

**INSURANCE COMMISSION OF WESTERN AUSTRALIA (GOVERNMENT OFFICERS)
CSA AGREEMENT 2022**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | | |
|---------------------|--|-------------------|
| PARTIES | INSURANCE COMMISSION OF WESTERN AUSTRALIA | APPLICANT |
| | -v- | |
| | CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED | RESPONDENT |
| CORAM | PUBLIC SERVICE ARBITRATOR SENIOR COMMISSIONER R COSENTINO | |
| DATE | THURSDAY, 25 MAY 2023 | |
| FILE NO | PSAAG 3 OF 2023 | |
| CITATION NO. | 2023 WAIRC 00291 | |

| | |
|-----------------------|---|
| Result | Agreement registered |
| Representation | (on the papers) |
| Applicant | Insurance Commission of Western Australia |
| Respondent | Civil Service Association of Western Australia Incorporated |

Order


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

AND WHEREAS the parties consent to this application for registration of the industrial agreement being determined on the papers;

AND WHEREAS I, the Public Service Arbitrator, am satisfied that the agreement meets the requirements of the IR Act and it should be registered;

NOW THEREFORE, the Public Service Arbitrator, pursuant to the powers conferred under the IR Act, hereby orders –

THAT the agreement made between the parties filed in the Registry of the Commission on 8 May 2023 as amended entitled the *Insurance Commission of Western Australia (Government Officers) CSA Agreement 2022* attached hereto be registered as an industrial agreement with effect from 25 May 2023 in replacement of the *Insurance Commission of Western Australia (Government Officers) CSA Agreement 2021* which by operation of s 41(8) of the IR Act is hereby cancelled.

 (Sgd.) R. COSENTINO

SENIOR COMMISSIONER R COSENTINO
PUBLIC SERVICE ARBITRATOR

**INSURANCE COMMISSION OF WESTERN AUSTRALIA
(GOVERNMENT OFFICERS) CSA
AGREEMENT 2022**

PART 1: APPLICATION OF THE AGREEMENT

1 TITLE

This Agreement shall be known as the Insurance Commission of Western Australia (Government Officers) CSA Agreement 2022.

2 ARRANGEMENT

PART 1: APPLICATION OF THE AGREEMENT

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3. DEFINITIONS

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

- 3.1 "Agreement" means the *Insurance Commission of Western Australia (Government Officers) CSA Agreement 2022*.
- 3.2 "Award" means the Government Officers (Insurance Commission of Western Australia) Award 1987, No. PSA A21 of 1986.
- 3.3 "casual employee" means a casual employee as defined in clause 51 (1) of the Award.
- 3.4 "child" and "grandchild" includes children of a multiple birth or adoption.
- 3.5 "Employee" means the person appointed to the Insurance Commission under the terms of the *Insurance Commission of Western Australia Act 1986*.
- 3.6 "Employer" means the Insurance Commission of Western Australia.
- 3.7 "GSLR" means Government Sector Labour Relations. GSLR is responsible for the coordination and governance of all government sector labour relations matters, in accordance with Premier's Circular 2017/03 – Coordination and Governance of Government Sector Labour Relations and as replaced.
- 3.8 "Insurance Commission" means the Insurance Commission of Western Australia.
- 3.9 "JCC" means Joint Consultative Committee.
- 3.10 "Managing Director" means the person for the time being holding or acting in the office of Managing Director (Chief Executive) of the Insurance Commission of Western Australia.
- 3.11 "Ordinary rate" and "Ordinary rate of salary" means rate of salary in Schedule 2.
- 3.12 "Partner" means a spouse or defacto partner.
- 3.13 "Replacement employee" means an Employee specifically engaged to replace an Employee proceeding on maternity leave, adoption leave, other parent leave or grandparental leave.
- 3.14 "PSC" means Public Sector Commission.
- 3.15 "Public Sector" means:
 - (a) all agencies, ministerial offices and non-SES organisations as defined in section 3 of the *Public Sector Management Act 1994*; and
 - (b) employing authorities as defined in section 5 of the *Public Sector Management Act 1994*.
- 3.16 "Redeployment period" means the redeployment period as defined by regulation 28 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.

- 3.17 “Registered employee” means a registered employee as defined by section 94(1A) of the *Public Sector Management Act 1994*.
- 3.18 “Registrable employee” means a registrable employee as defined by section 94(1A) of the *Public Sector Management Act 1994*.
- 3.19 “Suitability” means suitable office, post or position or suitable employment as defined by section 94(6) of the *Public Sector Management Act 1994* as read with regulation 7 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.20 “Suitable office, post or position”, and “suitable employment” have the meaning given in section 94(6) of the *Public Sector Management Act 1994* as read with regulation 7 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.21 “Surplus employee” means either a registrable employee or a registered employee.
- 3.22 “Suspend” means to suspend the continuance of an employee’s Redeployment period in accordance with regulation 29 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 3.23 “Union” means The Civil Service Association of Western Australia Incorporated.
- 3.24 “WAIRC” means the Western Australian Industrial Relations Commission.

4. PURPOSE OF AGREEMENT

- 4.1 The parties agree that the purpose of this Agreement is to:
- (a) provide salary increases in accordance with this Agreement, for Employees bound by this Agreement; and
 - (b) in conjunction with the Award provide a core set of employment conditions for Employees bound by this Agreement.

5. APPLICATION AND PARTIES BOUND

- 5.1 This agreement cancels and replaces the Insurance Commission of Western Australia (Government Officers) CSA Agreement 2021.
- 5.2 The parties bound by this Agreement are the Insurance Commission of Western Australia and the Civil Service Association of Western Australia Incorporated.
- 5.3 This Agreement applies to all Employees, other than those listed in subclause 5.4 of this clause, employed under the *Insurance Commission of Western Australia Act 1986*, who are members of or eligible to be members of the Union and covered by the Award. As at the date of registration the approximate number of Employees bound by this Agreement is 473.
- 5.4 This Agreement does not apply to those Employees whose salaries or salary ranges are determined or recommended pursuant to the *Salaries and Allowances Act 1975* or who occupy offices for which the remuneration is determined by an Act of Parliament to be a fixed rate, or is determined or to be determined by the Governor pursuant to the provisions of any Act of

Parliament.

- 5.5 It is the intent of the parties to preserve the Award as it applies to Employees covered by this Agreement at the time of registration, only for the life of this Agreement.
- 5.6 This Agreement must be read in conjunction with the Award.
- 5.7 Provisions in the Award that deal with subject matters not otherwise dealt with by this Agreement are preserved at the date of registration. For the purposes of this clause, these provisions are referred to as the “preserved provisions”.
- 5.8 Subsequent to the registration of this Agreement, any variations to provisions of the Award issued through orders of the WAIRC prevail over the preserved provisions to the extent of any inconsistency.
- 5.9 Subject to clause 5.8, where the provisions of the Award and this Agreement are inconsistent, the Agreement prevails.

6. TERM OF AGREEMENT

- 6.1 This Agreement operates from the date of registration and, in accordance with Section 41 of the *Industrial Relations Act 1979*, expires on 12 June 2024.
- 6.2 The parties to this Agreement agree to re-open negotiations for a replacement Agreement at least six months prior to the expiry of this Agreement with a view to implement a replacement Agreement on the 13 June 2024.

7. NO FURTHER CLAIMS

- 7.1 The parties to this Agreement undertake that for the term of this Agreement salary increases cannot be sought or granted other than those provided under the terms of this Agreement. This includes salary adjustments arising out of State Wage Cases. Such increases are absorbed in the salaries set out in this Agreement.
- 7.2 The parties to this Agreement undertake that for the term of this Agreement further claims cannot be made on matters contained in this Agreement except where specifically provided for.

8. CORE CONDITIONS

- 8.1 The core conditions of employment for Employees covered by this Agreement are the terms and conditions of this Agreement, with the exception of clause 19 – Hours of this Agreement provided an average of no more than 37.5 hours per week is worked as ordinary hours, and the following provisions contained in the Award:
 - (a) clause 7 – Contract of Service
 - (b) clause 13 – Annual Performance Based Salary Increments
 - (c) clause 14 – Traineeships

- (d) clause 16 – Annual Leave, including Leave Loading
- (e) clause 17 – Public Holidays
- (f) clause 18 – Long Service Leave
- (g) clause 25 – Bereavement Leave
- (h) clause 26 – Cultural/Ceremonial Leave
- (i) clause 27 – Blood/Plasma Donors Leave
- (j) clause 28 – Emergency Service Leave
- (k) clause 29 – Union Facilities For Union Representatives
- (l) clause 29A – Representation Rights
- (m) clause 30 – Leave to Attend Union Business
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- (o) clause 32 – Defence Force Reserves Leave
- (p) clause 34 – Witness and Jury Service
- (q) clause 35 – Higher Duties Allowance
- (r) clause 38 – Keeping of and Access to Employment Records
- (s) clause 39 – Right of Entry and Inspection by Authorised Representatives
- (t) clause 40 – Copies of Award
- (u) clause 46 – Salary Packaging Arrangement
- (v) clause 47 – Supported Wage
- (w) clause 49 – Purchased Leave – Deferred Salary Arrangement

PART 2: SALARY RELATED MATTERS

9. SALARIES

- 9.1 The annual salaries provided for by this Agreement are those contained in Schedule 2 – Salaries of this Agreement. Schedule 2 provides for an increase on and from 13 June 2022 and a further increase on and from 13 June 2023.
- 9.2 An Employee who is employed by the Employer on 21 December 2022 receives a payment equivalent to the additional annual salary increase that would have been paid had the salaries in Schedule 2 – Salaries of this Agreement been paid on and from 13 June 2022.

- 9.3 An Employee who resigns or retires or whose employment is otherwise terminated prior to 22 December 2022 is not entitled to payment provided in clause 9.2.
- 9.4 The annual salaries provided in Schedule 2 – Salaries of this Agreement include full and final settlement of productivity improvements up to the date of commencement of the *Government Officers (Insurance Commission of Western Australia) General Agreement 2011*.
- 9.5 An Employee covered by clause 47 – Supported Wage of the Award shall be paid the applicable percentage of the minimum rate of pay prescribed by this Agreement for the class of work the person is performing.
- 9.6 An Employee's fortnightly salary is:
- (a) determined according to the annual salaries contained in Schedule 2 – Salaries of this Agreement
 - (b) calculated to four decimal points; and
 - (c) rounded to the nearest one cent.
- 9.7 Subject to clause 9.3, the Employer must pay the payment provided in clause 9.2 to an Employee who, prior to 22 December 2022:
- (a) was employed in the Public Sector under a different industrial agreement to which the Union is respondent; and
 - (b) commenced employment with the Employer within one calendar week of ceasing employment with their previous Public Sector Employer.
- 9.8 Notwithstanding clause 9.2, the removal of Junior rates from Schedule 2, applies from 21 December 2022.

10. TRAINEESHIP RATES OF PAY

- 10.1 This clause replaces clause 14(2)(d) of the Award.
- 10.2 The annual salary applicable to full time school-based trainees and junior trainees (under 21) is derived from the applicable age-based level 1 salary detailed in Schedule 2 of this Agreement, adjusted according to subsequent wage increases. Accordingly, salary rates under this agreement are in accordance with the following table:

| | 13/06/2021 | 13/06/2022 | 13/06/2023 |
|-----------------|------------|----------------------|----------------------|
| | | <i>\$60 per week</i> | <i>\$60 per week</i> |
| Under 17 | \$28,869 | \$31,999 | \$35,129 |
| 17yrs | \$33,504 | \$36,634 | \$39,764 |
| 18yrs | \$38,139 | \$41,269 | \$44,399 |
| 19yrs | \$42,776 | \$45,906 | \$49,036 |
| 20yrs | \$47,409 | \$50,539 | \$53,669 |
| Adult | \$53,930 | \$57,060 | \$60,190 |

- 10.3 The salary applicable to adult trainees is level 1.1 salary as per Schedule 2 – Salaries of this Agreement.

11. SALARY PACKAGING

- 11.1 Salaries as prescribed by Schedule 2 – Salaries of this Agreement are applied for the purposes of clause 46(3) regarding Total Employment Cost (TEC), and clause 46(6), regarding Compulsory Employer Superannuation Guarantee contributions, of clause 46 – Salary Packaging Arrangement of the Award.

12. RECOVERY OF UNDERPAYMENTS

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

13. RECOVERY OF OVERPAYMENTS

- 13.1 The Employer has an obligation under the *Financial Management Act 2006* to account for public monies. This requires the Employer to recover overpayments made to an Employee.
- 13.2 Any overpayment is repaid to the Employer within a reasonable period of time.
- 13.3 Where an overpayment is identified and proven, the Employer must provide the Employee with the written details of the overpayment and notify the Employee of their intent to recover the overpayment.
- 13.4 Where the Employee accepts that there has been an overpayment, arrangements for the recovery of the overpayment are negotiated between the Employer and Employee.
- 13.5 If agreement on a repayment schedule cannot be reached within a reasonable period of time, the Employer can deduct the amount of the overpayment over the same period of time that the overpayment occurred provided:

- (a) the Employer cannot deduct or require an Employee to repay an amount exceeding 5% of the Employee's net pay in any one pay-period without the Employee's agreement; and
 - (b) where necessary, an Employer can deduct money over a period of time greater than the period of time over which the overpayment occurred.
- 13.6 If the Employee disputes the existence of an overpayment and the matter is not resolved within a reasonable period of time, the matter must be dealt with in accordance with clause 51 – Dispute Settlement Procedure of this Agreement. Whilst the matter is being dealt with in accordance with the Dispute Settlement Procedure, no deductions relating to the overpayment can be made.
- 13.7 Nothing in this clause precludes the Employer's legal right to pursue recovery of overpayments.
- 13.8 Where the Employer alters the pay cycle or pay day, any consequential variations to an Employee's fortnightly salary and/or payments to compensate are not considered an overpayment for the purposes of this clause.

PART 3: CONTRACT OF EMPLOYMENT

14. EMPLOYER PREFERENCE

- 14.1 The Employer recognises:
 - (a) Direct employment as the preferred form of engagement noting this cannot be practicable or financially achievable in all circumstances.
 - (b) Permanent employment is the preferred mode of employment for Employees covered by this Agreement.
- 14.2 The Employer recognises that casual employment, labour hire and other contract for service arrangements are not the preferred methods for delivery of services, and the Employer must minimise the use of casual employment, labour hire and other contract for service arrangements.

Reporting FTE Data

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

Government Temporary Labour Hire Review

- 14.5 The engagement of a person(s) under a contract for service is limited to the circumstances where:
- (a) the appropriate expertise is unavailable in the public sector at the time of need; or
 - (b) there is a requirement for impartiality and objectivity external to the public sector; or
 - (c) the required expertise and specialist skills are available only from external sources; or
 - (d) there arises a need to fill a position on very short notice for which the appropriate expertise within the public sector cannot be readily made available.
- 14.6 The Insurance Commission acknowledges that the Public Sector Commission will conduct regular compliance reviews to ensure Employers are complying with AP5, or its replacement. The findings of these reviews are provided to the Peak Consultative Forum (PCF) for consideration.
- 14.7 The Union can refer concerns about the potential misuse of labour hire contracts to the PCF.
- 14.8 The Insurance Commission acknowledges the work undertaken to date to review existing contract for service labour hire arrangements and associated procedures across the public sector.
- 14.9 The PCF reviews considered:
- (a) reasons for the use of labour hire rather than direct employment.
 - (b) opportunities for work currently being done by labour hire arrangements to be delivered by the public sector where it is financially viable to do so.
- 14.10 The Employer is to provide any information requested by the PCF to support the review in a timely manner.
- 14.11 Findings and recommendations from the review will be presented to Government for consideration.

Joint Consultative Committee (JCC) access to information

- 14.12 Within 60 days of a request being made in writing, the Employer must provide to the Joint Consultative Committee the names of the labour hire businesses used; the functions undertaken; the headcount number of labour hire employees performing the work; and the amount of money paid to each labour hire business.

Surplus Employees

- 14.13 Prior to engaging, or extending the engagement of, a labour hire employee, or entering into a new labour hire arrangement, the Employer must first consider whether any permanent Surplus

employees can undertake the role or duties required. All duties undertaken by labour hire employees must be assessed every three months for the possibility of a Surplus employee instead undertaking the role or duties. If a permanent Surplus employee can undertake the role or duties, they must be offered the employment.

