



# DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**New South Wales Aboriginal Land Council**  
(AG2017/691)

## **NSW ABORIGINAL LAND COUNCIL ENTERPRISE AGREEMENT 2016-2020**

Social, community, home care and disability services

COMMISSIONER ROE

MELBOURNE, 25 MAY 2017

*Application for approval of the NSW Aboriginal Land Council Enterprise Agreement 2016-2020.*

[1] An application has been made for approval of an enterprise agreement known as the *NSW Aboriginal Land Council Enterprise Agreement 2016-2020* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by New South Wales Aboriginal Land Council. The Agreement is a single enterprise agreement.

[2] The Applicant has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[3] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met. The Agreement does not cover all of the employees of the employer, however, taking into account the factors in Section 186(3) and (3A) I am satisfied that the group of employees was fairly chosen.

[4] Pursuant to s.205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[5] The CPSU, the Community and Public Sector Union being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[6] The Agreement was approved on 25 May 2017 and, in accordance with s.54, will operate from 1 June 2017. The nominal expiry date of the Agreement is 1 April 2020.



COMMISSIONER

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Annexure A

**IN THE FAIR WORK COMMISSION**

**FWC Matter No.:**  
AG2017/691

**Applicant:**

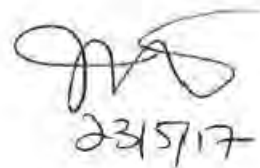
**NSW Aboriginal Land Council**

Section 185 – Application for approval of a single enterprise agreement

**Undertaking- Section 190**


I, James Christian, Chief Executive Officer for NSW Aboriginal Land Council ("NSWALC") give the following undertakings with respect to the NSW Aboriginal Land Council Enterprise Agreement 2016-2010 ("the Agreement"):

1. I have the authority given to me by the NSWALC to provide this undertaking in relation to the application before the Fair Work Commission.
2. In order to ensure all Employees employed by NSWALC are paid at a rate that is higher than the equivalent Award rate NSWALC undertakes to increase the rates of pay for all Employees employed at the following Salary Groups/Years:
  - Group 4 Year 3 from \$30.11 to \$30.71;
  - Group 5 Year 1 from \$30.11 to \$30.71;
  - Group 5 Year 3 from \$33.13 to \$33.18; and
  - Group 6 Year 1 from \$33.13 to \$33.18.
3. In replacement of the provisions in 65.2.3 and 65.2.4, prior to directing an employee to take excess annual leave, NSWALC must:
  1. Genuinely attempt to reach agreement/leave plan with the employee in writing, to take excess annual leave;
  2. Not require the employee to take any period of paid annual leave of less than one week;
  3. Not require the employee to take a period of annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  4. Not result in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks.
4. In replacement of the provisions in Clause 74.1.3, when a certificate of attendance on jury service is received in respect of any period during which an employee was required to be on duty, the Chief Executive Officer shall grant, in respect of any such period covered by the certificate of attendance, special leave on full pay. In any other case the Chief Executive Officer shall grant, at the sole election of the Employee, available annual leave on full pay, flex leave or leave without pay.
5. The NSW Aboriginal Land Council Enterprise Agreement 2016-2020 does not make provision for conditions of employment or benefits relating to Client Cancellation, Broken Shifts, Sleepovers, 24 Hour Care and Excursions because

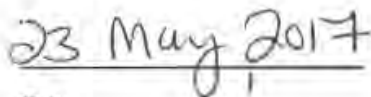


this work is not undertaken, now or in the future, by any Employee covered by the NSW Aboriginal Land Council Enterprise Agreement 2016-2020.

6. The definition of "Full-time contract hours in Clause 3 is amended to read "means the standard weekly hours, i.e., 35 hours per week, 7 hours per day, worked between 7:00am and 7:00pm on Monday to Friday, required to be worked as at the date of this Enterprise Agreement"
7. In addition to the protections provided in clause 91, NSWALC undertakes that prior to commencing employment, NSWALC and a part-time Employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work, the starting and finishing times each day. Any agreed variation to the regular pattern of work will be recorded in writing.
8. In addition to the protections provided in clause 91.2, NSWALC undertakes to pay casual employees the applicable Agreement rate for their classification plus a casual loading of 25%. Casual Employees are also entitled to a minimum payment of three hours' work at the appropriate rate.
9. The policies referred to in the Enterprise Agreement are not intended to form part of the Agreement. The relevant policies are available on the NSWALC intranet and are easily accessible by all NSWALC Employees.
10. The deductions referred to in Clause 79.2 will only be made after consultation with the affected Employee.
11. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature



Date



# 2016 - 2020

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

## NSW Aboriginal Land Council

Note - the model consultation term is taken to be a term of this agreement and can be found at the end of the agreement.



# ENTERPRISE AGREEMENT

Signed on behalf of the Employer

Signed on behalf of the Employees

Clare McHugh  
Executive Director Corporate Services  
NSW Aboriginal Land Council  
33, Argyle Street, Parramatta

Diane Lee  
Nominated Bargaining Representative  
NSW Aboriginal Land Council  
33, Argyle Street, Parramatta

Date: 23/02/17

Date: 23/02/2017

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## **1. Title**

This Agreement will be known as the *NSW Aboriginal Land Council Enterprise Agreement 2016-2020*.

## **2. Arrangement**

This Enterprise Agreement will be arranged as follows:

## **3. Definitions**

"Act" means the *NSW Aboriginal Land Rights Act, 1983*.

"Accumulation" means the accrual of leave or time. In respect of weekly study time "accumulation" means the aggregation of short periods of weekly study time which is granted for private study purposes.

"Agreement" means an Enterprise Agreement as defined in the *Fair Work Act 2009*.

"Approved Course" means a course relevant to the employment of the Employee in the New South Wales Aboriginal Land Council and approved by the Chief Executive Officer.

"At the convenience of" means the operational requirements permit the Employee's release from duty or that satisfactory arrangements are able to be made for the performance of the Employee's duties during the absence.

"Birth" means the birth of a child and includes stillbirth.

"Capital City rate" means the travelling allowance rate applicable within the Sydney Telephone District or within a corresponding area in the Capital City of another State or Territory.

"Casual Employee" means an Employee engaged to carry out irregular, intermittent, short-term, urgent or other work as and when required.

"Casual rate" means the appropriate rate payable in respect of a motor vehicle maintained by the Employee for private purposes but which the Employee may elect to use with the approval of the Chief Executive Officer for occasional travel on official business, subject to the allowance paid for such travel not exceeding the cost of travel by public or other available transport.

"Chief Executive Officer" means the Chief Executive Officer of the NSW Aboriginal Land Council or a person delegated by the Chief Executive Officer.

"Contract hours for the day" for a full time Employee, means one fifth of the full time contract hours, as defined in this Enterprise Agreement. For a part time Employee, contract hours for the day means the hours usually worked on the day.

"Crisis or Respite Foster Care" means fostering a child for a period not exceeding 3 months

"Daily rate" or "Rate per day" means the rate payable for 24 hours, unless otherwise specified.

"Employee" means a casual, temporary or permanent Employee of the NSW Aboriginal Land Council and includes both full-time and part-time staff employed by the NSW Aboriginal Land Council, other than those excluded under Clause 6 of this Enterprise Agreement.

"Employee's Immediate family or household" means a spouse; a de facto partner who lives with the Employee on a bona fide domestic basis; a child or an adult child (including an adopted child, step child, ex-nuptial child or foster child); parent (including a foster parent or legal guardian); grandparent; grandchild; sibling (including sibling of the Employee or of the Employee's spouse or de facto partner); a relative of the Employee who is a member of the same household, where for the purpose of this definition:

- "relative means a person related by blood, marriage affinity or Aboriginal kinship structures;
- "affinity" means a relationship that one spouse or de facto partner has to the relatives of the other; and
- "household" means a family group living in the same domestic dwelling.

"Employee Nominated Representative" means any person nominated by an Employee to represent them in a matter including a Grievance and/or Dispute; negotiating an Individual Flexibility Arrangement or under the consultation clause of this Agreement.

"Enterprise Agreement" means an Enterprise Agreement as defined in the *Fair Work Act 2009*.

"Exchange" means an arrangement agreed to by the Chief Executive Officer, the Employee and a public sector or private sector organisation which enables the Employee to work in such other organisation ("Exchange organisation"), for an agreed period of time and under conditions agreed to prior to the commencement of the period of Exchange. In return, NSWALC will host an Employee from the Exchange organisation for a similar length of time. An Employee has the right to return to their substantive position at the conclusion of a period of Exchange.

"Expected date of birth", in relation to an Employee who is pregnant, means a date specified by her medical practitioner to be the date on which the medical practitioner expects the Employee to give birth as a result of the pregnancy.

"Extended Leave" means extended (long service) leave to which an Employee is entitled under the provisions of Schedule 3 Section 55 of the *Public Sector Employment and Management Act 2002*, as amended from time to time.

"Flexible working hours credit" means the time exceeding the contract hours for a settlement period and includes any time carried over from a previous settlement period or periods.

"Flexible working hours debit" means the contract hours not worked by an Employee and not covered by approved leave during the settlement period, as well as any debit carried over from the previous settlement period or periods.

"Flexible working hours scheme" means the scheme outlined in the NSW Aboriginal Land Council Flexitime Working Hours Policy as it applies to eligible Employees.

"Flex leave" means a period of leave available to be taken by an Employee as specified in Subclause 19.15 of Clause 19 Flexible Working Hours of this Enterprise Agreement.

"Full pay" or "half pay" means the Employee's ordinary rate of pay or half the ordinary rate of pay respectively.

"Full-time contract hours" means the standard weekly hours, i.e., 35 hours per week, required to be worked as at the date of this Enterprise Agreement.

"Full-time position" means a position which is occupied, or if not for being vacant, would be occupied, by a full-time Employee.

"Full-time Employee" means an Employee whose ordinary hours of duty are specified in this Enterprise Agreement.

"Half day" means half the standard contract hours for the day.

"Headquarters" means the centre to which an Employee is attached or from which an Employee is required to operate on a long-term basis.

"Industrial action" means industrial action as defined in the *Fair Work Act 2009*.

"Individual Flexibility Arrangement" means an agreement between the NSWALC and the Employee in terms of Clause 11 Individual Flexibility Arrangement of this Enterprise Agreement.

"Independent Person" means either a qualified conciliator, investigator and/or mediator.

"Long Service Leave" means long service leave to which an Employee is entitled under the provisions of the *Long Service Leave Act 1955*.

"Long term Foster Care" means fostering a child for a period longer than 2 years, with the expectation that the Employee will care for the child until they reach 18 years of age.

"Normal hours of duty" means:



for an Employee working standard hours - the fixed hours of duty, with an hour for lunch, worked in the absence of flexible working hours;

for an Employee working under a flexible working hours scheme or Individual Flexibility Arrangement negotiated under Clause 11 - Individual Flexibility Arrangement - the hours of duty the Chief Executive Officer requires an Employee to work within the bandwidth specified under the flexible working hours scheme or Individual Flexibility Arrangement.

"Normal work" means, for the purposes of Clause 9, Dispute Settling Procedures of this Enterprise Agreement, the work carried out in accordance with the Employee's position or job description at the location where the Employee was employed, at the time the dispute was notified.

"Official business rate" means the appropriate rate of allowance payable for the use of a private motor vehicle where no other transport is available and such use is directed by the Chief Executive Officer and agreed to by the Employee or where the Employee is unable to use other transport due to a disability.

"Official overseas travel" means authorised travel out of Australia by an Employee where the Employee proceeds overseas on official business.

"On duty" means the time required to be worked for the NSW Aboriginal Land Council. For the purposes of 'Clause 41 - Trade Union Activities Regarded as on Duty' of this Enterprise Agreement, "on duty" means the time off with pay given by the New South Wales Aboriginal Land Council to the accredited union delegate to enable the union delegate to carry out legitimate trade union activities during ordinary work hours without being required to lodge an application for leave.

"On loan" means an arrangement between the NSW Aboriginal Land Council and the Union where an Employee is given leave of absence from the workplace to take up employment with the Employee's trade union for a specified period of time during which the Union is required to reimburse the New South Wales Aboriginal Land Council for the Employee's salary and associated on-costs.

"On special leave" means the Employee is required to apply for special leave in order to engage in an activity which attracts the grant of special leave in the terms of this Enterprise Agreement.

"Overtime" means all time worked, whether before or after the ordinary daily hours of duty, at the direction of the Chief Executive Officer, which, due to its character or special circumstances, cannot be performed during the Employee's ordinary hours of duty. Where a flexible working hours scheme is in operation, overtime shall be deemed as the hours directed to be worked before or after bandwidth or before or after the time specified in a Individual Flexibility Arrangement made pursuant to the provisions of Clause 11 of this Enterprise Agreement provided that, on the day when overtime is required to be performed, the Employee shall not be required by the Chief Executive

Officer to work more than 7 hours after finishing overtime or before commencing overtime.

"Partner" means a person living with the Employee as the partner of that Employee on a bona fide domestic situation.

"Part-time entitlement", unless specified otherwise in this Enterprise Agreement, means pro rata of the full-time entitlements calculated according to the number of hours an Employee works in a part-time position or under a part-time arrangement.

"Part-time hours" means the hours which are less than the hours which constitute full-time work under the relevant industrial instrument.

"Part-time position" means a designated part-time position and, unless otherwise specified, includes any position which is filled on a part-time basis.

"Part-time Employee" means an Employee whose ordinary hours of duty are specified as part-time in a formal industrial instrument or whose contract hours are less than the full-time hours.

"Prescribed starting time" means, for an Employee not working under a flexible working hours scheme, the commencement of standard daily hours of that Employee. For an Employee working under a flexible working hours scheme, "prescribed starting time," means the commencement of bandwidth of the scheme applying to that Employee.

"Public holiday" means a day proclaimed as a public holiday. This definition does not include a Saturday which is such a holiday by virtue of the Public Holidays Act 2010 (NSW), and 1 August or such other day that is a bank holiday instead of 1 August.

"Punitive Excess Charge" means an excess charge imposed by an insurer because of poor driving record or the type of car insured.

"Recall to duty" means those occasions when an Employee is directed to return to duty outside the Employee's ordinary hours or outside the bandwidth in the case of an Employee working under a flexible working hours scheme.

"Residence", in relation to an Employee, means the ordinary and permanent place of abode of the Employee.

"Secondment" means an arrangement agreed to by the Chief Executive Officer, the Employee and a public sector organisation or a private sector organisation which enables the Employee to work in such other organisation for an agreed period of time and under conditions agreed to prior to the commencement of the period of secondment. An Employee has the right to return to their substantive position at the conclusion of a period of secondment.

"Short term foster care" means fostering a child for a period of 3 months to 2 years.

"Standard hours" are set and regular hours of operation as determined by the Chief Executive Officer. Standard hours are generally the hours which were in operation prior to the introduction of flexible working hours or have been determined as standard hours for the NSW Aboriginal Land Council since the introduction of flexible working hours.

"Standby" means an instruction given by the Chief Executive Officer to an Employee to be available for immediate contact in case of an authorised call-out requiring the performance of duties.

"Study leave" means leave without pay granted for courses at any level or for study tours during which financial assistance may be approved by the Chief Executive Officer, if the activities to be undertaken are considered to be of relevance or value to the NSW Aboriginal Land Council.

"Study Time" means the time allowed off from normal duties on full pay to an Employee who is studying in a part-time course which is of relevance to the NSW Aboriginal Land Council.

"Supervisor" means the immediate supervisor or manager of the area in which an Employee is employed or any other Employee authorised by the Chief Executive Officer to fulfil the role of a supervisor or manager, other than a person employed as a consultant or contractor.

"Temporary Employee" is an Employee engaged for a specific task and/or period of time and shall be entitled to the same conditions as a permanent Employee on a pro rata basis.

"Temporary work location" means the place at or from which an Employee temporarily performs official duty if required to work away from headquarters.

"Trade Union" or "Union" means the Community and Public Sector Union (CPSU).

"Trade Union Delegate" means an accredited union delegate responsible for his/her workplace; and/or a person who is elected by the trade union as its representative, an executive member or a member of the union's Council.

"Trade Union Official" means a person who is employed by the union to carry out duties of an official in a permanent or temporary capacity, including elected full-time officials and/or Employees placed on loan to the union for an agreed period of time.

"Workplace" means the NSW Aboriginal Land Council or, as the case may be, a zone or section of the organisation in which the Employee is employed.

"Workplace Management" means the Chief Executive Officer or any other person authorised by the Chief Executive Officer to assume responsibility for the conduct and effective, efficient and economical management of the functions and activities of the organisation or part of the organisation.

#### **4. Scope and Application**

The Agreement is made under s172 of the *Fair Work Act 2009*. The parties to the Agreement are the NSW Aboriginal Land Council "the Employer" ("NSWALC") and eligible Employees.

#### **5. Objectives of the Agreement**

- 5.1. The Enterprise Agreement was made as reflective of existing conditions of employment for NSWALC Employees.
- 5.2. The parties to the Enterprise Agreement sought, through good faith bargaining, to provide fair and equitable conditions, provide for future wage and salary progression and provide an Agreement that would support and encourage the attraction, retention and development of quality staff.
- 5.3. In bargaining the Agreement the parties considered and recognised the financial and operational capacity of the NSWALC to provide conditions and benefits.

#### **6. Coverage**

- 6.1. The provisions of this Enterprise Agreement shall apply to all eligible Employees, being those Employees who are employed under a Group Classification as defined in the Salary & Wages Clause of this Agreement or as NSWALC Trainees under a Traineeship program.
- 6.2. The Agreement does not apply to the following Employees:
  - 6.2.1. Those employees engaged under a fixed term Contract of Employment with salaries and conditions determined by that Contract.
  - 6.2.2. Any other Employees not employed under a Group Classification.

#### **7. Period of Operation**

- 7.1. The Agreement will commence seven days following approval by the Fair Work Commission.
- 7.2. The nominal expiry date is 1 April 2020.
- 7.3. The parties agree to commence negotiations for a replacement Agreement not less than 3 months prior to the expiration of this Agreement.



## **8. Work Environment**

**8.1. Workplace Health and Safety** - The parties to this Enterprise Agreement are committed to achieving and maintaining accident-free and healthy workplaces in NSW Aboriginal Land Council by:

- 8.1.1.** The development of policies and guidelines for the NSW Aboriginal Land Council on Workplace Health, Safety and Rehabilitation;
- 8.1.2.** Consultative mechanisms and structures being established within the NSW Aboriginal Land Council to identify and introduce safe systems of work, safe work practices, working environments; to develop strategies to assist the rehabilitation of injured Employees; and to determine the level of responsibility to achieve these objectives.

This will assist to achieve the objects of the *Workplace Health and Safety Act 2011* and the Regulations and Codes of Practice made under the Act;

- 8.1.3.** Identifying training strategies for Employees, as appropriate, to assist in the recognition, elimination or control of workplace hazards and the prevention of work related injury and illness;
- 8.1.4.** Directly involving the Chief Executive Officer in the provisions of Subclauses 8.1.1 to 8.1.3 inclusive of this Subclause.

**8.2. Equality in employment** - The NSW Aboriginal Land Council is committed to the achievement of equality in employment and the Enterprise Agreement has been drafted to reflect this commitment.

**8.3. Harassment-free Workplace** - Harassment on the grounds of sex, race, marital status, physical or mental disability, sexual preference, transgender, age or carer's responsibility is unlawful in terms of the *Anti-Discrimination Act 1977*. Management and staff of the NSW Aboriginal Land Council are required to refrain from, or being party to, any form of harassment in the workplace.

## **9. Dispute Settling Procedures**

**9.1.** All disputes relating to the provisions of this Enterprise Agreement or the National Employment Standards shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within the NSW Aboriginal Land Council, if required.

**9.2.** An Employee is required to notify in writing their immediate manager, or next higher manager or the Human Resources manager, as to the substance of the dispute, request a meeting to discuss the matter, and if possible, state the remedy sought.

- 9.3.** The immediate manager, or next higher manager or Human Resources manager shall convene a meeting in order to resolve the dispute within two (2) working days of the matter being brought to the attention of the relevant manager, or as soon as practicable.
- 9.4.** If the matter remains unresolved with the immediate manager, or next higher manager, or Human Resources manager, the Employee may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two (2) working days, or as soon as practicable. The Employee may pursue the sequence of reference to successive levels of management until the matter is referred to the Chief Executive Officer.
- 9.5.** The Chief Executive Officer may refer the matter to, or the Employee may request that the Chief Executive Officer refer the matter to, an independent person for conciliation, mediation and/or investigation.
- 9.6.** The Chief Executive Officer shall provide a written response to the Employee and any other party involved in the dispute, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- 9.7.** An Employee, at any stage, may request to be represented by an Employee Nominated Representative.
- 9.8.** If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission.
- 9.9.** The Fair Work Commission may deal with the dispute in 2 stages:
- 9.9.1.** The Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - 9.9.2.** If The Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
    - 9.9.2.1.** Arbitrate the dispute; and
    - 9.9.2.2.** Make a determination that is binding on the parties.
- 9.10.** If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act.

