

PUBLIC HOSPITAL (TRAINING WAGE) (STATE) AWARD 2023

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 213670 of 2023)

Before Chief Commissioner Constant

17 August 2023

AWARD

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PART A

1. Title

This Award shall be known as the Public Hospital (Training Wage) (State) Award 2023.

2. Definitions

"Ambulance Service" means the Ambulance Service of NSW as referred to in section 67A of the *Health Services Act 1997*, as amended or varied from time to time.

"Appropriate State Legislation" means the *Apprentice and Traineeship Act 2001* (NSW) or any successor legislation, as amended or varied from time to time.

"Approved Training" means training undertaken (both on or off the job) in a Traineeship and shall involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship Scheme approved by the relevant Training Services NSW. The training will be accredited and lead to qualifications as set out in clause 6, Training Conditions.

"Commission" means the Industrial Relations Commission of New South Wales.

"Health Service" means a Public Health Organisation or the Ambulance Service.

"Industrial Instrument" means an Award of the New South Wales Industrial Relations Commission, Determination made pursuant to section 116A of the *Health Services Act 1997* or an Agreement made pursuant to section 116A of the *Health Services Act 1997*, as amended or varied from time to time.

"Ministry" means the Ministry of Health.

"Parties to a Traineeship Scheme" means the employer organisation and/or the employer and the relevant union involved in the consultation and negotiation required for the approval of a Traineeship Scheme.

"Public Health Organisation" means an organisation as defined in section 7 of the *Health Services Act 1997*, as amended or varied from time to time.

"Relevant Award" means an Award/agreement that applies to a Trainee, or that would have applied but for the operation of this Award.

"Relevant Union" means a union party to a relevant Award/Agreement and which is entitled to enrol the Trainee as a member.

"Trainee" means an employee who is bound by a Traineeship Agreement made in accordance with this Award and employed in terms of the public hospital Award.

"Traineeship" means a system of training which has been approved by the relevant Training Services NSW and which is being undertaken in a Health Service, either as an employee of that Health Service, or as an employee of another organisation which has allocated the trainee to the Health Service for the period of the traineeship.

"Traineeship Agreement" means an agreement made subject to the terms of this Award between an employer and the Trainee for a Traineeship and which is registered with the relevant Training Services NSW or under the provisions of the appropriate state legislation. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

"Traineeship Scheme" means an approved Traineeship applicable to a group or class of employees or to an industry or sector of an industry or enterprise. A Traineeship Scheme shall not be given approval unless consultation and negotiation with the relevant union(s) regarding the terms of the proposed Traineeship Scheme has occurred. An application for approval of a Traineeship Scheme shall identify the relevant union(s) and demonstrate to the satisfaction of the relevant Training Services NSW that the abovementioned consultation and negotiation has occurred. A Traineeship Scheme shall include a standard format which may be used for a Traineeship Agreement.

3. Application

- (a) Subject to subclause (c) of this clause this Award shall apply to persons who are undertaking a Traineeship and is to be read in conjunction with any Award of the Industrial Relations Commission of New South Wales or other industrial instrument which covers the terms and conditions of employment of persons performing work in the classifications covered.
- (b) The terms and conditions of any such legally registered Award of the Industrial Relations Commission of New South Wales or other industrial instrument shall apply except where inconsistent with this Award.
- (c) Notwithstanding the foregoing, this Award shall not apply to employees who were employed under any legally registered Award of the Industrial Relations Commission of New South Wales or other industrial instrument prior to the date of approval of a traineeship scheme relevant to the Ministry, except where agreed between the Ministry and the relevant union(s).
- (d) This Award does not apply to Apprentices.

4. Objective

The objective of this Award is to assist with the establishment of a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees, particularly young people and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees shall be displaced from employment by trainees. Except as provided for in clause 5, Training Conditions, nothing in this Award shall be taken to replace the prescription of training requirements in any relevant Award or other industrial instrument.