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

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

15. PART TIME EMPLOYMENT

15.1 The provisions of this clause:

- (a) are read in conjunction with clause 10 – Part Time Employment of the Award, with the exception of clause 10 (6); and
- (b) an Employee can return to work on a modified basis in accordance with the provisions contained in clause 33 – Parental and Related Leave of this Agreement.

15.2 An Employee can request the Employer to permit the Employee to work on a modified basis in their current position; or in a position equivalent in pay, conditions and status to their current position and commensurate with the Employee's skills and abilities.

15.3 An Employee can seek to work on a modified basis that involves the Employee working on different days or at different times or both; or on fewer days or for fewer hours or both, than the Employee currently works.

15.4 The Employer:

- (a) must give reasonable consideration to an Employee's request to work on a modified basis, particularly where the request relates to an Employee's caring responsibilities or phasing into retirement;
- (b) can only refuse an Employee's request to work on a modified basis if there are grounds to refuse, that would satisfy a reasonable person, that demonstrate agreeing to the request would have on the conduct of the operations or business of the Employer.

15.5 The Employer is to give the Employee written notice of the Employer's decision on a request to work on a modified basis. If the request is refused, the notice must set out the reasons for the refusal.

15.6 Right of reversion of Employees:

- (a) Where a full time Employee is permitted to work part time for a period of no greater than twelve months, the Employee has a right, upon four weeks' written notice, to revert to full time hours in the position previously occupied before becoming part time or a position of equal classification as soon as deemed practicable by the Employer, but no later than the expiry of the agreed period.
- (b) Where a full time Employee is permitted to work part time for a period greater than twelve months, the Employee may apply to revert to full time hours in the position previously occupied before becoming part time or a position of equal classification, but only as soon as is deemed practicable by the Employer. The Employee can be transferred to another full time position at a salary commensurable to their previous full time position.

15.7 Variation to a part time Employee's working hours

Where agreement is reached to vary a part time Employee's ordinary working hours pursuant to clause 10 (3) (c) – Part Time Employment of the Award; and the Employee works additional hours, up to 7.5 hours on any day, or additional days, up to a total of five days per week, without receiving overtime payments; the additional hours and/or days worked are considered part of the Employee's ordinary working hours. These hours are included in calculations for leave entitlements.

16. FIXED TERM CONTRACT EMPLOYEES

- 16.1 The Employer can appoint Employees under the *Insurance Commission of Western Australia Act 1986* on a fixed term contract basis.
- 16.2 Before employing a person as a fixed term contract Employee or providing a new or extended fixed term contract to an Employee, the Employer must first consider whether any permanent Surplus employees can undertake the role or duties required. If a permanent Surplus employee can undertake the role or duties, they will be offered the employment.
- 16.3 Notwithstanding clause 16.2 the Employer has discretion to renew an existing fixed term contract if the Employee has been in the same or similar role for more than two years and the arrangements are being reviewed for possible conversion under a process in clause 16.8.
- 16.4 Where more than one appropriate permanent Surplus employee exists, the following hierarchy applies for access to the role or duties:
 - (a) internal Surplus employees are considered first;
 - (b) if no internal Surplus employees are suitable, Registered employees from other employing authorities are considered; and
 - (c) if no Registered employees are suitable, Registrable employees from other employing authorities are considered.
- 16.5 The Employer can only appoint an Employee as a fixed term contract Employee in the following circumstances:
 - (a) covering one off periods of relief;

- (b) work on a project with finite life;
 - (i) where a project is substantially externally funded including multiple external funding, the Employer must present a business case supporting the use of fixed term contract Employees in such positions to the Joint Consultative Committee;
 - (ii) where external funding has been consistent on an historical basis and it can be reasonably expected to continue the Employer must assess the percentage of positions for which permanent appointment can be made;
 - (c) work that is seasonal in nature;
 - (d) where an Employee with specific skills is not readily available and is required for a finite period; or
 - (e) in any other situation as agreed between the parties to this Agreement.
- 16.6 Employees appointed for a fixed term must be advised in writing of the terms of the appointment including the circumstances of the appointment as provided under clause 16.5 including the commencement and expiry date of the period of employment.
- 16.7 The Employer must provide the Union the names and work locations and business email addresses of all fixed term contract employees within two months of registration of this Agreement and subsequently, within 28 days of a request being made in writing.

Conversion to Permanency for Fixed Term Employees

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

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

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

16.9 The Employer must, no later than three months after:

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

review the contract and the circumstances of the work being performed by the Employee at the time of the review to determine whether the fixed term employment meets a circumstance listed in clause 16.5.

16.10 Where there is a potential change to the legitimacy of an Employees fixed term contract arrangement due to a change in circumstance listed in clause 16.5 or 16.12, the Employee can request that the Employer undertake a review in accordance with this clause. The Employer must undertake the review no later than three months after the date of the Employee's request.

16.11 If, after carrying out a review referred to in clause 16.9 or 16.10, the Employer determines the fixed term employment does not currently meet a circumstance listed in clause 16.5, the employer must appoint the Employee permanently to the same position at their current FTE.

16.12 The requirement at 16.11 does not apply if the Employer certifies in writing that the role performed by the fixed term Employee can no longer be funded from within the agency or organisation's approved salary expense limits. Relevant notification and consultation obligations must be complied with prior to this certification, unless new information is identified as part of this review process.

16.13 If, after carrying out a review referred to in clause 16.9 and 16.10, the Employer determines the fixed term employment meets a circumstance listed in clause 16.5, the Employer must give the Employee in writing no later than two weeks after the date of completing the review:

- (a) a statement of the review outcome and the detailed reasons for it; and
- (b) a plain-language summary of the Employer's obligations under this clause to appoint eligible fixed term employees to permanent employment, in accordance with this clause, and the actions the Employee can take if they disagree with the review outcome.

- 16.14 For the purposes of 16.9 and 16.10, if an eligible fixed term Employee is employed under multiple, concurrent fixed term contracts with the same Employer, each contract and the circumstances of the work being performed under it is reviewed individually.
- 16.15 The review mechanisms and processes detailed in clause 16.8 to 16.14 will be reviewed over the life of this Agreement.

17. CASUAL EMPLOYMENT

- 17.1 An Employer can only engage a person as a casual Employee if both the following circumstances are met:
- (a) if the hours and patterns of work fluctuate substantially and are not regular or systematic; and
 - (b) the Employee is engaged hourly, for a period of up to four consecutive weeks in each engagement.
- 17.2 The provisions of this clause replace clause 51 of the Government Officers (Insurance Commission of Western Australia) Award, 1987.
- 17.3 The Employer must provide the Union with the names, work locations and business email addresses of all casual employees within two months of registration of this Agreement and subsequently, within 28 days of a request being made in writing.

Salary

- 17.4 A casual Employee is paid for each hour worked at the appropriate classification contained in Schedule 2: Salaries of this Agreement in accordance with the following formula:

$$\frac{\text{Fortnightly salary}}{75}$$

with the addition of casual loading in lieu of annual leave, personal leave and payment for public holidays. Casual loading is in accordance with subclause 17.5.

Casual Loading

- 17.5 The casual loading payable is 25 per cent.

Conditions of Employment

- 17.6 (a) Conditions of employment, leave and allowances provided under this Agreement or the Award do not apply to a casual employee with the exception of bereavement leave, long service leave, family and domestic violence leave and carers leave. However, where expenses are directly and necessarily incurred by a casual Employee in the ordinary performance of their duties, the Employee is entitled to reimbursement in accordance with the Award.

- (b) The minimum period of engagement of a casual Employee is three hours on each engagement.
- (c) The Employer determines appropriate increments for casual Employees by taking into consideration prior experience within the public sector.
- (d) The employment of a casual Employee can be terminated at any time by the casual Employee or the Employer giving to the other one hour's prior notice. In the event of an Employer or casual Employee failing to give the required notice, one hour's salary must be paid or forfeited.
- (e) Neither the Overtime Allowance provisions of the Award, nor clause 21 (Overtime) of this Agreement, applies to casual Employees. Additional hours are paid at the normal casual rate.

Caring Responsibilities

- 17.7 (a) Subject to the evidentiary and notice requirements in Clause 22 – Personal Leave of this Agreement, a casual Employee is entitled to not be available to attend work or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (b) The Employer and the casual Employee must agree on the period for which the casual Employee will be entitled to not be available to attend work. In the absence of agreement, the Employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual Employee is not entitled to any payment for the period of non-attendance.
- (c) An Employer must not fail to re-engage a casual Employee because the casual Employee accessed the entitlements provided for in this subclause. The rights of an Employer to engage or not engage a casual Employee are otherwise not affected.

Conversion and Appointment to Permanency for Casual Employees

17.8 For the purposes of this clause:

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

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

17.9 The Employer must review the circumstances of an eligible casual Employee's employment to determine whether or not they meet a circumstance described in clause 17.1 no later than three months after:

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

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

17.11 If, after carrying out a review referred to in clause 17.9 or 17.10 the Employer determines an employee's employment does not meet a circumstance listed in clause 17.1, the Employer must:

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

Relevant notification and consultation obligations must be complied with prior to this certification unless new information is identified as a part of this review process; and

- (b) no later than two weeks after the date of the review:
 - (i) advise the Employee in writing of the review outcome and the detailed reasons for it; and
 - (ii) if the Employer has established a new position, unless a circumstance in clause 17.12 applies, offer the Employee permanent appointment to the newly established position. The offer must provide sufficient detail for the Employee

to consider the implication of the decision to accept or reject permanent employment.

- 17.12 The Employee whose employment is the subject of a review resulting in the establishment of a new position in accordance with clause 17.11 is entitled to be appointed permanently to that position unless the employee is in Australia on a visa with a fixed duration or a suitable surplus employee is able to undertake the role.
- 17.13 If, after carrying out a review referred to in clause 17.9 and 17.10, the Employer determines the casual engagement meets a circumstance described in clause 17.1, the employer must give the Employee in writing no later than two weeks after the date of completing the review:
- (a) a statement of the review outcome and the detailed reasons for it; and
 - (b) a plain-language summary of an Employer's obligations under this clause to establish permanent positions where employees have been working regular and systematic hours over a qualifying two-year period, and the actions the employee can take if they disagree with the review outcome.
- 17.14 If an Employee does not accept an offer of permanent employment, the Employer can (at the Employer's discretion) continue to engage the Employee as a casual employee in a different position, subject to the requirements of clause 17.1.
- 17.15 The review mechanisms and processes detailed in clauses 17.8 to 17.14 will be reviewed over the life of this Agreement.

18. NOTICE OF TERMINATION BY EMPLOYER FOR EMPLOYERS OVER 45 YEARS OF AGE

- 18.1 The provisions of this clause are read in conjunction with clause 7 of the Award.
- 18.2 The period of notice for an Employee who, at the end of the day the notice is given, is over 45 years of age and has completed at least two years' continuous service with the Employer, is to be increased by one week.
- 18.3 The additional period of notice forms part of the notice provided under the Award or payment in lieu of notice worked out on the basis of the Employee's ordinary hours of work.

PART 4: HOURS OF WORK

19. HOURS

- 19.1 The provisions of this clause replace the provisions of clause 15 – Hours of Duty of the Award.
- 19.2 The Employee's normal hours of work are 37.5 hours per week worked as determined by the Employer between the hours of 7.00am and 6.00pm on five days per week Monday to Friday. Subject to the approval of the Employer an Employee may elect to work outside the spread of hours in which case no overtime is payable.
- 19.3 These hours are worked in accordance with Schedule 3 - Flexible Working Hours of this Agreement.
- 19.4 Study Leave

Where study leave has been approved by the Employer pursuant to the provisions of clause 23 - Study Assistance of the Award, credits are given for education commitments falling within the prescribed hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

20. OUT OF HOURS CONTACT

20.1 The provisions of this clause replace clause 36 (1) (k) and 36 (6) – Overtime Allowance, and Schedule C – Part I – Out of Hours Contact of the Award.

20.2 The terms below have the following meanings.

"out of hours contact" shall include the following:

- (a) (i) 'standby' shall mean a written instruction or other authorised direction by the Employer or a duly authorised officer to an Employee to remain at the Employee's place of employment during any period outside the Employee's normal hours of duty, and to perform certain designated tasks periodically or on an impromptu basis. Such Employee must be provided with appropriate facilities for sleeping if attendance is overnight, and other personal needs, where practicable.
- (ii) Other than in extraordinary circumstances, Employees must not perform more than two periods of standby in any rostered week.
- (iii) This provision does not replace normal overtime or shift work requirements.
- (b) 'on call' means a written instruction or other authorised direction by the Employer or a duly authorised officer to an Employee rostered to remain at the Employee's residence or to otherwise be immediately contactable by telephone or other means outside the Employee's normal hours of duty in case of a call out requiring an immediate return to duty. The nature of the duties to be performed requires an Employee to be in a state of readiness for immediate return to duty.
- (c) (i) 'availability' means a written instruction or other authorised direction by the Employer or a duly authorised officer to an Employee to remain contactable, but not necessarily immediately contactable by telephone or other means, outside the Employee's normal hours of duty and be available and in a fit state at all such times for recall to duty.
- (ii) 'availability' does not include situations in which Employees carry telephones or other means or make their telephone numbers or other contact details available only in the event that they are needed for casual contact or recall to work. Subject to clause 21 - Overtime of this Agreement, recall to work under such circumstances constitutes emergency duty in accordance with clause 36 (7) – Emergency Duty of the Award.
- (d) 'return to duty' shall also include, but is not limited to, situations where an Employee, if recalled to duty, can perform such duty outside the usual headquarters where the Employee performs ordinary rostered hours.

20.3 Where out of hours contact is a usual feature of the duties for which Employees are regularly rostered, the issue of a roster is deemed to be a written instruction.

20.4 (a) Except as otherwise agreed between the Employer and the Union, an Employee who is required by the Employer or a duly authorised officer to be on out of hours contact during periods off duty must be paid an allowance in accordance with the following formulae for each hour or part thereof the Employee is on out of hours contact.

| | | | | |
|--------------|-------------------------------|-------------------------|----------------------------|-------------------------|
| standby | current level 3.1 weekly rate | $\times \frac{1}{37.5}$ | $\times \frac{37.5}{100}$ | |
| on call | current level 3.1 weekly rate | $\times \frac{1}{37.5}$ | $\times \frac{18.75}{100}$ | |
| availability | current level 3.1 weekly rate | $\times \frac{1}{37.5}$ | $\times \frac{18.75}{100}$ | $\times \frac{50}{100}$ |

provided that:

- (i) 'current level 3.1 weekly rate' is the weekly salary of a level 3.1 Employee as per Schedule 2 – Salaries of this Agreement; and
 - (ii) payment in accordance with this clause must not be made when payment is made in accordance with the provisions of clause 36 (3) – Overtime of the Award when the Employee is recalled to work.
- (b) When an Employee is required to be on call or available the Employer must provide the Employee with the means of contact free of charge for the purposes of work related activity.
- (c) Where the means of contact is to be by land line or satellite telephone fixed at the Employee's residence the Employer must:
- (i) where the telephone is not already installed, pay the cost of such installation;
 - (ii) where an Employee pays or contributes towards the payment of the rental of such telephone, pay the Employee 1/52nd of the annual rental paid by the Employee for each seven days or part thereof on which an Employee is rostered to be on call or available;
 - (iii) where the usual duties of an Employee requires a regular roster to be on call or available, pay the full amount of the telephone rental.
- (d) An Employee must be reimbursed the cost of all telephone calls made on behalf of the Employer whilst on out of hours contact.
- (e) Where an Employee rostered for on call or availability is recalled to duty during the period for which the Employee is on out of hours contact then the Employee must

receive payment for hours worked in accordance with clause 36 (3) - Overtime of the Award.

- (f) Where an Employee rostered for on call or availability is recalled to duty, the time spent travelling to and from the place at which duty is to be performed, must be included with actual duty for the purposes of overtime payment.
- (g) Minimum payment provisions do not apply to an Employee rostered for out of hours contact duty.
- (h) An Employee in receipt of an out of hours contact allowance and who is recalled to duty is not regarded as having performed emergency duty in accordance with clause 36 (7) – Emergency Duty of the Award.
- (i) Employees subject to this clause must, where practicable, be periodically relieved from any requirement to hold themselves on standby, on call or availability.
- (j) No Employee is to be on out of hours contact after the last working day preceding a period of annual leave or long service leave.