**9.11.** A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

**9.12.** While the parties are trying to resolve the dispute using the procedures in this clause:

**9.12.1.** The Employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

**9.12.2.** The Employee must comply with a direction given by the NSWALC to perform other available work at the same workplace, or at another workplace, unless:

**9.12.2.1.** The work is not safe; or

**9.12.2.2.** Applicable Workplace Health and Safety legislation would not permit the work to be performed; or

**9.12.2.3.** The work is not appropriate for the Employee to perform;

**9.12.2.4.** There are other reasonable grounds for the Employee to refuse to comply with the direction.

**9.13.** The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this clause.

## **10. Employment Termination Procedures**

**10.1.** Cessation of Employment -

**10.1.1.** An Employee ceasing employment must provide 1 weeks' notice in writing.

**10.1.2.** The NSWALC must provide the following notice period:

<b>Period of Continuous Service</b>	<b>Period of Notice</b>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

An Employee over 45 years of age with at least 2 years employment at NSWALC is entitled to an additional weeks' notice.

- 10.2.** Abandonment of Employment - an Employee who is absent from duty without authorisation for a period exceeding three (3) continuous days is to be mailed or couriered a certified letter to their last known address requesting the reason for the absence; directing the Employee to resume duty within a specified time, and advising of the prospect of termination if the direction is not followed.
- 10.3.** If the Employee does not resume duty within the specified period or fails to provide a satisfactory reason for their unauthorised absence the Chief Executive Officer may terminate the person's employment.
- 10.4.** Summary Dismissal - the NSW Aboriginal Land Council shall have the right to dismiss an Employee without notice for conduct that justifies instant dismissal.

## **11. Individual Flexibility Arrangements**

- 11.1.** Individual Flexibility Arrangements, as specified in this Enterprise Agreement, may be negotiated between the NSWALC and an Employee and/or Employees covered by this Agreement, if:

- 11.1.1.** The Agreement deals with 1 or more of the following matters:
- (i) Arrangement about when work is performed
  - (ii) Overtime rates
  - (iii) Penalty rates
  - (iv) Allowances
  - (v) Leave Loading; and
- 11.1.2.** The arrangement meets the genuine needs of the NSWALC and the Employee; and
- 11.1.3.** The arrangement is genuinely agreed to by the NSWALC and the Employee.

- 11.2.** The NSWALC must ensure that the terms of the individual flexibility arrangement.

- 11.2.1.** Are about permitted matters under section 172 of the *Fair Work Act 2009*; and
- 11.2.2.** Are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
- 11.2.3.** Result in the Employee being better off overall than the Employee would be if no arrangement was made.



**11.3. The NSWALC must ensure that the Individual Flexibility Arrangement:**

- 11.3.1.** Is in writing; and
- 11.3.2.** Includes the name of the NSWALC and Employee; and
- 11.3.3.** Is signed by the NSWALC and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
- 11.3.4.** Includes details of:
  - 11.3.4.1.** The terms of the Enterprise Agreement that will be varied by the arrangement; and
  - 11.3.4.2.** How the arrangement will vary the effect of the terms; and
  - 11.3.4.3.** How the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and

**11.3.5. States the day on which the arrangement commences**

**11.4. The NSWALC must give the Employee a copy of the Individual Flexibility Arrangement within 14 days after it is agreed to.**

**11.5. The NSWALC or the Employee may terminate the Individual Flexibility Arrangement:**

- 11.5.1.** By giving no less than 28 days written notice to the other party to the arrangement; or
- 11.5.2.** If the NSWALC and the Employee agree in writing — at any time.

**11.6. An Employee, at any stage, may request to be represented by an Employee Nominated Representative.**

**12. Working Hours**

**12.1. The working hours of staff and the manner of their recording, shall be as determined from time to time by the Chief Executive Officer. Such direction will include the definition of full time contract hours as contained in Clause 3, Definitions of this Enterprise Agreement.**

**12.2. An Employee with the delegated authority will be responsible to the Chief Executive Officer for the proper observance of hours of work and for the proper recording of such attendance of relevant Employees.**

- 12.3.** The Chief Executive Officer may require an Employee to perform duty beyond the hours determined under Subclause 12.1 of this Clause but only if it is reasonable for the Employee to be required to do so. An Employee may refuse to work additional hours in circumstances where the working of such hours would result in the Employee working unreasonable hours. In determining what is unreasonable the following factors shall be taken into account:
- 12.3.1.** the Employee's prior commitments outside the workplace, particularly the Employee's family and carer responsibilities, community obligations or study arrangements;
  - 12.3.2.** any risk to the Employee's health and safety;
  - 12.3.3.** the urgency of the work required to be performed during the additional hours, the impact on the operational commitments of the organisation and the effect on client services;
  - 12.3.4.** the notice (if any) given by the Chief Executive Officer or manager regarding the working of the additional hours, and by the Employee of their intention to refuse the working of additional hours; or
  - 12.3.5.** any other relevant matter.
- 12.4.** The application of hours of work is subject to the provisions of this Clause.
- 12.5.** The ordinary hours may be standard or flexible and may be worked on a 35 hour per week full time equivalent, or part-time pro-rata basis.
- 12.6.** The Chief Executive Officer shall ensure that all Employees employed in the NSW Aboriginal Land Council are informed of the hours of duty required to be worked and of their rights and responsibilities in respect of such hours of duty.
- 12.7.** Employees are to keep a record of their daily attendance in the workplace by using the approved flex sheet. These flex sheets must be submitted in a timely manner (no later than 1 week after the closing date of each respective 4 week period).
- 12.8.** Managers are to ensure that each Employee within their respective Unit/Zone submit their flex sheets in the timely manner mentioned in Clause 12.7 and then forward the flex sheet to Human Resources & Training for verification and processing.

### **13. Variation of Hours**

If the Chief Executive Officer is satisfied that an Employee is unable to comply with the general hours operating in the NSW Aboriginal Land Council because of limited transport facilities, urgent personal reasons, community or family reasons, the Chief Executive Officer may vary the Employee's hours of attendance on a one off, short or long-term basis, subject to the following:

- 13.1. The variation does not adversely affect the operational requirements;
- 13.2. There is no reduction in the total number of daily hours to be worked;
- 13.3. The variation is not more than an hour from the commencement or finish of the span of usual commencing and finishing time;
- 13.4. A lunch break of one hour is available to the Employee, unless the Employee elects to reduce the break to not less than 30 minutes;
- 13.5. No overtime or meal allowance payments are made to the Employee, as a result of an agreement to vary the hours;
- 13.6. Ongoing arrangements are documented.

### **14. Natural Emergencies and Major Transport Disruptions**

An Employee prevented from attending work at a normal work location by a natural emergency or by a major transport disruption may:

- 14.1. Apply to vary the working hours as provided in Clause 13 - Variation of Hours of this Enterprise Agreement; and/or
- 14.2. Negotiate an alternative working location with the NSW Aboriginal Land Council; and/or
- 14.3. Take available family and community service leave and/or flex leave, recreation or extended leave or leave without pay to cover the period concerned.

## **15. Assistance With Transport**

The extent of any assistance by the NSW Aboriginal Land Council with transport of an Employee between the workplace and residence or part of the distance involved, shall be determined by the Chief Executive Officer according to the provisions contained in Clause 86 - Provision of Transport in Conjunction with Working of Overtime of this Enterprise Agreement.

## **16. Notification of Absence from Duty**

- 16.1.** If an Employee is to be absent from duty, other than on authorised leave, the Employee must notify the supervisor, or must arrange for the supervisor to be notified, as soon as possible, of the reason for the absence.
- 16.2.** If an Employee is absent from duty without authorised leave and does not provide an explanation of the absence to the satisfaction of the Chief Executive Officer, the amount representing the period of absence shall be deducted from the Employee's pay.
- 16.3.** The Supervisor must notify the Human Resources Unit within 24 hours for the purposes of Clause 16.2 of this Enterprise Agreement.

## **17. Public Holidays**

Unless directed to attend for duty by the Chief Executive Officer, an Employee is entitled to be absent from duty on any day which is:

- 17.1.** A public holiday throughout the State; or
- 17.2.** National Aboriginal & Islanders day of Commemoration (NAIDOC); or
- 17.3.** Such days as deemed by the Chief Executive Officer to be days of national Aboriginal significance.

## **18. Standard Working Hours**

- 18.1.** Standard hours are set and regular, with an hour for lunch and, if worked by the Employee under a flexible working hours scheme, would equal the contract hours required to be worked under the scheme. Standard hours could be full time or part-time.
- 18.2.** Urgent Personal Business - Where an Employee requires to undertake urgent personal business, appropriate leave or time off may be granted

by the Chief Executive Officer. Where time off has been granted, such time shall be made up as set out in Subclause 18.4 of this Clause.

**18.3.** Late Attendance - If an Employee is late for work, such Employee must either take appropriate leave or, if the Chief Executive Officer approves, make the time up in accordance with Subclause 18.4 of this Clause.

**18.4.** Making up of Time - The time off taken in circumstances outlined in Subclauses 18.2 and 18.3 of this Clause must be made up at the earliest opportunity. The time may be made up on the same day or on a day or days agreed to between the Employee and the Chief Executive Officer.

## **19. Flexible Working Hours**

**19.1.** Unless an Individual Flexibility Arrangement has been negotiated as provided in Clause 11 - Individual Flexibility Arrangement of this Enterprise Agreement, a flexible working hours scheme in terms of this Subclause may operate in the NSWALC or a unit/zone office of the organisation, in accordance with the NSW Aboriginal Land Council Flexible Working Hours Policy and, subject to operational requirements, as determined by the Chief Executive Officer.

**19.2.** Where the operational requirements allow, the working of flexible hours under a flexible working hours scheme operating in the NSW Aboriginal Land Council, shall be extended to an Employee working under a part-time work arrangement. Except for provisions contained in Subclauses 19.11 and 19.13 of this Clause, all other provisions under this Subclause shall be applied pro rata to an Employee working under a part-time work arrangement.

**19.3.** Exclusions - Flexible working hours shall not apply to Employees who are:

**19.3.1.** Under permanent standard hours arrangement;

**19.3.2.** Under a casual employment arrangement;

**19.3.3.** Excluded from this Agreement under Clause 6 Coverage.

**19.4.** Attendance - An Employee's attendance outside the hours of a standard day but within the bandwidth shall be subject to the availability of work.

**19.5.** Standard Bandwidth - The standard bandwidth shall be between the hours of 7.00a.m. and 7.00p.m., unless a different time span has been



negotiated under an Individual Flexibility Arrangement in terms of Clause 11, Individual Flexibility Arrangement of this Enterprise Agreement or under the Adjustable Bandwidth Subclause 19.6.

**19.6. Adjustable Bandwidth –** The adjustable bandwidth will apply where an Employee is required to work outside of the Standard Bandwidth due to operational requirements.

**19.6.1.** The adjustable bandwidth will provide for an extended Bandwidth of 6.30am to 9pm.

**19.6.2.** The hours worked will be negotiated based on a 7 hour working day and will be subject to the prior approval of the Employee's Manager or their delegated representative.

**19.6.3.** The Standard Core time will not apply in these circumstances.

**19.6.4.** All hours worked within an approved Adjustable Bandwidth arrangement will count towards the accrual of normal flexitime hours.

**19.7. Coretime -** The coretime shall be between the hours of 9.30a.m. and 3.30p.m, excluding the lunch break, unless other arrangements have been negotiated under a Individual Flexibility Arrangement in terms of Clause 11, Individual Flexibility Arrangement of this Enterprise Agreement or under the Adjustable Bandwidth Subclause 19.6.

**19.8. Lunch break -** The standard lunch period shall be 1 hour. With the approval of the supervisor, the lunch period may be extended by the Employee up to 2 hours or reduced to not less than 30 minutes within the span of hours determined by the Chief Executive Officer. Where an Individual Flexibility Arrangement has been negotiated in terms of Clause 11 of this Enterprise Agreement, the lunch break shall be taken in accordance with such Individual Flexibility Arrangement.

**19.9. Settlement period -** Unless an Individual Flexibility Arrangement has been negotiated in terms of Clause 11 of this Enterprise Agreement, the settlement period shall be 4 weeks.

**19.9.1.** For time recording purposes the settlement period and flex leave must coincide.

**19.9.2.** Where exceptional circumstances apply, e.g. prolonged transport strikes, adverse weather conditions and the like, the Chief Executive Officer may extend the affected settlement period by a further 4 weeks.

**19.10. Contract hours** - The contract hours for a settlement period shall be calculated by multiplying the Employee's weekly contract hours by the number of weeks in a settlement period.

**19.11. Flexible working hours credit** - An Employee may carry a maximum of 20 hours credit into the next period. Time accumulated in excess of 20 hours at the end of a settlement period shall be forfeited. Individual Flexibility Arrangement in terms of Clause 11 of this Enterprise Agreement may be negotiated in respect of the carryover of the maximum flexible hours credit and the banking of any accumulated time.

**19.12.** The NSWALC shall ensure that an Employee does not forfeit excess credit hours at the conclusion of settlement periods as a result of reasonable requests for flex leave being refused or the Employee being directed by the supervisor to work long hours within the bandwidth. Hours worked are to be monitored by the Employee and supervisor to ensure that, as far as possible, excess credit and debit hours are avoided.

**19.13. Flexible Working Hours Debit** - The following provisions shall apply to the carryover of flexible working hours debits, unless an Individual Flexibility Arrangement has been negotiated in terms of Clause 11 of this Enterprise Agreement:

**19.13.1.** A debit of up to 10 hours at the end of a settlement period may be carried over into the next period.

**19.13.2.** Where the debit exceeds 10 hours, the excess will be debited as leave without pay, unless the Employee elects to be granted available recreation or extended leave to offset the excess.

**19.13.3.** Any debit of hours outstanding on an Employee's last day of duty is to be deducted from any unpaid salary or the monetary value of accrued recreation/extended leave.

**19.14. Cessation of duty** - An Employee may receive payment for flex days accrued and remaining untaken or not forfeited on the last day of service:

**19.14.1.** Where the Employee's services terminate without a period of notice for reasons other than misconduct; or

**19.14.2.** Where an application for flex leave which would have eliminated the accumulated day or days was made during the period of notice of retirement or resignation and was refused; or

- 19.14.3.** In such other circumstances as have been negotiated between the NSWALC and the Employee under an Individual Flexibility Arrangement in terms of Clause 11 of this Enterprise Agreement.
- 19.15.** Flex Days – Subject to operational requirements, an Employee may take off 2 full flex days in a settlement period of 4 weeks. These days may also be taken in half day multiples. Flex days may be taken on consecutive working days. Half-day absences may be combined with other periods of authorised leave. Individual Flexibility Arrangements in respect of the taking of flex days may be negotiated in terms of Clause 11 of this Enterprise Agreement.
- 19.16.** Accrued Flex Days – Where operational convenience prevents a Employee from taking the Flex Days(s) Employees may elect to bank the remaining Flex Days(s).
- 19.16.1.** A maximum of six (6) days may be banked at any time.
- 19.16.2.** Employees may elect to take the Accrued Flex Days subject to NSWALC convenience.
- 19.16.3.** In any individual settlement period the combination of standard Flex days and accrued Flex days taken should not exceed 5 working days.
- 19.17.** Absence during core time - Where an Employee needs to take a short period of authorised leave within core time, other than flex leave, the quantum of leave to be granted shall be determined according to the provisions contained in Clause 56- Absence from Work of this Enterprise Agreement.
- 19.18.** Standard hours - Notwithstanding the provisions of this clause, the Chief Executive Officer may direct the Employee to work standard hours and not flexible hours:
- 19.18.1.** Where the Chief Executive Officer decides that the working of flexible hours by an Employee or employees does not suit the operational requirements of the NSWALC or a unit/zone office of the organisation, the Employee(s) shall be consulted, where appropriate; or
- 19.18.2.** As remedial action in respect of an Employee who has been found to have deliberately and persistently breached the flexible working hours scheme.



- 19.19.** Easter concession - Employees who work under a flexible working hours scheme may be granted, subject to the convenience of the NSWALC, an additional half day's flex leave on the Thursday preceding the Good Friday public holiday.

## **20. Private Employment**

An Employee of NSWALC is not to undertake any other paid work or engage in any other form of employment without the consent of the Chief Executive Officer in writing. Private Employment for this purpose is where a service or work is provided in an employer/employee relationship and the employee receives a set wage and incurs liability for taxation.

- 20.1.** The prohibition against undertaking other employment continues during any period of leave, whether the leave is paid or unpaid.

- 20.2.** An employee seeking approval to engage in private employment must submit written information concerning the nature of the employment and the time involved. This information should be accompanied by an assurance in writing, that:

- 20.2.1.** The work does not arise from, nor will it interfere with, the employee's official duties;
- 20.2.2.** The work will not involve a conflict of interest with the employee's official duties;
- 20.2.3.** The work will be undertaken outside working hours;
- 20.2.4.** No relevant information has been withheld in relation to Subclauses 20.2.1, 20.2.2, 20.2.3 ; and
- 20.2.5.** The arrangements will not be varied without further application.

An applicant is not required to divulge any personal circumstances associated with the application to engage in private employment.

## **21. Morning and Afternoon Breaks**

Employees may take a 10 minute morning break, provided that the discharge of the NSW Aboriginal Land Council business is not affected and, where practicable, they are to do so out of the view of the public contact areas. Employees may also take a 10 minute afternoon break, subject to the same conditions as apply to the morning break.

## **22. Meal Breaks**

Meal breaks must be given to and taken by Employees. No Employee shall be required to work continuously for more than 5 hours without a meal break, provided that:

- 22.1. Where the prescribed break is more than 30 minutes, the break may be reduced to not less than 30 minutes if the Employee agrees. If the Employee requests to reduce the break to not less than 30 minutes, the reduction must be operationally convenient; and
- 22.2. Where the nature of the work of an Employee or a group of Employees is such that it is not possible for a meal break to be taken after not more than 5 hours, Individual Flexibility Arrangements may be negotiated between the NSWALC and the Employees to provide for payment of a penalty.

### **23. Lactation Breaks**

- 23.1. This clause applies to Employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this Agreement.
- 23.2. A full time Employee or a part time Employee working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- 23.3. A part time Employee working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- 23.4. A flexible approach to lactation breaks can be taken by mutual agreement between an Employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the NSWALC with the lactating needs of the Employee in question.
- 23.5. Where available the NSWALC will provide access to suitable facilities including a suitable private space with comfortable seating for the purposes of breastfeeding or expressing milk, refrigeration and a sink. Where it is not practicable to provide these facilities, discussions between the manager and Employee will take place to attempt to identify reasonable alternative arrangements for the Employee's lactation needs.

**23.6.** Employees experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.

**23.7.** Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with Clause 69, Sick Leave of this Agreement, or access to the flexible working hours scheme provide in Clause 19, Flexible Working Hours of this Agreement, where applicable.

#### **24. Non-Compliance**

In the event of any persistent failure by an Employee to comply with the hours of duty required to be worked or in the event of failure to comply with Clause 12.7, the Chief Executive Officer, shall investigate such non-compliance as soon as it comes to notice and shall take appropriate remedial action according to any applicable NSWALC policy.

#### **25. Excess Travelling Time**

**25.1.** Excess Travelling Time - An Employee directed by the Chief Executive Officer to travel on official business outside the usual hours of duty is entitled to apply and to be compensated for such time either by:

**25.1.1.** Payment calculated in accordance with the provisions contained in this clause; or

**25.1.2.** If it is operationally convenient, by taking equivalent time off in lieu to be granted for excess time spent in travelling on official business.

**25.2.** Compensation under Clauses 25.2.1 or 25.2.2 of this Subclause, shall be subject to the following conditions:

**25.2.1.** On a non-working day - all time spent travelling on official business;

**25.2.2.** On a working day - subject to the provisions of Subclause 25.5 of this Clause, all additional time spent travelling before or after the Employee's normal hours of duty;

Provided the period for which compensation is being sought is more than a half an hour on any one day.

- 25.3.** No compensation for travelling time shall be given in respect of travel between 11.00p.m. on any one day and 7.00a.m. on the following day where the Employee has travelled overnight and sleeping facilities have been provided for the Employee.
- 25.4.** Compensation for travelling time shall be granted only in respect of the time that might reasonably have been taken by the use of the most practical and economic means of transport.
- 25.5.** Compensation for excess travelling time shall exclude the following
- 25.5.1.** Time normally taken for the periodic journey from home to headquarters and return;
  - 25.5.2.** Any periods of excess travel of less than 30 minutes on any one day;
  - 25.5.3.** Travel to new headquarters on permanent transfer, if special leave has been granted for the day or days on which travel is to undertaken;
  - 25.5.4.** Time from 11.00pm. on one day to 7.00am. on the following day if sleeping facilities have been provided;
  - 25.5.5.** Travel not undertaken by the most practical available route;
  - 25.5.6.** Travel overseas.
- 25.6.** Payment for travelling time calculated in terms of this clause shall be at the Employee's ordinary rate of pay on an hourly basis calculated as follows:
- $\text{Annual Salary}/52/35 = \text{hourly rate}$
- 25.7.** The rate of payment for travel or waiting time on a non-working day shall be the same as that applying to a working day.
- 25.8.** Time off in lieu or payment for excess travelling time or waiting time will not be granted for more than eight hours in any period of 24 consecutive hours.

