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SERIAL C8684

HIGHER SCHOOL CERTIFICATE MARKING AND RELATED CASUAL EMPLOYEES RATES OF PAY AND CONDITIONS AWARD 2017

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Education Standard Authority.

(No. 2017/177332)

Before Chief Commissioner Kite

20 June 2017

AWARD

Clause No. Subject Matter

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SECTION 1 - THE AWARD**1. Title**

This award shall be known as the (Higher School Certificate Marking and Related Casual Employees) Rates of Pay and Conditions Award 2017.

2. Intention

- 2.1 This award provides for increases in rates of pay and those allowances that are not regulated by other instruments consistent with the NSW Public Sector Wages Policy 2011.
- 2.2 The increases in the rates of pay and allowances in Schedule 1 arise from a net increase of 2.5% per annum.

3. Definitions

- 3.1 "the Act" means the *Government Sector Employment Act 2013*.
- 3.2 "Assistant Supervisor of Marking" means a person employed as such to assist the Supervisor of Marking.
- 3.3 "Chief Executive Officer" means the person holding or acting in the office of the Chief Executive Officer of the NSW Education Standards Authority pursuant to section 8 of the *Education Standards Authority Act 2013* The Chief Executive Officer is the Agency Head pursuant to section 28 of the *Government Sector Employment Act 2013*. Reference to the Chief Executive Officer may from time to time refer to his/her delegate, meaning a person delegated by the Chief Executive Officer to perform functions associated with the office.
- 3.4 "Corporate marking" means the marking, pilot marking, briefing, standards setting and other activities associated with HSC examinations, whether written or other, carried out at centres designated by the Chief Executive Officer during the day and night.
- 3.5 "Director" means the person holding or acting in the Senior Executive position appointed with responsibility for the Higher School Certificate programs pursuant to the *Government Sector Employment Act 2013*.
- 3.6 "Discrepant" means a difference in the marks allocated to a student's examination response which has been double marked which exceeds the parameters set out in clause 4.2 of this award. For questions where a single mark is awarded by each examiner, two marks are discrepant if their difference is equal to or greater than a fixed proportion of the maximum mark value of the question.
- 3.7 "External Marker" means a person employed as such to undertake a program of marking of the HSC and paid by the number of questions, papers or parts of papers marked, with additional payment on an hourly basis for briefing and pilot marking.

- 3.8 "External Marking" means the marking, pilot marking, briefing, standards setting and other activities associated with HSC examinations, whether written or other, where the responses are collected by or delivered to the markers to mark in their own time, and at individual locations including domestic locations.
- 3.9 "Double Marking" means a process where two markers make independent judgements concerning the relative merit of a student's examination response and each allocates a mark in accordance with the approved marking scheme and with each marker being unaware of the mark allocated by the other marker.
- 3.10 "Employees" means Markers, External Markers, Senior Markers, Assistant Supervisors of Marking, Supervisors of Marking, LOTE Examiners and LOTE Casuals.
- 3.11 "HSC" means the Higher School Certificate examination.
- 3.12 "Itinerant marking" means the marking, pilot marking, briefing, standards setting and other activities associated with HSC examinations, whether written or other, which occurs at various successive locations and where the markers travel between these decentralised locations at which the responses are produced or held.
- 3.13 "Languages other than English (LOTE) Examiner" means a person employed as such released from their normal teaching duties while on full pay during the normal working day, to conduct speaking and listening skills examinations in languages other than English at schools, colleges or special examination centres designated by the Chief Executive Officer for students other than those being taught as part of the Examiner's normal teaching duties. LOTE Examiners do not assign marks.
- 3.14 "Languages other than English (LOTE) Casual" means a person employed as such (who is not normally employed in a teaching position for which paid relief is provided) to conduct speaking and listening skills examinations in languages other than English at schools, colleges or special examination centres designated by the Chief Executive Officer. LOTE Casuals do not assign marks.
- 3.15 "Marker" means a person employed as such for the purpose of Corporate marking, External marking or Itinerant marking.
- 3.16 "Marking Staff" means all persons employed in the classifications of Markers, Senior Markers, Assistant Supervisors of Marking and Supervisors of Marking.
- 3.17 "NESA" means the NSW Education Standards Authority a statutory body corporate established by section 4 of the Education Standards Authority Act 2013.
- 3.18 "Onscreen Marking" means the marking of examination responses provided to Marking Staff or External Markers via the internet or a computer network.
- 3.19 "Paid Relief" means the reimbursement made to a school, college or school system to cover the employment of a replacement teacher to replace the teacher involved in marking or the Languages other than English (LOTE) Examiner conducting languages other than English examinations (as per definition), with the intention that the reimbursement made is to enable a replacement teacher to perform the normal duties of the teacher involved in marking or the teacher conducting languages other than English examinations.
- 3.20 "Parties" means the Chief Executive Officer and the unions.
- 3.21 "Senior Marker" means a person employed as such to undertake marking as required and to supervise a team of markers under the direction of the Supervisor of Marking and the Assistant Supervisor of Marking.
- 3.22 "Supervisor of Marking" means a person employed as such to manage the marking operation in particular subjects, courses or parts of courses as determined by the Chief Executive Officer.

