



GOVERNMENT SECTOR EMPLOYMENT ACT 2013
LAW ENFORCEMENT CONDUCT COMMISSION STAFF AGENCY
CONDITIONS OF EMPLOYMENT
SECTION 52 (1) DETERMINATION NO. 2/2016 5 August 2016

Part 1 – PURPOSE

1.1 INTENT

This Determination is made pursuant to S52(1) of the *Government Sector Employment Act 2013*, fixing employment conditions, remuneration rates and allowances for non-executive employees of the Law Enforcement Conduct Commission beyond the employment conditions and remunerations rates applying to public service employees under the *Government Sector Employment Act 2013*.

This Determination does not apply to any employee in receipt of remuneration equal to or above the minimum for Band 1 NSW Public Sector Senior Executives.

1.2 DATE OF EFFECT

This Determination shall take effect on and from the date of the commencement of the Law Enforcement Conduct Commission Act.

1.3 DURATION

This Determination will remain in operation until 31 December 2019.

1.4 COVERAGE

This Determination covers the employment conditions, remuneration and allowances for all non-executive Law Enforcement Conduct Commission employees.

Part 2 – CONDITIONS OF EMPLOYMENT

2.1 GENERAL

The conditions of employment for the Law Enforcement Conduct Commission (LECC) are based on NSW public service conditions at the date of the signing of this Determination.

In setting conditions of service for staff of the LECC regard will be given to the provisions of the current *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*, or its replacement.

If conditions of employment for staff of the LECC are not covered by this Determination, then the provisions of the current *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*, or its replacement, will apply.

Staff transferring to the LECC from other NSW public sector agencies may be able to transfer some of their existing entitlements to the Commission consistent with NSW public sector mobility provisions. However, the transfer of annual leave entitlements is restricted to a maximum of 10 days. This restriction of a maximum of 10 days of leave does not apply to the transfer of other types of leave entitlements to the LECC.

All conditions of employment in this Determination apply to part time staff on a pro-rata basis.

2.2 FLEXIBLE WORKING HOURS SCHEME (FWHS)

The LECC operates under a Flexible Working Hours Scheme as follows.

- 1 Purpose - to improve organisational performance and to provide the Executive and employees with flexibility in arranging working hours.
- 2 Principles - In order that staffing levels are sufficient to meet operational requirements and performance standards, Executive and staff are committed to ensuring that:
 - (a) Decisions regarding working hours will be made taking into account the requirements of the particular Division, Section or team and the LECC.
 - (b) Decisions regarding working hours will be made between an employee and their direct supervisor based on consultation and negotiation.
 - (c) Supervisors will notify staff of the need to change hours as soon as practicable.
 - (d) Staff will give reasonable notice of request for flex leave or ADO.
- 3 The provisions of this clause shall apply to part time staff on a pro rata basis.
- 4 Management recognises the need for greater flexibility in managing the flexible working hours' scheme for Surveillance officers and allows for variations in recognition of the employment situation of surveillance staff, which are referred to in the LECC Flexible Working Hours policy.
- 5 Surveillance operatives including technical surveillance operatives and Electronic Surveillance monitoring staff, in lieu of flexible working hours, are provided with ten (10) accrued days off (ADOs) per annum. For the first 12 months of employment ADOs accrue on a monthly basis at the rate of 0.833 of a day per month. Upon completion of 12 months service, ADOs are granted on each annual anniversary of commencing employment. Accrued days off are not cumulative and leave not taken in each 12 month period is forfeited. No payment will be made in respect of untaken ADOs upon termination of employment.
- 6 Ordinary hours of work - 7 hours/day, 35 hours/week, Monday to Friday.
- 7 Commission's daily hours of business – 8.30 am to 5 pm.
- 8 Daily period in which work is to be performed (bandwidth) - 7.00 am to 7.00 pm. This period may be varied with the agreement of staff and their supervisor to meet LECC or staff needs. If the bandwidth is altered, flex is accrued after 7 hours work (excluding meal breaks) and overtime after 11.5 hours from the start of the altered bandwidth.
- 9 Minimum hours to be worked each day - 5 hours. Minimum hours may be varied temporarily by agreement of the staff member and their Divisional Senior Executive in exceptional circumstances.
- 10 Maximum hours to be worked each day – 10 hours, unless approved otherwise.
- 11 Meal break - Minimum of 30 minutes every 5 hours. Surveillance officer meal breaks and the payment of meal allowances are defined in the LECC Flexible Working Hours policy.
- 12 Flex Period - 140 hours (4 weeks), which are the contract hours for a full time employee.