## **26. Waiting Time**

When an Employee travelling on official business is required to wait for transport in order to commence a journey to another location or to return home or to headquarters and such time is outside the usual hours of duty, the waiting time shall be treated and compensated for in the same manner as excess travelling time pursuant to Clause 25 - Excess Travelling Time.



## **27. Travelling Allowances – Actual Expenses (to apply from 1 July 2017)**

- 27.1** Any authorised official travel and associated expenses that are properly and reasonably incurred by an Employee who is required to perform duties at a location other than their normal headquarters shall be met by the NSWALC. As a general principle, an Employee should not suffer financial detriment when undertaking authorised official travel, nor should the required authorised official travel be an opportunity for an Employee to attract salary supplementation.
- 27.2** NSWALC requires all Employees to obtain an authorisation for all official travel prior to incurring any travel expense.
- 27.3** Unless the Chief Executive Officer authorises a variation to the method in which authorised official travel and associated expenses will be paid, the preferred payment method for authorised official travel and associated expenses is:
- 27.3.1** Flights are to be paid by corporate card prior to travel, preferably through a travel agent approved by NSWALC.
  - 27.3.2** Accommodation is to be paid by corporate card prior to travel, preferably through a travel agent approved by NSWALC. The amount should not exceed the amount set out in Table 1 of Part B Monetary Rates, updated in accordance with the relevant NSW Government Circulars.
    - 27.3.2.1** In the event an Employee elects to stay with a family member or friend that Employee shall be entitled to be paid a Private Stay Allowance at a rate of \$60 per night.
  - 27.3.3** Meals are to be covered through the payment of a daily travel allowance. The travel allowance is to be paid at the Capital City rate as set out in Table 1 of Part B Monetary Rates, updated in accordance with the relevant NSW Government Circulars (regardless of the area an Employees is travelling to)
  - 27.3.4** Taxis are to be paid by NSWALC via a method to be determined by NSWALC in consultation with the Employee.
  - 27.3.5** Incidentals will be paid in accordance with the rates set out in Table 1 of Part B Monetary Rates, updated in accordance with the relevant NSW Government Circulars.

- 27.4** All Employees are also required to comply with the provisions set out in the NSWALC Travel Policy.

**28. Travelling Allowances When a NSWALC Employee is working at a temporary location (to apply from 1 July 2017)**

- 28.1** An Employee who is required by the Chief Executive Officer to work from a temporary work location shall be compensated for accommodation, meal and incidental expenses properly and reasonably incurred during the time actually spent away from the Employee's residence in order to perform the work. For the first 21 days the payment shall be in accordance with the provisions outlined in Clause 27 and shall include pre-paid accommodation and a daily travel allowance for meals and incidentals.
- 28.2** If an Employee is required to work from a temporary work location for a period of more than 21 days but less than 12 months, the Employee shall be paid a Living Away from Home Allowance at the rates set and published by the ATO. During this period the Chief Executive Officer may, at his/her discretion, make alternative arrangements for meeting the living expenses incurred by the employee during the period an Employee is working at the temporary location. Any alternative arrangements made by the Chief Executive Officer must be reasonable and must be made in accordance with the provisions relating to the Living from Home Allowance set and published by the ATO, as amended from time to time.
- 28.3** The return of an Employee to their home at weekends, on rostered days off or during short periods of leave while working from a temporary work location shall not constitute a break in the temporary work arrangement.

**29. Restrictions on Payment of Travelling Allowances - When a NSWALC Employee is working at a temporary location (to apply from 1 July 2017)**

- 29.1** An allowance under Clause 28 is not payable in respect of:
- 29.1.1** Any period during which an Employee returns to their residence at weekends or public holidays, commencing at the time of arrival at that residence and ending at the time of departure from the residence;
  - 29.1.2** Any period of leave, except with the approval of the Chief Executive Officer or as otherwise provided by this Subclause; or
  - 29.1.3** Any other period during which an Employee is absent from the Employee's temporary work location otherwise than on official duty.

**29.2** Notwithstanding subclauses 29.1.1, 29.1.2 or 29.1.3 of this Clause, an Employee in receipt of an allowance under Clause 28 of this Enterprise Agreement who is granted special leave to return to their residence at a weekend, shall be entitled to an allowance under Clause 28 in respect of the necessary period of travel for the journey from the temporary work location to the Employee's residence; and for the return journey from the Employee's residence to the temporary work location, but is not entitled to any other allowance, in respect of the same period.

**29.3** Notwithstanding subclauses 29.1.1, 29.1.2 or 29.1.3 of this Clause, an Employee in receipt of an allowance under Clause 28 who, on ceasing to perform duty at or from a temporary work location, leaves that location shall be entitled to an allowance in accordance with Clause 28 of this Enterprise Agreement in respect of the necessary period of travel to return to the Employee's residence or to take up duty at another temporary work location, but is not entitled to any other allowance in respect of the same period.

### **30. Increase or Reduction in Payment of Travelling Allowances (to apply from 1 July 2017)**

Where the Chief Executive Officer is satisfied that the amount listed in Table 1 Part B – Monetary Rates as a travelling allowance is:

- 30.1** insufficient to adequately reimburse an Employee for expenses properly and reasonably incurred, the Chief Executive Officer may agree to the provision of a further amount to reimburse an Employee for the additional expenses incurred; or
- 30.2** in excess of the amount which would adequately reimburse an Employee for expenses properly and reasonably incurred, the Chief Executive Officer may reduce the allowance to an amount which would reimburse an Employee for expenses incurred properly and reasonably.

### **31. Production of Receipts (to apply from 1 July 2017)**

Payment of flights, accommodation and taxis (in the event a Cabcharge Voucher is not used), and any payment made on a Corporate Card, shall be subject to the production of receipts, unless the Chief Executive Officer is prepared to accept other evidence from an Employee with respect to the payments made.

#### **31A. Travel Allowances – Interim**

From the commencement date of this Agreement through until 30 June 2017, inclusive, the interim Travel Allowance clauses outlined in Annexure B to this Agreement shall apply to all Employees.

### **32. Travelling Distance**

The decision to obtain overnight accommodation shall be determined by the Chief Executive Officer having regard to the safety of an Employee travelling on official business and local conditions applicable in the area. Where an Employee is required to attend conferences or seminars which involve evening sessions or an Employee is required to make an early start at work in a location away from their normal workplace, overnight accommodation shall be appropriately granted by the Chief Executive Officer.

### **33. Allowance Payable for Use of Private Motor Vehicle**

**33.1.** The Chief Executive Officer may authorise an Employee to use a private motor vehicle for official NSWALC travel where:

**33.1.1.** Such use will result in greater efficiency or involve the NSWALC in less expense than if travel were undertaken by other means; or

**33.1.2.** Where the Employee is unable to use other means of transport due to a disability.

**33.2.** There shall be different classes of allowance payable for the use of a private motor vehicle for official NSWALC travel. The appropriate rate of the "casual rate" of allowance or the "official business rate" of allowance, as defined in Clause 3, Definitions of this Enterprise Agreement, shall be paid depending on the circumstances and the purpose for which the vehicle is used.

**33.3.** The Employee must have in force in respect of a motor vehicle used for official NSWALC travel, in addition to any policy required to be effected or maintained under the Motor Vehicles (Third Party Insurance) Act, 1942, a comprehensive motor vehicle insurance policy to an amount and in a form approved by the Chief Executive Officer.

**33.4.** An Employee who, with the approval of the Chief Executive Officer, uses a private motor vehicle for official NSWALC travel shall be paid an appropriate rate of allowance specified in Item 6 of Table 1 of Part B Monetary Rates for the use of such private motor vehicle.

**33.5.** Expenses such as tolls etc. shall be refunded to Employees where the charge was incurred during approved official NSWALC travel.

**33.6.** Except as otherwise specified in this Enterprise Agreement, an Employee shall bear the cost of ordinary daily travel by private motor vehicle between the Employee's residence and headquarters.



#### **34. Damage to Private Motor Vehicle Used for Official NSWALC Travel**

**34.1.** Where a private vehicle is damaged while being used for official NSWALC travel, any normal excess insurance charges prescribed by the insurer shall be reimbursed by the NSWALC, provided:

**34.1.1.** The damage is not due to gross negligence by the Employee; and

**34.1.2.** The charges claimed by the Employee are not the charges prescribed by the insurer as punitive excess charges.

**34.2.** Provided the damage is not the fault of the Employee, the NSWALC shall reimburse to the Employee the costs of repairs to a broken windscreen, if the Employee can demonstrate that:

**34.2.1.** The damage was sustained on approved official NSWALC travel ; and

**34.2.2.** The costs cannot be met under the insurance policy due to excess clauses.

#### **35. Compensation for Damage to or Loss of Employee's Personal Property**

**35.1.** Where damage to or loss of the Employee's personal property occurs in the course of employment, a claim may be lodged under the Workers Compensation Act and/or under any insurance policy of the NSW Aboriginal Land Council covering the damage to or loss of the personal property of the Employee.

**35.2.** If a claim under Subclause 35.1 of this Clause is rejected by the insurer, the Chief Executive Officer may compensate an Employee for the damage to or loss of personal property, if such damage or loss:

**35.2.1.** Is due to the negligence of the NSWALC, another Employee or both, in the performance of their duties; or

**35.2.2.** Is caused by a defect in an Employee's material or equipment; or

**35.2.3.** Results from an Employee's protection of or attempt to protect NSW Aboriginal Land Council property from loss or damage.

**35.3.** Compensation in terms of Subclause 35.2 of this Clause shall be limited to the amount necessary to repair the damaged item. Where the item cannot be repaired or is lost, the Chief Executive Officer may pay the cost of a replacement item, provided the item is identical to or only marginally different from the damaged or lost item and the claim is supported by satisfactory evidence as to the price of the replacement item.

- 35.4.** For the purpose of this clause, personal property means an Employee's clothes, spectacles, hearing-aid, and tools of trade or similar items which are ordinarily required for the performance of the Employee's duties.
- 35.5.** Compensation for the damage sustained shall be made by the NSWALC where, in the course of work, clothing or items such as spectacles, hearing aids, etc. are damaged or destroyed by natural disasters or by theft or vandalism.

### **36. Garage and Carport Allowance**

- 36.1.** Where an Employee garages a NSWALC fleet vehicle in their own garage or carport and the use of the garage or carport is considered essential by the Chief Executive Officer, such Employee shall be paid an appropriate rate of allowance as specified in Item 16 of Table 1 of Part B Monetary Rates.
- 36.2.** Payment of the garage or carport allowance shall continue during periods when the Employee is absent from headquarters.

### **37. First Aid Allowance**

- 37.1.** An Employee appointed as a First Aid Officer shall be paid a first aid allowance at the rate appropriate to the qualifications held by such Employee as specified in Item 18 of Table 1 of Part B Monetary Rates.
- 37.2.** The First Aid Allowance shall not be paid during extended leave or any other continuous period of leave which exceeds four weeks.
- 37.3.** When the First Aid Officer is absent on leave for one week or more and another qualified Employee is selected to relieve in the First Aid Officer's position, such Employee shall be paid a pro rata first aid allowance for assuming the duties of a First Aid Officer.

### **38. Review of Allowances Payable in terms of this Enterprise Agreement**

Adjustment of Allowances - Allowances contained in this Enterprise Agreement shall be reviewed as follows:

- 38.1.** Allowances payable in terms of Clauses listed below shall be updated in accordance with the relevant NSW Government Circulars
- 38.1.1.** Clause 27 – Travelling Allowances - Actual Expenses
- 38.1.2.** Clause 28 - Travelling Allowances Working at Temporary Location.

- 38.1.3.** Clause 82 - Overtime Meal Allowances for breakfast, lunch and dinner.
- 38.1.4.** Clause 33 - Allowances Payable for use of Private Motor Vehicle;
- 38.1.5.** Clause 36 - Garage and Carport Allowance; and
- 38.1.6.** Clause 37 - First Aid Allowance.

### **39. Overseas Travel**

Unless the Chief Executive Officer determines that an Employee shall be paid travelling rates especially determined for the occasion, an Employee required by the NSW Aboriginal Land Council to travel overseas on official business, shall be paid the appropriate overseas travelling allowance rates as updated in accordance with the relevant NSW Government Circulars.

### **40. Exchanges and/or Secondments**

- 40.1.** The Chief Executive Officer may arrange Exchanges with other organisations both public and private, if the NSW Aboriginal Land Council or the Employee will benefit from additional training and development which is intended to be used in the carrying out of the NSW Aboriginal Land Council business.
- 40.2.** Secondment for a defined period may be:
  - 40.2.1.** Offered by the Chief Executive Officer and agreed to by the Employee; or
  - 40.2.2.** requested by the Employee and agreed to by the Chief Executive Officer.
- 40.3.** The conditions applicable to those Employees who participate in exchanges or secondments will be determined by the Chief Executive Officer according to the individual circumstances in each case.
- 40.4.** The provisions of this Subclause do not apply to the loan of services of Employees to trade unions. The provisions of Clause 46 Conditions Applying to On Loan Arrangements of this Enterprise Agreement apply to Employees who are loaned to their trade union.

### **41. Trade Union Activities Regarded as on Duty**

A Union delegate will be released from the performance of normal NSWALC duty when required to undertake any of the activities specified below. While undertaking such activities the trade union delegate will be regarded as being on duty and will not be required to apply for leave:

- 41.1.** Attendance at meetings of the organisation's Workplace Health and Safety Committee and participation in all official activities relating to the functions and responsibilities of elected Workplace Health and Safety Committee members at a place of work as provided for in the *Workplace Health and Safety Act 2011* and the Regulations.
- 41.2.** Attendance at meetings with workplace management or workplace management representatives.
- 41.3.** A reasonable period of preparation time, before:
  - 41.3.1.** Meetings with management;
  - 41.3.2.** Disciplinary or grievance meetings when a Union member requires the presence of the Union; and
  - 41.3.3.** Any other meeting with management,

by agreement with management, where operational requirements allow the taking of such time;

- 41.4.** Giving evidence in a court or tribunal in relation to an industrial matter
- 41.5.** Presenting information on the trade union and trade union activities at induction sessions for new staff of the NSWALC; and
- 41.6.** Distributing official trade union publications or other authorised material at the workplace, provided that a minimum of 24 hours notice is given to workplace management, unless otherwise agreed between the parties. Distribution time is to be kept to a minimum and is to be undertaken at a time convenient to the workplace.

## **42. Trade Union Activities Regarded as Special Leave**

The granting of special leave with pay will apply to the following activities undertaken by a trade union delegate, as specified below:

- 42.1.** Annual or biennial conferences of the delegate's union;
- 42.2.** Meetings of the union's Executive, Committee of Management or Councils;
- 42.3.** Annual conference of the Unions NSW and the biennial Congress of the Australian Council of Trade Unions;
- 42.4.** Attendance at meetings called by the Unions NSW involving the Union requires attendance of a delegate;



- 42.5.** Giving evidence before an Industrial Tribunal as a witness for the trade union;
- 42.6.** Reasonable travelling time to and from conferences or meetings to which the provisions of Clauses 46, 47 & 48 of this Enterprise Agreement apply.

### **43. Trade Union Training Courses**

The following training courses will attract the grant of special leave as specified below:

- 43.1.** Accredited Workplace Health and Safety courses and any other accredited WH&S training for WH&S Committee members.

The provider(s) of accredited WH&S training courses and the conditions on which special leave for such courses will be granted, shall be negotiated between the Chief Executive Officer and the relevant trade union under a Individual Flexibility Arrangement pursuant to Clause 11, Individual Flexibility Arrangement of this Enterprise Agreement.

- 43.2.** Courses organised and conducted by the Trade Union Education Foundation or by a training provider nominated by the member's trade union. A maximum of 12 working days in any period of 2 years applies to this training and is subject to:
  - 43.2.1.** The operating requirements of the workplace permitting the grant of leave and the absence not requiring employment of relief staff;
  - 43.2.2.** Payment being at the base rate, i.e. excluding extraneous payments such as, overtime, etc;
  - 43.2.3.** All travelling and associated expenses being met by the Employee or the Union;
  - 43.2.4.** Attendance being confirmed in writing by the member's trade union or a nominated training provider.

### **44. Conditions Applying to On Loan Arrangements**

Subject to the operational requirements of the workplace, on loan arrangements will apply to the following activities:

- 44.1.** Meetings interstate or in NSW of a Federal nature to which a representative or member has been nominated or elected by the Union:
  - 44.1.1.** As an Executive Member; or
  - 44.1.2.** A member of a Federal Council; or
  - 44.1.3.** Vocational or industry committee.



- 44.2.** Briefing counsel on behalf of the Union;
- 44.3.** Assisting Union officials with preparation of cases or any other activity outside their normal workplace at which the delegate is required to represent the interests of the Union;
- 44.4.** Country tours undertaken by a member of the executive or Council of the Union;
- 44.5.** Taking up of full-time duties with the trade union if elected to the office of President, General Secretary or to another full-time position with the Union;
- 44.6.** Financial Arrangements - The following financial arrangements apply to the occasions when an Employee is placed "on loan" to the Union:
  - 44.6.1.** The NSWALC will continue to pay the delegate or an authorised union representative whose services are on loan to the Union;
  - 44.6.2.** The NSWALC will seek reimbursement from the Union at regular intervals of all salary and associated on costs, including superannuation, as specified by the NSWALC from time to time.
  - 44.6.3.** Agreement with the Union on the financial arrangements must be reached before the on loan arrangement commences and must be documented in a manner negotiated between the Chief Executive Officer and Union;
- 44.7.** Recognition of "on loan" arrangement as service - On loan arrangements negotiated in terms of this clause are to be regarded as service for the accrual of all leave and for incremental progression.
- 44.8.** Limitation - On loan arrangements may apply to full-time or part-time staff and are to be kept to the minimum time required. Where the Union needs to extend an on loan arrangement, the Union shall approach the Chief Executive Officer in writing for an extension of time well in advance of the expiration of the current period of on loan arrangement.

#### **45. Period of Notice for Trade Union Activities**

The Chief Executive Officer must be notified in writing by the Union or, where appropriate, by the accredited delegate as soon as the date and/or time of the meeting, conference or other accredited activity is known.

#### **46. Access to Facilities by Trade Union Delegates**

The workplace shall provide accredited delegates with reasonable access to the following facilities for authorised union activities:

- 46.1.** Telephone, facsimile and, where available, email facilities;
- 46.2.** A notice board for material authorised by the Union or access to staff notice boards for material authorised by the Union;
- 46.3.** Workplace conference or meeting facilities, where available, for meetings with member(s), as negotiated between local management and the Union.

#### **47. Responsibilities of the Trade Union Delegate**

Responsibilities of the Union delegate are to:

- 47.1.** Establish accreditation as a delegate with the Union and provide proof of accreditation to the workplace;
- 47.2.** Participate in the workplace consultative processes, as appropriate;
- 47.3.** Follow the dispute settling procedure applicable in the workplace;
- 47.4.** Provide sufficient notice to the immediate supervisor of any proposed absence on authorised union business;
- 47.5.** Account for all time spent on authorised union business;
- 47.6.** When special leave is required, to apply for special leave in advance;
- 47.7.** Distribute Union literature/membership forms, under an arrangement negotiated between the Chief Executive Officer and the Union; and
- 47.8.** Use any facilities provided by the workplace properly and reasonably as negotiated at organisational level.

#### **48. Responsibilities of the Trade Union**

Responsibilities of the Union are to:

- 48.1.** Provide written advice to the Chief Executive Officer about an Union activity to be undertaken by an accredited delegate and, if requested, to provide written confirmation to the workplace management of the delegate's attendance/participation in the activity;
- 48.2.** Meet all travelling, accommodation and any other costs incurred by the accredited delegate, except as provided in Subclause 51.4 of Clause 51.
- 48.3.** Pay promptly any monies owing to the workplace under a negotiated on loan arrangement;
- 48.4.** Provide proof of identity when visiting a workplace in an official capacity, if requested to do so by management;
- 48.5.** Apply to the Chief Executive Officer well in advance of any proposed extension to the "on loan" arrangement;
- 48.6.** Assist the workplace management in ensuring that time taken by the Union delegate is accounted for and any facilities provided by the NSWALC are used reasonably and properly; and
- 48.7.** Advise NSWALC of any leave taken by the Union delegate during the on loan arrangement.

#### **49. Responsibilities of Workplace Management**

Where time is required for union activities in accordance with this clause the responsibilities of the workplace management are to:

- 49.1.** Release the accredited delegate from duty for the duration of the union activity, as appropriate, and, where necessary, to allow for sufficient travelling time during the ordinary working hours;
- 49.2.** Advise the workplace delegate of the date of the next induction session for new Employees in sufficient time to enable the trade union to arrange representation at the session;
- 49.3.** Meet the travel and/or accommodation costs properly and reasonably incurred in respect of meetings called by the workplace management;

- 49.4. Where possible, to provide relief in the position occupied by the delegate in the workplace, while the delegate is undertaking union responsibilities to assist with the business of workplace management;
- 49.5. Recredit any other leave applied for on the day to which special leave or release from duty subsequently applies;
- 49.6. Where a union activity provided under this clause needs to be undertaken on the trade union delegate's rostered day off or during an approved period of flex leave, to apply the provisions of Subclause 49.5 of this Clause.
- 49.7. To continue to pay salary during an "on loan" arrangement negotiated with the relevant union and to obtain reimbursement of salary and on-costs from the union at regular intervals, or as otherwise agreed between the parties if long term arrangements apply;
- 49.8. To verify with the union the time spent by a union delegate or delegates on union business, if required; and
- 49.9. If the time and/or the facilities allowed for union activities are thought to be used unreasonably and/or improperly, to consult with the trade union before taking any remedial action.

