

Memorandum of Understanding

Between

NSW Government

And

Unions NSW in its own right and representing its affiliated members

1. INTRODUCTION

This Memorandum of Understanding (the Memorandum) reflects the agreement between Unions NSW and the Government of NSW and sets out the understanding of the parties in relation to an Influenza Pandemic.

The Memorandum will commence operation in the event a public health emergency is declared requiring the *NSW Interim Human Influenza Pandemic Plan* to be implemented in the NSW public sector. Use of NSW legislation and associated emergency provisions, such as issuing orders and directions under the Public Health Act 1991, the declaration of a state of emergency or activation of the Displan would be considered at Overseas phase 4 involving small clusters of human to human transmission.

2. AIM

The aim of this Memorandum is to assist NSW public sector agencies to minimise disruption to core business activities, ensure maintenance of essential services during a pandemic and assist employees with more flexible working arrangements and leave options. The Memorandum is to be read in conjunction with the *NSW Interim Human Influenza Pandemic Plan* which provides a framework for co-ordinated whole of government preparedness, prevention, response, recovery, command and control arrangements in the event of an influenza pandemic outbreak.

3. PARTIES

The parties to this Memorandum are:

Unions NSW (a State Peak Council as defined in the *Industrial Relations Act 1996*)

The NSW Government

4. CAPACITY OF THE PARTIES

This Memorandum is entered into by the NSW Government and is intended to apply to NSW Public Sector Services as defined in section 3 of the *Public Sector Employment and Management Act 2002* and all Stated Owned Corporations.

Unions NSW signs in its own right and for its member unions.

5. DEFINITIONS

NSW public sector for the purposes of this Memorandum, comprises NSW Public Sector Services as defined in section 3 of the *Public Sector Employment and Management Act 2002* and all State Owned Corporations.

Pandemic influenza means a virulent human influenza that causes a global outbreak, or pandemic, of serious illness. Because there is little natural immunity, the disease can spread easily from person to person.

Pandemic Special Leave means a grant of up to a total of 20 days paid leave additional to an employee's annual or cumulative entitlements **during the operation of the NSW Interim Human Influenza Pandemic Plan**, and its application is reserved for occasions of personal illness or to care for family members, or for transport or other major disruptions during an influenza pandemic when paid Sick Leave, Family and Community Service Leave or Personal/Carer's Leave has been exhausted.

Family and Community Service Leave means paid leave for reasons relating to family responsibilities, performance of community service or emergencies.

Personal/Carer's Leave means the use an employee's paid sick leave to provide care and support for a sick family member.

Joint Consultative Group means a group comprising representatives from Unions NSW and the Director of Public Employment and, where appropriate, representatives from NSW Public Sector agencies.

Director of Public Employment, as established under the Public Sector Employment and Management Act 2002 means the employer of the staff of the Public Service.

6. AWARDS AND OTHER INSTRUMENTS AFFECTED BY THIS MEMORANDUM

All New South Wales Public Sector Awards (and supporting MOUs), determinations, industrial instruments and related policies that are currently in operation in NSW are affected by this Memorandum.

7. AGREEMENT

The parties shall implement this Memorandum and agree to reasonable requests for workplace change, changes to hours of work at short notice, and the temporary

assignment of public sector staff to other agencies. (Note 'workplace change' in this context means, for example, working remotely due to the impact of the pandemic or reducing the physical interaction between staff and or clients.)

Where employees who are not directly involved in the pandemic response cannot be gainfully employed remotely from home or at another office of the agency, such employees may be redeployed to another government agency. Additionally, employees who have been directly involved in the pandemic response but who are no longer required to perform their normal duties, and cannot be gainfully employed remotely from home or another office of the agency, such employees may be redeployed to another government agency. Decisions to work at another office or government agency should take into account the employee's home location and capacity to travel. Employees may be required to discharge other duties as directed within their competencies for another government agency.

The parties agree that the provisions of awards, industrial instruments and related policies are suspended where they are inconsistent with the agency meeting core public services particularly where staffing shortages are severely affecting the performance of an agency's business continuity.

Interagency staff transfers

Where staff are required to perform duties at another agency, particularly to assist those agencies to meet core public services or where staffing shortages severely curtail the performance of an agency's business continuity, staff will be transferred pursuant to section 88 of the *Public Sector Employment and Management Act 2002* (the PSEM Act).