21. OVERTIME

Cases Where Overtime Provisions Do Not Apply

- 21.1 This clause replaces the provisions of clause 36 (4) - Overtime Allowance of the Award. It is read in conjunction with the remainder of clause 36 – Overtime Allowance of the Award.
- 21.2 Overtime, the granting of time off in lieu of overtime or travelling time does not apply to:
 - (a) Employees whose salary, or salary and allowance in the nature of salary, is equivalent to or greater than Schedule 2 Level 8.1.
 - (b) Employees whose work is not subject to close supervision.
- 21.3 Notwithstanding clause 21.2:
 - (a) Where it appears just and reasonable, the Employer can approve the payment of overtime or grant time off in lieu to any Employee referred to in clause 21.2 (a).
 - (b) When an Employee who is not subject to close supervision is directed by the Employer to carry out specific duties involving the working of overtime, and provided such overtime can be reasonably determined by the Employee's supervisor, then such Employee is entitled to the payment of overtime or time off in lieu of overtime in accordance with clauses 36 (3) (b) or (d) – Overtime of the Award.

PART 5: LEAVE

22. PERSONAL LEAVE

Introduction

- 22.1 The provisions of this clause replace clause 20 - Carers Leave, clause 24 - Short Leave, and clause 19 – Sick Leave with the exception of subclause 19 (14) - War Caused Illnesses of the Award.
- 22.2 The intention of Personal Leave is to give Employees and Employers greater flexibility by providing leave on full pay for a variety of personal purposes. Personal leave replaces sick, paid carer's leave and short leave.
- 22.3 This clause commenced on 30 July 2004. An Employee's pre-existing sick leave anniversary date is maintained for the purposes of the personal leave entitlement.
- 22.4 Personal leave is not for circumstances normally met by other forms of leave.
- 22.5 This clause does not apply to casual Employees.
- 22.6 An Employee employed on a fixed term contract for a period of twelve months or more is credited with the same entitlement as a permanent Employee. An Employee employed on a fixed term contract for a period less than twelve months is credited on a pro rata basis for the period of the contract.
- 22.7 A part time Employee is entitled to the same personal leave credits as a full time Employee, but on a pro rata basis according to the number of hours worked each fortnight. Payment for personal leave is only made for hours that would normally have been worked had the Employee not been on personal leave.
- 22.8 References to illness in this clause include physical and psychological ill health

Entitlement

- 22.9 The Employer must credit each permanent full time Employee with 15 days personal leave credits for each year of continuous service as follows:

| | Grant of Leave |
|--|-----------------------|
| On the day of initial appointment | 8.5 days |
| On the completion of 6 months continuous service | 6.5 days |
| On the completion of 12 months continuous service | 15 days |
| On the completion of each further period of 12 months continuous service | 15 days |

- 22.10 In the year of accrual the 15 days personal leave entitlement can be accessed for illness or injury, carer's leave, unanticipated matters or planned matters in accordance with the provisions of this clause. On completion of each year of accrual unused personal leave from that year is cumulative and hence added to personal leave accumulated from previous years.

- 22.11 Whilst Employees are able to access personal leave in accordance with the clause 22.23, access must be consistent with the *Minimum Conditions of Employment Act 1993* (WA) which specifies a minimum of 75 hours of paid leave must be available to Employees for illness or injury, or carer's leave.
- 22.12 Personal leave cannot be debited for public holidays, which the Employee would have observed.
- 22.13 Personal leave can be taken on an hourly basis.

Mental Health

- 22.14 The Employer is committed to providing mentally healthy workplaces. This includes working to eliminate stigma attached to mental health in the workplace and provide support and assistance to Employees (e.g. through employee assistance program services and training) to manage mental health.
- 22.15 The Employer must do what is reasonably practicable to eliminate or minimise risks to psychological health and safety in the workplace. In consultation with the Work Health and Safety (WHS) Committee, the Employer must assess and implement suitable control measures to eliminate or minimise workplace contributory risks in accordance with legislative requirements. The WHS Committee updates the JCC on progress as appropriate.
- 22.16 The Employer must ensure that managers and supervisors undertake appropriate training to effectively prevent and manage harm from psychosocial risks identified in the workplace. The Employer must provide the JCC with data on completed training.

Variation of ordinary working hours

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

Reconciliation

- 22.20 At the completion of an anniversary year, where an Employee has taken personal leave in excess of their current and accrued entitlement the unearned leave must be debited at the commencement of the following anniversary year/s.
- 22.21 The maximum number of hours debited cannot exceed one third of the employee's annual entitlement. The remaining portion of unearned personal leave is to be debited at the commencement of the subsequent anniversary year/s.
- 22.22 Where an Employee ceases duty and has taken personal leave, which exceeds the leave credited for that anniversary year, the Employee must refund the value of the unearned leave,

calculated at the rate of salary as at the date the leave was taken. No refund is required in the event of the death of the Employee.

Access

- 22.23 An Employee is unable to access personal leave while on any period of maternity leave, adoption leave, other parent leave or leave without pay. An Employee is unable to access personal leave while on any period of annual or long service leave, except as provided for in clauses 22.36 (Re-crediting Annual Leave) and 22.37 (Re-crediting Long Service Leave).
- 22.24 If an Employee has exhausted all accrued personal leave the Employer can allow the Employee who has at least twelve months' service to anticipate up to 5 days personal leave from next year's credit. If the Employee ceases duty before accruing the leave, the value of the unearned portion must be refunded to the Employer, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of the Employee.
- 22.25 In exceptional circumstances the Employer can approve the conversion of an Employee's personal leave credits to half pay to cover an absence on personal leave due to illness.

Application for Personal Leave

- 22.26 Reasonable and legitimate requests for personal leave are approved subject to available credits. Personal leave is granted in the following circumstances:
- (a) where the Employee is ill or injured;
 - (b) to provide care or support to a member of the Employee's family or household who requires care or support because of an illness or injury to the member or an unexpected emergency affecting the member;
 - (c) for unanticipated matters of a compassionate or pressing nature which arise without notice and require immediate attention; or
 - (d) for planned matters that cannot be organised outside of normal working hours, or accommodated by flexible working arrangements or other leave and which are either:
 - (i) of a one-off nature; or
 - (ii) of a regular on-going nature in relation to the management of an injury or illness affecting the Employee or a member of the Employee's family or household.
- 22.27 The Employer can grant two days unpaid personal leave per occasion to an Employee to provide care and support to a member of the Employee's family or household due to the birth of a child to the member. This entitlement does not of itself limit an Employee's access to paid personal leave as provided by clause 22.23 or parental leave as provided for by clause 33.6 (d) – Concurrent Parental Leave of this Agreement. This leave can also be substituted with accrued annual leave, leave service leave, time off in lieu of overtime, flexi leave to which the Employee is entitled.
- 22.28 Employees must complete the necessary application and clearly identify which of the above circumstances apply to their personal leave request.

- 22.29 The definition of family is the definition contained in the *Equal Opportunity Act 1984 (WA)* for “relative”. That is, a person who is related to the Employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the Employee.
- 22.30 Where practicable, the Employee must give reasonable notice prior to taking leave. Where prior notice cannot be given, notice must be provided as early as possible on the day of absence. Where possible, an estimate of the period of absence from work is to be provided.

Evidence

- 22.31 An application for personal leave exceeding two consecutive working days must be supported by evidence that would satisfy a reasonable person of the entitlement.
- 22.32 In general, supporting evidence is not required for single or two consecutive day absences. Where the Employer has good reason to believe that the absence is not reasonable or legitimate, the Employer can request evidence be provided. The Employer must provide the Employee with reasons for requesting the evidence. The leave cannot be granted where the absence is not reasonable or legitimate.
- 22.33 Personal leave is not granted where an Employee is absent from duty because of personal illness attributable to the Employee’s serious and wilful misconduct in the course of their employment.
- 22.34 Where there is doubt about the cause of an Employee's illness, the Employer can require the Employee to submit to a medical examination by a medical practitioner of the Employer’s choice, which the Employee must attend. Where it is reported that the absence is because of illness caused by the misconduct of the Employee, or the Employee fails without reasonable cause to attend the medical examination, the fee for the examination must be deducted from the Employee's salary and personal leave cannot be granted.
- 22.35 If the Employer has reason to believe that an Employee is in such a state of health as to render a danger to themselves, fellow Employees or the public, the Employee can be required to obtain and furnish a report as to the Employee’s condition from a registered medical practitioner nominated by the Employer. The Employer must pay the fee for any such examination.

Re-crediting Annual Leave

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

Re-crediting Long Service Leave

- 22.37 Where an Employee is ill during the period of long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Employer that as a result of illness the Employee was confined to their place of residence or a hospital for a period of at least 14 consecutive calendar days, the Employer can grant personal leave for the

period during which the Employee was so confined and reinstate long service leave equivalent to the period of confinement.

Personal Leave without Pay Whilst Ill or Injured

- 22.38 Employees who have exhausted their personal leave entitlements and are ill or injured can apply for personal leave without pay. Employees are required to complete the necessary application and provide evidence to satisfy a reasonable person. The Employer must not unreasonably withhold this leave.
- 22.39 Personal leave without pay not exceeding a period of three months in a continuous absence does not affect salary increment dates, anniversary date of personal leave credits, long service leave entitlements or annual leave entitlements. Where a period of personal leave without pay exceeds three months in a continuous absence, the period in excess of three months is excised from qualifying service.
- 22.40 Personal leave without pay is not available to Employees who have exhausted their personal leave entitlements and are seeking leave for circumstances outlined in clauses 22.26 (b), (c) or (d) or 22.27. However, applications for other forms of leave including unpaid carer's leave and leave without pay can be approved.

Other Conditions

- 22.41 Where an Employee who has been retired from the Insurance Commission on medical grounds resumes employment, personal leave credits at the date of retirement must be reinstated. This provision does not apply to an Employee who has resigned from the Insurance Commission and is subsequently reappointed.
- 22.42 Unused personal leave will not be cashed out or paid out when an Employee ceases their employment.

Workers' Compensation

- 22.43 Where an Employee suffers an "injury" within the meaning of section 5 of the *Workers' Compensation and Injury Management Act 1981* which necessitates that Employee being absent from duty, personal leave with pay must be granted to the extent of personal leave credits. In accordance with section 80 (2) of the *Workers' Compensation and Injury Management Act 1981* where the claim for workers' compensation is decided in favour of the Employee, personal leave credit is to be reinstated and the period of absence is to be granted as personal leave without pay.
- 22.44 A period of sick leave without pay granted to an officer on account of an illness compensable under the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA) does not affect salary increment dates, the anniversary date of sick leave credits, long service leave entitlements or annual leave entitlements provided the period of leave granted does not exceed six months in a continuous absence. Where the period of sick leave granted does exceed six months in a continuous absence, only the period in excess of six months is excised from qualifying service.

Portability

- 22.45 The Employer must credit an Employee additional personal leave credits up to those held at the date that Employee ceased previous employment provided:
- (a) immediately prior to commencing employment in the Insurance Commission of Western Australia, the Employee was employed in the service of:
 - (i) the Public Sector of Western Australia; or
 - (ii) any other State body of Western Australia; and
 - (b) the Employee's employment with the Insurance Commission of Western Australia commenced no later than one week after ceasing previous employment, and
 - (c) the personal leave credited in accordance with this clause cannot be greater than that which would have applied had the entitlement accumulated whilst employed by the previous employer.
- 22.46 The maximum break in employment permitted by clause 22.45 (b), can be varied by the approval of the Employer provided the period in excess of one week does not exceed the amount of accrued and pro rata annual leave paid out at the date the Employee ceased with the previous Employer.

23. FAMILY AND DOMESTIC VIOLENCE LEAVE

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

Definition of Family and Domestic Violence

- 23.4 (a) The meaning of family and domestic violence is in accordance with the definition of "family violence" in the *Restraining Orders Act 1997* (section 5A).
- (b) To avoid doubt, this definition includes behaviour that:
- (i) is physically or sexually abusive;
 - (ii) is emotionally or psychologically abusive;

- (iii) is economically abusive;
- (iv) is threatening;
- (v) is coercive;
- (vi) in any other way controls or dominates the family or household member and causes that person to feel fear for their safety or wellbeing or that of another person; or
- (vii) causes a child to hear or witness, or otherwise be exposed to the effects of, such behaviour.

Access to Family and Domestic Violence Leave

- 23.5 In accordance with the following subclauses, an Employee, including a casual Employee, can make application for leave to deal with activities related to family and domestic violence. The Employer must assess each application and give consideration to the personal circumstances of the Employee seeking the leave.
- 23.6 Such activities related to family and domestic violence can include attendance at medical appointments; legal proceedings; counselling; appointments with a medical or legal practitioner; relocation or making other safety arrangements; and other matters of a compassionate or pressing nature related to the family and domestic violence which arise without notice and require immediate attention.
- 23.7 Subject to clauses 23.5 and 23.6, an Employee experiencing family and domestic violence has access to 10 non-cumulative days per year of paid family and domestic violence leave, in addition to their existing leave entitlements.
- 23.8 Upon exhaustion of the leave entitlement in clause 23.7, Employees are entitled to up to two days' unpaid family and domestic violence leave on each occasion.
- 23.9 Family and domestic violence leave does not affect salary increment dates, personal leave entitlements, long service leave entitlements or annual leave entitlements.
- 23.10 Subject to the Employer's approval of the application, family and domestic violence leave can be taken as whole or part days off.
- 23.11 Application of the leave entitlement for casual Employees applies to the extent of their agreed working arrangements.

Notice and Evidentiary Requirements

- 23.12 The Employee must give the Employer notice as soon as reasonably practicable of their request to take leave under this clause.
- 23.13 Supporting evidence of family and domestic violence can be required to access paid leave entitlements, however, this should not be onerous on the Employee. Leave can be granted without supporting documentation when the manager/supervisor is satisfied that it is not required.

- 23.14 Evidence can include a document issued by the police, a court, a legal service, a health professional, a counsellor, a financial institution, a family violence support service or a refuge service. A statutory declaration can also be provided.
- 23.15 Such evidence is dealt with in accordance with the confidentiality provisions in this clause. Only the Employee retains a copy of the evidence and information must not be kept on an Employee's personnel file, unless otherwise agreed.

Access to Other Forms of Leave

- 23.16 Subject to the leave provisions of this Agreement and the Award, an Employee experiencing family and domestic violence can use other leave entitlements.
- 23.17 Subject to the Employer's approval of the application, and sufficient leave credits being available, leave can be taken as whole or part days off.
- 23.18 Forms of other paid leave include:
- (a) personal leave entitlements;
 - (b) annual leave;
 - (c) accrued long service leave;
 - (d) purchased leave; and/or
 - (e) accrued time off in lieu of overtime, or flexi leave.
- 23.19 Approval of leave without pay is subject to the provisions of this Agreement and the Award.

Confidentiality

- 23.20 The Employer must take all reasonable steps to ensure any information disclosed and or provided by an Employee regarding family and domestic violence is kept strictly confidential and must not be kept on and Employee's personnel file. Generally, only the employee retains a copy of evidence for accessing family and domestic violence leave.
- 23.21 Any disclosure of information or documentation provided must be on a need-to-know basis only and only to maintain workplace safety. Where possible, disclosure must only occur with the express consent of the Employee.
- 23.22 This clause does not override any legal obligations to disclose information.