## **50. Right of Entry Provisions**

The right of entry provisions shall be as prescribed under the *Workplace Health and Safety Act 2011* and the *Fair Work Act 2009*.

## **51. Travelling and Other Costs of Trade Union Delegates**

- 51.1. Except as specified in Subclause 49.3 of Clause 49 - Responsibilities of Workplace Management of this Enterprise Agreement, all travel and other costs incurred by accredited union delegates in the course of trade union activities will be paid by the Union.
- 51.2. In respect of meetings called by the workplace management in terms of Subclause 49.3 of Clause 49 - Responsibilities of Workplace Management of this Enterprise Agreement, the payment of travel and/or accommodation costs, properly and reasonably incurred, is to be made, as appropriate, on the same conditions as apply under Clauses 27, 28, 29 or 30 of this Enterprise Agreement.

**51.3.** No overtime, leave in lieu or any other additional costs will be claimable by an Employee from the NSWALC, in respect of union activities covered by special leave or on duty activities provided for in this clause.

**51.4.** The on loan arrangements shall apply strictly as negotiated and no extra claims in respect of the period of on loan shall be made on the NSWALC by the Union or the Employee.

## **52. Industrial Action**

**52.1.** Provisions of the *Fair Work Act 2009* shall apply to the right of Employees to take lawful industrial action.

**52.2.** There will be no victimisation of Employees prior to, during or following such industrial action.

## **53. Deduction of Trade Union Membership Fees**

At the Employee's election and with the concurrence of the Chief Executive Officer, the Employees union membership fees may be deducted with written authority from the Employee's pay. Such fees are to be transmitted to the Union at regular intervals. Alternative arrangements for the deduction of union membership fees may be negotiated between the Chief Executive Officer and the Union.

## **54. Consultation**

**54.1.** Where NSWALC proposes to implement changes in programs, organisation, structure or technology that are likely to have a significant effect on staff, NSWALC will consult those staff who are directly affected by the proposed changes.

**54.1.1.** For the purposes of this clause "significant" includes:

- a. restructuring and/or relocation of work units;
- b. change to the composition, operation or size of the NSWALC workforce or to the skills required of staff;
- c. elimination or diminution of job opportunities (including opportunities for promotion or continuing employment);
- d. alteration of hours of work; and
- e. termination of employment

**54.2.** NSWALC has a Change Management Policy and template to be followed as well as a Managing Excess Employees Policy, which will be used in all significant change processes in the organisation.

**54.3.** The NSWALC must notify the relevant Employees of the decision to introduce the major change.



**54.4.** The relevant Employees may appoint a representative for the purposes of the procedures in this term.

**54.5.** If:

**54.5.1.** A relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and

**54.5.2.** The Employee or Employees advise the NSWALC of the identity of the representative; the NSWALC must recognise the representative

**54.6.** As soon as practicable after making its decision, the NSWALC must:

**54.6.1.** Discuss with the relevant Employees:

**54.6.1.1.** The introduction of the change; and

**54.6.1.2.** The effect the change is likely to have on the Employees; and

**54.6.1.3.** Measures the NSWALC is taking to avert or mitigate the adverse effect of the change on the Employees; and

**54.6.2.** For the purposes of the discussion - provide, in writing, to the relevant Employees:

**54.6.2.1.** All relevant information about the change including the nature of the change proposed; and

**54.6.2.2.** Information about the expected effects of the change on the Employees; and

**54.6.2.3.** Any other matters likely to affect the Employees.

**54.7.** However, the NSWALC is not required to disclose confidential or commercially sensitive information to the relevant Employees.

**54.8.** The NSWALC must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.

**54.9.** For each proposed change of the kind referred to in Clause 54.1 affecting only one staff member, NSWALC will consult the staff member concerned (and their Union if required).

## **55. Leave - General Provisions**

**55.1.** The provisions contained in this clause apply to all Employees other than where an Individual Flexibility Arrangement has been negotiated between the NSWALC and the Employee in terms of Clause 11 - Individual Flexibility Arrangement of this Enterprise Agreement.

**55.2.** Unless otherwise specified, part-time Employees will receive the conditions of this Clause on a pro rata basis, calculated according to the number of hours worked per week.

**55.3.** Where paid and unpaid leave is available to be granted in terms of this Enterprise Agreement, paid leave shall be taken before unpaid leave.

## **56. Absence from Work**

**56.1.** An Employee must not be absent from work unless reasonable cause is shown.

**56.2.** If an Employee is to be absent from work because of illness or other emergency, the Employee shall notify or arrange for another person to notify the supervisor as soon as possible of the Employee's absence and the reason for the absence.

**56.3.** If a satisfactory explanation for the absence, is not provided, the Employee will be regarded as absent from work without authorised leave and the Chief Executive Officer shall deduct from the pay of the Employee the amount equivalent to the period of the absence.

**56.4.** The minimum period of leave available to be granted shall be a quarter day, unless Individual Flexibility Arrangement negotiated in the workplace allow for a lesser period to be taken.

**56.5.** Nothing in this clause affects any proceedings for a breach of discipline against an Employee who is absent from work without authorised leave.

## **57. Applying for Leave**

**57.1.** An application by an Employee for leave under this clause shall be made to and dealt with by the Chief Executive Officer, in accordance with applicable policies.

**57.2.** The Chief Executive Officer shall deal with the application for leave according to the wishes of the Employee, on condition that the operational requirements of the NSWALC permit this to be done.

## **58. Long Service Leave**

**58.1.** In substitution for the provisions of the *Long Service Leave Act 1955 (NSW)* Employees who were Employees of the NSWALC prior to 17 February 2003

shall accrue and become entitled to extended leave in accordance with the provisions of section 55 of the Public Sector Employment & Management Act 2002 (NSW).

- 58.2.** The provisions of the Long Service Leave Act 1955 (NSW) shall apply to all Employees who commence employment with the NSWALC on or after 17 February 2003.
- 58.3.** Employees shall be entitled to pro-rata long service leave after 7 years continuous service with NSWALC. Employees wishing to access this clause must take a minimum of one month long service leave.

## **59. Family and Community Service Leave**

This clause is to be read in conjunction with Clause 60 Compassionate Leave.

- 59.1.** The Chief Executive Officer shall, in the case of emergencies or in personal or domestic circumstances, grant to an Employee some or all of the available family and community service leave on full pay
- 59.2.** Such cases may include but not be limited to the following:
  - 59.2.1.** Compassionate grounds - such as the death or illness of a close member of the family or a member of the Employee's household;
  - 59.2.2.** Accommodation matters up to one day - such as attendance at court as defendant in an eviction action, arranging accommodation, or when required to remove furniture and effects;
  - 59.2.3.** Emergency or weather conditions - such as when flood, fire or snow etc. threaten property and/or prevent an Employee from reporting for duty; and
  - 59.2.4.** Other personal circumstances - such as citizenship ceremonies, parent/teacher interviews, crisis or respite foster care or attending child's school for other reasons.
- 59.3.** Attendance at court by an Employee to answer a charge for a criminal offence, if the Chief Executive Officer considers the granting of family and community service leave to be appropriate in a particular case.
- 59.4.** Employees who are selected to represent Australia or the State as competitors in major amateur sport (other than Olympic or Commonwealth Games).

- 59.5.** Employees who hold office in Local Government other than as a Mayor of a Municipal Council, President of a Shire Council or Chairperson of a County Council, to attend meetings, conferences or other duties associated with that office where those duties necessitate absence during normal working hours.
- 59.6.** The maximum amount of family and community service leave on full pay which may, subject to this Enterprise Agreement, be granted to an Employee shall be the greater of the leave provided in Subclauses 59.6.1 or 59.6.2.
- 59.6.1.** 2½ of the Employee's working days in the first year of service and, on completion of the first years' service, 5 of the Employee's working days in any period of 2 years; or
- 59.6.2.** After the completion of 2 years' continuous service, the available family and community service leave is determined by allowing 1 day's leave for each completed year of service less the total amount of short leave or family and community service leave previously granted to the Employee.
- 59.7.** If available family and community service leave is exhausted as a result of natural disasters, the Chief Executive Officer shall consider applications for additional family and community service leave, if some other emergency arises.
- 59.8.** In cases of illness of a family member for whose care and support the Employee is responsible, paid sick leave in accordance with Subclause 71.1.3 shall be granted.
- 59.9.** Personal Carers Entitlement for casual Employees
- 59.9.1.** Subject to the evidentiary and notice requirements set out in Subclause 59.9.4, casual Employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in Subclause 71.4.2 who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- 59.9.2.** The NSWALC and the Employee shall agree on the period for which the Employee will be entitled to not be available to attend work. In the absence of agreement, the Employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual Employee is not entitled to any payment for the period of non-attendance.

**59.9.3.** The NSWALC must not fail to re-engage a casual Employee because the Employee accessed the entitlements provided for in this clause. The rights of the NSWALC to engage or not to engage a casual Employee are otherwise not affected.

**59.9.4.** The casual Employee shall, if required:

**59.9.4.1.** Establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or

**59.9.4.2.** Establish by production of documentation acceptable to the NSWALC or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the Employee

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

## **60. Compassionate Leave**

**60.1.** All Employees (including casual employees) are entitled to compassionate leave (also known as Bereavement Leave). Full-time and part-time employees receive paid compassionate leave and casual employees receive unpaid compassionate leave. Compassionate Leave can be taken when a member of an Employee's immediate family or household:

- dies or
- suffers a life-threatening illness or injury

**60.2.** An Employee taking Compassionate Leave must notify NSWALC as soon as practicable of the intention to take compassionate leave (this maybe after the leave has started) and will, provide to the satisfaction of NSWALC, evidence to support the compassionate leave (e.g. death or funeral notice, or medical certificate to support illness/injury). If an Employee does not provide evidence NSWALC may decline the request for Compassionate Leave.

**60.3.** All Employees are entitled to 2 days compassionate leave for each instance where an immediate family or household member dies or suffers a life threatening illness or injury. Leave can be taken as:

- a single continuous 2 day period, or
- 2 separate periods of 1 day each, or
- any separate periods the Employee and the Employer agree on.



**60.4.** An Employee shall not be entitled to compassionate leave under this clause during any period in respect of which the Employee has been granted other leave.

**60.5.** Compassionate leave may be taken in conjunction with other leave the Employee has available. In determining such a request NSWALC will give consideration to the circumstances of the Employee and the reasonable operational requirements of the business.

## **61. Leave Without Pay**

**61.1.** The Chief Executive Officer may grant leave without pay to an Employee if good and sufficient reason is shown.

**61.2.** Leave without pay may be granted on a full-time or a part-time basis.

**61.3.** Where an Employee is granted leave without pay for a period not exceeding 10 consecutive working days, the Employee shall be paid for any proclaimed public holidays falling during such leave without pay.

**61.4.** Where an Employee is granted leave without pay which, when aggregated, does not exceed 5 working days in a period of twelve (12) months, such leave shall count as service for incremental progression and accrual of annual leave.

**61.5.** An Employee who has been granted leave without pay, shall not engage in private employment of any kind during the period of leave without pay, unless prior approval has been obtained from the Chief Executive Officer.

**61.6.** An Employee shall normally be required to exhaust any accrued paid leave prior to proceeding on leave without pay unless authorised by the Chief Executive Officer.

**61.7.** No paid leave shall be granted during a period of leave without pay.

## **62. Special Leave for matters relating to domestic and family violence**

**62.1.** Domestic and family violence means violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. It extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years.

Examples of behaviour that may constitute domestic and family violence include (but are not limited to):

- an assault; or
- a sexual assault or other sexually abusive behaviour; or
- stalking; or
- repeated derogatory taunts; or
- intentionally damaging or destroying property; or
- intentionally causing death or injury to an animal; or
- unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
- unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
- preventing the family member from making or keeping connections with his or her family, friends or culture; or
- unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.

**62.2.** No adverse action will be taken against an Employee if their attendance and/or performance at work suffers as a result of domestic and family violence.

**62.3. Leave**

**62.3.1.** An Employee, not including a casual employee, experiencing domestic and family violence is entitled to 5 days per year of paid Domestic Violence Leave for the purpose of:

- 62.3.1.1.** attending legal proceedings, counselling, appointments with a health or legal practitioner;
- 62.3.1.2.** relocation or making other safety arrangements; or
- 62.3.1.3.** other activities associated with the experience of domestic and family violence.

**62.3.2.** If the Fair Work Commission pass a model "domestic violence leave" clause recommending 10 days per year of paid Domestic Violence leave (or unpaid for casual employees), the entitlements in clause 62.3.1 shall be extended to 10 days per year to reflect the model clause. The rest of the provisions in Clause 62 will continue to apply.

**62.4.** A casual employee, experiencing domestic and family violence is entitled to 5 days per year of unpaid Domestic Violence Leave for the purpose of:

- 62.4.1.** attending legal proceedings, counselling, appointments with a health or legal practitioner

- 62.4.2.** relocation or making other safety arrangements; or
- 62.4.3.** other activities associated with the experience of domestic and family violence.

**62.5. Additional Support**

**62.5.1.** In addition to the entitlements in 62.3, for matters relating to domestic and family violence, an Employee (including a casual employee) who is experiencing domestic and family violence may access the following:

- 62.5.1.1.** flexible working arrangements, including changes to working times consistent with the needs of the work unit
- 62.5.1.2.** changing work location (where practicable), telephone number or email address
- 62.5.1.3.** where requested by the Employee, changes to specific duties, for example to avoid potential contact with an abuser in a public contact role or if they are a fellow Employee
- 62.5.1.4.** where requested by the Employee, redeployment or relocation:
  - 62.5.1.4.1.** other appropriate measures including those available under existing provisions for family friendly and flexible work arrangements.
  - 62.5.1.4.2.** use of other existing entitlements, such as on-going appointments with the EAP scheme (including access to a registered psychologist).

**62.6. Notice and Evidentiary Requirements**

- 62.6.1.** The Employee shall give his or her Employer notice as soon as reasonably practicable of their request to take leave under this clause.
- 62.6.2.** If required by the Employer, the Employee must provide evidence that would satisfy a reasonable person that the leave is for the purpose as set out in Clause 62.3.1. Such evidence may include a document issued by the police service, a court, a doctor or health practitioner (including a medical certificate), district nurse, maternal and child health care nurse, a family violence support service, a lawyer or a statutory declaration.
- 62.6.3.** The Employer must take all reasonable measures to ensure that any personal information provided by the Employee to the Employer concerning an Employee's experience of domestic and family violence is kept confidential.

**62.7. Employee Providing Support to another Person**

- 62.7.1.** An Employee who is supporting a person experiencing domestic and family violence, and who requires time off work for that purpose, may request unpaid leave and/or may access Family and Community Service Leave under Clause 59 or Witness Leave under Clause 74.2, if those clauses apply to the specific circumstances.

### **63. Observance of Essential Religious or Cultural Obligations**

- 63.1.** An Employee of:

- 63.1.1.** Any religious faith who seeks leave for the purpose of observing essential religious obligations of that faith; or  
**63.1.2.** Any ethnic or cultural background who seeks leave for the purpose of observing any essential cultural obligations;

may be granted annual/extended leave to credit, flex leave or leave without pay to do so.

- 63.2.** Adequate notice as to the need for leave must be provided by the Employee to the NSWALC if it is operationally convenient to release the Employee from duty, the Chief Executive Officer must grant the leave applied for by the Employee in terms of this Subclause.

- 63.3.** An Employee of any religious faith who seeks time off during daily working hours to attend to essential religious obligations of that faith, shall be granted such time off by the Chief Executive Officer, subject to:

- 63.3.1.** Adequate notice being given by the Employee;  
**63.3.2.** Prior approval being obtained by the Employee; and  
**63.3.3.** The time off being made up in the manner approved by the Chief Executive Officer.

- 63.4.** Notwithstanding the provisions of Subclauses 63.1, 63.2 and 63.3 of this Clause, arrangements may be negotiated between the NSWALC and the employee(s) in terms of Clause 11, Individual Flexibility Arrangement of this Enterprise Agreement to provide greater flexibility for Employees for the observance of essential religious or cultural obligations.

- 63.5.** Ceremonial Leave - Unpaid leave of up to 10 days each year will be granted to meet obligations under the Aboriginal custom or traditional law and to participate in ceremonial activities.

Note: NAIDOC day is provided for in Clause 17.2– Public Holidays

#### **64. Parental Leave**

**64.1.** Parental leave includes maternity, adoption, long term foster care, and "other parent" leave.

**64.2.** Maternity leave shall apply to an Employee who is pregnant and, subject to this clause, the Employee shall be entitled to be granted maternity leave as follows:

**64.2.1.** For a period up to 9 weeks prior to the expected date of birth; and

**64.2.2.** For a further period of up to 12 months after the actual date of birth.

**64.2.3.** An Employee who has been granted maternity leave and whose child is stillborn may elect to take available sick leave instead of maternity leave.

**64.3.** Adoption/long term foster care leave shall apply to an Employee who is adopting or long term fostering a child, and who will be the primary care giver, the Employee shall be granted adoption leave as follows:

**64.3.1.** For a period of up to 12 months if the child has not commenced school at the date of the taking of custody; or

**64.3.2.** For such period, not exceeding 12 months on a full-time basis, as the Chief Executive Officer may determine, if the child has commenced school at the date of the taking of custody.

**64.3.3.** Special Adoption and/or Long Term foster Care Leave - An Employee shall be entitled to special adoption leave (without pay) for up to 2 days to attend interviews or examinations for the purposes of adoption. Special adoption leave and/or long term foster care may be taken as a charge against annual leave, extended leave, flexitime or family and community service leave.

**64.4.** Where maternity or adoption/long term foster care leave does not apply, "other parent" leave is available to male and female staff who apply for leave to look after his/her child or children and/or children in his/her care. Other parent leave applies as follows:

**64.4.1.** Short other parent leave - an unbroken period of up to 8 weeks at the time of the birth of the child or other termination of the spouse's



or partner's pregnancy or, in the case of adoption or long term foster care, from the date of taking custody of the child or children;

**64.4.2.** Short term foster care leave – an unbroken period of up to 8 weeks from the time of the placement of the child;

**64.4.3.** Extended other parent leave - for a period not exceeding 12 months, less any short other parental leave already taken by the Employee as provided for in Subclause 64.4.1.

Extended other parental leave may commence at any time up to 2 years from the date of birth of the child or the taking of custody of the child.

**64.5.** An Employee taking maternity or adoption/long term foster care leave is entitled to payment at the ordinary rate of pay for a period of up to 14 weeks; an Employee entitled to short other parent leave is entitled to payment at the ordinary rate of pay for a period of up to 2 weeks provided the Employee:

**64.5.1.** Applied for parental leave within the time and in the manner determined set out in Subclause 64.10 of this Clause; and

**64.5.2.** Prior to the commencement of parental leave, completed not less than 40 weeks' continuous service.

**64.5.3.** Payment for the maternity, adoption/long term foster care or short other parent leave may be made as follows:

**64.5.3.1.** In advance as a lump sum; or

**64.5.3.2.** Fortnightly as normal; or

**64.5.3.3.** Fortnightly at half pay; or

**64.5.3.4.** A combination of full-pay and half pay.

**64.6.** Payment for parental leave is at the rate applicable when the leave is taken. An Employee holding a full time position who is on part time leave without pay when they start parental leave is paid:

**64.6.1.** At the full time rate if they began part time leave 40 weeks or less before starting parental leave;

**64.6.2.** At the part time rate if they began part time leave more than 40 weeks before starting parental leave and have not changed their part time work arrangements for the 40 weeks;

**64.6.3.** At the rate based on the average number of weekly hours worked during the 40 week period if they have been on part time leave for more than 40 weeks but have changed their part time work arrangements during that period.

**64.7.** An Employee who commences a subsequent period of maternity or adoption/long foster care leave for another child within 24 months of commencing an initial period of maternity or adoption/long term foster care leave will be paid:

**64.7.1.** At the rate (full time or part time) they were paid before commencing the initial leave if they have not returned to work; or

**64.7.2.** At a rate based on the hours worked before the initial leave was taken, where the Employee has returned to work and reduced their hours during the 24 month period; or

**64.7.3.** At a rate based on the hours worked prior to the subsequent period of leave where the Employee has not reduced their hours.

**64.8.** Except as provided in Subclauses 64.5, 64.6 and 64.7 of this Clause parental leave shall be granted without pay.