The principles, where relevant, of clauses 11, 12, 13, 14, 15, 16, 17 and 18 of the Crown Employees (Major and Community Events Reassignment) Award will apply to staff reassigned pursuant to section 88 of the PSEM Act. Copy of the Award is attached.

Staff will be no worse off where required to work at another government agency as the rate of pay for staff reassigned shall be the normal rate of pay they would have received in their home agency had they not been reassigned.

Where a staff member has been reassigned to another agency, the ongoing requirement for such reassignment is to be reviewed after a period of 3 months.

8. CONDITIONS APPLYING DURING THE OPERATION OF THE MOU

The parties agree that the following provisions will be implemented by way of administrative action from the date of implementation of the *NSW Interim Human Influenza Pandemic Plan*.

The Memorandum shall apply to human infection in Australia whether involving small clusters consistent with limited human to human transmission, localised to a geographic location, or widespread in NSW, or subsiding or the next wave of a pandemic.

8.1 ATTENDANCE

Each agency through the operation of their business continuity plan is to operate as close to normal as possible at each stage of the pandemic, utilising staff and customer protection measures as recommended by NSW Health.

Unless staff are on approved leave (eg., sick, annual, pandemic special leave or other) they are to remain working during a pandemic influenza outbreak. Where recommended measures for providing a safe workplace are in place, employees are to undertake their normal duties. Any employee who then chooses not to work should (after the appropriate process has been followed) be placed on leave without pay. Employees who stop work without discussing their concerns or appropriate safety measures with their agency could put their employment relationship and ultimately their employment at risk.

Agencies may apply any or all of the following flexible working arrangements:

(a) Attend normal place of work

All staff are to attend the workplace as usual, except where working from home (or elsewhere) as part of a business continuity and workforce management plan aimed at ensuring ongoing service delivery.

(b) Staff working remotely from home

Where possible, agencies should prepare for staff to work remotely from home to cover situations such as:

- There is a recommendation from NSW Health to increase social distancing in the workplace and remote working allows this to be implemented.
- Schools and caring facilities have been closed requiring staff to stay at home to provide care.
- Public transport is closed and some staff cannot reasonably get in to work, or the risk of staff being infected through the use of public transport cannot be reasonably managed.
- The workplace itself has been isolated/quarantined by a NSW Health officer.
- The staff member is caring for a sick family member.

Where staff work from home the agency needs to identify whether the home is a safe workplace, as it becomes a "place of work". If an agency does not already have a policy in place which covers staff working from home, a model Working From Home Agreement is contained in the Flexible Work Practices, Policy and Guidelines (available from www.premiers.nsw.gov.au).

Where staff are at home due to either 8.2 (c) or (d) below, the capacity of the employee to contribute to the workplace is to be considered by the agency. Additionally employees at home providing care to a sick family member, 8.2 (b), may elect to contribute to the workplace by working remotely from home.

(c) Alternate duties during a pandemic

Where possible, agencies are to utilise staff in other areas of the business of the agency so that each workplace remains open at all stages of the pandemic.

Staff may be:

- required to undertake different work functions (most likely for essential work) as directed within their competencies but outside the scope of their normal duties.
- redeployed to other government agencies to assist priority service delivery by those agencies pursuant to section 88 of the PSEM Act.

Staff who perform duties for another agency will remain employed by their home agency but will be under the control and direction of the host agency. The home agency will continue to pay employees their normal rate of pay. Interagency Staff Transfers at clause 7(a) above refers.

(d) Transport or other major disruptions

Where employees are unable to get to work due to transport or other major disruptions, employees may be directed to do their usual job remotely at another office of the agency, another government agency or from home. Decisions to work at another office or government agency should take into account the employee's home location and capacity to travel.

Employees may be required to discharge other duties as directed within their competencies at another office of the agency or another government agency. Employees who cannot be gainfully employed and are unable to get to work due to transport or other major disruptions may take available FACS leave and/or flex leave, recreation leave or extended leave to cover the period. Where paid FACS Leave or flex leave has been exhausted employees may elect to take Pandemic Special Leave of up to 20 days in lieu of recreation leave, extended leave or leave without pay.

Where an employee agrees to work at an office or government agency requiring excess travel or to be accommodated overnight, agencies are to pay travelling allowances in accordance with the employee's home agency industrial instrument or policy.