Contact Person

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

Individual Support

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

Workplace Safety

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

24. LEAVE LOADING – ANNUAL LEAVE

- 24.1 This clause replaces clause 16 (8) – Leave Loading of the Award.
- 24.2 Subject to clauses 24.4 and 24.6, a loading of 17.5% calculated on an Employee's normal rate of salary for a maximum of four weeks' annual leave is paid to Employees on the first pay period in December in the calendar year in which the leave accrues.
- 24.3 The leave loading is paid to Employees who are in the service of the Employer prior to or engaged after 1 January in each year is paid the leave loading anticipated to be due on 31 December of that year.
- 24.4 The maximum payment for the loading provided for in clause 24.2 cannot exceed a rate equivalent to 17.5% of four weeks' salary of a level 8.1 Employee as per Schedule 2 – Salaries of this Agreement as at 1 January in the calendar year in which the leave accrues, in accordance with the following:

| | Maximum leave loading for annual leave: | Maximum |
|-----|--|------------|
| (a) | Maximum leave loading payment in December 2022 | \$1,828.90 |
| (b) | Commencing on or after 1 January 2023 | \$1,883.76 |
| (c) | Commencing on or after 1 January 2024 | \$1,940.28 |

- 24.5 Part-time Employees are paid a proportion of the annual leave loading at the salary rate applicable, provided the maximum loading payable is calculated in accordance with the following:

$$\frac{\text{Average hours of work per fortnight in the calendar year in which the leave accrues}}{75} \times \frac{\text{Maximum loading in accordance with clause 24.4}}{1}$$

- 24.6 (a) The loading is calculated on the rate of the normal fortnightly salary including any allowances, which are paid as a regular fortnightly or annual amount.
- (b) Any allowance paid to an Employee for undertaking higher duties is only included if the allowance is payable during any period of leave taken during the calendar year as provided for under clause 35 – Higher Duties Allowance of this Agreement.
- 24.7 An Employee must refund any leave loading paid in December if the Employee resigns, or ceases employment, or where an Employee is dismissed prior to the 31 December of that year. This provision does not apply in the event of death of an Employee or if the Employee retires.
- 24.8 Where payment in lieu of accrued or pro rata annual leave is made on the death or retirement of an Employee, a loading calculated in accordance with the terms of this clause is paid on accrued and pro rata annual leave.
- 24.9 When an Employee resigns, or ceases employment, or where an Employee is dismissed, an annual leave loading is paid as follows:
- (a) accrued entitlements to annual leave – a loading calculated in accordance with the terms of this clause for accrued leave is paid.
- (b) pro rata annual leave – no loading is paid.

25. ADDITIONAL LEAVE FLEXIBILITIES

- 25.1 This clause is to be read in conjunction with clause 16 – Annual Leave and clause 18 – Long Service Leave of the Award.
- 25.2 Payout of leave
- (a) If an Employee applies in writing to receive payments, rather than taking periods of accrued annual leave, such application can be approved by the Employer, subject to the following:
- (i) 10 days leave (pro rata for part time employees) must be taken in a calendar year for any application to be approved;
- (ii) payment in lieu of leave cannot exceed the equivalent of four weeks annual leave in any one calendar year. However, applications to have greater amounts of leave paid out can be considered by the Employer where special circumstances exist;

(iii) the payment will be at the salary rate payable if the leave had been taken;
and

(iv) no more than 50% of the Employee's total accrued annual leave entitlement can be cashed out.

25.3 Access to Accrued Long Service Leave Entitlement

- (a) Employees can by agreement with the Employer, clear any accrued entitlement to long service leave in minimum periods of one day.
- (b) Employees must either clear or have commenced clearance of their long service leave entitlement within one year of it becoming due. This leave can be cleared by taking the leave, opting for payment of leave or a combination of both.
- (c) The Managing Director can approve deferment of long service leave in special circumstances subject to any condition, which the Managing Director may determine. Such circumstances include retirement within five years of the date of the entitlement accruing.
- (d) If an Employee has not cleared such an entitlement or has not commenced clearance within one year of it becoming due, and no approval to defer the clearance of such leave has been obtained by the Employee, then the entitlement must be paid out at that point in time.

25.4 Early Access to Pro Rata Long Service Leave

- (a) This clause is read in conjunction with clause 18 Long Service Leave of the Award.
- (b) Subject to clause 25.4 (f), Employees within seven years of their preservation age under Western Australian Government superannuation arrangements can, by agreement with their Employer, choose to access pro rata long service leave at the rate of 9.28 days per completed 12 month period of continuous service for full time Employees.
- (c) Part time and casual Employees have the same entitlement as full time Employees.
- (d) For part time Employees their entitlement is calculated on a pro rata basis according to any variations to their ordinary working hours during the accrual period.
- (e) For casual Employees their entitlement is calculated on a pro rata basis according to the average hours worked during the accrual period.
- (f) Early access to pro rata long service leave does not include long service leave to which the Employee has become entitled, or accumulated prior to being within seven years of their preservation age.
- (g) Under this subclause, long service leave can only be taken as paid leave and there is no capacity for payment in lieu of leave.
- (h) Employees may by agreement with the Employer:

- (a) clear any pro rata entitlement to long service leave in minimum periods of one day; and/or
- (b) Access pro rata long service leave at half, full or double pay.
- (i) Where Employees access pro rata long service leave, any period of leave taken will be excised for the purpose of continuous service in accordance with clause 18 (5) – Long Service Leave of the Award.

26. PURCHASED LEAVE – 42/52 ARRANGEMENT

- 26.1 The provisions of this clause replace clause 48 – Purchased Leave – 44/52 Salary Arrangement of the Award.
- 26.2 The Employer and the Employee can agree to enter into an arrangement whereby the Employee can purchase up to ten weeks’ additional leave.
- 26.3 The Employer must assess each application for a 42/52 salary arrangement on its merits and give consideration to the personal circumstances of the Employee seeking the arrangement.
- 26.4 Priority access to purchased leave of between five and ten weeks is to be given to Employees with caring responsibilities.
- 26.5 In order to access approved purchased leave, an Employee must:
- (a) satisfy the Insurance Commission’s accrued leave management policy; and
 - (b) take one week annual leave if purchasing nine weeks’ leave; or
 - (c) take two weeks’ annual leave if purchasing ten weeks’ leave.
- 26.6 Notwithstanding clauses 26.5 (b) and 26.5 (c), the Employer can allow an Employee to access purchased leave before they have accessed one or two week’s annual leave, whichever applies, where the Employee requests it. Any such request may only be refused by the Employer if there are reasonable grounds to do so.
- 26.7 The provisions of clauses 26.5 (b) and 26.5 (c) do not apply to an Employee who purchases less than nine weeks’ leave.
- 26.8 An agreement to take a reduced salary spread over the 52 weeks of the year yields the following amounts of purchased leave.

| Number of weeks’ salary spread over 52 weeks | Number of weeks’ purchased leave |
|---|---|
| 42 | 10 |
| 43 | 9 |
| 44 | 8 |
| 45 | 7 |
| 46 | 6 |
| 47 | 5 |

| | |
|----|---|
| 48 | 4 |
| 49 | 3 |
| 50 | 2 |
| 51 | 1 |

- 26.9 (a) Purchased leave does not accrue. The Employee is entitled to pay in lieu of any purchased leave not taken and their salary will be adjusted in the next available pay period following the completion of the agreed 12 month period to reconcile the time worked during the year not included in their salary.
- (b) Untaken purchased leave will be paid out at the rate at which it was purchased.
- 26.10 (a) Where an Employee in receipt of an allowance provided for in clause 35 – Higher Duties Allowance of the Award or clause 35 – Higher Duties Allowance of this Agreement takes any period of purchased leave, the Employee is not entitled to receive payment of the allowance for any period of purchased leave.
- (b) Other than when an Employee takes purchased leave, the higher duties allowance component of an Employee’s salary is not affected by an agreement to reduce the Employee’s salary for purchased leave purposes.
- 26.11 Overtime is paid at the Ordinary rate of salary and not the reduced rate. This also applies where overtime is referred to as a percentage of salary.
- 26.12 In the event that a part time Employee’s ordinary working hours are varied during the year, the salary paid for such leave is adjusted in the in the next available pay period following the completion of the agreed 12 month period to take account of any variations to the Employee’s ordinary working hours during the previous.

27. DAYS IN LIEU OF THE REPEALED PUBLIC SERVICE HOLIDAYS

- 27.1 For the purpose of this clause “repealed public service holidays” are Easter Tuesday and 2 January.
- 27.2 Employees are entitled to two days in lieu of the repealed public service holidays where they would normally be expected to work these days.
- 27.3 Subject to this clause, days in lieu of the repealed public service holidays:
- (a) are made available on the date of the relevant repealed public service holiday;
 - (b) are not available to an Employee who is on any period of leave without pay;
 - (c) are paid at the rate of ordinary time;
 - (d) can be added to annual leave or taken individually;
 - (e) must be taken in the calendar year in which they occur;
 - (f) will be forfeited if not taken in the year in which they occur; and

(g) are not to be paid out on termination of employment.

- 27.4 By prior agreement with the Employer the day in lieu may be taken on the date of the relevant repealed public service holiday.

EASTER SUNDAY

- 27.5 Permanent and fixed term contract Employees are provided an additional day of paid leave for Easter Sunday.
- 27.6 The day of paid leave is made available to the Employee regardless of whether the Employee would normally be expected to work on that date.
- 27.7 The day of paid leave accrues on the date that Easter Sunday falls each calendar year.
- 27.8 Employee access to the day of leave is subject to the conditions set out in clause 27.3 (b)-(g).

28. BEREAVEMENT LEAVE

- 28.1 The provisions contained in this clause replace those contained in clause 25 – Bereavement Leave of the Award.
- 28.2 Employees are eligible for up to three days' paid leave on the death of:
- (a) the spouse or de-facto partner of the Employee;
 - (b) a former spouse or former de-facto partner of the Employee;
 - (c) a child, step-child, foster child or grandchild of the Employee (including an adult child, step-child or grandchild);
 - (d) a parent, step-parent, foster parent or grandparent of the Employee;
 - (e) a parent in law or former parent in law of the Employee;
 - (f) a brother, sister, step brother or step sister of the Employee; or
 - (g) any other person who, immediately before that person's death, lived with the Employee as a member of the Employee's household;
- 28.3 The Employer must not unreasonably withhold approval to grant bereavement leave to an Employee in respect of some other person with whom the Employee had a special relationship, on the request of the Employee.
- 28.4 The three days need not be consecutive.
- 28.5 Bereavement leave is not taken during any other period of leave, including periods of unpaid leave.

- 28.6 If requested by the Employer, payment of such leave can be subject to the Employee providing evidence that would satisfy a reasonable person of the death or relationship to the deceased.
- 28.7 An Employee requiring more than three days' bereavement leave in order to travel interstate or overseas in the event of a death of a person referred to in clause 28.2 or 28.3 can, in addition to any bereavement leave and upon providing evidence that would satisfy a reasonable person have immediate access to annual leave and/or accrued long service leave, or leave without pay provided all accrued leave is exhausted.
- 28.8 Travelling time for Regional Employees
- (a) Subject to prior approval from the Employer, an Employee entitled to bereavement leave and who, because of the bereavement, travels to a location within Western Australia that is more than 240 km from their workplace is granted paid time off for the travel period undertaken in the Employee's ordinary working hours up to a maximum of 15 hours per bereavement. The Employer will not unreasonably withhold approval.
 - (b) The Employer can approve additional paid travel time within Western Australia where the Employee can demonstrate to the satisfaction of the Employer that more than two days travel time is warranted.
 - (c) The provisions of clauses 28.8 (a) and (b) apply as follows.
 - (i) An Employee employed on a fixed term contract for a period greater than 12 months, is credited with the same entitlement as a permanent Employee for each full year of service and pro rata for any residual portion of employment.
 - (ii) An Employee employed on a fixed term contract for a period less than 12 months is credited with the same entitlement on a pro rata basis for the period of employment.
 - (iii) A part time Employee is entitled to the same entitlement as a full time employee for the period of employment, but on a pro rata basis according to the number of ordinary hours worked each fortnight.
 - (iv) For casual Employees, the provisions apply to the extent of their agreed working arrangements.

29. CULTURAL LEAVE FOR ABORIGINAL AND TORRES STRAIT ISLANDER EMPLOYEES

- 29.1 Employees who identify as Aboriginal or Torres Strait Islanders are entitled to paid cultural leave to participate in any of the following:
- (a) cultural and ceremonial obligations under Aboriginal or Torres Strait Islander lore, customs or traditional law; and/or
 - (b) community cultural events such as NAIDOC Week activities, Reconciliation Week or Coming of the Light festivals.

- 29.2 Up to five days of paid cultural leave per calendar year is available under this clause. The leave need not be taken in one continuous period. Paid cultural leave cannot accrue from year to year and will not be paid out on termination.
- 29.3 The Employer must assess each application for cultural leave on its merits and consider the personal circumstances of the Employee seeking the leave.
- 29.4 The Employer can request reasonable evidence of the legitimate need for the Employee to be allowed time off.
- 29.5 If an Employer requires an Employee to attend to business associated with an Aboriginal or Torres Strait Islander organisation, or an organisation that works to facilitate Aboriginal or Torres Strait Islander interests, the attendance is considered part of the Employee's normal duties and the Employee need not access leave under this or any other clause to enable it.
- 29.6 Cultural leave granted under this clause is in addition to the leave provided by clause 28 – Bereavement Leave of this Agreement and clause 26 – Cultural/Ceremonial Leave of the Award.

30. FOSTER CARER'S LEAVE

- 30.1 Foster and short-term care leave is available to an employee who is a foster carer in the state of Western Australia, to enable them to attend to the care of a child in an emergency or other out of home care placement. Foster carer includes kinship arrangements and respite care that has not been determined to be permanent.
- 30.2 A permanent employee or fixed term contract employee will have access to three paid days of non-cumulative leave per calendar year.
- 30.3 Employees must give reasonable notice prior to taking foster care leave and must provide an estimate of the period of absence from work.
- 30.4 Employees may, by agreement with the Employer, take foster care leave in minimum periods of one hour.
- 30.5 Leave credits may be used to attend to training associated with the Employee's Foster Carer responsibilities.
- 30.6 Employees must provide the Employer with documentation supporting their eligibility for the leave.
- 30.7 The entitlement to foster care leave in accordance with clause 30.2 for casual employees applies to the extent of their agreed working arrangements.

31. PUBLIC HEALTH EMERGENCY LEAVE

31.1 Definitions

In this clause:

- (a) "Public health emergency" means an incident or emergency that is the subject of Directions issued under Parts 11 or 12 of the *Public Health Act 2016*.

- (b) “Diagnosed person” means a person who has a current positive test for a disease the subject of the public health emergency or an incident that is deemed a serious public health risk by way of a testing or diagnostic regime accepted within the WA health system as being a reliable indicator that the person has the disease.
- (c) “Ordinary pay” is to be calculated according to the rostered or ordinary hours the Employee would have worked, had they not been subject to a government requirement to isolate or quarantine. For casual Employees, ordinary pay is to be calculated with reference to the Employee’s rostered future shifts or, if there is no certainty about future rosters, the preceding four-week average of shifts worked.

Special Public Health Emergency Leave

- 31.2 The Employer is to credit each Employee with 20 days of non-cumulative special public health emergency leave on January 1 each year.
- 31.3 An Employee employed on a fixed term contract for a period of 12 months or more is to be credited with the same entitlement as a permanent Employee. An Employee on a fixed term contract for a period less than 12 months is to be credited on a pro rata basis for the period of the contract.
- 31.4 A part time or casual Employee is to be credited with the same entitlement as a permanent Employee, calculated on a pro rata basis according to the number of hours worked each fortnight.
- 31.5 Employees absent on special public health emergency leave are to receive their ordinary pay.
- 31.6 Employees who have exhausted their special public health emergency leave can access existing personal leave entitlements under clause 22 of this Agreement.

Eligibility for Special Public Health Emergency Leave

- 31.7 Special public health emergency leave may only be taken in respect of absences from work during:
 - (a) a public health emergency; or
 - (b) other significant events as agreed between the Union and the Executive Director GLSR.
- 31.8 An Employee who is a diagnosed person or is subject to a government requirement to isolate or quarantine can access special public health emergency leave before existing personal leave entitlements under clause 22 of this Agreement.
- 31.9 Employees with caring responsibilities can access special public health emergency leave if they are caring for, or providing support to a member of the Employee’s family or household because:
 - (a) the other person is a diagnosed person or is subject to a government requirement to isolate or quarantine; or

- (b) a child's school has closed or the person's other care arrangements are unavailable because of a public health emergency.

- 31.10 Compassionate access to special public health emergency leave may be granted in exceptional circumstances despite not being a reason referred to in subclause 31.9.
- 31.11 Special public health emergency leave will not be debited for public holidays that the Employee would have observed.
- 31.12 An Employee is unable to access special public health emergency leave while on any period of leave without pay, parental or related leave, or annual or long service leave except as provided for in clauses 22.36 (re-crediting annual leave) and 22.37 (re-crediting long service leave).

Notice and Access

- 31.13 Special public health emergency leave may be taken on an hourly basis.
- 31.14 Reasonable and legitimate requests for special public health emergency leave will be approved subject to available credits. Where practicable, the Employee must give reasonable notice before taking leave.
- 31.15 Where prior notice cannot be given, notice must be provided as early as possible on the day of absence. Where possible, an estimate of the period of absence from work is to be provided.

Evidence

- 31.16 The Employer can require evidence that would satisfy a reasonable person to support an application for special public health emergency leave.

