

# HEALTH INDUSTRY STATUS OF EMPLOYMENT (STATE) AWARD 2023

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 213202 of 2023)

Before Chief Commissioner Constant

15 August 2023

## AWARD

### Arrangement

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4.	Arrangements for Existing Part-time Workers
5.	Process for Resolving Inconsistencies
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### 1. Definitions

- 1.1 Employer means the Secretary of the Ministry of Health exercising employer functions on behalf of the Government of New South Wales.
- 1.2 Employee means a person who is engaged on either a full time, part time, temporary, exempt or casual basis under a contract of employment in the NSW Health Service under s115(1) of the *Health Services Act 1997*, as amended or varied from time to time.
- 1.3 Casual employee means a person who may be engaged on an hourly basis, for a period which does not extend beyond one week, to provide services related to the unexpected absence of temporary, permanent or exempt employees. This provision may also encompass short-term employment associated with unanticipated peak demands.
- 1.4 Temporary employee means a person who is engaged as an employee for a period not exceeding 13 weeks, provided that fixed term contracts of employment, whether for periods greater or lesser than 13 weeks, must not be offered in preference to ongoing contracts.
- 1.5 Permanent employee means a person appointed as such or a person who has worked in the same position, including a permanent relief position, for a continuous period of 13 weeks other than as an exempt employee. Permanency is subject to the outcome of any appeal process.
- 1.6 Exempt employee means a person who is engaged for a continuous period and whose employment involves:
  - relief for periods in excess of 13 weeks during the absence of existing employees or;
  - specific projects which are time limited or;

- functions which involve funding for a specific period and which is not of a recurrent nature or;
- forthcoming service reductions which have a predetermined date.

Exempt employees as defined do not attract casual or temporary loadings.

- 1.7 Continuous period of employment means an uninterrupted period of 13 weeks employment involving at least one shift per week in that period but does not refer to exempt employees as defined.
- 1.8 Health Service means a Local Health District constituted under section 8 of the *Health Services Act* 1997, a Statutory Health Corporation constituted under section 11 of that Act, an Affiliated Health Organisation constituted under section 13 of that Act and the Public Health System Support Division of the NSW Health Service.
- 1.9 Secretary means the Secretary of the Ministry of Health.
- 1.10 Union means the Health Services Union NSW

## **2. Principles**

- 2.1 Employees who are engaged in meaningful work on a continuing basis are entitled to an expectation of permanency of employment subject to the provisions of this award.
- 2.2 It is the responsibility of the employer to ensure that all employees, upon engagement and at all appropriate times, are correctly classified as exempt, casual, temporary, or permanent according to the above definitions.
- 2.3 Where a person changes from casual to either temporary or permanent, the employment status of the person is deemed to have changed automatically.
- 2.4 During the period of continuing employment the status of an employee cannot be changed from permanent to temporary or casual or from temporary to casual, without the prior written consent of the employee.
- 2.5 All permanent employees are required as part of their contract of employment, to use their best endeavours to provide four weeks' notice of their intention to terminate their employment contract.
- 2.6 Any position which would involve the employment of an exempt, temporary or permanent employee, upon falling vacant, will, where such a position continues to be required in its current form by the Health Service, be advertised within the Health Service and/or external to the Health Service. Positions should be filled under the merit principle of selection.
- 2.7 A person who, by definition, is a temporary employee for a period of less than 13 weeks may be re-engaged by the same Health Service under more than one employment contract provided the aggregate period of the contracts, where consecutive, does not exceed 13 weeks.
- 2.8 Where the employee is retained beyond a continuous period of 13 weeks in the same position the employee is deemed to be permanent, subject to the outcome of any appeal. The application of this sub clause shall not be applied in a manner which is inconsistent with legislation or Government recruitment and employment policy, as varied from time to time. This subclause does not apply to an exempt employee as defined.

## **3. Loadings**

- 3.1 Casual Employees - A casual employee will be paid for the number of hours worked each week at an hourly rate, calculated at the same hourly rate as prescribed for a full time employee in the same classification and grade plus 10 per cent loading. A minimum payment of 2 hours at ordinary pay on each occasion the employee commences a shift will apply.

- 3.2 Temporary Employees - A temporary employee shall be paid for the number of hours worked each week on an hourly rate calculated at the same hourly rate as prescribed for a full time employee in the same classification plus 10 per cent loading. The loading shall cease to apply if:
- (a) the period of employment extends beyond 13 weeks
  - (b) the employer and the employee agree, during the period of 13 weeks, that the employee will be employed on a permanent basis.