(e) Workplace closure

During a pandemic, NSW Health may close premises either as a preventative measure or because those premises have been isolated or quarantined. In particular:

- Closing premises to the public by directive of NSW Health does not necessarily exclude the employees from continuing to work in such premises (unless the directive is for the premises themselves to be isolated or quarantined).
- Where NSW public sector premises have been closed to the public or school children as part of preventative measures, as with other workplaces during a pandemic, appropriate workplace safety measures as recommended by NSW

Health should still be implemented and employees in those workplaces should still attend work, unless the premises themselves have been closed.

- Where an agency directs staff to stay home, the employee will:
 - o remain on pay for the period, and
 - o remain at home until directed to return to work
 - o failure to return to work in the absence of illness, caring for family or other matters covered by this MOU, may result in disciplinary action.
- In the event of workplace closure, employees may be required to do their usual job remotely at another office of the agency, another government agency or from home, 8.1 (b) above refers.
- Employees may be deployed to another government agency to undertake other duties as directed within their competencies, 8.1 (c) above refers.

8.2 ABSENCE

Agencies are to manage the absence and return to work of staff during a pandemic. Some issues to consider include:

- advice to the employee on how long to stay away from work (the NSW Health website will have advice on this once the characteristics of a pandemic are known)
- consulting with the staff member during their absence from work
- ensure staff are healthy before allowing them to return to work (NSW Health advice will assist agencies in this regard).

The following leave arrangements shall apply:

(a) Employee is sick

Where paid Sick Leave is exhausted, employees will be granted Pandemic Special Leave, unless existing industrial instrument(s) provide better conditions of employment.

(b) Employee is caring for sick family members

Where paid FACS Leave and Personal/Carer's Leave is not adequate, flexible or accessible, and paid sick leave to care for a family member has been exhausted, employees will be granted Pandemic Special Leave.

(c) Employee is caring for family members due to closure of schools and caring facilities but no sickness directly involved

Where paid FACS Leave and Personal/Carer's Leave is not adequate, flexible or accessible, employees will be granted Pandemic Special Leave, see also 8.1 (b).

(d) Employee directed to stay home due to social distancing measures (see also 8.1 (b) Staff working remotely from home above)

Employees who are absent from the workplace as they have been directed to stay home or their normal place of work has been closed due to social distancing measures are to work remotely from home.

Where employees cannot be gainfully employed remotely from home, such staff may be directed to do their usual job at another office of the agency or another government agency. Decisions to work at another office or government agency should take into account the employee's home location and capacity to travel. Employees may be required to discharge other duties as directed within their competencies for another government agency.

If an employee makes themselves available for work, but is directed not to attend and the Government is unable to provide alternate suitable duties either by way of working from home or 'redeployment' to elsewhere in the NSW public sector, then the employee is to remain on pay for the period.

With respect to temporary contracts that expire during the pandemic there is no requirement for the temporary employee to remain on pay after the expiration of the contract.

(e) Pandemic Special Leave

Pandemic Special Leave is capped at a total of 20 days whether used for personal illness, caring for sick family members or due to transport or other major disruptions as set out in clauses (a) – (c) above.

(f) Salary Payments

Where an employee's leave entitlements and advances of Pandemic Special Leave are exhausted, payment of leave is to cease and the employee placed on leave without pay. Employees may elect to utilise paid annual leave, extended leave or long service leave in lieu of leave without pay.

(g) No Requirement for Medical Certificates

Employees are not required to provide a medical certificate when absent due to sickness or to provide care for others but will need to provide a copy of their record of attendance, or for the person for whom they are providing care, from a NSW Health Fever Clinic, or such other document(s) which satisfy agency requirements.

Employees are discouraged from going to their GP and are to attend a NSW Health Fever Clinic where details of recent contacts will be recorded.

(h) In a major emergency, **Emergency Service Volunteers** continue to have access to unlimited Special Leave on full pay (pursuant to cl 85(j) of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006

and Chapter 6-19.8 Emergencies of the NSW Government Personnel Handbook (which applies to schedule 1 Departments of the *Public Sector Employment and Management Act 2002*)).

9. OCCUPATIONAL HEALTH AND SAFETY (OH & S)

All government agencies have a general duty to ensure the safety of workers. This duty applies even in an influenza pandemic. For an agency to meet this obligation there is an onus on agencies to provide safe systems of work, provide information, instruction, training and supervision and to provide a suitable working environment.

(a) Implementation of Business Continuity Plans (BCPs) and Planning for Absenteeism

Agencies are to be aware of the potential for increased workloads following implementation of their BCP. Agencies are to provide appropriate training for staff where they are required to carry out tasks outside of their usual employment. In this context, agencies need to be aware of regulatory licensing requirements for certain types of work (eg., certification of persons operating certain cranes or load shifting machinery).