- 13 Maximum Flex Leave that can be taken in any financial year - 26 days (182 hours).
- 14 Carry over credit at end of Flex Period - up to 14 hours.
- 15 Carry over debit at end of Flex Period - up to 10.5 hours. Debits in excess of 10.5 hours must be offset by an application for Annual Leave.
- 16 Maximum Flex Leave that can be taken in a Flex Period - 28 hours. Staff are expected to take Flex leave as either a half day (3.5 hours) or a full day (7 hours). Part time employees may take a pro rata amount equivalent to the hours worked on a specific day. Flex Leave may be taken at the beginning and/or end of a period of other leave.
- 17 Working hours in excess of the 14 hour carry over credit cannot be banked and are forfeited.
- 18 Flex Record - Staff must maintain current and accurate records of their working hours on the LECC's flex sheet system. Data from flex sheet records will be analysed from time to time.
- 19 Where a staff member has accrued 6 weeks recreation leave (that is, 30 days or more), unless otherwise authorised by their Divisional Senior Executive, flex leave can only be taken in situations where at least one day of recreation leave has been applied for and approved within the flex period. If, however recreation leave has been applied for and declined or not actioned by the manager, access to flex leave is available.
- 20 No payment will be made in respect of untaken Flex leave upon termination of employment.

2.3 FLEXIBLE WORK ARRANGEMENTS (FWA)

- 1 This Determination aims to provide assistance to staff in balancing their personal and work commitments. This enables the LECC to be more flexible in the delivery of its services and to improve the satisfaction of staff. FWA will only be available with the agreement of management.
- 2 The following FWA are available:
- (a) Permanent Part-time Employment - enables staff to permanently work hours which are less than the full-time weekly hours of their position.
 - (b) Part-time Leave Without Pay - enables staff to work on a part-time basis for a period of time, either by reducing hours in their current position or by doing other duties. At the end of the period they return to full-time work.
 - (c) Part Year Employment - enables staff to work for an agreed number of weeks per year, with an agreed number of unpaid weeks.
 - (d) Job Sharing - enables a job to be shared by two or more staff. They may be employed on a part-time basis or may be full-time employees taking part-time leave without pay.
 - (e) Working at home - Staff may work at home from time to time if it is an efficient and effective way of working and the outcomes to be achieved are agreed to by their manager. The documented security policies and procedures relating to this provision must be adhered to at all times.

- 3 A permanent member of staff originally employed on a full-time basis and currently working in a FWA has the right to return to full-time employment. In such a case they will be paid at their substantive salary level but may not be able return to the work carried out before entering the FWA in accordance with the LECC Policy.

2.4 HOURS OF WORK

- 1 Full time employees work a minimum standard of 140 hours per 4 week cycle (70 hours per fortnight).
- 2 Part time employees work the pro rata equivalent of the minimum standard hours attached to their respective roles.
- 3 Electronic surveillance monitor staff work 280 hours per 8 week cycle on a 365 day per year rotating shift arrangement consisting of 4 x 10 hour days on shift followed by 4 days off shift.

2.5 PERFORMANCE MANAGEMENT AND REVIEWS

Performance management is an essential tool that is relevant to all employees at all levels in LECC. It provides a means to improve organisational performance by linking and aligning individual, team and organisational objectives and results. It also provides a means to recognise and reward good performance and to manage under-performance.

The LECC performance management and development system aims to:

- build individual, team and organisational capabilities
- better align employees and their capabilities with the organisation and its values
- link the development of capabilities with business planning
- improve organisational performance
- increase employee engagement
- encourage rich conversations between employees and managers
- recognise and reward individual and team performance
- manage underperformance in a timely manner.

The performance management and development system fulfils the requirements of section 67 of the Government Sector Employment (GSE) Act 2013 and section 35 of the Government Sector Employment Rules 2014. It also aligns with the Public Sector Performance Development Framework.

An employee's performance for the previous performance cycle, along with other relative checks, must be considered, as set out in LECC policies and procedures, prior to approval of the following:

- reassignment, transfer or secondment, including secondments and temporary assignments to a higher grade or band other than the employee's current assignment
- progression through salary increments.

Part 3 – REMUNERATION AND ALLOWANCES

3.1 GENERAL

The salary structure has regard for equivalent work value and salaries in the following markets:

NSW public sector (Administrative & Clerical and Legal); Police/Investigator (NSW, Federal, Australian Crime Commission); and Private sector (Information Technology).