5. Training Conditions

- (a) The Trainee shall attend an approved training course or training program prescribed in the Traineeship Agreement or as notified to the trainee by the relevant Training Services NSW in an accredited and relevant Traineeship Scheme.
- (b) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the employer and the trainee and lodged for registration with the relevant Training Services NSW, provided that if the Traineeship Agreement is not in a standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the relevant Training Services NSW.

The employer shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on-the-job training.

- (c) The employer shall provide a level of supervision in accordance with the Traineeship Agreement during the traineeship period.
- (d) The employer agrees that the overall training program will be monitored by officers of the relevant Training Services NSW and training records or workbooks may be utilised as part of this monitoring process.
- (e) Training shall be directed at:
 - (i) the achievement of key competencies required for successful participation in the workplace where these have not previously been achieved (e.g., literacy, numeracy, problem solving, team work, using technology) and as are proposed to be included in the Australia Quality Framework, Certificates at Level 1, or future qualifications at Level 1, as determined from time to time by the Australian National Training Authority and/or the New South Wales Department of Education.

This could be achieved through foundation competencies which are part of endorsed competencies for an industry or enterprise.

- (ii) The achievement of competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these competencies), as are proposed to be included in the Australia Quality Framework, Certificates at Level 2, or future qualifications at Level 2, as determined from time to time by the Australian National Training Authority and/or the New South Wales Department of Education.

6. Employment Conditions

- (a) Full-Time Traineeships
 - (i) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration provided that a Trainee shall be subject to a satisfactory probation period of up to one month, which may be reduced at the discretion of the employer. By agreement in writing, and with the consent of the relevant Training Services NSW, the employer and the Trainee may vary the

duration of the Traineeship and the extent of approved training, provided that any agreement to vary is in accordance with the relevant Traineeship Scheme.

- (ii) The Trainee will be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Agreement.
- (iii) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of any relevant industrial instrument or any other legislative entitlements.
- (iv)
 - (a) The Traineeship Agreement may restrict the circumstances under which the trainee may work overtime and shift work in order to ensure that the training program is successfully completed.
 - (b) No Trainee shall work overtime or shift work on their own unless consistent with the provisions of the relevant Award or other industrial instrument.
 - (c) No Trainee shall work shift work unless the parties to a Traineeship Scheme agree that such shift work makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week but, must average over the relevant period no less than the amount of training required for non-shift work Trainees.
 - (d) The Trainee salary shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the relevant industrial instrument, unless otherwise agreed by the parties to a Traineeship Scheme, or unless the relevant Award makes specific provision for a Trainee to be paid at a higher rate, in which case the higher rate shall apply.
- (v) All other terms and conditions of the relevant industrial instruments that are applicable to the Trainee or would be applicable to the Trainee but for this Award shall apply unless specifically varied by this Award.
- (vi) All conditions of employment applying to temporary employees under the relevant Health Service Award, other than those specified in this Award, shall apply to Trainees.
- (vii) A Trainee who fails to complete the Traineeship or who is not offered employment upon the completion of the Traineeship shall not be entitled to any severance payments.

(b) Full-Time School-Based Traineeships

- (i) School-Based Trainees shall not be required to attend work during the interval starting four weeks prior to the commencement of the final Higher School Certificate examination period and ending upon the completion of the individual's last examination period.
- (ii) For the purposes of this Award, a School-Based Trainee shall become an ordinary Trainee as at January 1 of the year following in which they cease to be a school student.
- (iii) School-based trainees are to be paid an amount as detailed in Table 3, School-Based Trainees, of Part B, Monetary Rates.
- (iv) School-Based Traineeships are part-time and subject to additional conditions.
- (v) A "school-based Trainee" may be defined as being a student enrolled in the Higher School Certificate, or equivalent qualification, who is undertaking a traineeship which forms a recognised component of their HSC curriculum, and is endorsed by the relevant Training Services NSW and the NSW Education Standards Authority as such.