32. COMPASSIONATE LEAVE FOR EARLY PREGNANCY LOSS

- 32.1 An Employee and/or partner of the Employee is entitled to up to three consecutive days of paid compassionate leave on each occasion a pregnancy ends without the birth of a living child up to 20 weeks before the expected date of birth.
- 32.2 Leave will commence from the date the pregnancy ends and is not to be taken during any other period of leave, including unpaid leave.
- 32.3 The Employee must provide notice as soon as reasonably practicable indicating the period of leave sought and anticipated return to duty.
- 32.4 The Employer can require reasonable evidence that an early pregnancy loss has occurred such as a medical certificate or a recognition certificate for early pregnancy loss issued by the WA Registry of Births, Deaths and Marriages.
- 32.5 The provisions of 32.1 will apply to a:
 - (a) part time Employee on a pro rata basis; and
 - (b) casual Employee to the extent of their future rostered shifts, or if there is no certainty about future rosters, the preceding four-week average of shifts worked.

PART 6: PARENTAL AND RELATED LEAVE

33. PARENTAL AND RELATED LEAVE

Preliminary

33.1 This Clause replaces the parental leave provisions contained in clause 21 – Parental Leave of the Award.

Terms used

33.2 In this Clause —

- (a) “adoption” includes the making of a parentage order under the *Surrogacy Act 2008*;
- (b) “comparable position” means a position with equivalent classification level, pay, conditions and status as an employee’s position and that is commensurate with their skills and abilities;
- (c) “concurrent leave” means unpaid parental leave taken by an employee under clause 33.6(d);
- (d) “flexible parental leave” means unpaid parental leave taken by an employee under clause 33.18;
- (e) “grandparental leave” means leave to which an employee is entitled under clause 33.31;
- (f) “parental leave” means leave to which an employee is entitled under clauses 33.4 to 33.20 of this Clause;
- (g) “partner” means a person who is a spouse or de facto partner;
- (h) “partner leave” means leave to which an employee is entitled under clauses 33.28 to 33.30 of this Clause;
- (i) “primary care giver of a child” means the person who is primarily responsible for the care and supervision, including day-to-day care and supervision, of the child;
- (j) “public sector industrial instrument” means this Agreement, the Award or any other relevant industrial instrument that applies to the public sector.

33.3 Employees to whom this clause applies

- (a) This Clause applies to —
 - (i) permanent employees;
 - (ii) fixed term contract employees; and
 - (iii) eligible casual employees,whether employed on a full-time or part-time basis.

- (b) For the purposes of this Clause, an eligible casual employee is an employee —
 - (i) who has been employed in the public sector on a regular and systematic basis over a period of at least 12 months (or over a sequence of periods of a combined length of at least 12 months if any break in employment was on the employer's initiative and did not exceed 3 months); and
 - (ii) who has a reasonable expectation (but for becoming a parent) of continuing employment on a regular and systematic basis.

Parental Leave

33.4 Nature of parental leave

- (a) Parental leave is leave taken by—
 - (i) a pregnant employee in connection with the pregnancy and birth of a child; or
 - (ii) an employee following the birth or adoption of a child for whom they are the primary care giver.
- (b) It does not matter whether the primary care giver is a parent of the child or another person.
- (c) Only one parent or other person can be the primary care giver of a child during any one particular period of time.
- (d) If different public sector employees are the primary care giver of a child during different periods of time, their entitlement to paid or unpaid parental leave under this Clause or under any other public sector industrial instrument can be shared, but the total period of their combined entitlement to paid parental leave is limited to the paid parental leave entitlement of a single employee.
- (e) If an employee is no longer the primary care giver of the child following the birth, their entitlement to any further parental leave in connection with the child ends, unless —
 - (i) the employee is entitled to remain on unpaid parental leave because they share responsibility for the care and supervision of their child or their partner's biological child under clause 33.6 (Special unpaid parental leave entitlements for employees who share responsibility for care and supervision of child); or
 - (ii) the employee is entitled to remain on parental leave under clause 33.12 - Parental leave where pregnancy ends without birth of living child, the child dies or the child or employee hospitalised.
- (f) An employee who commences parental leave does not have a separate entitlement to unpaid parental leave under clause 33.6 - Special unpaid parental leave entitlements for employees who share responsibility for care and supervision of child, if they stop being the primary care giver of their child or their partner's biological child but continue to share the responsibility for the child's care with their partner or another person.

33.5 Period of parental leave to which eligible employee entitled

- (a) An eligible employee is entitled to 52 weeks of parental leave.
- (b) The 52 weeks of parental leave comprises 14 weeks of paid leave and 38 weeks of unpaid leave, except as provided by subclause (3).
- (c) The 52 weeks of parental leave comprises only unpaid leave in the case of —
 - (i) an eligible casual employee; or

- (ii) any other employee who has not completed the minimum period of service required by clause 33.7 Minimum period of service to be eligible for paid parental leave, for paid leave.
 - (d) The period of paid parental leave to which an employee is entitled can be extended by the employee electing to take double the amount of leave on half-pay.
 - (e) An employee has only a single entitlement, and not separate entitlements, to parental leave for children of a multiple birth or adoption.
 - (f) Parental leave for a fixed term contract employee cannot extend beyond the term of the contract.
 - (g) Any public holiday that falls during parental leave is counted as part of that leave and does not extend the period of parental leave.
 - (h) An employee who is on parental leave is not entitled to any public service holiday.
- 33.6 Special unpaid parental leave entitlements for employees who share responsibility for care and supervision of child
- (a) An employee who shares responsibility with their partner or another person for the care and supervision of their child or their partner's biological child has the same entitlement to unpaid parental leave under this Clause as an employee who is the primary care giver for the child.
 - (b) An employee who commences unpaid parental leave under this clause does not have a separate entitlement to paid or unpaid parental leave if they become the primary care giver of their child or their partner's biological child.
 - (c) It does not matter whether or not the other person with whom the employee shares responsibility for the care and supervision of the child is—
 - (i) an employee to whom this Clause applies; or
 - (ii) the primary care giver for the child.
 - (d) Concurrent leave
 - (i) If an employee who shares responsibility for the care and supervision of a child takes unpaid parental leave under this Clause, they may take unpaid parental leave during the same time that their partner takes unpaid parental leave (concurrent leave).
 - (ii) The concurrent leave—
 - must not be longer than eight weeks in total; and
 - may be taken in separate periods but, unless the employer agrees, each period must not be shorter than two weeks.
- 33.7 Minimum period of service to be eligible for paid parental leave
- (a) An employee is only entitled to a period of paid parental leave if, on the day parental leave commences, the employee has completed at least 12 months of continuous service in the public sector immediately preceding the parental leave, whether on a full-time or part-time basis.
 - (b) For the purposes of this clause, continuous service includes any period of authorised paid leave or authorised unpaid leave not exceeding 14 days. However, continuous service includes personal leave without pay whilst ill or injured not exceeding three

months in accordance with clause 22.38 - Personal Leave without Pay Whilst Ill or Injured.

- (c) For the purposes of this clause, continuous service includes a period of service as an eligible casual employee if —
 - (i) the eligible casual employee has become a permanent or fixed term contract employee with the employer; and
 - (ii) any break between service as an eligible casual employee and service as a permanent or fixed term contract employee does not exceed three months.
- (d) An employee who takes parental leave is not required to resume work for the purposes of taking parental leave in connection with any subsequent pregnancy or birth or adoption of a child.
- (e) An employee on leave without pay unrelated to parental leave is required to resume work before taking paid parental leave.

33.8 Taking Parental Leave

- (a) An employee must take parental leave in one continuous period, except as otherwise provided by this clause.
- (b) The period of parental leave may be interrupted by the following —
 - (i) any period during which the employee substitutes other paid leave or time off as referred to in clause 33.15 -Interaction with other leave entitlements;
 - (ii) any period during which the employee engages in special parental leave employment as referred to in clause 33.17- Employment during unpaid parental leave;
 - (iii) any period between periods of flexible parental leave taken by the employee;
 - (iv) any period between separate periods of concurrent leave taken by the employee;
 - (v) any period during which the employee does not take parental leave as referred to in clause 33.12 - Parental leave where pregnancy ends without birth of living child, the child dies or the child or employee hospitalised, because the child is hospitalised after birth.
- (c) An employee may, at any time but subject to the notice requirements of clause 33.9 Employee required to give notice of parental leave —
 - (i) cancel or delay the commencement of their proposed parental leave; or
 - (ii) shorten their period of parental leave; or
 - (iii) extend their period of parental leave up to the maximum period of leave to which they are entitled.
- (d) If an employee takes less than the maximum period of parental leave to which they are entitled, the unused balance of leave cannot be banked or preserved in any way.

33.9 Employee required to give notice of parental leave

- (a) An employee who intends to take parental leave must give the employer at least 8 weeks' written notice of—
 - (i) the date on which the employee proposes to commence the leave; and
 - (ii) the period of leave proposed to be taken.

- (b) An employee who intends to change or cancel their parental leave must give the employer at least 4 weeks' written notice of the change or cancellation.
- (c) However, an employee is not required to give notice of the cancellation of proposed parental leave because the pregnancy ends without the birth of a living child or the child dies.
- (d) An employee who fails to give the required period of notice does not contravene this clause if it was not reasonably practicable for the employee to comply because of an early birth or placement for adoption or because of other compelling circumstances.
- (e) An employee who has given notice of proposed parental leave is required to give their employer before proceeding on leave, reasonable evidence detailing —
 - (i) in the case of a pregnant employee – the expected date of birth (including by the provision of a medical certificate); or
 - (ii) in any other case – the relationship the employee has with the child and the employee's responsibility for the care of the child.

33.10 Commencement of parental leave

- (a) The period of parental leave of a pregnant employee in connection with the pregnancy can commence up to 6 weeks before the expected date of birth of the child, but not later than the birth of the child.
- (b) However, the period of unpaid parental leave of the pregnant employee can commence on an earlier date before the birth of the child with the agreement of the employer and employee.
- (c) The period of parental leave of any other employee can commence at any time on or after:
 - (i) the day the employee becomes the primary care giver of the child; or
 - (ii) for the purposes of clause 33.6 -Special unpaid parental leave entitlements for employees who share a responsibility for care and supervision of a child, the day the employee begins to share the responsibility with their partner or another person for the care and supervision of their child or their partner's biological child.

33.11 Conclusion of paid parental leave

- (a) The period of paid parental leave must conclude within the period of 12 months after the birth or date of placement for adoption.
- (b) The employer may, in exceptional circumstances, allow an employee to take paid parental leave after that 12 months' period.
- (c) An employer may require the employee to provide reasonable evidence that the circumstances justify the employee taking paid parental leave after that 12 months' period.

33.12 Parental leave where pregnancy ends without birth of living child, the child dies or the child or employee hospitalised

- (a) A pregnant employee remains entitled to paid parental leave if the pregnancy ends without the birth of a living child within 20 weeks before the expected date of birth.
- (b) A pregnant employee is entitled to remain on paid parental leave if —
 - (i) the child dies or is hospitalised following the birth; or

- (ii) the employee is incapacitated as a result of the birth.
- (c) An employee is not entitled to paid parental leave in those circumstances for any period that the employee has taken paid personal leave.
- (d) If a pregnancy ends without the birth of a living child within 20 weeks before the expected date of birth, an employee who would have been entitled under this Clause to unpaid parental leave if the child had been born alive remains entitled to that unpaid parental leave except when the entitlement would have derived from an adoption.
- (e) An employee who has commenced parental leave can return to work by providing the Employer at least 4 weeks' written notice of their return to work if:
 - (i) the child dies; or
 - (ii) the pregnancy ends without the birth of a living child within 20 weeks before the expected date of birth.
- (f) If an employee has commenced parental leave and the child is hospitalised immediately following the birth, the employee may agree with their employer not to take parental leave for a period while the child remains in hospital (the permitted work period).
- (g) Only one permitted work period may be agreed and it ends at the earliest of the following:
 - (i) the time agreed by the employee and employer;
 - (ii) the end of the day of the child's first discharge from hospital after birth;
 - (iii) if the child dies before being discharged – the end of the day the child dies.
- (h) The employer may require the employee to provide reasonable evidence that the child has been hospitalised following the birth and that the employee is fit for work (including by the provision of a medical certificate).

33.13 Provisions relating to payment of paid parental leave

- (a) An employee entitled to paid parental leave is to be paid according to their ordinary working hours at the commencement of parental leave.
- (b) In the case of a part-time employee, the employee is to be paid according to the average hours worked over the period of 12 months immediately preceding the commencement of parental leave if those average hours exceed ordinary working hours at the commencement of parental leave.
- (c) An employee may elect to be paid in advance for paid parental leave or elect to be paid on a fortnightly basis during that leave.
- (d) Allowances or penalties for shift or weekend work are not payable during paid parental leave.
- (e) An employee who was in receipt of higher duties allowances for a continuous period of 12 months immediately preceding the commencement of parental leave is to continue to be paid the higher duties allowances during the first four weeks of paid parental leave. If the employee has elected to take parental leave on half-pay, the higher duties allowances are payable at the full rate for those first four weeks of paid leave only.
- (f) If the employment of an employee who is being paid parental leave on half-pay is terminated through no fault of the employee, the employee is to be paid out any period

of unused paid parental leave that is equivalent to the period of leave the employee would have accessed had they been on parental leave on full pay when their employment was terminated.

- (g) An employee who takes a subsequent period of paid parental leave without returning to work is to be paid on the basis of their employment when they commenced the original period of paid parental leave and is not affected by any intervening period of special parental leave employment under clause 33.17 – Employment during unpaid parental leave.
- (h) For the purposes of determining the amount of paid parental leave of an employee to whom clause 33.22 - Modification of duties and transfer to safe job applied, the ordinary working hours of the employee are the ordinary working hours before the modification of or absence from work under that clause.

33.14 Extension of period of parental leave

- (a) An employee may apply to the employer to extend their parental leave by up to 2 years of unpaid leave after the end of the period of parental leave to which they are entitled under this clause.
- (b) The period of extended leave is a period of parental leave for the purposes of this clause.
- (c) Parental leave may only be extended after the employee has exhausted all other available paid leave entitlements.
- (d) The employer must agree to an application for the extension of parental leave unless the employer has reasonable grounds to believe that agreeing to the application would have an adverse impact on the conduct of the employer's business or operations.
- (e) Before a refusal under subclause 33.14(d) the employer must give the employee a reasonable opportunity to discuss the application.
- (f) The employer must, as soon as practicable but not later than 21 days after an application for the extension of parental leave is made, give the employee written notice of —
 - (i) the decision of the employer to agree to or refuse the application; and
 - (ii) if the application is refused - the reasons for the refusal.
- (g) An employee who believes that their application for the extension of parental leave has been unreasonably refused may seek to enforce it as a minimum condition of employment and, in that case, the employer has the onus of demonstrating that the refusal was justified in the circumstances.

33.15 Interaction with other leave entitlements

- (a) An employee entitled to unpaid parental leave may take any of the following to which the employee is entitled instead of any part of that parental leave—
 - (i) accrued annual leave;
 - (ii) accrued long service leave;
 - (iii) accrued time off in lieu of overtime;
 - (iv) flexi leave or banked hours.
- (b) The period of any such substituted leave or time off—

- (i) forms part of the period of unpaid parental leave otherwise authorised by this Part and does not extend the period of parental leave; but
 - (ii) is treated as paid leave and not unpaid parental leave for the purposes of clause 33.20 - Effect of parental leave on contract of employment.
- (c) An employee is not entitled to personal leave during any period of paid or unpaid parental leave.

33.16 Communication during parental leave

- (a) The employer must take all reasonable steps to inform an employee who is on parental leave of any decision that significantly affects the status, responsibility level, pay or work location of the employee and give the employee an opportunity to discuss the effect of the decision on the employee's position. The consultation obligations under clause 44.4 apply to employees on parental leave.
- (b) An employee on parental leave must notify the employer of any change in their contact details that might affect the employer's capacity to comply with this clause.