Salaries will be adjusted in accordance with increases applied by the *Crown Employees (Public Sector – Salaries 2016) Award*, or any replacement of that award, subject to successful performance review.

3.2 OVERTIME

- 1 LECC managers at Grade 11 and Grade 12 are not entitled to the payment of overtime. However, where, in the opinion of the relevant Divisional Senior Executive a LECC manager Grade 11-12 works excessive additional hours, the Divisional Senior Executive may approve compensation of not more than 7 hours leave in lieu to be taken within three months of the leave being granted.
- 2 Staff listed below shall be paid an allowance in lieu of overtime payments for overtime worked on weekdays, weekends and public holidays:

Assistant Investigator
 Investigator
 Financial Investigator
 Senior Investigator
 Special Investigator (Financial and also Technical)
 Technical Operative
 Surveillance Operative
 Surveillance Team Leader
 Critical Incidents Operatives

The allowance forms part of overall remuneration, and is set out in Table 1 of this Determination.

- 3 All other non-executive staff shall be paid overtime in accordance with the provisions of the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*.
- 4 Recall to Duty

This clause does not apply to LECC managers Grade 11-12 or to employees paid an overtime allowance in lieu of overtime payments. For all other employees:

- (a) An employee recalled to duty after leaving the LECC premises shall be paid for a minimum of three (3) hours work at the appropriate overtime rates.
- (b) The employee shall not be required to work the full three (3) hours if the job can be completed within a shorter period.
- (c) When an employee returns to the place of work on a number of occasions in the same day and the first or subsequent minimum pay period overlap into the next call out period, payment shall be calculated from the commencement of the first recall until either the end of duty or three (3) hours from the commencement of the last recall, whichever is the greater. Such time shall be calculated as one continuous period.

- (d) When an employee returns to the place of work on a second or subsequent occasion and a period of three (3) hours has elapsed since the employee was last recalled, overtime shall only be paid for the actual time worked in the first and subsequent periods with the minimum payment provision only being applied to the last recall on the day.
- (e) A recall to duty commences when the employee starts the additional period of work and terminates when the work is completed. A recall to duty does not include time spent travelling to and from the place at which work is to be undertaken.
- (f) An employee recalled to duty within three (3) hours of the commencement of usual hours of duty shall be paid at the appropriate overtime rate from the time of recall to the time of commencement of such normal work.
- (g) This clause shall not apply in cases where it is customary for an employee to return to the LECC's premises to perform a specific job outside the employee's ordinary hours of duty, or where overtime is continuous with the completion or commencement of ordinary hours of duty. Overtime worked in these circumstances shall not attract the minimum payment of three (3) hours unless the actual time worked is three (3) or more hours.

5 On-Call (Stand-By) and On-Call Allowance

This clause does not apply to employees paid a composite allowance. For all other employees:

A LECC employee shall be entitled to be paid the on-call allowance set out in Table 1 of this Determination when directed by the LECC to be on call or on stand-by for a possible recall to duty outside the employee's working hours.

- (a) if an employee who is on call and is called out by the LECC, the overtime provisions as set out at Clause 3.2 Overtime shall apply to the time worked,
- (b) where work problems are resolved without travel to the place of work whether on a weekday, weekend or public holiday, work performed shall be compensated at ordinary time for the time actually worked, calculated to the next 15 minutes.

6 Overtime Meal Breaks

- (a) Employee working flexible hours - an employee required to work overtime on weekdays beyond 7 p.m. and until or beyond eight and a half hours after commencing duty plus the time taken for lunch, shall be allowed 30 minutes for a meal and thereafter, 30 minutes for a meal after every five hours of overtime worked. Overtime is not paid in respect of the time taken for a meal break.
- (b) Employees Generally - an employee required to work overtime on a Saturday, Sunday or Public Holiday, shall be allowed 30 minutes for a meal after every five hours of overtime worked. An employee who is unable to take a meal break and who works for more than five hours shall be given a meal break at the earliest opportunity. Overtime is not paid in respect of the time taken for a meal break.

7 Provision of Transport in conjunction with Working Overtime

For the purpose of this clause, departure or arrival after 8.00 p.m. will determine whether the provisions of this clause apply. Departure or arrival after 8.00 p.m. of an employee on overtime

does not in itself warrant the provision of transport. It needs to be demonstrated that the normal means of transport, public or otherwise, is not reasonably available and/or that travel by such means of transport places the safety of the employee at risk.