(c) Part-Time Traineeships

- (i) A Trainee shall be engaged as an employee on a part-time basis by working less than full-time ordinary hours.
- (ii) The salary rate shall be pro rata the full-time rates based on variation in the amount of training and/or the amount of work over the period of the traineeship, which may also be varied on the basis of the following formula.

$$\frac{\text{Full-time salary rate (Trainee hours - Average weekly training time)}}{30.4}$$

Note: 30.4 in the above formula represents 38 ordinary full-time hours less the average training time for full-time trainees (i.e. 20%).

- (iii) "Full-time salary rate" means the appropriate rate as set out in Part B, Monetary Rates.
- (iv) "Trainee hours" shall be the hours worked per week including the time spent in approved vocational training. For the purpose of this definition, the time spent in approved vocational training may be taken as an average for that particular year of the Traineeship.
- (v) "Average weekly training time" is based upon the length of the Traineeship specified in the Traineeship Agreement or the Training Contract as follows:

$$\frac{7.6 \times 12}{\text{Length of the Traineeship in months}}$$

Note 1: 7.6 in the above formula represents the average weekly training time for a full-time Trainee whose ordinary hours are 38 per week.

Note 2: The parties note that the Traineeship Agreement will require a Trainee to be employed for sufficient hours to complete all requirements of the Traineeship, including the on the job work experience and demonstration of competencies. The parties also note that this would normally result in the equivalent of a full days on the job work per week.

- (vi) A part-time Trainee shall receive, on a pro rata basis, all employment conditions applicable to a full-time Trainee. All the provisions of this Award shall apply to part-time Trainees except as specified in this clause.
- (vii) A part-time Trainee may, by agreement, transfer from a part-time to a full-time Traineeship position should one become available.
- (viii) The minimum engagement periods specified in the relevant Award shall also be applicable to part-time Trainees.
- (ix) Minimum and maximum hours of work for part-time employees specified in the Relevant Award shall apply to part-time Trainees also. Example of the Calculation for the Salary Rate for a Part-Time Traineeship

Example of the calculation for the salary rate for a part-time traineeship

A school student commences a Traineeship in Year 11. The ordinary hours of work in the Relevant Award are 38. The Training Contract specifies two years (24 months) as the length of the Traineeship.

"Average weekly training time" is therefore $7.6 \times 12/24 = 3.8$ hours.

"Trainee hours" totals 15 hours; these are made up of 11 hours' work which is worked over 2 days of the week plus 1-1/2 hours on the job training plus 2-1/2 hours off the job approved training at school and at TAFE.

So the wage rate in Year 11 is:

$$\$304.40 \times \frac{15 - 3.8}{30.4} = \$112.15 \text{ plus any applicable penalty rates under the relevant Award.}$$

The salary rate varies when the student completes Year 11 and passes the anniversary date of 1 January the following year to begin Year 12 and/or if "Trainee hours" changes.

(d) Other Conditions

For any other conditions of employment see Health Employees Conditions of Employment (State) Award 2023; Public Hospital (Professional and Associated Staff) Conditions of Employment (State) Award 2023; and/or Paramedics and Control Centre Officers (State) Award 2023 as varied or replaced from time to time.

7. Salaries

(a)

- (i) The weekly salary payable to Trainees are as provided in Table 1 - Industry/Skill Level A and Table 2 - Industry/Skill Level B, of Part B, Monetary Rates.
- (ii) These salary rates will only apply to Trainees while they are undertaking an approved Traineeship which includes approved training as defined in this Award.
- (iii) The salary rates prescribed by this clause do not apply to complete trade level training which is covered by the Apprenticeship system.

(b) The weekly salary in this Award recognise the Fair Work Commission's Annual Wage Review Decisions and are paid in settlement of any claim for increases that arise should these National Wage Decisions be adopted for the purposes of this Award under the *Industrial Relations Act 1996*.

(c) Appendix A - Industry/Skill Levels sets out the industry/skill level of an approved Traineeship. The industry/skill levels contained in Appendix A are prima facie the appropriate levels but are not determinative of the actual skill levels (i.e. Skill Level A, B, or C) that may be contained in a Traineeship Scheme.