#### **4. Arrangements for Existing Part-Time Workers**

- 4.1 Payment of 15% Allowance - Persons engaged as at 1 January 2000 and who were paid the 15% loading at that date will continue to receive that loading but only for the remainder of the existing part time employment contract. Receipt of the allowance will cease if the contract is completed or where an employee requests a transfer or is promoted to another position.
- 4.2 Conditions - Persons covered by clause 4.1 of this clause will, for the duration of any existing part-time employment contract and while remaining in their current position, retain existing part-time provisions. They will not be entitled to pro rata entitlements as outlined elsewhere within applicable awards.

#### **5. Process for Resolving Inconsistencies**

- 5.1 The Awards contained in the attached schedule "A", as varied or replaced from time to time, shall also apply, where appropriate, to persons covered by this award.
- 5.2 To the extent that any inconsistency exists between the conditions provided by this award and that provided by an award contained in the attached schedule "A" this award will prevail.

#### **6. Dispute Resolution**

- 6.1 Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and the supervising staff, it shall be referred to the Designated Manager of the hospital or service unit or their nominee who will arrange for the matter to be discussed with the employee concerned and if requested a local representative or representatives of the Union.
- 6.2 If the matter is not resolved within a reasonable time it must be referred by the Designated Manager to the Chief Executive Officer of the Health Service (or their nominee) and may be referred by the employee to the Union's Head Office. Discussions at this level must take place within a reasonable time with a view to resolving the issue in dispute. Failing settlement of the issue at this level, the matter shall be dealt with in accordance with sub-clause 6.3 of this clause.
- 6.3 With a view to amicable and speedy settlement of all disputes that firstly cannot be settled by local management and the Union or its representatives, disputes may be submitted to a committee consisting of not more than six members with equal representation of the Secretary and the Union. Such committee shall have the power to investigate all matters in dispute and to report to the Chief Executive of the Health Service and the Union respectively, with such recommendations as it may think right and in the event of no mutual decision being arrived at by such a committee and if a dispute still exists the matter in dispute may be referred to the Industrial Relations Commission in accordance with the provisions of the *Industrial Relations Act 1996* by one of the disputing parties.
- 6.4 Whilst these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied.
- 6.5 Unless agreed otherwise by the parties the status quo before the emergence of the issue must continue whilst these procedures are being followed. For this purpose "status quo" means the work procedures and practices in place:
- (a) immediately before the issue arose: or

- (b) immediately before any change to those procedures or practices, which caused the issue to arise, was made

6.6 The Employer must ensure that all practices applied during the operation of these procedures are in accordance with safe working practices.

## **7. Anti-Discrimination**

7.1 It is the intention of the parties bound by this Award to seek to achieve the object in section 3 (f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

7.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.

7.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

7.4 Nothing in this clause is to be taken to affect:

- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
- (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (a) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (b) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

7.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

### NOTES -

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

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

## **8. 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.

## **9. Area, Incidence and Duration**

9.1 This Award rescinds and replaces the Health Industry Status of Employment (State) Award 2022 published 4 November 2022 (393 I.G. 106) and all variations thereof.

- 9.2 This Award shall apply to persons employed in classifications as contained in the awards identified in Schedule "A", as varied or replaced from time to time, employed in the New South Wales Health Service under s115(1) of the *Health Services Act 1997*, or their successors, assignees or transmittes, excluding the County of Yancowinna.
- 9.3 This award incorporates changes under s 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of NSW on 4 December 2018.

## **SCHEDULE "A"**

1. Public Hospitals Professional Engineers (Biomedical Engineers) (State) Award 2022
2. Public Hospital Career Medical Officers (State) Award 2022
3. Health Employees Oral Health Therapists (State) Award 2022
4. Public Hospitals Dental Assistants (State) Award 2022
5. Health Employees Dental Officers (State) Award 2022
6. Public Hospitals Library Staff (State) Award 2022
7. Public Hospitals Medical Superintendents (State) Award 2022
8. Public Hospital Medical Officers (State) Award 2022
9. Public Hospitals Medical Record Librarians (State) Award 2022
10. Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award 2022
11. Hospital Scientists (State) Award 2022
12. Health Employees Conditions of Employment (State) Award 2022
13. Health Employees Administrative Staff (State) Award 2022
14. Health Managers (State) Award 2022
15. Health Employees Pharmacists (State) Award 2022
16. Health Employees (State) Award 2022
17. Health Employees General Administrative Staff (State) Award 2022
18. Health Employees Engineers (State) Award 2022
19. Health Employees Computer Staff (State) Award 2022
20. Health Employees Technical (State) Award 2022
21. Health Employees Medical Radiation Scientists (State) Award 2022
22. Health Employees Interpreters (State) Award 2022

23. NSW Health Service Health Professionals (State) Award 2022
24. Health Employees Dental Prosthetists and Dental Technicians (State) Award 2022

N. CONSTANT, *Chief Commissioner*

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