The responsibility of deciding whether the provision of assistance with transport is warranted in the circumstances set out above rests with the relevant LECC Unit manager.

Where overtime is required to be performed, it should be arranged, as far as is reasonably possible, so that the employee can use public transport or other normal means of transport to and from work.

Where an employee ceases overtime duty after 8.00 p.m. and public transport or other normal means of transport is not reasonably available, arrangements may be made for transport home or to be provided by way of taxi.

3.3 ABOVE-LEVEL ASSIGNMENTS

Where employees are temporarily assigned or seconded to a higher grade position, in addition to the experience gained performing those duties, an above-level allowance will be paid in the circumstances described here.

The allowance will be calculated by the difference between the employee's current salary and the nearest salary point of the classification of the position temporarily assigned to. Payment of the allowance will be as follows:

- (a) 10 working days or less - No payment
- (b) 11 or more working days - 100% difference for the full period, except if the employee does not undertake all the duties and responsibilities of the higher position, in which case a percentage of the difference is paid as agreed between the employer and his/her manager.

3.4 OTHER ALLOWANCES

1 Composite allowance

A Composite Allowance is paid to staff in compensation for shift work; changes in shift; alteration of bandwidth; on-call allowances for days rostered off; on-call allowances for days rostered on; and public holidays.

Where specified in Table 1 the composite allowance includes overtime worked on weekdays and weekends.

The composite allowance is set out in Table 1 of this Determination.

2 On call allowance

An on-call allowance is paid to staff in compensation for being on-call for days rostered off; and on-call for days rostered on.

The on-call allowance is set out in Table 1 of this Determination. This allowance will increase in line with increases in the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*.

3 Community language allowance scheme

Staff appointed as language aides under the Community Language Allowance Scheme (CLAS) will be paid the allowance referred to in the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*. The allowance will be increased in line with the salary increases prescribed in that Award. The rate set out in Table 2 will apply from the first full pay period commencing after 1 July 2016.

An annual review of whether the payment of the allowance is still applicable will occur on the anniversary of receiving the allowance.

4 First Aid allowance

Staff appointed as First Aid Officers will be paid the allowances referred to in the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*. The allowance will be increased in line with the salary increases prescribed in that Award. The rate set out in Table 2 will apply from the first full pay period commencing after 1 July 2016.

The First Aid Allowance shall not be paid during extended leave or any other continuous period of leave which exceeds one week. When the First Aid Officer is absent on leave for more than one week and another qualified staff member is selected to relieve in the First Aid Officer's position, such staff members shall be paid a pro rata first aid allowance for assuming the duties of a First Aid Officer.

5 Associate's allowance

Staff trained to be Associates will receive the allowance referred to in Table 3 of this Determination. The allowance will be paid fortnightly to Associates for recognition of annual training and being available to work as an Associate. A daily sitting fee will also be paid for each day of hearings. This allowance will maintain parity with the Associate's allowance set out in the *Independent Commission Against Corruption Award 2016*, and increase when the ICAC allowance increases.

TABLE 1

Allowance	Classification entitled to allowance	FFP 1.7.16 % of base rate of pay \$
Composite allowance	Electronic surveillance monitoring staff	22%
Composite allowance (includes overtime)	Critical Incident Operative, Surveillance Team Leader, Surveillance Operative, Technical Surveillance Operative	22%
Composite allowance (includes overtime) (Integrity Division only)	Senior Investigator, Special Financial/Technical Investigator, Investigator, Financial Investigator, Assistant Investigator	9.0%
On-call allowance	Security staff, ICT staff	\$1.04 per hour
On-call allowance (stand by)	Other staff as required	\$0.94 per hour

TABLE 2

Community Language Allowance and First Aid Allowance

Allowance	FFP 1.7.16 \$
Community language – base level rate	\$1,345 pa
Community language – higher level rate	\$2,021 pa
First aid – holders of basic qualifications	\$866 pa
First aid – holders of current occupational first aid certificate	\$1,301 pa

TABLE 3

Associate's Allowance

Allowance	FFP 1.7.16 \$
Associate's Allowance	
- Total allowance payable in 12 month financial period not to exceed	\$6,187 pa
- 50% allowance payable to approved staff members on basis of training and availability	\$3,093 pa
- Daily Rate	\$77.34 per day



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