



Our Ref: LR0402/2006V1  
Enquiries: Miriam Fransen  
9222 7726

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## CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO. 15 OF 2006

### MINIMUM CONDITIONS OF EMPLOYMENT

The Government's Minimum Conditions of Employment Policy has been revised and amended and is attached at **Attachment A**. This Circular replaces Circular to Departments and Authorities No. 13 of 2006.

This Circular should be read in conjunction with the relevant legislation where applicable including:

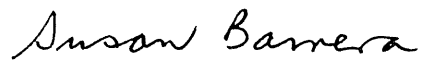
1. the *Minimum Conditions of Employment Act 1993*;
2. the *Workplace Relations Act 1996* and the Fair Pay and Conditions Standard,
3. the *Long Service Leave Act 1958*,
4. the Long Service Leave General Order for Government Wages Employees employed by a Public Authority; and
5. relevant awards and agreements.

All public sector employees are protected by minimum wages and conditions of employment.

Minimum conditions are implied into every industrial agreement, award and contract of employment. Any clause of an agreement, award or contract of employment which provides for a condition that is of a lesser standard than the minimum condition has no effect.

Public sector employees generally enjoy terms and conditions of employment that are in excess of the minima, consistent with the Government's aim of being an employer that is fairer, safer and more productive.

A summary of minimum wages and conditions of employment for employees in both State and Federal jurisdictions is attached at **Attachment B**. Conditions of employment in awards, agreements or contracts of employment that are more favourable will prevail.



Susan Barrera  
**EXECUTIVE DIRECTOR**

7 November 2006

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## MINIMUM CONDITIONS OF EMPLOYMENT

### *POLICY OBJECTIVE*

- To ensure public sector employees are protected by minimum wages and conditions of employment.

### *POLICY PRINCIPLES*

- Public sector employers are required to comply with the minimum conditions of the Western Australian and Federal industrial relations systems.
- Public sector employers may register agreements with terms and conditions in excess of the minima, subject to them being consistent with the Government's policy framework.

### *STATEMENT*

1. The Western Australian industrial relation system encourages the making of collective agreements that are underpinned by a safety net of minimum pay and employment conditions.
2. *The Minimum Conditions of Employment Act 1993* provides a safety net of minimum employment standards for Western Australian employees other than those covered by the Federal jurisdiction.
3. State awards provide minimum wages and conditions of employment for employees and the *Minimum Conditions of Employment Act* applies where the award is less favourable than the Act or no award applies.
4. The Australian Fair Pay and Conditions Standard provides the statutory minimum for wages and conditions in the Federal jurisdiction and applies, with some exceptions, to all employees covered by the Workplace Relations Act 1996.
5. A summary of the statutory minimum standards relating to wages and conditions of employment for public sector employees in both State and Federal jurisdictions is provided in Circular to Departments and Authorities No.15 of 2006 Minimum Conditions of Employment as replaced from time to time.

## STATE JURISDICTION

1. The minimum conditions specified in the *Minimum Conditions of Employment Act 1993* are implied into every industrial agreement, award and contract of employment. Any clause of an agreement, award or contract of employment which provides conditions less than the minimum conditions has no effect.
2. The *Minimum Conditions of Employment Act* applies to State jurisdiction employees including "award free" employees. The Act does not apply to employees covered by Federal agreements or awards.
3. Employers cannot contract out of the conditions prescribed in the *Minimum Conditions of Employment Act* unless the Act specifically provides for it. The Act is enforceable in the Industrial Magistrate's Court.
4. The Western Australian Industrial Relations Commission (WAIRC) may issue a General Order which provides a more favourable minimum condition of employment than that provided in the *Minimum Conditions of Employment Act*. The provisions of that General Order will then become the minimum condition which must be applied.

## Minimum Entitlements Under the State Jurisdiction

5. The *Minimum Conditions of Employment Act* was last amended on 4 July 2006 and provides the following minimum safety net:
  - a) **minimum weekly rates of pay** for adult and junior workers, apprentices and trainees based on a 38 hour week. The WAIRC reviews and determines the minimum rate of pay on an annual basis. For the current minimum rates of pay, please refer to <http://www.docep.wa.gov.au>.
  - b) **casuals** are entitled to a 20% loading in lieu of paid leave and public holidays;
  - c) **four weeks' paid annual leave**, or up to 152 hours per annum, which is cumulative;
  - d) **ten days' paid sick leave**, or up to 76 hours per annum, which is cumulative;
  - e) up to **ten days carer's leave** each year, taken from unused sick leave entitlements, for employees who 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 of the member or an unexpected emergency affecting the member. This leave is not cumulative;
  - f) **52 weeks' unpaid parental leave** on the birth or adoption of a child for employees, including eligible casual employees, who have had at least 12 months continuous employment with their current employer;
  - g) up to **two days' paid bereavement leave per bereavement**, on the death of a designated family member;
  - h) payment for ten designated **public holidays** per annum;
  - i) employees must be told as soon as possible if they are to be made **redundant** and are entitled to up to eight hours paid leave for job search purposes; and
  - j) employees are entitled to be paid in full for work undertaken as provided for in their agreement, award or contract of employment.

