

26 JUL 2021

**Ministry of Health's Explanatory Notes for proposed Award July 2021**OFFICE OF THE INDUSTRIAL  
REGISTRAR  
on 11 June 2021

This document is to address the Directions issued by Commissioner Sloan

"The Ministry is to file and serve by 4.00pm on 16 July 2021 a draft of the award that it proposes the Commission make to give effect to the decision of Sloan C published on 13 January 2021. To the extent that the proposed draft award does not contain it, the Ministry must also file and serve its proposed classification structure. The Ministry should provide a document explaining how it has effected the "translation" of existing classifications to those under the relevant existing Awards or, where that translation is not possible, how such exceptions have been dealt with."

The Ministry of Health's proposed Award (**TAB A**) gives effect to the decision of Commissioner Sloan published on 13 January 2021 (the Commission's decision).

To assist the Commission, these explanatory notes also include the Ministry's understanding of the Commission's decision.

**PART A – MINISTRY'S UNDERSTANDING OF COMMISSION'S DECISION**

The Ministry's proposed Award is based on the following:

1. The terms of employment for staff under the new award is to be set or established by reference to the relevant HSU State Award in relation to each classification <sup>1</sup>
2. The benefits conferred on staff by the 1997 Industrial Agreement (and previous agreements) considered in the proceedings were limited to<sup>2</sup>:
  - a. Five weeks annual leave per annum
  - b. Long service leave accrual at 1.3 week per annum for the first 10 years of continuous service
  - c. Rates of pay combining a Broken Hill Town and Versatility allowance (BHTVA to a total of \$43.13 per week).
3. The Commission considered in its decision "the benefits enjoyed by the employees over time". <sup>3</sup> The Ministry did not sufficiently make out a case to vary the "historical above award entitlements previously contained in terminated agreements"<sup>4</sup> nor did the Ministry make out its case for there to be a distinction between existing and new staff.<sup>5</sup>
4. Except for Long Service Leave, the historical above award benefits "which have existed for generations"<sup>6</sup> are retained under the new award as a recognition and continuation of existing terms<sup>7</sup> and conditions for staff in the Broken Hill Health Service.

<sup>1</sup> 2021 NSWIRComm 100 lines 231- 241

<sup>2</sup> 2021 NSWIRComm 100 line 8

<sup>3</sup> 2021 NSWIRComm 100 line 134, 210

<sup>4</sup> 2021 NSWIRComm 100 line 129

<sup>5</sup> 2021 NSWIRComm 100 line 147

<sup>6</sup> 2021 NSWIRComm 100 line 127, 128,130

<sup>7</sup> 2021 NSWIRComm 100 line 127

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5. The Commission did not accept the Ministry's submissions that these benefits should not apply to new staff<sup>8</sup>, except in the case of Long Service Leave accrual.
  - a. In relation to Long Service Leave this is still retained for existing staff, but new staff will accrue at the State rates.
6. The Commission did not accept that the Ministry had demonstrated that it would be fair and reasonable to limit the BHTVA to existing employees and not apply to new employees. This extended to setting the rates of pay to not differentiate between existing and new employees.<sup>9</sup>
7. The Commission did not accept the Ministry's submission that the five BIC allowances "ought to no longer be payable" to new staff [in BIC classifications], nor did it accept the BHTEU's claim that four other allowances should be added to the Award<sup>10</sup>.
8. The Commission was not asked to, nor did it consider awarding "increases in remuneration or other condition of employment that would result in employee related costs increasing by more than 2.5 % per annum"<sup>11</sup>
9. In Broken Hill Health Service, the District employs two distinct groups of staff classifications that would otherwise come under a HSU state award were it not for the County of Yancowinna exclusion.
10. The two groups of staff classifications are as follows:
  - a. BIC classifications
    - i. These classifications come under the terms and conditions and pay rate of the 1997 Industrial Agreement as varied by MOUs from time to time.
    - ii. A schedule of the BIC classifications and their pay rates is published in an Information Bulletin each year by the Ministry of Health on its website.
    - iii. BIC classifications' pay rates include the BHTVA as indexed annually.
    - iv. BIC classifications accrue 1.3 weeks of LSL p.a. for the first ten years and they get 5 weeks Annual Leave p.a.
    - v. BIC classifications get allowances over and above the Award allowances (ie BIC allowances).
  - b. HSU state classifications
    - i. These are staff engaged in Broken Hill Health Service in HSU state classifications taken directly from the State Awards
    - ii. These classifications are known as the "award free" classifications in Broken Hill since at least 2012, when there was agreement between the

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<sup>8</sup> 2021 NSWIRComm 100 line 210

<sup>9</sup> 2021 NSWIRComm 100 Line 213

<sup>10</sup> 2021 NSWIRComm 100 line 224,225

<sup>11</sup> 2021 NSWIRComm 100 line 149,150, 151

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parties via an MOU regarding their terms of employment being 'cost neutral'.

- iii. Except for Annual Leave, these classifications have the full terms and conditions, allowances and rates of pay whether they be more or less beneficial [than the 1997 Industrial Agreement] as set down by the relevant State award that would have covered them except for the County of Yancowinna exclusion clause.
- iv. These classifications get five weeks Annual Leave
- v. These classifications do not get the BHTVA or the additional LSL accrual rates.