33.17 Employment during unpaid parental leave

- (a) In this clause —
 - (i) “keeping in touch day” has the same meaning it has in section 79A of the *Fair Work Act 2009* (Cth); and is one of a maximum of 10 days on which the employee is employed to enable them to keep in touch with their employment in order to facilitate a return to their employment after the end of parental leave.
 - (ii) “special parental leave employment” means employment of an employee on unpaid parental leave—
 - that is of an intermittent nature or for a limited specified period (special temporary employment); or
 - that is casual employment (other than special temporary employment) on an hourly basis for a period not exceeding 4 weeks in any period of engagement (special casual employment).
- (b) Despite anything to the contrary in this Clause, an employee on unpaid parental leave may be employed by their employer in special parental leave employment during that unpaid parental leave if both parties agree in writing to that employment.
- (c) Without limiting this clause, any such parental leave employment may be employment for the purposes of a keeping in touch day.
- (d) The following applies to engagement in special parental leave employment—
 - (i) only employees covered by the Award can be employed in special casual employment;
 - (ii) an employee can only engage in special parental leave employment during a period of unpaid parental leave that is not substituted with paid leave under clause 33.15;
 - (iii) in the case of special temporary employment – an employee can only be employed in connection with their substantive position;
 - (iv) in the case of special casual employment – an employee is to be employed at a level that is commensurate with the level of the available position under this Agreement;

- (v) the period of service in special parental leave employment does not break an employee's continuity of service or change the employee's status in regard to their substantive employment;
 - (vi) in the case of special temporary employment - the period of special parental leave employment counts as qualifying service for all purposes under this Agreement and the Award;
 - (vii) in the case of special casual employment - the period of special parental leave employment counts as qualifying service for the ordinary entitlements a casual employee would have for engaging in casual employment, but does not count as qualifying service for all other purposes under this Agreement and the Award.
- (e) The following applies to the effect of special parental leave employment on unpaid parental leave—
- (i) the period of special parental leave employment is taken to be part of the employee's original period of unpaid parental leave;
 - (ii) an employee who immediately resumes unpaid parental leave following a period of special parental leave employment is entitled to extend their period of unpaid parental leave by the period of that special parental leave employment (subject to giving the employer at least 4 weeks' written notice of the new date on which they intend to complete parental leave and return to work);
 - (iii) an employee who does not immediately resume unpaid parental leave following a period of special parental leave employment cannot preserve the unused portion of leave for use at a later date.

33.18 Flexible unpaid parental leave

- (a) An employee may take up to 30 days of their entitlement to unpaid parental leave in separate periods of one or more days each as follows ("flexible parental leave") —
 - (i) the flexible parental leave may only be taken within the period of 24 months after the birth or date of placement for adoption of the child;
 - (ii) the flexible parental leave may be taken after the employee takes other parental leave in connection with the same child.
- (b) However, further unpaid parental leave (including any extension of unpaid parental leave under clause 33.14 - Extension of period of parental leave) cannot be taken by an employee after any flexible parental leave is taken by the employee in connection with the same child.
- (c) If an employee takes flexible parental leave, the maximum period of parental leave to which the employee is entitled under this Clause is calculated on the basis that the employee takes all the flexible parental leave days in a single continuous period (on the assumption that the employee works each day that is not a Saturday or Sunday and there are no public holidays during that period).

33.19 Return to work on conclusion of parental leave

- (a) An employee who returns to work at the end of their parental leave is entitled to be employed in—
 - (i) the same position as the substantive position they held—

- immediately before proceeding on parental leave; or
 - immediately before any modification of or absence from work under clause 33.22- Modification of duties and transfer to safe job; or
- (ii) a comparable position.
- (b) An employee who returns to work at the end of parental leave may work on a basis modified from the basis on which they worked immediately before proceeding on parental leave. The modified basis may be part-time work, work on a job-share basis, work on different days or at different times (or both) or work on fewer days or for fewer hours (or both).
- (c) An employee who returns to work on a modified basis may be subsequently required by the employer to resume work on the same basis as they worked immediately before proceeding on parental leave. Any such requirement can only be made if —
- (i) the employer has reasonable grounds to believe that the continuation of work on that modified basis would have an adverse impact on the conduct of the employer's business or operations; or
 - (ii) the child has not reached the compulsory education period under Section 6 of the *School Education Act 1999 (WA)*.
- (d) An employee who returns to work on a modified basis may subsequently apply to the employer to resume work on the same basis as they worked immediately before proceeding on parental leave. Any such application must be made in writing at least 4 weeks before the employee wishes to resume work on that same basis.
- (e) The employer must agree to any such application to resume work on the former basis, unless the employer has reasonable grounds to believe that agreeing to the application would have an adverse impact on the conduct of the employer's business or operations.
- (f) The employer must give an employee written notice of the refusal of an application to resume work on the former basis and of the reasons for that refusal, within 21 calendar days of an application being received.
- (g) An employee who believes that their application to resume work on the former basis has been unreasonably refused may seek to enforce it as a minimum condition of employment and in that case the employer has the onus of demonstrating that the refusal was justified in the circumstances.

33.20 Effect of parental leave on contract of employment

- (a) Paid parental leave counts as qualifying service for all purposes under the Award and this Agreement.
- (b) The qualifying service is to be calculated according to the number of weeks of paid parental leave taken at full pay (or the number of weeks that would have been taken if the parental leave had not been taken at half pay).
- (c) Employees who take paid parental leave on half pay do not accrue award, agreement or other entitlements beyond those that would have accrued had they taken the leave at full pay.
- (d) Absence on unpaid parental leave does not break the continuity of service of the employee.

- (e) In calculating a period of service for any purpose under the Award or this Agreement, any single continuous period of unpaid parental leave—
 - (i) is not to be taken into account if it exceeds 14 calendar days; and
 - (ii) is to be taken into account if it does not exceed 14 calendar days.
- (f) An employee on parental leave can terminate their employment at any time in accordance with Clause 7 – Contract of Service of the Award.
- (g) An employer cannot terminate the employment of an employee on the ground that the employee has applied for parental leave or of their absence on parental leave, but otherwise any right of the employer to terminate employment is not affected by this Clause.

Special provisions relating to pregnant employees

33.21 Fitness for work in current position

- (a) If the employer has reason to believe that the continued performance of duties by a pregnant employee is a danger to the employee, fellow employees or the public, the employer can require the employee to provide a certificate from a medical practitioner stating that the pregnant employee is fit for work in their current position for a period stated in the certificate.
- (b) The employer is required to pay for any examination by a medical practitioner for the purposes of issuing such a certificate.

33.22 Modification of duties and transfer to safe job

- (a) A pregnant employee can work on a part-time basis in accordance with this Agreement during any one or more periods if the employee provides the employer with a certificate from a medical practitioner stating that part-time work is, because of the pregnancy, necessary or preferable.
- (b) The work on a part-time basis must be —
 - (i) work in the employee's current position or in a comparable position; and
 - (ii) on terms that are recorded in writing and in accordance with this Agreement.
- (c) Unless otherwise agreed with the employer, a pregnant employee must give at least four weeks' written notice to the employer of their intention to seek a variation in the terms of their part-time work or to revert to employment on a full-time basis.
- (d) If a pregnant employee is fit for work but it is inadvisable for the employee to continue to perform the duties of their current position for any particular period (the risk period) because of illness or risks arising from the pregnancy or because of hazards connected with their current position, the employer must, during that period —
 - (i) modify the duties of the employee; or
 - (ii) transfer the employee to a safe job in a comparable position (including a position with a different number of ordinary hours agreed to by the employee).
- (e) The employer may require the pregnant employee to provide a certificate from a medical practitioner or other reasonable evidence that it is inadvisable for the employee to continue to perform the duties of their current position.
- (f) If the employer considers that it is not reasonably practicable to modify the duties of the pregnant employee or transfer the pregnant employee to a safe job —
 - (i) the employee is entitled to be absent from work during the risk period; and

- (ii) the employee is entitled to be paid the amount they would have reasonably expected to have been paid if they had worked during the risk period; and
 - (iii) the employee's leave entitlements are not affected by the absence from work.
- (g) Any such entitlement to be absent from work extends to an eligible casual employee.
- (h) Any such entitlement to be absent from work ends at the earliest of the following —
 - (i) the end of the risk period stated in the medical certificate or other reasonable evidence provided by the employee;
 - (ii) the end of the day on which the pregnancy ends (whether with or without the birth of a living child).

33.23 Unpaid special pregnancy leave

- (a) A pregnant employee is entitled to unpaid leave ("unpaid special pregnancy leave") during any period that the employee is not fit for work because —
 - (i) the employee has a pregnancy related illness; or
 - (ii) the pregnancy ends without the birth of a living child within 28 weeks before the expected date of birth.
- (b) In any such case of unfitness for work, the pregnant employee may take any personal leave to which they are entitled instead of unpaid special pregnancy leave.
- (c) A pregnant employee must give the employer notice of the taking of unpaid special pregnancy leave. The notice —
 - (i) must be given as soon as practicable (whether before or after the commencement of the leave); and
 - (ii) must advise the employer of the period or expected period of the leave.
- (d) The employer may require the pregnant employee to provide reasonable evidence that the employee has become entitled under this clause to unpaid special pregnancy leave (including by the provision of a medical certificate).
- (e) The entitlement of a pregnant employee to parental leave under this clause is not reduced by any period of unpaid special pregnancy leave taken by the employee while pregnant.
- (f) Special pregnancy leave is not required to be taken in a continuous period with parental leave.
- (g) Clause 33.20 -Effect of parental leave on the contract of employment applies to unpaid special pregnancy leave in the same way as it applies to parental leave, with any necessary modifications.

Special provisions relating to adoption

33.24 Date of placement of child

- (a) For the purposes of the provisions of this clause relating to parental leave following the adoption of a child by an employee, the date of placement of a child for adoption means the earlier of the following—
 - (i) the date on which the employee first takes custody of the child for adoption;
 - (ii) the date on which the employee starts any travel that is reasonably necessary to take custody of the child for adoption.

33.25 Age of adopted children

- (a) An employee is not entitled to parental leave in connection with the adoption of a child unless —
 - (i) the child is (or will be) under 16 years of age as at the date or expected date of placement of the child for adoption; and
 - (ii) the child has not (or will not have) lived with the employee continuously for a period of six months or more as at the date or expected date of placement of the child for adoption; and
 - (iii) the child is not (otherwise than because of the adoption) a child or stepchild of the employee or the employee's partner.

33.26 Additional unpaid leave in connection with adoption

- (a) An employee seeking to adopt a child is entitled to 2 days' unpaid leave to attend interviews or examinations required as part of the procedure for adoption.
- (b) If the employee works or resides outside the Perth metropolitan area, the employee is entitled to an additional day's unpaid leave for that purpose.
- (c) The employee may take any accrued paid leave to which the employee is entitled for that purpose instead of unpaid leave under this clause.

33.27 Termination of parental leave if adoption does not proceed

- (a) If a proposed adoption for which parental leave has been granted does not proceed, the parental leave is then terminated.
- (b) The employee may take any other leave to which they are entitled instead of the terminated parental leave or return to work.

Partner Leave

33.28 Entitlement to partner leave

- (a) An employee is entitled to partner leave while not on parental leave in connection with the birth of a child to, or the adoption of an eligible adoptive child by, the employee or the employee's partner.
- (b) An eligible adoptive child is a child —
 - (i) who is under the age of 16 years; and
 - (ii) who has not lived continuously with the employee for 6 months or longer; and
 - (iii) who is not (otherwise than because of the adoption) the child or stepchild of the employee or the employee's partner.
- (c) Partner leave must be taken immediately following the birth or placement of the child for adoption.
- (d) Partner leave is to be taken (subject to available credits) as any combination of the following —
 - (i) paid personal leave;
 - (ii) paid annual or long service leave;
 - (iii) paid accrued time off in lieu of overtime, flexi leave or banked hours;
 - (iv) unpaid leave.

- (e) However, an eligible casual employee may only take partner leave as unpaid leave.

33.29 Period of partner leave to which eligible employee entitled

- (a) An eligible employee is entitled to 1 week of partner leave.
- (b) An eligible employee is entitled to apply to the employer for an extension of their partner leave.
- (c) The period of any extension of partner leave is to be taken as unpaid leave.
- (d) The total period of partner leave and any extension of that leave cannot exceed eight weeks.
- (e) An extension of partner leave may be taken in separate periods of at least 2 weeks or, with the agreement of the employer, of a shorter period.
- (f) The period of any extension of partner leave must conclude within the period of 12 months after the birth or date of placement for adoption of the child concerned.
- (g) The employer must agree to an application for an extension of partner leave, unless the employer has reasonable grounds to believe that granting the leave would have an adverse impact on the conduct of the employer's business or operations.
- (h) The employer must give an employee written notice of the refusal of an application for the extension of partner leave and of the reasons for that refusal.
- (i) An employee who believes that their application for an extension of partner leave has been unreasonably refused may seek to enforce it as a minimum condition of employment and in that case the employer has the onus of demonstrating that the refusal was justified in the circumstances.
- (j) An employee has only a single entitlement, and not separate entitlements, to partner leave for children of a multiple birth or adoption.

33.30 Miscellaneous provisions relating to partner leave

- (a) An employee who intends to take partner leave is required to give their employer at least four weeks' written notice of—
 - (i) the date on which the employee proposes to commence the leave; and
 - (ii) the period of leave proposed to be taken.
- (b) An employee who has given notice of proposed partner leave is required to give their employer before proceeding on leave —
 - (i) in the case of a pregnancy – a certificate from a medical practitioner confirming the pregnancy and the expected date of birth; or
 - (ii) in the case of a proposed adoption – a statement of the expected date of placement of the child for adoption.
- (c) Partner leave taken by an employee does not affect any entitlement the employee or their partner may have to parental leave. However, partner leave that is taken by an employee as unpaid leave counts as part of the parental leave entitlement of the employee in connection with the birth or adoption of the child concerned.
- (d) Any public holiday that falls during partner leave is counted as part of that leave and does not extend the period of partner leave.

- (e) The taking of partner leave as personal leave does not affect an employee's entitlement to take more than a week's personal leave for any purpose for which personal leave can be taken.
- (f) An employee is not entitled to paid personal leave while on unpaid partner leave.
- (g) Clause 33.20 -Effect of parental leave on the contract of employment applies to partner leave in the same way as it applies to parental leave, with any necessary modifications.

Grandparental Leave

33.31 Entitlement to grandparental leave

- (a) An eligible grandparent is entitled to grandparental leave following the birth or adoption of a grandchild of the employee.
- (b) An eligible grandparent is an employee who —
 - (i) is primarily responsible for the care and supervision of their grandchild on a part time basis; and
 - (ii) provides that care and supervision during what would be the employee's ordinary hours of work (but for the employee providing care to their grandchild).
- (c) An employee is not entitled to grandparental leave in connection with the adoption of a grandchild unless —
 - (i) the grandchild is under the age of 5 years; and
 - (ii) the grandchild has not lived continuously with the adoptive parents for 6 months or longer; and
- (d) the grandchild is not (otherwise than because of the adoption) the grandchild or grand-stepchild of the employee.
- (e) An employee has only a single entitlement, and not separate entitlements, to grandparental leave for grandchildren of a multiple birth or adoption.
- (f) An employee is not entitled to grandparental leave if they —
 - (i) are a casual employee (including an eligible casual employee); or
 - (ii) have taken or are on parental leave in connection with the birth or adoption of the same grandchild of the employee.

33.32 Period of grandparental leave to which eligible employee entitled

- (a) An eligible grandparent is entitled to 52 weeks of unpaid grandparental leave.
- (b) The period of grandparental leave —
 - (i) can commence any time within 24 months after the birth or date of placement for adoption of the employee's grandchild; and
 - (ii) must conclude within the period of 12 months after the commencement of grandparental leave.
- (c) With the agreement of the employer, an employee can take grandparental leave on a part time basis, provided they are primarily responsible for the care and supervision of their grandchild on those days the leave is taken.

- (d) If an employee takes less than the maximum period of grandparental leave to which they are entitled, the unused balance of leave cannot be banked or preserved in any way.

33.33 Miscellaneous provisions relating to grandparental leave

- (a) An employee who intends to take grandparental leave is required to give their employer at least four weeks' written notice of—
 - (i) the date on which the employee proposes to commence the leave; and
 - (ii) the period of leave proposed to be taken.
- (b) The employer may waive the notice period in exceptional circumstances.
- (c) The employer may require an employee who has given notice of proposed grandparental leave to provide reasonable evidence that the employee is entitled to grandparental leave.
- (d) Clause 33.16 - Communication during parental leave and clause 33.20 -Effect of parental leave on the contract of employment apply to grandparental leave in the same way as they apply to parental leave, with any necessary modifications.

34. SUPERANNUATION ON UNPAID PARENTAL LEAVE

34.1 In this clause, “unpaid parental leave” means unpaid parental leave under clause 33.4 - Nature of parental leave or under clause 33.23 - unpaid special pregnancy leave.