The determination of the appropriate skill level for the purpose of determining the appropriate salary rate shall be made by the relevant Training Services NSW based on the following criteria:

- (i) Any agreement of the parties
- (ii) The nature of the industry
- (iii) The total training plan
- (iv) Recognition that training can be undertaken in stages
- (v) The exit skill level in the relevant Award contemplated by the Traineeship.

In the event that the parties disagree with such determination it shall be open to any party to the Award to seek to have the matters in dispute determined by the Commission.

(d) For the purposes of this provision, "out of school" shall refer only to periods out of school beyond Year 10, and shall be deemed to:

- (i) include any period of schooling beyond Year 10 which was not part of nor contributed to a completed year of schooling;

- (ii) include any period during which a Trainee repeats in whole or part a year of schooling beyond Year 10; and
 - (iii) not include any period during a calendar year in which a year of schooling is completed.
- (e) At the conclusion of the Traineeship, this Award ceases to apply to the employment of the Trainee and the relevant industrial instrument shall apply to the former trainee.

8. Grievance and Dispute Procedures

- (a) Where any grievance, question, dispute, or difficulty arises it shall be dealt with as close to its source as possible. Where a matter is not resolved, further attempts to resolve the matter must be made at progressively higher levels of authority.
- (b) Reasonable time limits will be allowed at each level for any necessary discussion, investigation and consideration of the matter. Whilst these procedures are continuing the status quo shall remain and no stoppage of work or any other form of ban or limitation of work shall be applied.
- (c) A grievance of an individual employee should firstly be put to their supervisor. At the conclusion of discussions between the employee and the employer, the employer must provide a response to the employee's grievance, and, in the event the matter is not resolved, reasons for not implementing any proposed remedy.
- (d) An employee or employees may be represented by the Union or other appropriate person, and the employer by an industrial organisation, at any stage of these procedures.
- (e) In the event that the matter remains unresolved, the matter may be referred to the Industrial Relations Commission of New South Wales.
- (f) If the question, dispute or difficulty relates to training, the matter may be dealt with under the *Apprenticeship and Traineeship Act 2001* (NSW) as amended from time to time.

9. No Extra Claims

Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 (or its successor however described), there shall be no further claims/demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2024 by a party to this Award.

10. Area, Incidence and Duration

- (a) This Award shall apply to all classes of trainees in Appendix A - Industry/Skill Levels.
- (b) This Award shall rescind and replace the Public Hospital Training Wage (State) Award 2022 published 20 October 2022 (392 I.G. 1401) and all variations thereof.
- (c) This Award takes effect from 1 July 2023 and shall remain in force for a period of one year. The rates in the second column in the tables of Part B - Monetary Rates will apply from the first full pay period on or after (ffppoa) 1 July 2023.

PART B

MONETARY RATES

Table 1 - Industry/Skill Level A:

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at industry/skill Level A.

In the period 1 July 2023 to the commencement of the first full pay period on or after 1 July 2023, the applicable rates of pay are those that applied immediately prior to the first full pay period on or after 1 July 2023.

Classification	Rate from ffppoa 01/07/2023 Per week \$
Trainee - Skill/Industry Level A	
Completed Year 10	
School Leaver (50%)	334.68
School Leaver (33%)	382.19
Plus 1 year out of school	445.93
Plus 2 years out of school	523.54
Plus 3 years out of school	597.63
Plus 4 years out of school	683.29
Plus 5 years or more	772.48
Completed Year 11	
School Leaver (33%)	404.25
School Leaver (25%)	445.93
Plus 1 year out of school	523.54
Plus 2 years out of school	597.63
Plus 3 years out of school	683.29
Plus 4 years out of school	772.48
Plus 5 years or more	772.48
Completed Year 12	
School Leaver (33%)	523.54
Plus 1 year out of school	597.63
Plus 2 years out of school	683.29
Plus 3 years out of school	772.48
Plus 4 years out of school	772.48
Plus 5 years or more	772.48

The figures in brackets indicate the average proportion of time spent in Structured Training to which the associated salary rate is applicable. Where not specifically indicated the average portion of time spent in structured training which has been taken into account in setting the rate is 20 per cent.