11. The Ministry's proposed Award recognises that these two groups of classifications have historically been managed under different terms and conditions and rates of pay. The proposed Award maintains those arrangements for existing and new staff as per the Commission's decision. This includes maintaining the higher rates of pay presently available to the BIC classifications, with those rates maintained into their transitioned state Award classification.

12. The Ministry's proposed Award implements the Commission's decision by retaining the over award benefits for groups of staff ( both existing and new) who have historically received them while not extending these benefits to staff (existing and new) who have not historically received them (which if applied to this latter grouping would result in them receiving a pay increase significantly higher than 2.5%).<sup>12</sup>

**PART B - CLASSIFICATIONS COVERED BY THE PROPOSED AWARD**

The proposed Award is a standalone award document that will apply to the following classifications when engaged in Broken Hill Health Service (i.e. the County of Yancowinna):<sup>13</sup>

1. BIC Classifications in use on the date the Award is made and that are retained
2. BIC classifications in use on the date the Award is made and that are transitioned to a HSU state award classification (also included)
3. Classifications from a HSU state award in use in Broken Hill Health Service on the date the award is made
4. All other HSU or Skilled Trades state award classifications should they be used in Broken Hill Health Service in the future.

Note: BIC classifications are those listed in NSW Health's Information Bulletin IB2018\_039 'Increased Rates of Pay and Allowances for Broken Hill Health Services Employees'.

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<sup>12</sup> 2021 NSWIRComm 100 line 149

<sup>13</sup> 2021 NSWIRComm 100 line 265

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**PART C - TERMS AND CONDITIONS OF EMPLOYMENT IN THE PROPOSED AWARD**

The proposed Award provides for the following:

- Except for the points noted below, all employees under the proposed Award have their conditions of employment established by reference to the relevant state award in respect of each classification.<sup>14</sup> This is achieved via the schedules attached to the proposed Award.
- All employees under the proposed Award will continue to accrue five weeks annual leave per annum.<sup>15</sup>
- Existing staff members in a BIC classification at the time the proposed Award is made will continue to accrue Long Service Leave at the rate of 1.3 weeks per annum for first ten years as per the BIC Agreement<sup>16</sup>.
- BIC classification rates of pay, including the BHTVA, will continue to apply to all BIC classifications and to their transitioned state classification. This applies to existing and new staff.<sup>17</sup>
- State Classifications (other than those being transitioned from a BIC classification) will continue to have their rates of pay, and terms and conditions established by the relevant state award except for the additional annual leave provision.<sup>18</sup>
- The BIC Agreement allowances - Pool, offensive work, typing qualifications, sterilisation certificate and pruning shrubs allowances are continued in the same amount and subject to same conditions as in BIC Agreement.<sup>19</sup>
  - a. Note the Sterilising Certificate Allowance is not defined in the 1997 Industrial Agreement and so the definition as contained in the Health Employees Conditions of Employment (State) Award has been added.

**PART D - THE BIC CLASSIFICATION AND TRANSITION SCHEDULE**

The proposed Award includes a schedule of BIC classifications and their translation to a reasonably equivalent state classification where appropriate, along with the relevant rates of pay. It also includes in the schedule those BIC classifications that are unable to be transitioned.

The Ministry has taken the following considerations into account to determine what is a "reasonably equivalent state classification":

- Similarity of classification name
- Similarity of classification's core duties
- Similarity of qualifications or pre requisite requirements for the position

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<sup>14</sup> 2021 NSWIRComm 100 line 266 (6)

<sup>15</sup> 2021 NSWIRComm 100 line 266(2)

<sup>16</sup> 2021 NSWIRComm 100 line 266 (3)

<sup>17</sup> 2021 NSWIRComm 100 line 266 (4)

<sup>18</sup> 2021 NSWIRComm 100 line 266 (6)

<sup>19</sup> 2021 NSWIRComm 100 line 266 (5)

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- Similarity in base pay (noting the BIC classification rate of pay includes the BHTVA)

The Ministry proposes that 71 BIC classifications are transitioned to a HSU state award classification. This is based on similarity in tasks, position descriptions, where available or qualifications or definitions contained in state Award and pay rates (which already include the BHTVA).

The Ministry proposes that 59 BIC classifications are maintained as BIC classifications on the basis that there is no reasonably equivalent state classification.

For these 59 BIC classifications, there are either no similarly named classifications or classifications that appear to have similar core duties or qualifications or there are no similar classifications with a comparable rate of pay (i.e. comparable is taken to mean where the difference per week is around \$50 per week equating to the BHTVA).

To assist the Commission, attached at **TAB B** is a schedule listing the BIC classifications with considered State classifications showing a comparison of the 2019 pay rates for the BIC classifications against the State classification.

The Ministry proposes the following classifications are not included in the proposed Award as they are no longer in use in Broken Hill Health Service:

- BIC Boiler Assistant
- BIC Clerk Junior 16 years through to BIC Clerk Grade 1 year 5
- Assist Catering Officer
- EDSA Year 1
- EDSA Year 2
- Housekeeper
- Machine Operator
- Porter
- Foreperson Porter
- Supervising Porter
- Radiographer Level 6, Grades 2 and 3
- Rehabilitation Super
- Secretary Grade 3 years 1 and 2
- Apprentice Tradesperson SC53% through to HSC97%