6. Minimum entitlements in respect of **Long Service Leave** are:
- a) In accordance with the relevant award where applicable;
  - b) For wages employees: the State Government Wages Employees General Order provides for 13 weeks paid long service leave after the first 10 years and each subsequent 7 years of continuous service; and
  - c) For employees without a specific entitlement through an agreement, award or General Order: the Long Service Leave Act 1958 provides 8 and 2/3 weeks paid long service leave after 10 years of continuous service and 4 and 1/3 weeks after a further five years continuous service. Under some circumstances it may be paid on a pro rata basis after 7 years service.

### FEDERAL JURISDICTION

7. Part VA of the *Workplace Relations Act 1996* relates to the Australian Fair Pay and Conditions Standard (the Standard).
8. The Standard is a 'universal' statutory minimum that cannot be 'contracted out' of. It applies to all employees covered by the WR Act, with the following exceptions:
  - (a) Employees whose employers are not constitutional corporations (other than the parental leave entitlement under the Standard which applies to **all** employees);
  - (b) Employees bound by an Australian Workplace Agreement (AWA) approved by the Office of the Employment Advocate (OEA) before 27 March 2006;
  - (c) Employees who are a party to an AWA filed with the OEA before 27 March 2006. However the date from which the Standard does not apply differs depending on whether:
    - The employee signed the AWA before they commenced employment. In this case, the Standard does not apply from the date the AWA was filed with the OEA;
    - The employee signed the AWA after they were already employed. In this case the Standard does not apply from the date the AWA is approved by the OEA.
  - (d) Employees covered by a pre-reform certified agreement;
  - (e) Employees covered by a Preserved State Agreement.
9. The Standard underpins all workplace agreements and common law contracts of employment. It applies unless the workplace agreement or common law contract of employment provides the employee with a more favourable outcome in which case the more favourable outcome applies.

10. In summary the Standard is:

(a) **Minimum hourly rate of pay**

For each hour an employee is required to work (including additional hours above 38 hours) and also on public holidays (not including union picnic days).

The minimum hourly rate will be contained in the relevant Australian Fair Pay and Classifications Scale or if there is none, based on the Federal Minimum Wage as set by the Australian Fair Pay Commission from time to time.

A default casual loading of 20% applies to all casuals.

(b) **Maximum 38-hour week**

Maximum ordinary weekly work hours is 38 hours a week for which employees must receive at least the minimum hourly wage as set by the Australian Fair Pay Commission. If the employee and employer agree in writing that the employee's hours of work are to be averaged over a specified averaging period of no more than 12 months – an average of 38 hours per week can be worked over that period. Employees may also be required to work reasonable additional hours.

(c) **Annual leave**

The Standard provides for four weeks' paid annual leave per year. Annual leave is cumulative and accrues on a pro rata basis. Seven day continuous shift workers will be entitled to an additional week.

(d) **Parental leave**

Employees are entitled up to 52 weeks of unpaid parental leave at the time of birth or adoption after 12 months' continuous service with their employer. This entitlement applies to eligible casuals.

(e) **Personal/carer's leave**

A fulltime employee is entitled to 10 days paid personal/carer's leave in respect of each year of service.

Personal/carer's leave includes paid leave taken by an employee because of personal illness or injury (sick leave); or paid or unpaid leave taken by an employee to provide care or support to a member of the employee's immediate family or member of the employee's household who requires care or support because of a personal illness or injury or an unexpected emergency (carer's leave).

An additional two days of unpaid carer's leave is available for unexpected emergencies for permanent employees who have used up their personal leave entitlement, and for casual employees. The unpaid leave can be taken in separate periods.

(f) **Compassionate leave**

Employees are entitled to two days paid compassionate leave for each permissible occasion, that is for each occasion when an immediate family member or a member of their household develops a personal illness that poses a serious threat to his or her life or sustains an injury that poses a serious threat to his or her life or dies. The paid leave can be taken in separate periods.

(g) **Other minimum entitlements**

The *Workplace Relations Act 1996* makes provision for a number of other minimum entitlements that do not form part of the Standard. Employees are entitled to an unpaid meal break of at least 30 minutes duration after working for more than five hours continuously. Employees have a limited entitlement to a day off on public holidays. However, an employer may request an employee to work on a particular public holiday. The employee may refuse to work on reasonable grounds which are defined in the Act.

(h) **Dispute-settling procedures**

All agreements have to include dispute-settling procedures.