34.2 An Employee or eligible casual employee who is entitled to unpaid parental leave is entitled to have superannuation contributions made in respect of the period of unpaid parental leave taken to a maximum of 24 weeks.

34.3 Superannuation contributions under this clause are calculated:

- (a) in respect of the period of unpaid maternity leave, unpaid adoption leave or unpaid other parent leave taken or 24 weeks, whichever is the lesser;
- (b) based upon the amount that would have been paid to the Employee had they taken paid maternity leave, paid adoption leave or paid other parent leave for that period and in accordance with the following:
 - (i) for full time Employees – the ordinary working hours at the time of commencement of parental leave;
 - (ii) for part time Employees – an average of the hours worked by the Employee over the preceding 12 months; or their ordinary working hours at the time of commencement of parental leave, whichever is the greater;
 - (iii) for eligible casual Employees – an average of the hours worked by the eligible casual Employee over the preceding 12 months;

exclusive of shift and weekend penalties.

34.4 Superannuation contributions will be paid:

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

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

PART 7: ALLOWANCES

35. HIGHER DUTIES ALLOWANCE

35.1 This clause replaces clauses 35 (6), (7) and (8) – Higher Duties Allowance of the Award.

35.2 Where an Employee in receipt of an allowance granted under clause 35 – Higher Duties Allowance of the Award for a continuous period of twelve months or more, proceeds on any period of paid leave and:

- (a) resumes in the position immediately on return from leave, the Employee continues to receive the allowance for the period of leave; or
- (b) does not resume in the position immediately on return from leave, the Employee continues to receive the allowance for the period of leave accrued during the period of higher duties.

35.3 Where an Employee who is in receipt of an allowance granted under clause 35 – Higher Duties Allowance of the Award for less than twelve months proceeds on a period of paid leave, whether in excess of the normal entitlement or not, the Employee continues to receive the allowance for the period of normal leave provided that:

- (a) during the Employee's absence, no other Employee acts in the position in which the Employee was acting immediately prior to proceeding on leave; and
- (b) the Employee resumes in the position immediately on return from leave.

35.4 For the purpose of clause 35.3, 'normal leave' means the period of paid leave an Employee would accrue in twelve months. It also includes any public holidays and leave in lieu accrued during the preceding twelve months taken in conjunction with such paid leave.

Part Time Higher Duties Allowance Arrangements

35.5 This clause is read in conjunction with clause 35 – Higher Duties Allowance of the Award.

35.6 Where a part time Employee acts in a higher office, the allowance is payable after the completion of 37.5 hours service in that position. The 37.5 hours service in the higher position must be worked consecutively according to the hours the part time Employee normally works.

35.7 Where the higher office is a part time position, the allowance is payable after the completion of 37.5 hours service in that position. The 37.5 hours service in the higher position must be worked consecutively according to the normal working hours of the part time position for which the allowance is being paid.

36. FIRST AID ALLOWANCE

36.1 For the purposes of this clause the terms below have the following meanings:

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

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

| Effective date | 13 June 2022 | 13 June 2023 |
|-----------------|--------------|--------------|
| Rate (per hour) | \$0.33 | \$0.35 |

The hourly rate is calculated based as 1% of the gross hourly salary of a level 1.4 of the applicable year as per Schedule 2 – General Division Salaries of this Agreement.

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

36.4 The Public Sector first aid allowance is paid to either the appointed first aid officer or the deputy first aid officer in a workplace. The deputy first aid officer is not paid the first aid allowance for any period in which the allowance is paid to the appointed first aid officer.

36.5 By agreement with the Employer, a deputy first aid officer is paid the Public Sector first aid allowance where the appointed first aid officer is unable to do so. For example, where the appointed first aid officer is on annual or long service leave, or extended personal leave.

PART 8: WORKFORCE MANAGEMENT

37. REDEPLOYMENT AND REDUNDANCY

37.1 The *Public Sector Management Act 1994* (PSMA) and the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* (Regulations) provide the legislative framework for redeployment and redundancy for all Employees covered by this Agreement. If

the provisions of this Agreement and the Regulations are inconsistent, the provision of the Regulations shall prevail.

- 37.2 The Employer and prospective Employer must assess the Suitability of a Surplus employee broadly which includes, but is not limited to:
- (a) acknowledging that the Employee's classification level illustrates core competencies for that classification level;
 - (b) providing sufficient weight to the Employee's knowledge, skills and experience; and,
 - (c) recognising the transferability of skills to roles where a direct fit may not exist.
- 37.3 The Employer and prospective Employer are to place Surplus employees in suitable positions in accordance with clause 38.2.
- 37.4 The Employer must provide Surplus employees with direct access to priority vacancies through the online Recruitment Advertising Management System.
- 37.5 The Employer must provide Surplus employees with case management in accordance with the Public Sector Commission's Redeployment and Redundancy Guidelines and the Public Sector Commission's Redeployment and Redundancy Guidelines Appendix A – Case Management or any revised arrangement subsequent to the review of the redeployment and redundancy provisions. The Employer must ensure Surplus employees are provided with an appropriately skilled case manager/s, a skills audit and continual support to find Suitable employment.
- 37.6 The Employer must notify an Employee of the Employer's intention to register them under regulation 18 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* and provide written reason/s for the intended registration and details of the possible employment, placement and training options available to them.
- 37.7 The Employer can when acting consistent with Commissioner's Instruction No. 12 – Redeployment and Redundancy, suspend the Redeployment period of a Registered employee for the duration the Employee is participating in retraining, a secondment or other employment placement arrangement. Where suspension of the total duration would exceed the allowable duration under Commissioner's Instruction No. 12 – Redeployment and Redundancy, the Employer can suspend the Redeployment period for the portion allowable.
- 37.8 The Employer must notify the Union prior to a Registered employee entering the last three months of their Redeployment period.

38. WORKING FROM HOME

- 38.1 The parties support working from home arrangements facilitated in accordance with this clause.
- 38.2 Subject to this clause, Employees can request a working from home arrangement to support their personal circumstances. A request made under this clause must be made in writing and should set out the details of the proposed working from home arrangement.

- 38.3 The Employer must consider an Employee's working from home request. Any consideration is to be informed by the Employer's obligations under the *Equal Opportunity Act 1984 (WA)* and subclause 38.4 of this Agreement.
- 38.4 The Employer can only refuse a request for a working from home arrangement on reasonable business grounds. Without limiting what are reasonable business grounds for the purpose of this clause, reasonable business grounds include the following:
- (a) the working from home arrangement requested by the Employee would be too costly for the Employer.;
 - (b) it is not possible or would be impractical to change the working arrangements of other Employees, or recruit new Employees, to accommodate the working from home arrangement requested by the Employee.
 - (c) it would result in a significant loss of efficiency or productivity or have a significant negative impact on customer service.
- 38.5 If the working from home arrangement is refused in accordance with clause 38.4, the Employer and Employee will consider whether other flexible working arrangements provided under this Agreement can be facilitated.
- 38.6 Irrespective of the number of days an Employee is permitted to work from home, a working from home arrangement does not provide for an Employee's headquarters to be moved to the Employee's home for the purposes of this Agreement or the Award.
- 38.7 Statutory requirements apply to Employees working from home as they do to Employees working at an Employer's workplace. A working from home arrangement must address:
- (a) duty of care responsibilities owed by the Employer and Employee under the *Work Health and Safety Act 2020 (WA)*; and
 - (b) all additional statutory obligations affecting the Employer/Employee relationship.
- 38.8 Employers are required to undertake a risk assessment of the work activities carried out by Employees. In carrying out any assessment, Employers must look at who and what can be affected by, and the possible effects of, the work being done from home.
- 38.9 Prior to implementing a working from home arrangement, Employers must discuss matters relevant to a working from home arrangement with Employees including; insurance, provision of equipment and tools, related overhead costs, the Employee's ordinary hours of work and flexible working arrangements provided under the Agreement, and any agreed reasonable accommodations. Employers can only initiate a working from home arrangement once this discussion has occurred and subject to the agreement of the Employee.
- 38.10 Approved working from home arrangements can, on the request of either the Employer or Employee, be reviewed. If the working from home arrangement is to be modified, the date of the implementation of the changes is to be agreed between the parties.
- 38.11 A working from home arrangement can be terminated by either:
- (a) the Employer by giving 3 weeks' notice, where it can be substantiated the arrangement:
 - (i) is having an ongoing adverse effect on the employee's ability to deliver on their performance objectives; or
 - (ii) can no longer be accommodated on reasonable business grounds in accordance with clause 38.4; or
 - (b) an Employee by giving 3 weeks' notice.

- 38.12 A working from home policy or procedure developed by an Employer, must be consistent with the provisions of this clause and statutory obligations under relevant legislation, including but not limited to, the *Work Health and Safety Act 2020* (WA) and the *Equal Opportunity Act 1984* (WA).

39. WORKLOAD MANAGEMENT

- 39.1 The Employer has a duty to provide a safe and healthy work environment and must not require Employees to undertake unreasonable workloads in the ordinary discharge of their duties.
- 39.2 The objective of this clause is to ensure workload allocation is fair, manageable and without risk to health and safety.
- 39.3 The Employer must take reasonable steps to ensure that Employees:
- (a) do not work excessive or unreasonable hours;
 - (b) can clear annual leave; and
 - (c) are paid or otherwise recompensed for work as provided for under the Award and this Agreement.
- 39.4 Employees are required to perform, attain or sustain a standard of work that can be reasonably expected of them.
- 39.5 Relevant indicators of workload must be monitored and recorded by the Employer. Indicators may include but are not limited to:
- (a) nature of work;
 - (b) work patterns;
 - (c) hours of work including accrued RDOs, level of credit, debit hours and overtime;
 - (d) levels of accrued annual and long service leave;
 - (e) environment in which work is performed;
 - (f) volume of work;
 - (g) level of performance;
 - (h) turnover;
 - (i) accident rate;
 - (j) workers' compensation claims lodged;
 - (k) personal leave usage;
 - (l) early retirement records;

- (m) referral rates to Employee assistance program providers and general feedback regarding workload issues, if raised from counsellors;
 - (n) exit survey information regarding workload, if raised; and
 - (o) summary information on the results of Employee workload surveys if conducted.
- 39.6 Where Employee performance issues are identified these are managed in accordance with the Insurance Commission's performance management policy and consider:
 - (a) training and development;
 - (b) application of skill and competencies;
 - (c) capacity to perform at a required level;
 - (d) individual accountability; and
 - (e) communication and feedback.
- 39.7 With the exception of identified Employee performance issues, any workload issues, including the relevant indicators and the associated monitoring and recording, must be dealt with as a function of the Joint Consultative Committee (JCC).
- 39.8 Any disputes in relation to this clause are resolved in accordance with clause 51 – Dispute Settlement Procedure of this Agreement.
- 39.9 Where potential workload issues are identified by the Union or the Employer, a review team is convened within 21 days of a written request from either party. The review team is made up of representatives nominated by the Employer and the Union.
- 39.10 The review team once established must conduct a workload survey for affected Employees covered by this Agreement.
- 39.11 The review team determines the content and scope of the workload survey based upon criteria stated in clause 39.5.
- 39.12 A workload survey can only be conducted where a workload survey has not been completed in the previous 12 months.
- 39.13 The collated results of the survey, together with the report outlining the findings of the review team, must be provided to the parties to the Agreement within two months of commencement of the survey.
- 39.14 Broader consultation of the findings of the review team can be undertaken through the JCC.

Responding to work-related information and communications outside of work hours

39.15 In this clause:

- a) “Business-critical matters” means any situation which is unexpected and requires an immediate response in relation to which the Employee’s expertise, advice or assistance is required to enable an agency to perform its primary function.
- b) “Genuine welfare and safety matters” means serious matters likely to have an imminent effect on the welfare and/or safety of the Employee.
- c) “Work-related communications” include all communication concerning work matters that are not business critical or genuine welfare and safety matters sent via SMS, teams messages, phone-calls, or any other means of technological communication, to a personal or work issued phone, computer or other device.

39.16 The Employer is committed to minimising work-related communications to support work/life balance for employees, whilst ensuring operational needs are met.

39.17 Managers and supervisors recognise employees are not required to access or respond to work-related communications sent outside an Employee’s ordinary or rostered hours, unless there is a business-critical matter or genuine welfare and safety matter.

39.18 Employees will not be penalised or otherwise disadvantaged for choosing not to engage, respond or access work-related information or communication technologies outside their ordinary or rostered working hours.

39.19 This clause does not apply where an Employee is in receipt of an ‘Out of Hours Contact’ allowance under clause 20 of this Agreement, undertaking reasonable overtime in accordance with clause 21 of this Agreement, or where an Employee has provided contact details for the purpose of being notified for available casual or overtime shift work.

40. CLASSIFICATION DETERMINATION

40.1 Matters of classification shall be determined pursuant to the Insurance Commission’s Classification Determination Policy.

41. CHRISTMAS/NEW YEAR CLOSEDOWN

Observation of a Closedown

41.1 The Employer can observe a closedown over the Christmas/ New Year period for the whole or part of the Insurance Commission.

41.2 The dates/duration of the closedown are at the discretion of the Employer, but cannot exceed five working days.

Notification of a Closedown

41.3 The Employer must as soon as possible in each calendar year, but not later than 30 June, advise affected Employees of the dates of the closedown and the number of working days involved.

Leave Arrangements During the Closedown

- 41.4 Employees can access the following forms of paid leave to cover the closedown period:
- (a) flexitime credit;
 - (b) time in lieu of overtime; or
 - (c) credit hours as provided for under Schedule 3 – Flexible Working Hours of this Agreement.
- 41.5 In the absence of sufficient flexitime credit hours the following types of paid leave must be used to cover the Christmas closedown:
- (a) annual leave;
 - (b) accrued long service leave;
 - (c) pro rata long service leave as provided for at clause 25.4 – Additional Leave Flexibilities;
 - (d) purchased leave; and/ or
 - (e) days in lieu of repealed public service holidays.
- 41.6 Employees who do not currently participate in existing flexible working hours arrangements can alternatively accrue credit hours throughout the calendar year, for the purpose of the closedown period, pursuant to the provisions contained in Schedule 3 – Flexible Working Hours of this Agreement.
- 41.7 The days/hours can only be accrued up to the maximum of the number of hours necessary to cover the period of the closedown.
- 41.8 At the discretion of the Employer the following Employees can be granted either leave without pay or annual leave in advance to cover the amount of leave required for the closedown:
- (a) Employees engaged during the calendar year immediately preceding the closedown who have not accrued sufficient credit hours to cover the period of the close down; or
 - (b) Employees who have not accrued sufficient credit hours to cover the period of the close down and have exhausted their paid leave credits.

Managing Debit Hours /Days

- 41.9 Employees, who have gone into debit to cover the period of the closedown and whose employment is terminated prior to accrual of sufficient hours or leave entitlements to cover the debit, are required to refund the balance of hours outstanding on termination.

Payout of Hours Upon Termination

- 41.10 An Employee who has accrued hours for the specific purposes of a closedown and subsequently resigns, transfers to another Agency or otherwise has their employment terminated without

being afforded the opportunity to clear their credit hours, must be paid for those unused hours that relate only to the closedown.

42. UNION FACILITIES

Inductions

- 42.1 In addition to the provisions contained in clause 29 - Union Facilities for Union Representatives of the Award, the Employer must provide the Union with time to discuss the benefits of Union membership with new Employees as part of the Employees' formal induction program. Where the induction is wholly online, the Union is afforded the opportunity to provide content on the benefits of union membership for inclusion in the online induction program.

Union meetings

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

Notification of new Employees

- 42.3 Unless otherwise agreed, the Employer will notify the Union of the commencement of any new employees on a quarterly basis. Notification will include the new employee's name, commencement date, position title, type of employment, work location, business email addresses, and business phone numbers where available.

43. HEALTH AND SAFETY REPRESENTATIVES RECORDS

- 43.1 The Employer must maintain a Health and Safety Representative Register (Register).
- 43.2 The Register is to record the following information for each health and safety representative in the Insurance Commission:
- (a) name;
 - (b) work branch/division (as appropriate);
 - (c) work location;
 - (d) job title/occupation;
 - (e) date of election as an health and safety representative; and

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

43.3 The Employer must provide a copy of the Register to the Union every six months.

43.4 The Register is to be submitted to GSLR on 31 January each year, for the previous year.

PART 9: CONSULTATIVE MECHANISMS AND REVIEWS

44. CONSULTATION AND JOINT CONSULTATIVE COMMITTEE

Consultation on Proposals for Change

44.1 The provisions of the clause are read in conjunction with clause 42 – Organisational Change of the Award.

44.2 For the purposes of this clause the terms below have the following meanings:

- (a) 'change' means situations where the Employer proposes to make a change or changes likely to affect an existing practice(s), working conditions or employment prospects of Employees.
- (b) 'consultation' means a process that involves the timely exchange of relevant information and opportunity for discussions between the parties on matters relevant to a proposed change. These discussions are to provide the Union and Employees with a genuine opportunity to contribute to the decision making process.