- 3.23 "Unions" means the Australian Education Union New South Wales Teachers Federation Branch, the National Tertiary Education Union New South Wales Division and the New South Wales Independent Education Union.

SECTION 2 - CONDITIONS OF MARKING AND RELATED MATTERS

4. HSC Marking Procedures

- 4.1 Double Marking shall be used for questions which require an extended response such as essays, creative writing and responses to literature and will be used in all subjects where double marking was applied in the 1998 HSC.
- 4.2 The identification of discrepant marks will be made in accordance with the following parameters:
- (a) For questions where a single mark is awarded by each examiner - where the difference between the two examiners' marks is equal to or greater than one-third of the range of marks allocated to the question.
 - (b) Where the mark awarded for the question comprises marks awarded to a number of part questions - where the difference between the total mark awarded for the question by each examiner is equal to or greater than one-quarter of the range of marks.
- 4.3 Where marks for a student's examination response are found to be discrepant pursuant to clause 4.2, the student's examination response will undergo a third independent marking.
- 4.4 The parties to the award agree to consult in relation to the application of double marking and discrepant marking prior to each marking period.

5. Marking of Written Papers

- 5.1 Pen-and-paper marking is undertaken by marking staff travelling to a centre to mark between 4.00 p.m. and 9.00 p.m. Monday to Friday and either 8.30 am and 4.30 pm or 9.00 a.m. and 5.00 p.m. on Saturdays.
- 5.2 A proportion of marking of written papers may occur between 9 am and 5.30 pm Monday to Friday in the case only of:
- (a) briefing, pilot marking, standards setting and other related duties performed during the day prior to the commencement of evening marking at a centre or at the conclusion of the marking program for a course; and
 - (b) corporate marking performed in accordance with sub-clauses 5.3 to 5.5, referred to as day marking.
- 5.3 The particular subjects, courses or parts of courses to be marked by corporate marking between 9 am and 5.30 pm Monday to Friday:
- (a) in the Sydney metropolitan area will be rotated from year to year and will not include subjects, courses or parts of courses in which there is itinerant marking;
 - (b) in areas outside the Sydney metropolitan area may be rotated from year to year and will not include subjects, courses or parts of courses in which there is itinerant marking.
- 5.4 No more than 12 per cent of the total hours of written marking shall be marked by corporate marking between 9 am and 5.30 pm Monday to Friday.
- 5.5 Onscreen Marking of HSC papers and questions, on a Corporate or External Marking basis will be used for those subjects, courses or questions as determined by the Chief Executive Officer, at his or her discretion without limit each year.

- 5.6 Each year the parties agree to consult over the operation of corporate marking between 9 am and 5.30 pm Monday to Friday in the preceding marking period. Such consultation shall include, without being limited to, discussion of the following issues - the mix of metropolitan and non-metropolitan corporate marking between 9 am and 5.30 pm Monday to Friday and the subjects in which corporate marking between 9 am and 5.30 pm Monday to Friday is utilised.

6. Privacy

The parties note the regulations to the *Education Act* 1990.

SECTION 3 - CONDITIONS OF EMPLOYMENT

7. Duties of Marking Staff

7.1 Marking Staff

Without limiting the generality of clause 7.2, the duties of marking staff involve attendance at designated venues or external settings for External Markers according to a program determined by the Chief Executive Officer comprising pilot marking, marking, briefing, standards setting and other activities associated with examination scripts, projects and performances for Higher School Certificate assessment purposes. These activities can take place in a range of school, marking centre and external settings.