Table 2 - Industry/Skill Level B:

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at industry/skill Level B.

In the period 1 July 2023 to the commencement of the first full pay period on or after 1 July 2023, the applicable rates of pay are those that applied immediately prior to the first full pay period on or after 1 July 2023.

Classification	Rate from ffppoa 01/07/2023 Per week \$
Trainee - Skill/Industry Level B	
Completed Year 10	
School Leaver (50%)	334.68
School Leaver (33%)	382.19
Plus 1 year out of school	445.93
Plus 2 years out of school	507.22
Plus 3 years out of school	574.48
Plus 4 years out of school	663.68
Plus 5 years or more	745.93
Completed Year 11	
School Leaver (33%)	404.25

School Leaver (25%)	445.93
Plus 1 year out of school	507.22
Plus 2 years out of school	574.48
Plus 3 years out of school	663.68
Plus 4 years out of school	745.93
Plus 5 years or more	745.93
Completed Year 12	
School Leaver (33%)	507.22
Plus 1 year out of school	574.48
Plus 2 years out of school	663.68
Plus 3 years out of school	745.93
Plus 4 years out of school	745.93
Plus 5 years or more	745.93

The figures in brackets indicate the average proportion of time spent in Structured Training to which the associated salary rate is applicable. Where not specifically indicated the average portion of time spent in structured training which has been taken into account in setting the rate is 20 per cent.

Table 3 - School Based Trainees

In the period 1 July 2023 to the commencement of the first full pay period on or after 1 July 2023, the applicable rates of pay are those that applied immediately prior to the first full pay period on or after 1 July 2023.

Classification	Rate from ffppoa 01/07/2023 Per week \$
Trainee- School Based	
Year 11	411.11
Year 12	445.93

APPENDIX A

(i) Any Traineeship or Traineeships for a declared calling as defined by the *Apprenticeship and Traineeship Act 2001* (NSW) as amended from time to time.

(ii) Industry/Skill Level A

Certificate III in Aboriginal and/or Torres Strait Islander Primary Health Care

Certificate III in Allied Health Assistance

Certificate III in Basic Health Care

Certificate III in Non-Emergency Patient Transport

Certificate III in Ambulance Communications (Call-Taking)

Certificate III in Dental Assisting

Certificate III in Health Services Assistance

Certificate III in Pathology Collection

Certificate III in Pathology Assistance

Certificate III in Dental Laboratory Assisting

Certificate III in Hospital/Health Services Pharmacy Support

Certificate III in Sterilisation Services
Certificate III in Health Support Services
Certificate III in Health Administration
Certificate III in Population Health
Certificate III in Indigenous Environmental Health
Certificate IV in Aboriginal and/or Torres Strait Islander Primary Health Care (Practice)
Certificate IV in Aboriginal and/or Torres Strait Islander Primary Health Care
Certificate IV in Allied Health Assistance
Certificate IV in Ambulance Communications (Dispatch)
Certificate IV in Audiometry
Certificate IV in Dental Assisting
Certificate IV in Operating Theatre Technical Support
Certificate IV in Cardiac Technology
Certificate IV in Hospital/Health Services Pharmacy Support
Certificate IV in Sterilisation Services
Certificate IV in Health Administration
Certificate IV in Health Supervision
Certificate IV in Population Health
Certificate IV in Indigenous Environmental Health

(iii) Industry/Skill Level B

Certificate II in Aboriginal and/or Torres Strait Islander Primary Health Care
Certificate II in Emergency Medical Services First response
Certificate II in Health Support Services
Certificate II in Population Health
Certificate II in Indigenous Environmental Health

N. CONSTANT, *Chief Commissioner*