(b) Home Based Work

Agencies are responsible for ensuring the health, safety and welfare of workers who become home based workers. A model working from home agreement is contained in the Flexible Work Practices, Policy and Guidelines on the Department of Premier and Cabinet website.

(c) Essential Services

Essential front line service workers who may be at a higher risk of occupational exposures to pandemic influenza will be provided with antivirals and PPE and other infection prevention and control measures as determined appropriate by NSW Health.

Normal practice shall apply with respect to Employee Assistance Programs, where available, within agencies.

10. GRIEVANCE PROCEDURE

The parties acknowledge the special circumstances that exist in a pandemic and the need to ensure minimum disruption to core business activities and maintenance of essential services during a pandemic. Accordingly a mechanism is to be put in place to facilitate the resolution of grievances or disputes as quickly as possible, as follows:

- (a) All grievances and disputes relating to the application of this MOU shall initially be dealt with at the agency level.
- (b) A staff member, at any stage, may request to be represented by their union.
- (c) The agency shall consider the issue as soon as practicable and provide a response within 2 days of the matter being brought to attention.
- (d) If the matter remains unresolved, the department head shall provide a written response to the staff member and union if applicable of the reasons.

- (e) **Where the matter cannot be resolved at the agency level due to the critical impact of the pandemic**, the matter may be referred to a Joint Consultative Group, represented by the Director of Public Employment and Unions NSW, for resolution.
- (f) The staff member, union, Unions NSW, agency and Director of Public Employment shall agree to be bound by any resolution by the Joint Consultative Group in relation to the matter.
- (g) While the procedures outlined above are being followed, normal work undertaken prior to notification of the dispute or difficulty will continue unless otherwise agreed between the parties, or in the case involving occupational health and safety, normal work will proceed in a manner which avoids any risk to the health and safety of any staff member or member of the public.

The parties also acknowledge where, due to the operation of this Memorandum, a staff member has suffered an unintended detriment, or the Memorandum is operating in a manner not envisaged by the parties, the matter may be referred to the Joint Consultative Group for consideration.

11. NO EXTRA CLAIMS

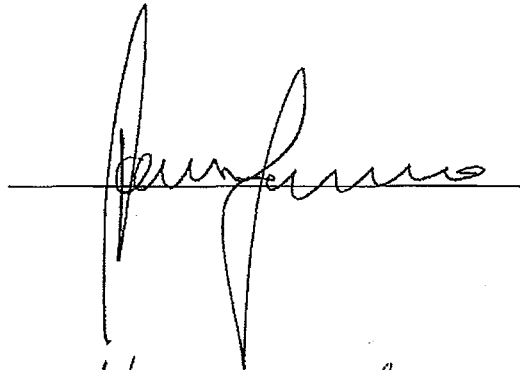
- (a) The parties agree that there will be no extra wage claims, claims for improved conditions of employment or demands made in respect of employees covered by New South Wales Public Sector Awards, determinations and related policies during the operation of this Memorandum, or as a result of the operation of this Memorandum.
- (b) Where the operation of this Memorandum exceeds a period of 3 months, in any one location, the parties agree that the provisions of 11 (a) above shall cease.
- (c) Where the no extra wage claims clause at 11 (a) has been supplanted due to clause 11 (b), the matter is to be referred to a Joint Consultative Group, for consideration.

12. MONITORING OF MEMORANDUM

- (a) The Memorandum shall be reviewed regularly to ensure the provisions are relevant to employees covered by New South Wales Public Sector Awards, determinations and related policies and updated as required.
- (b) The parties agree that the Memorandum shall have a life of 5 years from the date this Memorandum is made.
- (c) Notwithstanding clause 12 (b), extension of the Memorandum may be agreed to by the parties, for a further period of 5 years, where NSW Health information available at the time warrants the continuation of this Memorandum.

THIS AGREEMENT IS MADE AT SYDNEY ON THE 19th DAY
OF October 2007.

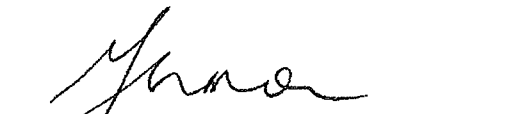
(Signed for and on behalf of the)
NSW Government



C. Kellam

Witness

(Signed for and on behalf of the)
Unions NSW



MARK LENNON
ASSISTANT SECRETARY

Aisha Wilde

Witness