**64.9.** Right to request:

**64.9.1.** An Employee who has been granted parental leave in accordance with Subclause 64.2, 64.3 or 64.4 of this Clause may make a request to the Chief Executive Officer to:

**64.9.1.1.** Extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;

**64.9.1.2.** Return from a period of full time parental leave on a part time basis until the child reaches school age (Note: returning to work from parental leave on a part time basis includes the option of returning to work on part time leave without pay);

to assist the Employee in reconciling work and parental responsibilities.

**64.9.2.** The Chief Executive Officer shall consider the request having regard to the Employee's circumstances and, provided the request is genuinely based on the Employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the NSWALC's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

**64.10.** Notification Requirements

**64.10.1.** When the NSWALC is made aware that an Employee or their spouse is pregnant or is adopting or long term fostering a child, the NSWALC must inform the Employee of their entitlements and their obligations under the Enterprise Agreement.

**64.10.2.** An Employee who wishes to take parental leave must notify the Chief Executive Officer in writing at least 8 weeks (or as soon as practicable) before the expected commencement of parental leave:

**64.10.2.1.** That she/he intends to take parental leave, and

**64.10.2.2.** The expected date of birth or the expected date of placement, and

**64.10.2.3.** If she/he is likely to make a request under Subclause 64.9 of this Clause.

**64.10.3.** At least 4 weeks before an Employee's expected date of commencing parental leave they must advise:

**64.10.3.1.** The date on which the parental leave is intended to start, and

**64.10.3.2.** The period of leave to be taken.

**64.10.4.** An Employee's request and the Chief Executive Officer's decision made under this Clause must be recorded in writing.

**64.10.5.** An Employee intending to request to return from parental leave on a part time basis or seek an additional period of leave of up to 12 months must notify the Chief Executive Officer in writing as soon as practicable and preferably before beginning parental leave. If the notification is not given before commencing such leave, it may be given at any time up to 4 weeks before the proposed return on a part time basis, or later if the Chief Executive Officer agrees.

**64.10.6.** An Employee on maternity leave is to notify the NSWALC of the date on which she gave birth as soon as she can conveniently do so.

**64.10.7.** An Employee must notify the NSWALC as soon as practicable of any change in her intentions as a result of premature delivery or miscarriage.

**64.10.8.** An Employee on maternity or adoption/long term foster care leave may change the period of leave or arrangement, once without the consent of the NSWALC and any number of times with the consent of the NSWALC. In each case she/he must give the NSWALC at least 14 days' notice of the change unless the Chief Executive Officer decides otherwise.

**64.11.** An Employee has the right to her/his former position if she/he has taken approved leave or part time work in accordance with Subclause 64.9 of this Clause, and she/he resumes duty immediately after the approved leave or work on a part time basis.

- 64.12.** If the position occupied by the Employee immediately prior to the taking of parental leave has ceased to exist, but there are other positions available that the Employee is qualified for and is capable of performing, the Employee shall be appointed to a position of the same grade and classification as the Employee's former position.
- 64.13.** An Employee does not have a right to her/his former position during a period of return to work on a part time basis. If the Chief Executive Officer approves a return to work on a part time basis then the position occupied is to be at the same classification and grade as the former position.
- 64.14.** An Employee who has returned to full time duty without exhausting their entitlement to 12 months unpaid parental leave is entitled to revert back to such leave. This may be done once only, and a minimum of 4 weeks' notice (or less if acceptable to the NSWALC) must be given.
- 64.15.** An Employee who is sick during her pregnancy may take available paid sick leave or accrued annual or extended leave or sick leave without pay. An Employee may apply for accrued annual leave, extended leave or leave without pay before taking maternity leave. Any leave taken before maternity leave, ceases at the end of the working day immediately preceding the day she starts her nominated period of maternity leave or on the working day immediately preceding the date of birth of the child, whichever is sooner.
- 64.16.** An Employee may elect to take available annual leave or long service leave within the period of parental leave provided this does not extend the total period of such leave.
- 64.17.** An Employee may elect to take available annual leave at half pay in conjunction with parental leave provided that:
- 64.17.1.** Accrued annual leave at the date leave commences is exhausted within the period of parental leave;
  - 64.17.2.** The total period of parental leave is not extended by the taking of annual leave at half pay;
  - 64.17.3.** When calculating other leave accruing during the period of annual leave at half pay, the recreation leave at half pay shall be converted to the full time equivalent and treated as full pay leave for accrual of further annual, long service and other leave at the full time rate.



**64.18.** If, for any reason, a pregnant Employee is having difficulty in performing her normal duties or there is a risk to her health or to that of her unborn child the Chief Executive Officer, should, in consultation with the Employee, take all reasonable measures to arrange for safer alternative duties. This may include, but is not limited to greater flexibility in when and where duties are carried out, a temporary change in duties, retraining, multi-skilling, tele-working and job redesign.

**64.19.** If such adjustments cannot reasonably be made, the Chief Executive Officer must grant the Employee maternity leave, or any available sick leave, for as long as it is necessary to avoid exposure to that risk as certified by a medical practitioner, or until the child is born, whichever is the earlier.

**64.20.** Communication during parental leave

**64.20.1.** Where an Employee is on parental leave and NSWALC proposes to implement changes in programs, organisation, structure or technology that are likely to have a significant effect on staff, the NSWALC shall take reasonable steps to:

**64.20.1.1.** Contact the employee directly and in writing available in relation to any significant effect the change will have on the status or responsibility level of the position the Employee held before commencing parental leave; and

**64.20.1.2.** Provide an opportunity for the Employee to discuss any significant effect the change will have on the status or responsibility level of the position the Employee held before commencing parental leave.

**64.20.2.** The Employee shall take reasonable steps to inform the Chief Executive Officer about any significant matter that will affect the Employee's decision regarding the duration of parental leave to be taken, whether the Employee intends to return to work and whether the Employee intends to request to return to work on a part time basis.

**64.20.3.** The Employee shall also notify the Chief Executive Officer of changes of address or other contact details which might affect the NSWALC capacity to comply with Subclause 64.20.1.



## **65. Annual Leave.**

### **65.1. Accrual**

**65.1.1.** Except where stated otherwise in this Enterprise Agreement, paid annual leave for full time Employees and annual leave for Employees working part-time, accrues at the rate of 20 working days per year. Employees working part-time shall accrue paid annual leave on a pro rata basis, which will be determined on the average weekly hours worked per leave year;

**65.1.2.** Annual leave accrues from day to day.

### **65.2. Limits on Accumulation and Direction to Take leave**

**65.2.1.** At least two (2) consecutive weeks of annual leave shall be taken by an Employee every 12 months, except by agreement with the Chief Executive Officer in special circumstances.

**65.2.2.** Where the operational requirements permit, the application for leave shall be dealt with by the Chief Executive Officer according to the wishes of the Employee.

**65.2.3.** The Chief Executive Officer shall notify the Employee in writing when accrued annual leave reaches 6 weeks or its hourly equivalent and at the same time may direct an Employee to take at least 2 weeks annual leave within 3 months of the notification at a time convenient to the NSWALC.

**65.2.4.** The Chief Executive Officer shall notify the Employee in writing when accrued annual leave reaches 8 weeks or its hourly equivalent and direct the Employee to take at least 2 weeks annual leave within 6 weeks of the notification. Such leave is to be taken at a time convenient to the NSWALC.

**65.3.** Conservation of Leave - If the Chief Executive Officer is satisfied that an Employee is prevented by operational or personal reasons from taking sufficient recreation leave to reduce the accrued leave below an acceptable level of between 4 and 6 weeks or its hourly equivalent, the Chief Executive Officer shall:

**65.3.1.** Specify in writing the period of time during which the excess shall be conserved; and

- 65.3.2.** On the expiration of the period during which conservation of leave applies, grant sufficient leave to the Employee at a mutually convenient time to enable the accrued leave to be reduced to an acceptable level below the 8 weeks' limit.
- 65.3.3.** A Chief Executive Officer will inform an Employee in writing on a regular basis of the Employee's annual leave accrual.
- 65.4.** Cashing out Annual Leave – NSWALC recognises that from time to time employees may experience financial hardship and may need to draw on other monies to help return to a financial medium. NSWALC may in its discretion approve a maximum of 2 weeks cash out of Annual Leave limited to the following:
- 65.4.1.** An Employee requesting cash out has taken a minimum of 2 weeks Annual Leave in the 12 months prior to the request being made. This 2 weeks leave cannot be made up of Flex Leave, Long Service Leave, Sick Leave, Public Holidays or any other leave, and must be a continuous period of 10 days Annual Leave. This enforces NSWALC's commitment to ensure that an Employee is able to take appropriate downtime away from the workplace
- 65.4.2.** Only 1 occurrence of cashing out Annual Leave may occur in a 12 month period.
- 65.4.3.** An Employee must have a minimum balance equivalent to 4 weeks Annual Leave in order to cash out any Annual Leave.
- 65.4.4.** A written application for cashing out of Annual Leave must be made to the Manager Human Resources for approval.
- 65.4.5.** Payments made under this clause do not attract Superannuation nor does the cashed out leave count as service.
- 65.4.6.** Payments made under this subclause must be made at the same rate at which the Employee would have been paid if they had taken the annual leave, with the exception of the payment of superannuation contributions.
- 65.4.7.** A manager cannot under any circumstances force an Employee to take a cash payment of leave instead of taking the Annual Leave.
- 65.5.** Miscellaneous:
- 65.5.1.** Unless an Individual Flexibility Arrangement has been negotiated between the Chief Executive Officer and the Employee(s), Annual leave is not to be granted for a period less than a quarter-day or in other than multiples of a quarter day.

- 65.5.2.** Annual leave for which an Employee is eligible on cessation of employment is to be calculated to a quarter day (fractions less than a quarter being rounded up).
  - 65.5.3.** Annual leave does not accrue to an Employee in respect of any period of absence from duty without leave or without pay, except as specified in Subclause 65.5.4.
  - 65.5.4.** Annual leave accrues during any period of leave without pay granted on account of incapacity for which compensation has been authorised to be paid under the *Workers' Compensation Act 1987*; or any period of sick leave without pay or any other approved leave without pay, not exceeding 5 full time working days, or their part time equivalent, in any period of 12 months.
  - 65.5.5.** The proportionate deduction to be made in respect of the accrual of annual leave on account of any period of absence referred to in Subclause 65.5.4 shall be calculated to an exact quarter-day (fractions less than a quarter being rounded down).
  - 65.5.6.** Recreation leave accrues at half its normal accrual rate during periods of extended leave on half pay.
  - 65.5.7.** On cessation of employment, an Employee is entitled to be paid, the money value of accrued recreation leave which remains untaken.
  - 65.5.8.** An Employee to whom Subclause 65.5.7 applies may elect to take all or part of accrued annual leave which remains untaken at cessation of active duty as leave or as a lump sum payment; or as a combination of leave and lump sum payment.
- 65.6.** Death - Where an Employee dies, the monetary value of annual leave accrued and remaining untaken or un-forfeited as at the date of death, shall be paid to the Employee's nominated beneficiary.
- 65.7.** Where no beneficiary has been nominated, the monetary value of annual leave is to be paid as follows:
- 65.7.1.** To the partner of the Employee; or
  - 65.7.2.** If there is no partner, to the children of the Employee or, if there is a guardian of any children entitled under this subclause, to that guardian for the children's maintenance, education and advancement; or
  - 65.7.2.1.** If there is no person entitled under Subclauses 65.7.1 or 65.7.2 to receive the money value of any leave not taken or not completed by an Employee or which would have accrued to the Employee, the payment shall be made to the personal representative of the Employee.

## **66. Remote Annual Leave**

- 66.1.** Additional annual leave at the rate of 5 days per calendar year accrues to an Employee who is stationed indefinitely in a remote area of the state, only as approved by the Chief Executive Officer.
- 66.2.** For the purpose of sub-clause 66.1 remote area of the state is defined as any area to the west of the green line outlined on the map attached to this Agreement at Annexure A.

## **67. Annual Leave Loading**

- 67.1.** General - Unless more favourable conditions apply to an Employee under another industrial instrument, an Employee is entitled to be paid an annual leave loading as set out in this subclause. Subject to the provisions set out in subclauses 67.2 and 67.3 of this Clause, the annual leave loading shall be 17½% on the monetary value of up to 4 weeks' annual leave accrued in a leave year.
- 67.2.** Annual Leave Loading year - For the calculation of the annual leave loading, the annual leave loading year shall commence on the 1<sup>st</sup> December and shall end on 30<sup>th</sup> November the following year.
- 67.3.** Payment of the annual leave loading shall be made in the first payroll in December unless requested to be paid during periods of leave. Annual leave loading can be paid at the time that the leave is taken throughout the leave year with the exception of the first year of employment and only Leave Loading that has been accrued (for example leave taken in June would only have 6 months leave loading accrued to be paid).

## **68. Christmas Close Down**

A two week closedown of NSWALC's business will occur every year during the Christmas/New Year period.

- 68.1.** The closedown will cover a period of 10 consecutive week days and will consist of:
  - 68.1.1.** 3 declared Public Holidays being Christmas Day, Boxing Day and New Year's Day.
  - 68.1.2.** 4 days paid Special Leave.
  - 68.1.3.** 3 days to be nominated from each Employee's own leave entitlements i.e. Annual Leave, Flex Leave, Long Service Leave.

- 68.2.** The relevant closedown period will be determined annually by NSWALC with that determination being made by 31 October each year.

## **69. Sick Leave**

- 69.1.** If the Chief Executive Officer is satisfied that an Employee is unable to perform duty because of the Employee's illness or the illness of his/her family member, the Chief Executive Officer:

- 69.1.1.** Shall grant to the Employee sick leave on full pay; and
- 69.1.2.** May grant to the Employee, sick leave without pay if the absence of the Employee exceeds the entitlement of the Employee under this Enterprise Agreement to sick leave on full pay.

### **69.2. Entitlements**

- 69.2.1.** Sick leave on full pay accrues to an Employee at the rate of 15 days each calendar year. Any leave accrued and not utilised accumulates.
  - 69.2.2.** Sick leave on full pay accrues at the beginning of the calendar year. If an Employee is appointed after 1 January, sick leave on full pay accrues on a proportionate basis for the year in which employment commences.
  - 69.2.3.** Sick leave without pay shall count as service for the accrual of annual leave and paid sick leave. In all other respects sick leave without pay shall be treated in the same manner as leave without pay.
  - 69.2.4.** When determining the amount of sick leave accrued, sick leave granted on less than full pay, shall be converted to its full pay equivalent.
  - 69.2.5.** Paid sick leave shall not be granted during a period of unpaid leave.
- 69.3.** Payment during the initial 3 months of service - Paid sick leave which may be granted to an Employee, in the first 3 months of service shall be limited to 5 days' paid sick leave, unless the Chief Executive Officer approves otherwise. Paid sick leave in excess of 5 days granted in the first 3 months of service shall be supported by a satisfactory medical certificate.



## **70. Sick Leave - Requirements for Medical Certificate**

- 70.1.** An Employee absent from duty for more than 3 consecutive working days because of illness must furnish a medical certificate to the Chief Executive Officer in respect of the absence.
- 70.2.** An Employee shall be put on notice in advance if required by the Chief Executive Officer to furnish a medical certificate in respect of an absence from duty for 3 consecutive working days or less because of illness.
- 70.3.** Analysis and review of sick leave strategies are to be undertaken regularly by NSWALC to ensure effective sick leave management.
- 70.4.** If the nature or the pattern of an Employee's illness calls into question their ability to perform their daily duties, the Chief Executive Officer, after raising the issue with the Employee, may refer the matter to an independent Medical Officer for advice.
- 70.5.** Following the advice from an Independent Medical Officer, the nature of the leave to be granted to an Employee shall be determined by the Chief Executive Officer
- 70.6.** If an application for sick leave is not granted, the Chief Executive Officer must, as far as practicable, take into account the wishes of the Employee when determining the nature of the leave to be granted.
- 70.7.** An Employee may elect to have an application for sick leave dealt with confidentially by an independent Medical Officer where such illness is of personal or private nature. In such cases, the independent Medical Officer shall provide the Chief Executive Officer with sufficient information on a confidential basis in relation to the illness to allow the Chief Executive Officer to determine the nature of leave to be granted.
- 70.8.** If an Employee who is absent on annual leave or extended leave, furnishes to the Chief Executive Officer a satisfactory medical certificate in respect of an illness which occurred during the leave, the Chief Executive Officer may, subject to the provisions of this clause, grant sick leave to the Employee as follows:-
  - 70.8.1.** In respect of annual leave, the period set out in the medical certificate;

**70.8.2.** In respect of extended leave, the period set out in the medical certificate if such period is 5 working days or more.

**70.9.** Subclause 70.8 applies to all Employees other than those on leave prior to resignation or termination of services, unless the resignation or termination of services amounts to a retirement.

**70.10.** The reference in Subclause 70.8 to a medical certificate shall apply, as appropriate, to the certificates of up to one week provided by a registered dentist, optometrist, chiropractor, osteopath, physiotherapist, oral and maxillo-facial surgeon or, at the Chief Executive Officer's discretion, another registered health services provider. Where the absence exceeds one week, and unless the health provider listed above is also a registered medical practitioner, applications for any further sick leave must be supported by a medical certificate from a registered medical practitioner.

## **71. Sick Leave to Care for a Family Member**

### **71.1. Use of Sick Leave –**

An Employee may elect to use available paid sick leave, subject to the conditions outlined in this subclause, to provide care and support to a member of the Employee's immediate family or household who is ill and needs the Employee's care and support. Such leave may be taken for part of a single day.

**71.1.1.** The sick leave shall initially be taken from the current leave year's entitlement followed, if necessary, by the sick leave accumulated over the previous 3 years. In special circumstances, the Chief Executive Officer may grant additional sick leave from the sick leave accumulated during the Employee's eligible service.

**71.1.2.** If the instance involves the taking of 3 days or greater of paid sick leave, the Employee must provide a medical certificate or statutory declaration, supporting the reason for the leave to be used for this purpose.

**71.1.3.** The entitlement to use sick leave in accordance with this Subclause is subject to:

**71.1.3.1.** The Employee being responsible for the care and support of the person concerned; and

**71.1.3.2.** The person concerned being, a member of the Employee's immediate family or household

**71.1.4.** An employee shall, wherever practicable, give the NSWALC notice, prior to the absence, of the intention to take leave, the name of the person requiring care and that person's relationship to the Employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the Employee to give prior notice of absence, the Employee shall notify the NSWALC by telephone of such absence at the first opportunity on the day of absence.

**71.2.** If leave under Clause 71 has been exhausted, an Employee may use the types of leave outlined below in order to care for a sick family member:

**71.3.** Unpaid Leave for Family Purpose –

**71.3.1.** An Employee may elect, with the consent of the NSWALC, to take unpaid leave for the purpose of providing care and support to a member of the Employee's immediate family or household who is ill.

**71.4.** Annual Leave –

**71.4.1.** An Employee may elect, with the consent of the NSWALC, subject to the *Annual Holidays Act 1944*, to take annual leave not exceeding five days in single-day periods or part thereof in any calendar year at a time or times agreed by the parties.

**71.4.2.** Access to annual leave, as prescribed in Subclause 71.4.1, shall be exclusive of any close down period provided for elsewhere under this Enterprise Agreement.

**71.4.3.** An Employee and NSWALC may agree to defer payment of the annual leave loading in respect of single-day absences until at least five consecutive annual leave days are taken.

**71.5.** Time Off in Lieu of Payment for Overtime

**71.5.1.** For the purpose only of providing care and support for a member of the Employee's immediate family or household and despite the provisions of Clause 83, Payment for Overtime or Leave in Lieu the following provisions shall apply:

**71.5.2.** An Employee may elect, with the consent of the NSWALC, to take time off in lieu of payment for overtime at a time or times agreed with the NSWALC within 12 months of the said election.

- 71.5.3. Overtime taken as time off, including time-off in lieu, during ordinary-time hours shall be taken at the ordinary-time rate, that is, an hour for each hour worked.
- 71.5.4. If, having elected to take time as leave in accordance with Subclause 71.5.2, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
- 71.5.5. Where no election is made in accordance with the Subclause 71.5.2, the Employee shall be paid overtime rates in accordance with the Enterprise Agreement.

**71.6. Make-up Time –**

- 71.6.1. An Employee may elect, with the consent of the NSWALC, to work "make-up time", under which the Employee takes time off ordinary hours and works those hours at a later time during the spread of ordinary hours provided in the Enterprise Agreement, at the ordinary rate of pay.

**72. Sick Leave - Workers Compensation**

- 72.1. The Chief Executive Officer shall advise each Employee of the rights under the *Workers Compensation Act 1987*, as amended from time to time, and shall give such assistance and advice, as necessary, in the lodging of any claim.
- 72.2. An Employee who is or becomes unable to attend for duty or to continue on duty in circumstances which may give the Employee a right to claim compensation under the *Workers Compensation Act 1987*, shall be required to lodge a claim for any such compensation.
- 72.3. Where, due to the illness or injury, the Employee is unable to lodge such a claim in person, the Chief Executive Officer shall assist the Employee or the representative of the Employee, as required, to lodge a claim for any such compensation.
- 72.4. The Chief Executive Officer will ensure that, once received by the NSWALC, an Employee's worker's compensation claim is to be lodged by the NSWALC with the workers' compensation insurer within the statutory period prescribed in the *Workers Compensation Act 1987*.
- 72.5. Pending the determination of that claim and on production of an acceptable medical certificate, the Chief Executive Officer shall grant sick



leave on full pay for which the Employee is eligible followed, if necessary, by sick leave without pay or, at the Employee's election by accrued annual leave or extended leave.