44.3 The parties acknowledge that decisions continue to be made by the Employer who is responsible and accountable to the Board of Commissioners and Government for the effective and efficient operation of the Insurance Commission.

44.4 The parties agree that:

- (a) Consultation must occur prior to the Employer's decision to make a change.
- (b) The Employer must notify the Union and Employees who could be affected by a proposed change as soon as practicable.

To enable genuine consultation to occur, the notification must be in writing and include, at a minimum, the nature of the proposed change and the effect it is likely to have on employees.
- (c) The consultation discussion must commence as soon as possible after the Employer notifies the Union and affected employees of the proposed change.
- (d) The consultation process must be open and transparent, and apply the following principles:
 - (i) the employer must ensure appropriate mechanisms and communication channels are in place to facilitate consultation;

- (ii) the Employer and the Union must provide all reasonable and relevant information except confidential commercial, business or personal information, the release of which can seriously harm a party or individual;
- (iii) information provided must be clear and with sufficient background information available so that issues are understood;
- (iv) the Employer must assess the impacts of the change broadly;
- (v) throughout the consultation process, the Employer must provide adequate time, resources and support for information to be considered by affected Employees and the Union and for consultation to occur; and
- (vi) once a change is implemented, the Employer must evaluate and review the change and inform the Union of the review outcomes.

44.5 Where the Employer is proposing change that can result in Surplus employees, they must provide information on their overall workforce composition to the Union and the likely affected Employees as soon as possible. This includes, but is not limited to, data on the use of fixed term contract Employees, casual Employees, labour hire employees and contractors including the:

- (a) number of Employees or persons engaged in each category;
- (b) position or duties being undertaken by each Employee or person engaged;
- (c) reason for the arrangement or employment;
- (d) total duration of each arrangement or employment (including successive contracts); and
- (e) expiry date of the contract (excluding for casual Employees).

Joint Consultative Committee (JCC)

44.6 Effective communication is necessary to improve the business/operational performance and the working environment in the Insurance Commission.

44.7 The parties confirm their ongoing commitment to the Joint Consultative Committee (JCC) process.

44.8 The Insurance Commission must have a JCC for the purposes of consultation under this Agreement, comprising of the Employer or their nominee, Employer nominated representatives and Union nominated representatives, unless otherwise agreed between Employer and the Union to effect consultation through some other means.

44.9 The JCC must convene within 28 days of a written request being received from either party.

44.10 The JCC determines its own operating procedures.

44.11 JCC is a forum for consultation on issues such as:

- (a) development of workload management tools within the Insurance Commission;
- (b) industrial issues;
- (c) fixed term contract employment, casual employment and labour hire usage;
- (d) changes to work organisation and/or work practices occurring in the workplace;
- (e) Employer implementation of recommendations from Government decisions, policies and initiatives; and
- (f) Employer implementation of other aspects of this Agreement.

44.12 The consultation process must comply with the parameters set out in clause 44.4.

44.13 Matters not resolved through the JCC can be referred to the provisions of clause 51 – Dispute Settlement Procedure of this Agreement.

45. PEAK CONSULTATIVE FORUM (PCF)

45.1 The Insurance Commission recognises the establishment of a Peak Consultative Forum comprising of representatives from the Union GSLR, PSC and other agencies as required and that the function of the PCF is to consult on cross sector matters including the implementation of this Agreement.

45.2 The parties acknowledge that decisions will continue to be made by the Employer who is responsible and accountable to the Board of Commissioners and Government for the effective and efficient operation of the Insurance Commission.

45.3 There will be only one Peak Consultative Forum for all Agreements to which the Union is a party.

46. REVIEW OF COMMON USE AGREEMENTS AND CONTRACTS

Employer Reviews

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

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

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

- 46.2 When undertaking the review described in clause 46.1, the Employer must examine:
- (a) the procurement planning process, including consideration of whether there are non-financial risks and benefits to the State and whether the contract currently provides value for money. In particular:
 - (i) an estimate of the cost of direct delivery of the service;
 - (ii) the capacity of the agency to continue to deliver the service in the event the contractor becomes unable to; and
 - (iii) the availability of labour and expertise within the employing authority and/or the broader public sector, including registered and registrable employees;
 - (b) whether the efficacy of each contract has been regularly assessed, including the outcome of any audit of whether suppliers under the contract have met their contractual obligations; and
 - (c) whether there is adequate expertise within agencies to provide oversight and evaluation of the contractual arrangement and use of the contract, including effective records management and data storage to inform future contracts. In particular:
 - (i) that the agency is resourced to manage the contract for its duration (considering any relevant requirements of the *Procurement Act 2020*); and
 - (ii) whether agency records management and data storage processes are sufficient to assess the contracting decision was compliant with Approved Procedure 5, and recommendations to address any gaps.
- 46.3 Within 3 months of the registration of this Agreement, the Employer must advise the JCC where one is established or the Union of the contracts to be reviewed under this clause; and a target date for submission of a final report to the JCC or Union.
- 46.4 During the life of this Agreement, the Employer must provide relevant information from the review, the review report and the review outcome in relation to the contracts reviewed under this clause to the Union.
- 46.5 The Employer must notify the Union of the expiry date of any of the following contracts to which they are a party:
- (a) a contract referred to in clause 46.1:
 - (i) if the Employer does not intend to extend the contract before it expires – 18 months before the expiry date; or
 - (ii) in any other case – when the contract is extended; and
 - (b) a contract referred to in clause 46.1 (b) – 6 months before the expiry date.
- 46.6 The requirements of clauses 46.1 – 46.4 do not apply to any contract that an Employer and the Union agree does not involve the delivery of services that are core public sector functions.

46.7 A JCC, or any member of that Committee, can refer to the PCF for review any proposal by an Employer to enter into a contract of a kind referred to in clause 46.1 (a) or (b).

46.8 The parties acknowledge that decisions continue to be made by the Employer, who is responsible and accountable to Government for the effective and efficient operation of the Agency. Nothing in this clause prevents the Employer from using contracts for service where it is appropriate to do so.

47. REVIEW INTO A DISCOUNTED PUBLIC TRANSPORT SCHEME

47.1 Government recognises that increased use of public transport has environmental, social and economic benefits and seeks to implement a scheme for Employees that provides more affordable access to public transport. Government wishes to consider options that deliver benefits to Employees and attract minimal implementation, ongoing compliance monitoring and other costs.

47.2 The parties acknowledge the Public Transport Scheme Working Group has submitted a final evaluation report, including recommendations, to Government for consideration and implementation of appropriate recommendations.

48. PUBLIC SECTOR DELIVERY OF PUBLIC SERVICES

48.1 The Government and Employer prefer the delivery of public services to be undertaken by Employees.

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

48.3 If Government and the Board of Commissioners identify work carried out by persons external to the Public Sector which can be returned to the Public Sector in line with its stated preference the Union must be consulted at the earliest opportunity.

49. AMALGAMATION OF PUBLIC SECTOR CSA AGREEMENTS

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

49.2 The parties must explore opportunities to facilitate this consistency in the replacement Agreement.

50. RESERVED MATTERS/LIBERTY TO APPLY

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

- (a) variations to clause 44 – Consultation and Joint Consultative Committee of this Agreement;
- (b) clause 10 – Traineeship Rates of Pay: identification of a suitable model of remuneration that provides an alternative to age-based increments.

50.2 If the parties reach agreement on this reserved matter, the Agreement will be varied via section 43 of the *Industrial Relations Act 1979*.

50.3 The parties will also consider the possibility of varying the notification of change and consultative mechanisms in the Award.

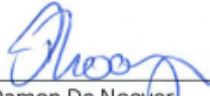
51. DISPUTE SETTLEMENT PROCEDURE

Employee/Employer Disputes

- 51.1 Any questions, difficulties or disputes arising during the course of employment of Employees covered by this Agreement must be dealt with in accordance with this clause.
- 51.2 An Employee can be accompanied by a Union representative during all stages of this procedure.
- 51.3 The Employee/s and the manager with whom the dispute has arisen must discuss the matter and attempt to find a satisfactory solution, within three working days.
- 51.4 If the dispute cannot be resolved at this level, the matter must be referred to and be discussed with the relevant manager's superior and an attempt made to find a satisfactory solution, within a further three working days.
- 51.5 If the dispute is still not resolved, it can be referred by the Employee/s or Union representative to the Employer or his/her Employer nominee.
- 51.6 Where the dispute cannot be resolved within five working days of the Union representative's referral of the dispute to the Employer or his/her Employer nominee, either party can refer the matter to the WAIRC.
- 51.7 The period for resolving a dispute may be extended by agreement between the parties.
- 51.8 Notwithstanding the operation of clauses 51.3 to 51.6, questions, difficulties or disputes involving multiple Employees can be raised by the Union directly with the Employer or the Employer's nominated representative.
- 51.9 If a dispute is raised by the Union via clause 51.8, the parties must make a genuine attempt to reach an agreed solution. If the dispute cannot be resolved either party can refer the dispute to the WAIRC for conciliation or, where appropriate, arbitration.
- 51.10 Nothing in this clause constitutes a referral agreement within the meaning of section 12 of the *Employment Dispute Resolution Act 2008* (WA).

PART 10: SCHEDULES

SCHEDULE 1- SIGNATURES OF PARTIES



Damon De Nooyer
Chief Finance Officer
Insurance Commission of Western Australia

28/4/2023

Date



Rikki Hendon
Branch Secretary
The Civil Service Association of Western Australia Inc.

5/4/2023

Date

SCHEDULE 2 – SALARIES

| Level | Current salary | 2022 salary | 2023 salary |
|---------|----------------|-------------|-------------|
| 1.1 | \$53,930 | \$57,060 | \$60,190 |
| 1.2 | \$56,742 | \$59,872 | \$63,002 |
| 1.3 | \$59,698 | \$62,828 | \$65,958 |
| 1.4 | \$62,376 | \$65,506 | \$68,636 |
| Level 2 | | | |
| 2.1 | \$64,172 | \$67,302 | \$70,432 |
| 2.2 | \$65,781 | \$68,911 | \$72,041 |
| 2.3 | \$67,482 | \$70,612 | \$73,742 |
| 2.4 | \$69,256 | \$72,386 | \$75,516 |
| Level 3 | | | |
| 3.1 | \$72,896 | \$76,026 | \$79,156 |
| 3.2 | \$74,781 | \$77,911 | \$81,041 |
| 3.3 | \$76,723 | \$79,853 | \$82,983 |
| 3.4 | \$78,717 | \$81,847 | \$84,977 |
| Level 4 | | | |
| 4.1 | \$81,452 | \$84,582 | \$87,712 |
| 4.2 | \$83,593 | \$86,723 | \$89,853 |
| 4.3 | \$85,797 | \$88,927 | \$92,057 |
| Level 5 | | | |
| 5.1 | \$90,047 | \$93,177 | \$96,307 |
| 5.2 | \$92,915 | \$96,045 | \$99,175 |
| 5.3 | \$95,896 | \$99,026 | \$102,156 |
| 5.4 | \$98,994 | \$102,124 | \$105,254 |
| Level 6 | | | |
| 6.1 | \$103,966 | \$107,096 | \$110,309 |
| 6.2 | \$107,350 | \$110,571 | \$113,888 |
| 6.3 | \$110,853 | \$114,179 | \$117,604 |
| 6.4 | \$114,590 | \$118,028 | \$121,569 |
| Level 7 | | | |
| 7.1 | \$120,725 | \$124,347 | \$128,077 |
| 7.2 | \$124,701 | \$128,442 | \$132,295 |
| 7.3 | \$129,033 | \$132,904 | \$136,891 |
| Level 8 | | | |
| 8.1 | \$136,296 | \$140,385 | \$144,597 |
| 8.2 | \$141,348 | \$145,588 | \$149,956 |
| 8.3 | \$147,609 | \$152,037 | \$156,598 |

| Level | Current salary | 2022 salary | 2023 salary |
|---------|----------------|-------------|-------------|
| Level 9 | | | |
| 9.1 | \$155,689 | \$160,360 | \$165,171 |
| 9.2 | \$160,981 | \$165,810 | \$170,784 |
| 9.3 | \$167,015 | \$172,025 | \$177,186 |
| Class 1 | \$176,438 | \$181,731 | \$187,183 |
| Class 2 | \$185,588 | \$191,156 | \$196,891 |
| Class 3 | \$194,725 | \$200,567 | \$206,584 |
| Class 4 | \$203,869 | \$209,985 | \$216,285 |

SCHEDULE 3 - FLEXIBLE WORKING HOURS

Introduction

The Insurance Commission will adopt flexible working hours to:

- enhance customer service;
- meet the operational needs of the organisation; and
- recognise Employees' responsibilities outside of work enabling them to better balance their work and life commitments through the opportunity of flexibility in working hours.

Definitions

“flexible working hours” means that Employees have the opportunity to choose their hours of work with some flexibility, subject to this Schedule and the terms and conditions of this Agreement.

A “settlement period” for the benefit of this Policy is one calendar month.

Hours of Duty

Employees may agree with their supervisor their start and finish times on a day to day basis. A minimum of 30 minutes must be taken each day for lunch.

Recording Attendance

All Employee attendance at work must be recorded on Time & Attendance to ensure appropriate timekeeping and compliance with salary and audit requirements.

All absences from the workplace for non work-related matters must be recorded on Time & Attendance.

Responsibilities

Flexible working hours can be beneficial to both the Insurance Commission and the individual Employee and is essentially an arrangement of trust.

The Flexible Working Hours Policy should be employed and managed in the context of the:

- responsibilities of the individual Employee with regard to the performance of their job and their contribution to the work team;
- operational needs of the work team and the Insurance Commission;
- service requirements of both our internal and external customers; and
- occupational safety and health, corporate security, building and computer access policies and guidelines.

Credit Hours

Employees may accumulate credit hours:

- to meet short term operational requirements; and/or
- for use at an agreed time in the future.

Employees should not accumulate credit hours in excess of 37.5 hours (pro rata for part time Employees) for each settlement period, without the approval of their supervisor. Requests to clear accumulated credit hours will not be unreasonably withheld.

Hours worked in excess of those stated without supervisor approval will not be accumulated by Time & Attendance.

Subject to the above, any hours worked in excess of 37.5 hours (pro rata for part time Employees) at the end of a settlement period, will be paid in accordance with the relevant Agreement following the Chief Executive's approval.

Deficit Hours

Employees are permitted to have deficit hours at the end of any settlement period, however an Employee shall be required to work the additional hours required to 'break even' by the end of the following settlement period.

An Employee may seek approval from the supervisor to have all or part of the deficit hours deducted from their pay in the next available pay period.

Extended Leave

Employees proceeding on extended leave eg:

- parental leave;
- leave without pay; and/or
- long service leave/extended annual leave,

are required to achieve a zero balance in Flexi hours prior to commencing such leave.

Termination of Employment

When an Employee ceases employment with the Insurance Commission, e.g. retires, resigns, is dismissed, is redeployed or accepts voluntary severance, Time & Attendance hours are to be managed to a zero balance by the last day of employment.

An amount equivalent to any deficit hours as at termination date will be deducted from the termination payment. Divisional Managers may approve the payment of credit hours not able to be cleared by the termination date.

Overtime

All overtime is to be authorised in advance by the relevant Divisional Manager. Where an Employee is required to work overtime to meet an Insurance Commission priority, then overtime rates in accordance with the Insurance Commission's Agreement will be paid.

Hours of overtime worked will not form part of the flexible working hours credit.

Chief Executive's Prerogative

The option of flexible working hours may be suspended or withdrawn by the Chief Executive at any time if an Employee breaches this Policy, is guilty of a breach of discipline; or it is not operationally convenient for the Insurance Commission to provide flexible working hours.

Breaches of this Policy may be viewed as misconduct or gross misconduct in accordance with the Insurance Commission's Disciplinary Policy and Procedure.

Effective August 2019.