within the meaning of section 12 of the *Employment Dispute Resolution Act 2008*.



PART 11 – SCHEDULES TO THE AGREEMENT

SCHEDULE 1: SIGNATURES OF PARTIES

Signed:

  
.....  
Signature

*22/12/2021*  
.....  
Date

Rikki Hendon  
**General Secretary**  
The Civil Service Association of Western Australia (Inc)

Signed:

  
.....  
Signature

*14/12/2021*  
.....  
Date

Dr Adam Tomison  
Director General, Department of Justice

**SCHEDULE 2: SALARIES FOR YOUTH CUSTODIAL OFFICERS, UNIT MANAGERS AND SENIOR OFFICERS**

Level	Current rate (per annum)	2021 rate 13 June 2021 (per annum)
Youth Custodial Officers		
1 <sup>st</sup> Year	\$ 63,172	\$ 64,172
2 <sup>nd</sup> Year	\$ 64,781	\$ 65,781
3 <sup>rd</sup> Year	\$ 66,482	\$ 67,482
4 <sup>th</sup> Year	\$ 68,256	\$ 69,256
Unit Managers		
1 <sup>st</sup> Year	\$ 71,896	\$ 72,896
2 <sup>nd</sup> Year	\$ 73,781	\$ 74,781
3 <sup>rd</sup> Year	\$ 75,723	\$ 76,723
4 <sup>th</sup> Year	\$ 77,717	\$ 78,717
Senior Officers		
1 <sup>st</sup> Year	\$ 80,452	\$ 81,452
2 <sup>nd</sup> Year	\$ 82,593	\$ 83,593
3 <sup>rd</sup> Year	\$ 84,797	\$ 85,797