- 72.6.** If liability for the workers compensation claim is accepted, by the worker's compensation insurer, then an equivalent period of any sick leave taken by the Employee pending acceptance of the claim shall be restored to the credit of the Employee.
- 72.7.** An Employee who continues to receive compensation after the completion of the period of 26 weeks referred to in section 36 of the *Workers Compensation Act 1987* may use any accrued and untaken sick leave to make up the difference between the amount of compensation payable under that Act and the Employee's ordinary rate of pay. Sick leave utilised in this way shall be debited against the Employee.
- 72.8.** If an Employee notifies the appropriate Chief Executive Officer that he or she does not intend to make a claim for any such compensation, the Chief Executive Officer shall consider the reasons for the Employee's decision and shall determine whether, in the circumstances, it is appropriate to grant sick leave in respect of any such absence.
- 72.9.** An Employee may be required to submit to a medical examination under the *Workers Compensation Act 1987* in relation to a claim for compensation under that Act. If an Employee refuses to submit to a medical examination without an acceptable reason, the Employee shall not be granted available sick leave on full pay until the examination has occurred and a medical certificate is issued indicating that the Employee is not fit to resume employment.
- 72.10.** If the Chief Executive Officer provides the Employee with employment which meets the terms and conditions specified in the medical certificate issued under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and, without good reason, the Employee fails, to resume or perform such duties, the Employee shall be ineligible for all.
- 72.11.** No further sick leave shall be granted on full pay if there is a commutation of weekly payments of compensation by the payment of a lump sum pursuant to section 51 of the *Workers Compensation Act 1987*.



**72.12.** Nothing in this clause prevents an Employee from appealing a decision or taking action under other legislation made in respect of:

- 72.12.1.** The Employee's claim for workers' compensation;
- 72.12.2.** The conduct of a medical examination by a Medical Officer;
- 72.12.3.** A medical certificate issued by the examining Medical Officer; or
- 72.12.4.** Action taken by the Chief Executive Officer either under the *Workers Compensation Act 1987* or any other relevant legislation in relation to a claim for workers' compensation, medical examination or medical certificate.

### **73. Sick Leave - Claims other than Workers Compensation**

**73.1.** If the circumstances of any injury to or illness of an Employee give rise to a claim for damages or to compensation, other than compensation under the *Workers Compensation Act 1987*, sick leave on full pay may, subject to and in accordance with this clause, be granted to the Employee on completion of an acceptable undertaking that:

- 73.1.1.** Any such claim, if made, will include a claim for the value of any period of paid sick leave granted by the NSWALC to the Employee; and
- 73.1.2.** In the event that the Employee receives or recovers damages or compensation pursuant to that claim for loss of salary or wages during any such period of sick leave, the Employee will repay to the NSWALC the monetary value of any such period of sick leave.

**73.2.** Sick leave on full pay shall not be granted to an Employee who refuses or fails to complete an undertaking, except in cases where the Chief Executive Officer is satisfied that the refusal or failure is unavoidable.

**73.3.** On repayment to the NSWALC of the monetary value of sick leave granted to the Employee, sick leave equivalent to that repayment and calculated at the Employee's ordinary rate of pay, shall be restored to the credit of the Employee.

### **74. Special Leave**

#### **74.1. Special Leave - Jury Service**

- 74.1.1.** An Employee shall, as soon as possible, notify the Chief Executive Officer of the details of any jury summons served on the Employee.
- 74.1.2.** An Employee who, during any period when required to be on duty, attends a court in answer to a jury summons shall, upon return to

duty after discharge from jury service, furnish to the Chief Executive Officer a certificate of attendance issued by the Sheriff or by the Registrar of the court giving particulars of attendances by the Employee during any such period and the details of any payment or payments made to the Employee under section 72 of the *Jury Act* 1977 in respect of any such period.

- 74.1.3.** When a certificate of attendance on jury service is received in respect of any period during which an Employee was required to be on duty, the Chief Executive Officer shall grant, in respect of any such period for which the Employee has been paid out-of-pocket expenses only, special leave on full pay. In any other case, the Chief Executive Officer shall grant, at the sole election of the Employee, available annual leave on full pay, flex leave or leave without pay.

- 74.2.** Witness at Court - Official Capacity - When an Employee is subpoenaed or called as a witness in an official capacity, the Employee shall be regarded as being on duty.

- 74.2.1.** Salary and any expenses properly and reasonably incurred by the Employee in connection with the Employee's appearance at Court as a witness in an official capacity shall be paid by the NSWALC.

- 74.3.** Witness at Court - Other than in Official Capacity - Crown Witness - An Employee who is subpoenaed or called as a witness by the Crown (whether in right of the Commonwealth or in right of any State or Territory of the Commonwealth) shall:

- 74.3.1.** Be granted, for the whole of the period necessary to attend as such a witness, special leave on full pay; and

- 74.3.2.** Pay into the NSWALC all money paid to the Employee under or in respect of any such subpoena or call other than any such money so paid in respect of reimbursement of necessary expenses properly incurred in answer to that subpoena or call.

- 74.3.3.** Union Witness - an Employee called by the Union to give evidence before an Industrial Tribunal or in another jurisdiction, shall be granted special leave by the NSWALC for the required period.

- 74.4.** Called as a witness in a private capacity - An Employee who is subpoenaed or called as a witness in a private capacity shall, for the whole of the period necessary to attend as such a witness, be granted at

the Employee's election, available annual leave on full pay or leave without pay.

**74.5. Special Leave - Examinations -** Special leave on full pay up to a maximum of 5 days in any one year shall be granted to Employees for the purpose of attending at any examination approved by the Chief Executive Officer.

**74.5.1.** Special leave granted to attend examinations shall include leave for any necessary travel to or from the place at which the examination is held.

**74.6. Special Leave - Union Activities -** Special leave on full pay may be granted to Employees who are accredited Union delegates to undertake trade union activities as provided for in Clause 41 Trade Union Activities Regarded as Special Leave of this Enterprise Agreement.

**74.7. Return Home When Temporarily Living Away from Home -** Sufficient special leave, as set out in this Subclause, shall be granted to an Employee who is temporarily living away from home as a result of work requirements. Such an Employee shall be granted sufficient special leave once a month before or after a weekend or a long weekend to return home to spend two days and two nights with their family. If the Employee wishes to return home more often, such Employee may be granted annual leave, extended leave or flex leave to credit or leave without pay, if the operational requirements allow.

**74.8. Return Home When Transferred to New Location -** Special leave shall be granted to an Employee who has moved to the new location ahead of dependants, to visit such dependants.

**74.9.** All Employees of the NSWALC will be granted up to one day's special leave per year to enable the Employee to participate in the National Aborigines and Islander Day of Commemoration Celebrations.

**74.10. Special Leave - Other Purposes -** Special leave on full pay may be granted to Employees by the Chief Executive Officer for such other purposes, as may be deemed appropriate.

## **75. Purchased Leave Provisions**

- 75.1.** An Employee may apply to enter into an agreement with the NSWALC to purchase either 10 days (2 weeks) or 20 days (4 weeks) additional leave in a 12 month period.
- 75.2.** Each application will be considered subject to operational requirements and personal needs and will take into account business needs and work demands.
- 75.3.** The leave must be taken in the 12 month period specified in the Purchased Leave Agreement and will not attract any leave loading.
- 75.4.** The leave must be taken in a minimum block of 5 days.
- 75.5.** Where a public holiday falls within a period of purchased leave, the public holiday is not counted as purchased leave. A minimum 5-day block of purchased leave will still apply.
- 75.6.** The leave will count as service for all purposes.
- 75.7.** The purchased leave will be funded through the reduction in the Employee's ordinary rate of pay.
- 75.8.** Purchased leave rate of pay means the rate of pay an Employee receives when their ordinary salary rate has been reduced to cover the cost of purchased leave.
- 75.9.** To calculate the purchased leave rate of pay, the Employee's ordinary salary rate will be reduced by the number of weeks of purchased leave and then annualised at a pro rata rate over the 12 month period.
- 75.10.** Purchased leave is subject to the following provisions:
  - 75.10.1.** The purchased leave cannot be accrued and will be refunded where it has not been taken in the 12 month period.
  - 75.10.2.** Other leave taken during the 12 month Purchased Leave Agreement period i.e. sick leave, annual leave, extended leave or leave in lieu will be paid at the purchased leave rate of pay.

- 75.10.3.** Sick leave cannot be taken during a period of purchased leave. Under extreme circumstances an Employee may seek for the Chief Executive Officer, to approve such leave to be granted.
- 75.10.4.** The purchased leave rate of pay will be the salary for all purposes including superannuation.
- 75.10.5.** Overtime and salary related allowances not paid during periods of annual leave will be calculated using the Employee's hourly rate based on the ordinary rate of pay.
- 75.10.6.** Higher Duties Allowance will not be paid when a period of purchased leave is taken.

**75.11.** NSWALC Policy governing purchased leave may be amended from time to time by the NSWALC in consultation with Employees.

## **76. Staff Development and Training Activities**

**76.1.** For the purpose of this Clause, the following shall be regarded as staff development and training activities:

- 76.1.1.** All staff development courses conducted by the NSWALC;
- 76.1.2.** Short educational and training courses conducted by generally recognised public or private educational bodies; and
- 76.1.3.** Conferences, conventions, seminars, or similar activities conducted by professional, learned or other generally recognised societies, including Federal or State Government bodies.

**76.2.** For the purposes of this clause, the following shall not be regarded as staff development and training activities:

- 76.2.1.** Activities for which study assistance is appropriate;
- 76.2.2.** Activities to which other provisions of this Enterprise Agreement apply (e.g. courses conducted by the Union); and
- 76.2.3.** Activities which are of no specific relevance to the NSWALC.

**76.3.** Attendance of an Employee at activities considered by the Chief Executive Officer to be:

- 76.3.1.** Essential for the efficient operation of the NSWALC; or;
- 76.3.2.** Developmental and of benefit to the NSWALC;

shall be regarded as on duty for the purpose of payment of salary if an Employee attends such an activity during normal working hours.



**76.4.** The following provisions shall apply, as appropriate, to the activities considered to be essential for the efficient operation of the NSWALC:

- 76.4.1.** Recognition that the Employees are performing normal duties during the course;
- 76.4.2.** Adjustment for the hours so worked under flexible working hours;
- 76.4.3.** Payment of course fees;
- 76.4.4.** Payment of all actual necessary expenses or payment of allowances in accordance with this Enterprise Agreement, provided that the expenses involved do not form part of the course and have not been included in the course fees; and
- 76.4.5.** Payment of overtime where the activity could not be conducted during the Employee's normal hours and the Chief Executive Officer is satisfied that the approval to attend constitutes a direction to work overtime under Clause 78 - Overtime-General.

**76.5.** The following provisions shall apply, as appropriate, to the activities considered to be developmental and of benefit to the NSWALC:

- 76.5.1.** Recognition of the Employee as being on duty during normal working hours whilst attending the activity;
- 76.5.2.** Payment of course fees;
- 76.5.3.** Reimbursement of any actual necessary expenses incurred by the Employee for travel costs, meals and accommodation, provided that the expenses have not been paid as part of the course fee; and
- 76.5.4.** Such other conditions as may be considered appropriate by the Chief Executive Officer given the circumstances of attending at the activity, such as compensatory leave for excess travel or payment of travelling expenses.

**76.6.** Where the training activities are considered to be principally of benefit to the Employee and of indirect benefit to the NSWALC, special leave of up to 10 days per year shall be granted to an Employee. If additional leave is required and the Chief Executive Officer is able to release the Employee, such leave shall be granted as a charge against available flex leave, annual/extended leave or as leave without pay.

**76.7.** Higher Duties Allowance - Payment of a higher duties allowance is to continue where the Employee attends a training or developmental activity whilst on duty in accordance with this Subclause.

## **77. Study Assistance**

- 77.1.** The Chief Executive Officer shall have the power to grant or refuse study time and/or study leave.
- 77.2.** If the Chief Executive Officer refuses to grant study time and/or study leave, the Chief Executive Officer shall provide a written explanation setting out why study time and/or study leave was refused
- 77.3.** Where the Chief Executive Officer approves the grant of study time, the grant shall be subject to:
  - 77.3.1.** The course being a course relevant to the NSWALC;
  - 77.3.2.** The time being taken at the convenience of the NSWALC; and
  - 77.3.3.** Paid study time not exceeding a maximum of 4 hours per week.
- 77.4.** In determining the relevance of a program of study for approval, the CEO will consider:
  - 77.4.1.** The relevance and value of the program to NSWALC;
  - 77.4.2.** The contribution the program is likely to make to enhancing the employability of the Employee;
  - 77.4.3.** The benefits of the program to the organisation and the Employee in relation to the costs in time and impact on the NSWALC business.
- 77.5.** Appropriate courses for approval should meet the following criteria:
  - 77.5.1.** Leading to a recognised qualification; or
  - 77.5.2.** A TAFE or specialised course; or
  - 77.5.3.** A bridging or qualifying course; or
  - 77.5.4.** An incidental subject forming part of a course for which study leave would be approved, and the incidental subject is of relevance to the department or the service; or
  - 77.5.5.** Administered by a public or private institution; or
  - 77.5.6.** Leading to membership of a registered professional association;
  - 77.5.7.** Able to be taken part-time by full time employees.
- 77.6.** Study time may be granted to both full and part-time Employees. Part-time Employees however shall be entitled to a pro-rata allocation of study time to that of a full-time Employee. Employees on probation will not be entitled during their probation period to Study Assistance provisions.

**77.7. Study time may be used for:**

- 77.7.1.** Attending compulsory lectures, tutorials, residential schools, field days etc., where these are held during working hours; and/or
- 77.7.2.** Staff undertaking Distance Education, Open Learning or Correspondence courses.
- 77.7.3.** Necessary travel during working hours to attend lectures, tutorials etc., held during or outside working hours; and/or private study; and/or accumulation, subject to the conditions specified in Subclauses 77.9 to 77.13.

**77.8. Employees requiring study time must nominate the type(s) of study time preferred at the time of application and prior to the proposed commencement of the academic period. The types of study time are as follows:**

- 77.8.1.** Face-to-Face - Employees may elect to take weekly and/or accrued study time, subject to the provisions for its grant.
- 77.8.2.** Distance Education, Open Learning or Correspondence - Employees may elect to take weekly and/or accrued study time, or time off to attend compulsory residential schools.
- 77.8.3.** Accumulation - Employees may choose to accumulate part or all of their study time as provided in Subclauses 77.9 to 77.13.

**77.9. Accumulated study time may be taken in any manner or at any time, subject to operational requirements of the NSWALC.**

**77.10. Where at the commencement of an academic year/semester an Employee elects to accrue study time and that Employee has consequently foregone the opportunity of taking weekly study time, the accrued period of time off must be granted even if changed work circumstances mean absence from duty would be inconvenient.**

**77.11. Employees attempting courses which provide for annual examinations, may vary the election as to accrual, made at the commencement of an academic year, effective from 1st July in that year.**

**77.12. Where an Employee is employed after the commencement of the academic year, weekly study time may be granted with the option of electing to accrue study time from 1st July in the year of entry on duty or from the next academic year, whichever is the sooner.**

**77.13.** Employees studying in semester based courses may vary their election as to accrual or otherwise from semester to semester.

**77.14.** Distance Education, Open Learning or Correspondence Courses - Study time for Employees studying by distance education, open learning or correspondence accrues on the basis of half an hour for each hour of lecture/tutorial attendance involved in the corresponding face-to-face course, up to a maximum grant of 4 hours per week. Where there is no corresponding face-to-face course, the training institution should be asked to indicate what the attendance requirements would be if such a course existed.

**77.15.** Distance Education, Open Learning or Correspondence students may elect to take weekly study time and/or may accrue study time and take such accrued time when required to attend compulsory residential schools.

**77.16.** Repeated subjects - Study time shall not be granted for repeated subjects.

**77.17.** Expendable grant - Study time if not taken at the nominated time shall be forfeited. If the inability to take study time occurs as a result of a genuine emergency at work, study time for that week may be granted on another day during the same week.

**77.18.** Examination Leave - Examination leave shall be granted as special leave for all courses of study approved in accordance with this clause.

**77.19.** The period granted as examination leave shall include:

**77.19.1.** Time actually involved in the examination;

**77.19.2.** Necessary travelling time, in addition to examination leave;

but is limited to a maximum of 5 days in any one year. Examination leave is not available where an examination is conducted within the normal class timetable during the term/semester and study time has been granted to the Employee.

**77.20.** The examination leave shall be granted for deferred examinations and in respect of repeat studies.

**77.21.** Study leave for full-time study is granted to assist those Employees who win scholarships/fellowships/awards or who wish to undertake full-time



study and/or study tours. Study leave may be granted for studies at any level, including undergraduate study.

**77.22.** All Employees are eligible to apply and no prior service requirements are necessary.

**77.23.** Study leave shall be granted without pay, except where the Chief Executive Officer approves financial assistance. The extent of financial assistance to be provided shall be determined by the Chief Executive Officer according to the relevance of the study to the workplace and may be granted up to the amount equal to full salary.

**77.24.** Where financial assistance is approved by the Chief Executive Officer for all or part of the study leave period, the period shall count as service for all purposes in the same proportion as the quantum of financial assistance bears to full salary of the Employee.

**77.25.** Scholarships for Part-Time Study - In addition to the study time/study leave provisions under this Subclause, the NSWALC may choose to identify courses or educational programmes of particular relevance or value and establish a NSWALC scholarship to encourage participation in these courses or programmes. The conditions under which such scholarships are provided should be consistent with the provisions of this clause.

## **78. Overtime – General**

**78.1.** An Employee may be directed by the Chief Executive Officer to work overtime, provided it is reasonable for the Employee to be required to do so. An Employee may refuse to work overtime in circumstances where the working of such overtime would result in the Employee working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:

**78.1.1.** The Employee's prior commitments outside the workplace, particularly the Employee's family and carer responsibilities, community obligations or study arrangements,

**78.1.2.** Any risk to Employee's health and safety,

**78.1.3.** The urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services,



- 78.1.4.** The notice (if any) given by the Chief Executive Officer regarding the working of the overtime, and by the Employee of their intention to refuse overtime, or
- 78.1.5.** Any other relevant matter.

**78.2.** Payment for overtime shall be made only where the Employee works directed overtime.

## **79. Rate of Payment for Overtime**

**79.1.** Rates - Overtime shall be paid at the following rates

- 79.1.1.** Weekdays (Monday to Friday inclusive) - at the rate of time and one-half for the first two hours and at the rate of double time thereafter for all directed overtime worked outside the Employee's ordinary hours of duty, if working standard hours, or outside the bandwidth, if working under a flexible working hours scheme, unless an Individual Flexibility Arrangement negotiated in terms of clause 11, Individual Flexibility Arrangement of this Enterprise Agreement apply.
- 79.1.2.** Saturday - All overtime worked on a Saturday at the rate of time and one-half for the first two hours and at the rate of double time thereafter.
- 79.1.3.** Sundays - All overtime worked on a Sunday at the rate of double time.
- 79.1.4.** Public Holidays - All overtime worked on a public holiday at the rate of double time and one half.

**79.2.** If an Employee is absent from duty on any working day during any week in which overtime has been worked the time so lost may be deducted from the total amount of overtime worked during the week unless the Employee has been granted leave of absence or the absence has been caused by circumstances beyond the Employee's control.

**79.3.** An Employee who works overtime on a Saturday, Sunday or public holiday, shall be paid a minimum payment as for three (3) hours work at the appropriate rate

**79.4.** Rest Periods –

- 79.4.1.** An Employee who works overtime shall be entitled to be absent until eight (8) consecutive hours have elapsed.

- 79.4.2.** Where an Employee, at the direction of the supervisor, resumes or continues work without having had eight (8) consecutive hours off duty then such Employee shall be paid at the appropriate overtime rate until released from duty. The Employee shall then be entitled to eight (8) consecutive hours off duty and shall be paid for the ordinary working time occurring during the absence.

## **80. Recall to Duty**

- 80.1.** An Employee recalled to work overtime after leaving the NSWALC's premises shall be paid for a minimum of three (3) hours work at the appropriate overtime rates.
- 80.2.** The Employee shall not be required to work the full three (3) hours if the job can be completed within a shorter period.
- 80.3.** When an Employee returns to the place of work on a number of occasions in the same day and the first or subsequent minimum pay period overlap into the next call out period, payment shall be calculated from the commencement of the first recall until either the end of duty or three (3) hours from the commencement of the last recall, whichever is the greater. Such time shall be calculated as one continuous period.
- 80.4.** When an Employee returns to the place of work on a second or subsequent occasion and a period of three (3) hours has elapsed since the Employee was last recalled, overtime shall only be paid for the actual time worked in the first and subsequent periods with the minimum payment provision only being applied to the last recall on the day.
- 80.5.** A recall to duty commences when the Employee starts work and terminates when the work is completed. A recall to duty does not include time spent travelling to and from the place at which work is to be undertaken.
- 80.6.** An Employee recalled to duty within three (3) hours of the commencement of usual hours of duty shall be paid at the appropriate overtime rate from the time of recall to the time of commencement of such normal work.
- 80.7.** This Subclause shall not apply in cases where it is customary for an Employee to return to the NSWALC's premises to perform a specific job outside the Employee's ordinary hours of duty, or where overtime is continuous with the completion or commencement of ordinary hours of

duty. Overtime worked in these circumstances shall not attract the minimum payment of three (3) hours unless the actual time worked is three (3) or more hours.

## **81. Overtime Meal Breaks**

- 81.1.** Employees not working flexible hours - An Employee required to work overtime on weekdays for an hour and a half or more after the Employee's ordinary hours of duty on weekdays, shall be allowed 30 minutes for a meal and thereafter, 30 minutes for a meal after every five hours of overtime worked.
- 81.2.** Employee working flexible hours - An Employee required to work overtime on weekdays beyond 7.00 p.m. and until or beyond eight and a half hours after commencing duty plus the time taken for lunch, shall be allowed 30 minutes for a meal and thereafter, 30 minutes for a meal after every five hours of overtime worked.
- 81.3.** Employees Generally - An Employee required to work overtime on a Saturday, Sunday or Public Holiday, shall be allowed 30 minutes for a meal after every five hours of overtime worked. An Employee who is unable to take a meal break and who works for more than five hours shall be given a meal break at the earliest opportunity.

## **82. Overtime Meal Allowances**

- 82.1.** If an adequate meal is not provided by the NSWALC, a meal allowance shall be paid by the NSWALC at the appropriate rate specified in Item 19 of Table 1 Part B, Monetary Rates, provided the Chief Executive Officer is satisfied that:
  - 82.1.1.** The time worked is directed overtime;
  - 82.1.2.** The Employee properly and reasonably incurred expenditure in obtaining the meal in respect of which the allowance is sought;
  - 82.1.3.** Where the Employee was able to cease duty for at least 30 minutes before or during the working of overtime to take the meal, the Employee did so; and
  - 82.1.4.** Overtime is not being paid in respect of the time taken for a meal break.
- 82.2.** Notwithstanding the above provisions, nothing in this Clause shall prevent the Chief Executive Officer and the Employee(s) from

negotiating different meal provisions in terms of Clause 11, Individual Flexibility Arrangement .

### **83. Payment for Overtime or Leave in Lieu**

**83.1.** The Chief Executive Officer shall grant compensation for directed overtime worked either by payment at the appropriate rate or, if the Employee so elects, by the grant of leave in lieu in accordance with Subclause 83.2.

**83.2.** The following provisions shall apply to the leave in lieu:

**83.2.1.** The Employee shall advise the supervisor before the overtime is worked or as soon as practicable on completion of overtime, that the Employee intends to take leave in lieu of payment;

**83.2.2.** The leave shall be calculated at the same rate as would have applied to the payment of overtime in terms of this clause;

**83.2.3.** The leave must be taken at the convenience of the NSWALC except when leave in lieu is being taken to look after a sick family member. In such cases, the conditions set out in Clause 71 - Sick Leave to Care for a Family Member apply;

**83.2.4.** The leave shall be taken in multiples of a quarter day, unless debiting of leave in hours or in fractions of an hour has been approved by NSWALC;

**83.2.5.** Leave in lieu accrued in respect of overtime worked on days other than public holidays, shall be given by the NSWALC and taken by the Employee within three months of accrual unless alternate Individual Flexibility Arrangements have been negotiated between the Chief Executive Officer and the Employee(s) ;

**83.2.6.** At the Employee's election, leave in lieu accrued in respect of overtime worked on a public holiday may be added to the Employee's annual leave credits and may be taken in conjunction with annual leave; and

**83.2.7.** An Employee shall be paid for the balance of any overtime entitlement not taken as leave in lieu.

### **84. Calculation of Overtime**

**84.1.** Unless a minimum payment in terms of Subclause 84.2 applies, overtime shall not be paid if the total period of overtime worked is less than a quarter of an hour.

- 84.2.** The formula for the calculation of overtime at ordinary rates for Employees employed on a five (5) day basis shall be:

$$\text{Annual Salary}/52/35 = \text{hourly rate}$$

- 84.3.** To determine time and one half, double time or double time and one half, the hourly rate at ordinary time shall be multiplied by 3/2, 2/1 or 5/2 respectively, calculated to the nearest cent.
- 84.4.** Overtime is not payable for time spent travelling

#### **85. Review of Overtime Meal Allowances**

- 85.1.** The rates of overtime meal allowances shall be adjusted in accordance with the provisions contained in Clause 38 - Review of Allowances payable in terms of this Enterprise Agreement.
- 85.2.** Where an allowance payable under Clause 82 - Overtime Meal Allowances of this Enterprise Agreement is insufficient to reimburse the Employee the cost of a meal, properly and reasonably incurred, the Chief Executive Officer may approve payment of actual expenses.
- 85.3.** Where the meal was not purchased, payment of a meal allowance shall not be made.
- 85.4.** Receipts shall be provided to the Chief Executive Officer in support of any claims for additional expenses or when the Employee is required to substantiate the claim.

#### **86. Provision of Transport in Conjunction with Working of Overtime**

- 86.1.** For the purpose of this Subclause, departure or arrival after 8.00 p.m. will determine whether the provisions of this subclause apply.
- 86.2.** Departure or arrival after 8.00 p.m. of an Employee on overtime, does not in itself warrant the provision of transport. It needs to be demonstrated that the normal means of transport, public or otherwise, is not reasonably available and/or that travel by such means of transport places the safety of the Employee at risk.
- 86.3.** The responsibility of deciding whether the provision of assistance with transport is warranted in the circumstances set out above, rests with



administrative units of the NSWALC where knowledge of each particular situation will enable appropriate judgements to be made.

- 86.4.** Arrangement of Overtime - Where overtime is required to be performed, it should be arranged, as far as is reasonably possible, so that the employee can use public transport or other normal means of transport to and from work.
- 86.5.** Provision of Taxis - Where an Employee ceases overtime duty after 8.00 pm and public transport or other normal means of transport is not reasonably available, arrangements may be made for transport home or to be provided by way of taxi.

### **87. Salary Sacrifice**

- 87.1.** All eligible Employees may elect to have their gross salary reduced by an amount nominated by the Employee as a salary sacrifice contribution for the benefit of the Employee.
- 87.2.** Any salary sacrifice arrangements must be in accordance with NSWALC Policies and Procedures, the outsourced providers Policies and Procedures (at the commencement of this Agreement being Maxxia) and any relevant legislative requirements.
- 87.3.** Any Fringe Benefits Tax incurred as a result of a salary sacrifice arrangement must be met by that Employee.
- 87.4.** In the event of any changes to legislation, NSWALC's PBI status etc that removes the capacity or results in a cost to NSWALC in maintaining or providing salary sacrifice provisions NSWALC may terminate the arrangement by providing appropriate notice.

### **88. Superannuation**

- 88.1.** NSWALC will comply with the requirements prescribed by the *Superannuation Guarantee (Administration) Act 1992* or subsequent or amending legislation.
- 88.2.** At the commencement of this Agreement the contribution rate shall be as determined by the legislation in Clause 88.1 and calculated on the gross salary.

- 88.3.** On commencement of employment and/or thereafter an Employee can nominate, in writing, a complying superannuation fund of their choice into which the NSWALC will make superannuation contributions.
- 88.4.** The default fund for an Employee who fails to make an election in accordance with the legislation shall be First State Super.
- 88.5.** Employees may elect by personal contributions or salary sacrifice to contribute additional contributions to a complying superannuation fund. The extent of those contributions will be determined by relevant legislation.
- 88.6.** The Employees gross salary prior to any salary sacrifice arrangement shall be used to determine the Employers superannuation guarantee contribution.
- 88.7.** NSWALC will make superannuation contributions at the rate prescribed by the *Superannuation Guarantee (Administration) Act 1992* or subsequent or amending legislation, to any Employee eligible for paid parental leave (as outlined in Clause 64.5) for the period that the paid parental leave is being paid.

## **89. Salary Continuance**

- 89.1.** All Full-time Employees and those Part-time Employees working more than 20 hours per week will be entitled to salary continuance insurance as per the relevant insurer's policy.
- 89.2.** Eligibility and access will be subject to meeting the conditions and terms as determined and assessed by the Insurer.

The key components of the program provide for:

- 89.2.1.** In the event of incapacity due to illness or injury, 75% of gross salary plus the current superannuation guarantee contribution will be paid.
- 89.2.2.** There is a 90 day waiting period after the date of the incident, as per the insurer's policy.
- 89.2.3.** Payments to continue until age 65 or return to work.

Access to this program will subject to the continuation of this Policy. In the event of any changes to the Salary Continuance Insurance cover, including termination of the insurance cover, NSWALC will provide appropriate notice to Employees in writing.

## **90. Anti-Discrimination**

- 90.1.** It is the intention of the parties bound by this Enterprise Agreement to seek 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.
- 90.2.** It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Enterprise Agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Enterprise Agreement 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 Enterprise Agreement which, by its terms or operation, has a direct or indirect discriminatory effect.
- 90.3.** 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.
- 90.4.** Nothing in this clause is to be taken to affect:
- 90.4.1.** Any conduct or act which is specifically exempted from anti-discrimination legislation;
  - 90.4.2.** Offering or providing junior rates of pay to persons under 21 years of age;
  - 90.4.3.** Any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - 90.4.4.** A party to this Enterprise Agreement from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
  - 90.4.5.** 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.

**NOTE:** NSWALCs and its Employees may also be subject to Commonwealth anti-discrimination legislation.

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

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

## **91. Secure Employment**

**91.1.** NSWALC recognises that Employees seek secure employment and that this is the preferred option for employment where possible, but recognises that it needs to be flexible and have the ability to meet its business obligations through a number of employment categories. These are:

### **91.2. Kinds of employment at NSWALC:**

**91.2.1.** Employment in NSWALC, other than fixed contract may be one of the following kinds of employment:

- a) ongoing (permanent) employment; or
- b) temporary employment; or
- c) casual employment.

**91.2.2.** Ongoing (permanent) employment is employment that continues until the Employee resigns or his or her employment is terminated by NSWALC.

**91.2.3.** Temporary employment is employment for a temporary purpose or project and is for the life of that temporary purpose or project. For example the backfilling of an ongoing role where the substantive holder is absent on extended leave; or on a project for a specified period; or filling an ongoing role whilst recruitment action is taking place; or where limited funding has been granted for a program of works over an extended period.

**91.2.4.** Casual employment is employment to carry out irregular, intermittent, short-term, urgent or other work as and when required.

### **91.3. Casual Conversion**

**91.3.1.** A casual Employee engaged by NSWALC on a regular and systematic basis for a sequence of periods of employment under this Enterprise Agreement during a calendar period of 12 months at the same regular hours on the same regular days shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this Subclause.

**91.3.2.** If NSWALC has such a casual Employee NSWALC shall give the Employee notice in writing of the provisions of this Subclause at the commencement of employment. However, the Employee retains his or her right of election under this Subclause if the NSWALC fails to comply with this notice requirement.



**91.3.3.** Any casual Employee who has a right to elect under Subclause 91.3.1, after the expiry of the 12 month calendar period referred to in Subclause 91.3.1, may give four weeks' notice in writing to the NSWALC that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the Employee, the NSWALC shall consent to or refuse the election, but shall not unreasonably so refuse. Where NSWALC refuses an election to convert, the reasons for doing so shall be fully stated in writing and discussed with the Employee concerned, and a genuine attempt shall be made to reach agreement.

Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

**91.3.4.** Any casual Employee who does not, within four weeks after the expiry of the 12 month calendar period referred to in 91.3.1, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.

**91.3.5.** Once a casual Employee has elected to become and been converted to a full-time Employee or a part-time Employee, the Employee may only revert to casual employment by written agreement with the NSWALC.

**91.3.6.** If a casual Employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with Subclause 91.3.3, the NSWALC and Employee shall, in accordance with this Subclause, and subject to Subclause 91.3.3, discuss and agree upon:

**91.3.6.1.** Whether the Employee will convert to full-time or part-time employment; and

**91.3.6.2.** If it is agreed that the Employee will become a part-time Employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this Enterprise Agreement pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an Employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an Employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the



basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the NSWALC and the Employee.

**91.3.7.** Following an agreement being reached pursuant to Subclause 91.3.6, the Employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an Employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

**91.3.8.** An Employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this Subclause.

#### **91.4. Temporary Employment**

**91.4.1.** An Employee may be temporarily employed for a specified term or ascertainable period. This employment will usually specify the starting and finishing dates of that employment (or in lieu of a finishing date, will specify the circumstance(s) or contingency relating to a specific task or project, upon the occurrence of which the term of the employment will expire).

**91.4.2.** An Employee must not be engaged and reengaged nor have his/her hours reduced for the principal reason of avoiding any obligation under this clause. This does not include breaks for genuine operational reasons or where an Employee's services are not required for a period.

**91.4.3.** Use of Temporary Employment

**91.4.3.1.** The parties acknowledge that temporary employment is not the ideal employment mode in all circumstances. NSWALC is committed to minimising the use of temporary employment to circumstances in which it is appropriate. Temporary appointments shall generally be limited to work activity that comes within the description of one or more of the following circumstances:

- a.** to work on a specific task or project where a definable work activity has a starting time and which is expected to be completed within an anticipated timeframe;
- b.** to perform work that is externally funded, where the funds are not part of the operating grant;

- c. to work in a new organisational area, function or program, or to provide additional assistance in a particular work area where the prospective need or demand for which is uncertain or unascertainable at the time, in which case Temporary employment may be offered for up to two years;
- d. to replace another staff member for a specified period while they are absent on leave, secondment or temporary transfer, or are undertaking higher duties, restricted duties, or have elected to work part-time for a specified period;
- e. to fill a vacant position pending recruitment action where the position has been advertised or approved for advertisement, in which case the replacement Employee may be employed for up to 6 months, with capacity for extension for a further period of up to 6 months;
- f. pursuant to a "pre-retirement contract" for a period of up to five years ending on the date on which the Employee has indicated that they intend to retire.

**91.4.4.** Notice of cessation or renewal of employment upon expiry of approved employment period.

**91.4.4.1.** NSWALC will advise, and the supervisor will discuss with, temporary Employees about the impending termination or renewal of their temporary employment, and this will normally be no later than 6 weeks before the cessation of their employment.

**91.4.5.** Further Employment

**91.4.5.1.** Where NSWALC has decided to continue the position with the same or similar tasks or project activities and at the same classification level and this decision is in compliance with 91.4.3, the incumbent Employee will be given further employment in the position.

**91.4.6.** Conversion to Continuing Employment

**91.4.6.1.** Employees may seek to be converted to ongoing (permanent) employment where the following mandatory criteria are met:

- a. the Employee was recruited through an externally advertised merit-based recruitment process; and

- b. the temporary Employee has been engaged for 2 years or more; and
- c. the position the employee is being held against is a vacant ongoing (permanent) role, or there is an ongoing requirement for the duties to be performed, or substantially similar duties, or the nature of the work can be established as ongoing; and
- d. the temporary employee's performance has been no less than satisfactory; and
- e. the Chief Executive Officer is satisfied that the person has the qualifications, experience, standard of work performance, and capabilities to enable to temporary Employee to perform the duties of the role on a permanent basis.

**91.4.6.2.** Where a staff member meets the requirements in 91.4.6.1, approval for conversion to continuing employment will not be unreasonably withheld.

#### **91.4.7. Severance Pay**

**91.4.7.1.** Temporary Employees are not entitled to severance payment unless:

- a. the Employee has been extended beyond the 2 year period (and met the requirements for conversion) or;
- b. the Employee has transferred to another role and their employment was not terminated prior to the new appointment and the Employee was not paid out all entitlements due upon termination of employment, including accrued but untaken leave.

**91.4.7.2.** Long-term temporary Employees may apply to the Chief Executive Officer through HR on a case by case basis to seek approval for the payment of severance, with payment in line with the Fair Work provisions.

## **91.5. Workplace Health and Safety**

**91.5.1.** For the purposes of this Subclause, the following definitions shall apply:

**91.5.1.1.** A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to NSWALC for the purpose of such staff performing work or services for NSWALC.

**91.5.1.2.** A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by NSWALC to provide a specified service or services or to produce a specific outcome or result for NSWALC which might otherwise have been carried out by NSWALC's own Employees.

**91.5.2.** Should NSWALC engage a labour hire business and/or a contract business to perform work wholly or partially on the NSWALC's premises shall do the following (either directly, or through the agency of the labour hire or contract business):

**91.5.2.1.** Consult with Employees of the labour hire business and/or contract business regarding the workplace health and safety consultative arrangements;

**91.5.2.2.** Provide Employees of the labour hire business and/or contract business with appropriate Workplace Health and Safety induction training including the appropriate training required for such Employees to perform their jobs safely;

**91.5.2.3.** Provide Employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own Employees; and

**91.5.2.4.** Ensure Employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

**91.5.3.** Nothing in this clause is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under

the *Workplace Health and Safety Act 2011* or the *Workplace Injury Management and Workers Compensation Act 1998*.

- 91.6.** Disputes Regarding the Application of this Clause - Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this Enterprise Agreement.
- 91.7.** This Clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

## **92. Salary and Wages**

- 92.1.** The salary ranges prescribed by this Enterprise Agreement are set out in Table 2, Group Salary Rates.
- 92.2.** A new Employee shall be advised of the relevant Group and Year in their letter of offer of employment prior to commencement of employment with the NSWALC.

## **93. No Extra Claims**

It is the intention of the parties that this Enterprise Agreement shall not during its currency be subject to further claims.

## **94. Redundancy Provisions**

- 94.1.** An Employee who accepts voluntary redundancy, or who is retrenched, will be covered by the provisions of the NSWALC's Managing Excess Employees policy, which exists at the date of this Enterprise Agreement.
- 94.2.** In accordance with the Managing Excess Employees Policy an Employee who accepts voluntary redundancy will receive the following redundancy entitlements:
  - 94.2.1.** Four (4) weeks notice or pay in lieu; Plus



- 94.2.2.** An additional one week's notice or pay in lieu for Employees aged 45 years and over with 5 or more years of completed service; Plus
- 94.2.3.** Severance pay for an Employee who has completed 1 year but less than 2 years of service is to equal 4 weeks pay

**94.2.3.1** Severance pay for an Employee who has completed more than 2 years of service will be at the rate of three (3) weeks per year of continuous service up to a maximum of thirty nine (39) weeks; with pro-rata payments for incomplete years of service to be on a quarterly basis: Plus

- 94.2.4.** Benefit allowable as a contributor to a superannuation or retirement fund; Plus

- 94.2.5.** Pro-rata annual leave loading in respect of leave accrued at the date of termination.

- 94.2.6.** Those Employees, who accept an offer of redundancy within two (2) weeks of the offer made and terminate employment within the time nominated by NSWALC, will be entitled to the following additional payments:

Less than 1 year service	2 weeks' pay
1 year and less than 2 years' service	4 weeks' pay
2 years' service and less than 3 years' service	6 weeks' pay
3 years' service and over	8 weeks' pay

**Note:** Reference to service in calculating entitlement to voluntary redundancy is based on a continuous period of employment with the NSWALC only. As with standard leave provisions, periods of leave without pay, secondments or similar are not considered as service for these purposes, (nor are they considered a break in employment) and periods of part-time employment will enable pro-rata entitlement.

**Note**

The provisions in this clause apply to permanent Employees only.

**Table 1 (Please note: Subject to annual review)**

- 2 -

**PART B - MONETARY RATES**

**Table 1 – Rates and Allowances**

**Effective 1 July 2016**

Item No	Clause No	Description	Amount
1		<b>Meal expenses on one day journeys</b>	
		<b>Capital cities and high cost country centres</b>	
		(see list in item 2)	
	29.1.1	Breakfast	\$26.45
	29.1.2	Dinner	\$50.70
	29.1.3	Lunch	\$29.75
		<b>Tier 2 and other country centres</b>	
		(see list in item 2)	
	29.1.1	Breakfast	\$23.70
	29.1.2	Dinner	\$46.65
	29.1.3	Lunch	\$27.05
2		<b>Travelling allowances</b>	
	26.8.2	<b>Capital cities</b>	<b>Per day</b>
		Adelaide	\$262.95
		Brisbane	\$330.95
		Canberra	\$293.95
		Darwin	\$341.95
		Hobart	\$257.95
		Melbourne	\$298.95
		Perth	\$328.95
		Sydney	\$310.95
	26.8.2	<b>High cost country centres</b>	<b>Per day</b>
		Albany (WA)	\$304.95
		Alice Springs (NT)	\$275.95
		Bordertown (SA)	\$260.95
		Bourke (NSW)	\$290.95
		Bright (VIC)	\$277.95
		Broome (WA)	\$385.95
		Bunbury (WA)	\$280.95
		Burnie (TAS)	\$285.95
		Cairns (QLD)	\$278.95
		Camaron (WA)	\$276.95
		Castlemaine (VIC)	\$271.95
		Chinchilla (QLD)	\$268.95
		Christmas Island (WA)	\$305.95
		Cocos (Keeling) Islands (WA)	\$410.95
		Colac (VIC)	\$263.95

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Review of Meal, Travelling and other Allowances

Item No	Clause No	Description	Amount
		Dalby (QLD)	\$275.95
		Dampier (WA)	\$300.95
		Derby (WA)	\$315.95
		Devonport (TAS)	\$270.95
		Emerald (QLD)	\$281.95
		Esperance (WA)	\$266.95
		Exmouth (WA)	\$380.95
		Geraldton (WA)	\$300.95
		Gladstone (QLD)	\$312.95
		Gold Coast (QLD)	\$325.95
		Gosford (NSW)	\$265.95
		Halls Creek (WA)	\$324.95
		Hervey Bay (QLD)	\$282.95
		Horn Island (QLD)	\$325.95
		Jabiru (NT)	\$325.95
		Kalgoorlie (WA)	\$284.95
		Karratha (WA)	\$425.95
		Katherine (NT)	\$259.95
		Kingaroy (QLD)	\$259.95
		Kununurra (WA)	\$327.95
		Mackay (QLD)	\$286.95
		Maitland (NSW)	\$277.95
		Mount Isa (QLD)	\$285.95
		Mudgee (NSW)	\$260.95
		Newcastle (NSW)	\$290.95
		Newman (WA)	\$320.95
		Norfolk Island (NSW)	\$454.95
		Northam (WA)	\$288.95
		Orange (NSW)	\$280.95
		Port Hedland (WA)	\$385.95
		Port Lincoln (SA)	\$295.95
		Port Macquarie (NSW)	\$265.95
		Port Pirie (SA)	\$275.95
		Roma (QLD)	\$264.95
		Thursday Island (QLD)	\$325.95
		Townsville (QLD)	268.95
		Wagga Wagga (NSW)	\$269.95
		Weipa (QLD)	\$263.95
		Whyalla (SA)	\$288.95
		Wilpena-Pound (SA)	\$292.95
		Wollongong (NSW)	\$261.95
		Wonthaggi (VIC)	\$263.95
		Yulara (NT)	\$425.95

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Review of Meal, Travelling and other Allowances



Item No	Clause No	Description	Amount
	26.8.2	Tier 2 country centres	Per day
		Albury (NSW)	\$248.45
		Ararat (VIC)	\$248.45
		Armidale (NSW)	\$248.45
		Ayr (QLD)	\$248.45
		Bairnsdale (VIC)	\$248.45
		Ballarat (VIC)	\$248.45
		Bathurst (NSW)	\$248.45
		Bega (NSW)	\$248.45
		Benalla (VIC)	\$248.45
		Bendigo (VIC)	\$248.45
		Broken Hill (NSW)	\$248.45
		Bundaberg (QLD)	\$248.45
		Ceduna (SA)	\$248.45
		Charters Towers (QLD)	\$248.45
		Coffs Harbour (NSW)	\$248.45
		Cooma (NSW)	\$248.45
		Dubbo (NSW)	\$248.45
		Echuca (VIC)	\$248.45
		Geelong (VIC)	\$248.45
		Goulburn (NSW)	\$248.45
		Griffith (NSW)	\$248.45
		Gunnedah (NSW)	\$248.45
		Hamilton (VIC)	\$248.45
		Horsham (VIC)	\$248.45
		Innisfail (QLD)	\$248.45
		Kadina (SA)	\$248.45
		Launceston (TAS)	\$248.45
		Lismore (NSW)	\$248.45
		Mildura (VIC)	\$248.45
		Mount Gambier (SA)	\$248.45
		Muswellbrook (NSW)	\$248.45
		Naracoorte (SA)	\$248.45
		Nowra (NSW)	\$248.45
		Port Augusta (SA)	\$248.45
		Portland (VIC)	\$248.45
		Queanbeyan (NSW)	\$248.45
		Queenstown (TAS)	\$248.45
		Renmark (SA)	\$248.45
		Rockhampton (QLD)	\$248.45
		Sale (VIC)	\$248.45
		Seymour (VIC)	\$248.45
		Shepparton (VIC)	\$248.45
		Swan Hill (VIC)	\$248.45

Item No	Clause No	Description	Amount
		Tamworth (NSW)	\$248.45
		Tennant Creek (NT)	\$248.45
		Toowoomba (QLD)	\$248.45
		Tumut (NSW)	\$248.45
		Wangaratta (VIC)	\$248.45
		Warrnambool (VIC)	\$248.45
		Wodonga (VIC)	\$248.45
	26.8.2	Other country centres	\$226.45
	26.8.2	Incidental expenses when claiming actual expenses - all locations	\$19.05
	26.11	Daily allowance payable after 35 days and up to 6 months in the same location - all locations	50% of the appropriate location rate
3	26.8.1	Incidental expenses	\$19.05
4		Camping allowance	Per night
	34.2.1	Established camp	\$31.55
	34.2.2	Non established camp	\$41.70
		Additional allowance for staff who camp in excess of 40 nights per year	\$9.95
5	35.2	Composite allowance (per day)	\$150.45
6		Use of private motor vehicle	Cents per kilometre
	36.3	Official business	66.0
	36.3	Casual rate (40% of official business rate)	26.4
		Motor cycle allowance (50% of the official business rate)	33.0
	36.7	Towing trailer or horse float (13% of the official business rate)	8.6
7		Camping equipment allowance	Per night
	38.2	Camping equipment allowance	\$31.25
	38.3	Bedding and sleeping bag	\$5.25
8		Remote areas allowance	Per annum
		With dependants	
	39.2.1	- Grade A	\$1996 pa
	39.2.2	- Grade B	\$2647 pa
	39.2.3	- Grade C	\$3535 pa
		Without dependants	
	39.2.1	- Grade A	\$1393 pa
	39.2.2	- Grade B	\$1856 pa
	39.2.3	- Grade C	\$2477 pa
9	40.1	Assistance to staff members stationed in a remote area when travelling on recreation leave	
		By private motor vehicle	Appropriate casual rate up to a maximum of 2850 kms less \$49.20



Item No	Clause No	Description	Amount
		Other transport - with dependants	Actual reasonable expenses in excess of \$49.20 and up to \$329.55
		Other transport - without dependants	Actual reasonable expenses in excess of \$49.20 and up to \$162.80
		Rail travel	Actual rail fare less \$49.20
10	41	Insurance cover	Up to \$A 1,173
11	42.2	Exchanges	Actual cost
12	43.1	Room at home used as office	\$909 pa
13	92.1.1	On-call (stand-by) and on-call allowance (effective fpp on or after 1 July 2016)	0.94 per hour
14	45	Flying allowance (effective fpp on or after 1 July 2016)	\$20.20 per hour
15	46.1	Uniforms, protective clothing and laundry allowance	\$4.75 per week
16	48.1	Garage and carport allowance	Per annum
		- Garage allowance	\$643 pa
		- Carport allowance	\$143 pa
17	50.1	Community language allowance scheme (effective fpp on or after 1 July 2016)	Per annum
		- Base Level Rate	\$1345 pa
		- Higher Level Rate	\$2021 pa
18	51.1	First aid allowance (effective fpp on or after 1 July 2016)	Per annum
		- Holders of basic qualifications	\$866 pa
		- Holders of current occupational first aid certificate	\$1301 pa
19	94.1	Overtime meal allowances	Effective 1 July 2016
		Breakfast	\$29.40
		Lunch	\$29.40
		Dinner	\$29.40
		Supper	\$10.90

NB: In adjusting expense related and salary related allowances, annual rates are adjusted to the nearest dollar, weekly and daily rates are rounded to the nearest 5 cents, and hourly rates are moved to the nearest cent (except for the flying allowance which is moved to the nearest 10 cents).

**TABLE 2 – GROUP SALARY RATES****AS AT JUL 2016**

Group	1st Year	2nd Year	3rd Year
13	116,421	120,020	125,735
12	106,808	111,129	116,421
11	97,098	101,954	106,808
10	88,271	92,682	97,098
9	80,247	84,259	88,271
8	72,949	76,602	80,247
7	66,319	69,634	72,949
6	60,291	63,304	66,319
5	54,809	57,552	60,291
4	49,828	52,316	54,809
3	45,297	47,567	49,828
2	41,179	43,242	45,297
1	37,438	39,308	41,180

**AS AT JUL 2017**

Group	1st Year	2nd Year	3rd Year
13	119,332	123,021	128,878
12	109,478	113,907	119,332
11	99,525	104,503	109,478
10	90,478	94,999	99,525
9	82,253	86,365	90,478
8	74,773	78,517	82,253
7	67,977	71,375	74,773
6	61,798	64,887	67,977
5	56,179	58,991	61,798
4	51,074	53,624	56,179
3	46,429	48,756	51,074
2	42,208	44,323	46,429
1	38,374	40,291	42,210

**AS AT JUL 2018**

Group	1st Year	2nd Year	3rd Year
13	122,315	126,097	132,100
12	112,215	116,755	122,315
11	102,013	107,116	112,215
10	92,740	97,374	102,013
9	84,309	88,524	92,740
8	76,642	80,535	84,309
7	69,676	73,159	76,642
6	63,343	66,509	69,676
5	57,583	60,466	63,343
4	52,351	54,965	57,583

3	47,590	49,975	52,351
2	43,263	45,431	47,590
1	39,333	41,298	43,265

**AS AT JUL 2019**

Group	1st Year	2nd Year	3rd Year
13	125,373	129,249	135,403
12	115,020	119,674	125,373
11	104,563	109,794	115,020
10	95,059	99,808	104,563
9	86,417	90,737	95,059
8	78,558	82,548	86,417
7	71,418	74,988	78,558
6	64,927	68,172	71,418
5	59,023	61,978	64,927
4	53,660	56,339	59,023
3	48,780	51,224	53,660
2	44,345	46,567	48,780
1	40,316	42,330	44,347



## Annexure A – Map for Remote Annual Leave





## **Annexure B - Interim Travel Allowance**

**The clauses listed below will apply from the date of this agreement to 30 June 2017**

### **1. Travelling Allowances – General**

- 1.1.** Any authorised official travel and associated expenses, properly and reasonably incurred by an Employee required to perform duty at a location other than their normal headquarters shall be met by the NSWALC.
- 1.2.** The Chief Executive Officer shall require Employees to obtain an authorisation for all official travel prior to incurring any travel expense.
- 1.3.** Where available at a particular centre or location, the overnight accommodation to be occupied by Employees who travel on official business shall be the middle of the range standard, referred to generally as three star or three diamond standard of accommodation.
- 1.4.** Where payment of a proportionate amount of an allowance applies in terms of this clause, the amount payable shall be the appropriate proportion of the daily rate. Any fraction of an hour shall be rounded off to the nearest half-hour.
- 1.5.** Travelling Allowances rates are set out in Table 1 of Part B Monetary Rates and are updated in accordance with the relevant NSW Government Circulars.

### **2. Meal Expenses on One-Day Journey**

- 2.1.** An Employee who is authorised by the Chief Executive Officer to undertake a one-day journey on official business which does not require the Employee to obtain overnight accommodation, shall be paid the appropriate rate of allowance set out in Item 1 of Table 1 of Part B Monetary Rates for:
  - 2.1.1.** Breakfast when required to commence travel at or before 6.00 a.m. and at least 1 hour before the prescribed starting time;
  - 2.1.2.** An evening meal when required to travel beyond 7.00 p.m.; and
  - 2.1.3.** Lunch when required to travel a total distance on the day of at least 100 kilometres and, as a result, is located at a distance of at least 50 kilometres from the Employee's normal headquarters at the time of taking the normal lunch break.

### **3. Travelling Allowances when staying in Non NSWALC Provided Accommodation**

- 3.1.** An Employee who is required by the Chief Executive Officer to work from a temporary work location shall be compensated for accommodation, meal and incidental expenses properly and reasonably incurred during the time actually spent away from the Employee's residence in order to perform the work.
- 3.2.** For the first 35 days, the payment shall be either:
  - 3.2.1.** The appropriate rate of allowance specified in Item 2 of Table 1 Allowances of Part B Monetary Rates for every period of 24 hours

absence by the Employee from their residence; and actual meal expenses properly and reasonably incurred (excluding morning and afternoon teas) for any residual part day travel; or

- 3.2.2. If the Employee elects, actual expenses, properly and reasonably incurred for the whole trip on official business (excluding morning and afternoon teas) together with an incidental expenses allowance set out in Item 2 of Table 1 of Part B Monetary Rates.
- 3.3. Payment of the appropriate allowance for an absence of less than 24 hours may be made only where the Employee satisfies the Chief Executive Officer that, despite the period of absence being of less than 24 hours' duration, expenditure for accommodation and three meals has been incurred.
- 3.4. Where an Employee is unable to so satisfy the Chief Executive Officer, the allowance payable for part days of travel shall be limited to the actual expenses incurred during such part day travel.
- 3.5. After the first 35 days - If an Employee is required by the Chief Executive Officer to work in the same temporary work location for more than 35 days, such Employee shall be paid the appropriate rate of allowance as specified in Item 2 of Table 1 of Part B Monetary Rates.
- 3.6. Long term arrangements - As an alternative to the provisions set out in Subclauses 3.2 and 3.5 above, NSWALC could make alternative arrangements for meeting the additional living expenses, properly and reasonably incurred by an Employee working from a temporary work location.
- 3.7. The return of an Employee to their home at weekends, on rostered days off or during short periods of leave while working from a temporary work location shall not constitute a break in the temporary work arrangement.

#### **4. Travelling Allowances When Staying in NSWALC Provided Accommodation**

- 4.1. When an Employee working from a temporary work location is provided with accommodation by the NSWALC, the Employee shall be entitled to claim the incidental expenses allowance set out in Item 3 of Table -1 Allowances of Part B Monetary Rates for the same period. If meals are not provided by the NSWALC at the temporary work location, the Employee shall be entitled to claim also the reimbursement of any meal expenses properly and reasonably incurred during the time spent at the temporary work location.

#### **5. Restrictions on Payment of Travelling Allowance**

- 5.1. An allowance under Clause 3 - Travelling Allowance when staying in Non NSWALC Provided Accommodation is not payable in respect of:
  - 5.1.1. Any period during which the Employee returns to their residence at weekends or public holidays, commencing with the time of arrival at

that residence and ending at the time of departure from the residence;

- 5.1.2.** Any period of leave, except with the approval of the Chief Executive Officer or as otherwise provided by this Subclause; or
- 5.1.3.** Any other period during which the Employee is absent from the Employee's temporary work location otherwise than on official duty.
- 5.2.** Notwithstanding Subclauses 5.1, 5.2 and 5.3 of this Clause, an Employee in receipt of an allowance under Clause 3 - Travelling Allowance when staying in Non NSWALC Provided Accommodation of this Enterprise Agreement who is granted special leave to return to their residence at a weekend, shall be entitled to an allowance under Clause 3- Travelling Allowance when staying in Non NSWALC Provided Accommodation in respect of the necessary period of travel for the journey from the temporary work location to the Employee's residence; and for the return journey from the Employee's residence to the temporary work location, but is not entitled to any allowance under this Subclause, or any other allowance, in respect of the same period.
- 5.3.** Notwithstanding Subclauses 5.1, 5.2 or 5.3 of this Clause, an Employee in receipt of an allowance under this Subclause who, on ceasing to perform duty at or from a temporary work location, leaves that location shall be entitled to an allowance in accordance with Clause 3-Travelling Allowance when staying in Non-NSWALC Provided Accommodation of this Enterprise Agreement in respect of the necessary period of travel to return to the Employee's residence or to take up duty at another temporary work location, but is not entitled to any other allowance in respect of the same period.

#### **6. Increase or Reduction in Payment of Travelling Allowances**

**6.1.** Where the Chief Executive Officer is satisfied that a travelling allowance is:

- 6.1.1.** Insufficient to adequately reimburse the Employee for expenses properly and reasonably incurred, a further amount may be paid to reimburse the Employee for the additional expenses incurred; or
- 6.1.2.** In excess of the amount which would adequately reimburse the Employee for expenses properly and reasonably incurred, the Chief Executive Officer may reduce the allowance to an amount which would reimburse the Employee for expenses incurred properly and reasonably.

#### **7. Production of Receipts**

Payment of any actual expenses shall be subject to the production of receipts, unless the Chief Executive Officer is prepared to accept other evidence from the Employee.

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## IN THE FAIR WORK COMMISSION

**FWC Matter No.:**

AG2017/691

**Applicant:**


**NSW Aboriginal Land Council**

Section 185 – Application for approval of a single enterprise agreement

### Undertaking- Section 190

I, James Christian, Chief Executive Officer for NSW Aboriginal Land Council ("NSWALC") give the following undertakings with respect to the NSW Aboriginal Land Council Enterprise Agreement 2016-2010 ("the Agreement"):

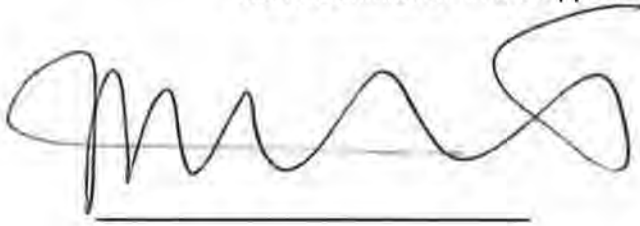
1. I have the authority given to me by the NSWALC to provide this undertaking in relation to the application before the Fair Work Commission.
2. In order to ensure all Employees employed by NSWALC are paid at a rate that is higher than the equivalent Award rate NSWALC undertakes to increase the rates of pay for all Employees employed at the following Salary Groups/Years:
  - Group 4 Year 3 from \$30.11 to \$30.71;
  - Group 5 Year 1 from \$30.11 to \$30.71;
  - Group 5 Year 3 from \$33.13 to \$33.18; and
  - Group 6 Year 1 from \$33.13 to \$33.18.
3. In replacement of the provisions in 65.2.3 and 65.2.4, prior to directing an employee to take excess annual leave, NSWALC must:
  1. Genuinely attempt to reach agreement/leave plan with the employee in writing, to take excess annual leave;
  2. Not require the employee to take any period of paid annual leave of less than one week;
  3. Not require the employee to take a period of annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  4. Not result in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks.
4. In replacement of the provisions in Clause 74.1.3, when a certificate of attendance on jury service is received in respect of any period during which an employee was required to be on duty, the Chief Executive Officer shall grant, in respect of any such period covered by the certificate of attendance, special leave on full pay. In any other case the Chief Executive Officer shall grant, at the sole election of the Employee, available annual leave on full pay, flex leave or leave without pay.
5. The NSW Aboriginal Land Council Enterprise Agreement 2016-2020 does not make provision for conditions of employment or benefits relating to Client Cancellation, Broken Shifts, Sleepovers, 24 Hour Care and Excursions because



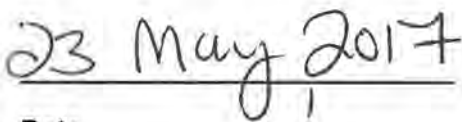
23/5/17

this work is not undertaken, now or in the future, by any Employee covered by the NSW Aboriginal Land Council Enterprise Agreement 2016-2020.

6. The definition of "Full-time contract hours in Clause 3 is amended to read "means the standard weekly hours, i.e., 35 hours per week, 7 hours per day, worked between 7:00am and 7:00pm on Monday to Friday, required to be worked as at the date of this Enterprise Agreement"
7. In addition to the protections provided in clause 91, NSWALC undertakes that prior to commencing employment, NSWALC and a part-time Employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work, the starting and finishing times each day. Any agreed variation to the regular pattern of work will be recorded in writing.
8. In addition to the protections provided in clause 91.2, NSWALC undertakes to pay casual employees the applicable Agreement rate for their classification plus a casual loading of 25%. Casual Employees are also entitled to a minimum payment of three hours' work at the appropriate rate.
9. The policies referred to in the Enterprise Agreement are not intended to form part of the Agreement. The relevant policies are available on the NSWALC intranet and are easily accessible by all NSWALC Employees.
10. The deductions referred to in Clause 79.2 will only be made after consultation with the affected Employee.
11. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

**Signature**

A handwritten date in black ink, reading "23 May 2017".

**Date**

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## Schedule 2.3—Model consultation term

(regulation 2.09)

### Model consultation term

- (1) This term applies if the employer:
  - (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
  - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

#### *Major change*

- (2) For a major change referred to in paragraph (1)(a):
  - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
  - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
  - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
  - (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
  - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and



- (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
    - (i) all relevant information about the change including the nature of the change proposed; and
    - (ii) information about the expected effects of the change on the employees; and
    - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is ***likely to have a significant effect on employees*** if it results in:
  - (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.

*Change to regular roster or ordinary hours of work*

- (10) For a change referred to in paragraph (1)(b):
  - (a) the employer must notify the relevant employees of the proposed change; and
  - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

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- (12) If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion—provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
- relevant employees*** means the employees who may be affected by a change referred to in subclause (1).