7.2 Duties as Directed

- (a) The Chief Executive Officer, or his/her delegate, nominee or representative, may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training, consistent with the classifications covered by this award and provided that such duties are not designed to promote deskilling.
- (b) Any directions issued by the Chief Executive Officer pursuant to paragraph (a) of this clause shall be consistent with the Chief Executive Officer's responsibility to provide a safe and healthy working environment.

8. Hours of Work

8.1 The ordinary hours of work for Employees shall be:

- (a) Monday to Friday Corporate Marking HSC:
 - (i) 9 am to 5.30 pm;
 - (ii) 4 pm to 9 pm.
- (b) Saturday Corporate Marking HSC and the conducting of languages other than English speaking and listening skills examinations on Saturdays 8.30 am to 4.30 pm or 9 am to 5 pm.
- (c) Itinerant Marking - 9 am to 3.30 pm Monday to Friday, 9 am to 5 pm Saturday.
- (d) External Marking - outside the hours midnight to 6 am. At the request of Markers, Supervisors of Marking may request the Director to vary the hours of work for particular subjects to outside the hours midnight to 5 am.

8.2 Provided that, with the exception of External Markers, all other Employees will be entitled to a meal break of either a half-hour, if agreed by a majority of markers at the initial briefing session by vote supervised by the Supervisor of Marking, or one-hour between the hours, as applicable, of:

- (a) 12.30 pm to 2 pm, Monday to Friday;

- (b) 6 pm to 7.30 pm, Monday to Friday;
 - (c) 12.30 pm to 2 pm, Saturday.
- 8.3 With the exception of External Markers, employees will be entitled to a morning and afternoon tea break of ten minutes each on each work day which will count as time worked.
- 8.4 Hours of work for Languages other than English (LOTE) Examiners shall be pursuant to the minimum shift engagement of three hours between 9 am to 3.30 pm on weekdays.
- 8.5 With the exception of External Markers, and at the request of the markers of a particular subject, Supervisors of Marking may ask the Director to vary the hours of work for that subject as follows:
- (a) Commencing work at 8.30 am and finishing at 4.30 pm on Saturdays.
 - (b) Commencing work at 4 pm and finishing at 9.15 pm and 8.45 pm respectively on Monday to Friday.
 - (c) If a half hour meal break is elected pursuant to clause 8.2, either commencing work a half hour later or finishing work a half hour earlier.
- 8.6 Subject to the progress of marking in particular subjects, courses or parts of courses, Supervisors of Marking may request the Director to allow an unpaid lay night where no marking is undertaken in a particular subject, courses or parts of courses on that night.
- 8.7 Itinerant examiners shall have up to one hour of unpaid travelling time, with one hour for lunch for the remuneration as applicable according to whether they are released from full-time teaching or not as set out in clauses 15.2.2 and 15.2.3 respectively. All other marking shall be remunerated at the applicable rates as set out in clauses 15.2.1 and 15.2.4. Additional travelling time shall be paid at the weekday rate as set out in clause 15.2.3.
- 8.8 Employees engaged in Corporate Marking may, subject to the agreement of the majority of employees affected, reach agreement with the relevant Supervisor of Marking and the Director to work beyond the scheduled finishing times described in clause 8.1. In the event this involves Employees working beyond their regular shift of:
- (a) 9 am to 5.30 pm weekdays until 6.30 pm
 - (b) 9 am to 5 pm Saturday until 6.30 pm
 - (c) 8.30 am to 4.30 pm Saturday until 6.00 pm

then a further meal allowance is payable notwithstanding the provisions of clause 15.5.

9. Provision of Facilities

- 9.1 Tea/Coffee
- 9.1.1 Adequate tea, coffee, milk, sugar and refrigerator facilities will be provided at each marking centre.
 - 9.1.2 Access of employees to tea and coffee facilities will, at all times, be subject to the directions of the Supervisors of Marking to ensure minimal interruption to the marking process.
 - 9.1.3 Employees will supply their own cups for tea and coffee during the employment.

9.2 Work Health and Safety

9.2.1 Marking centres will be clean and tidy prior to the commencement of marking each day in accordance with work health and safety legislation standards.

9.2.2 The parties to the award will monitor and address any work health and safety issues arising from the implementation of onscreen marking.

9.3 Proof of Identity

Employees will supply their own photograph, of a standard passport size, for attachment to an identification card. Unless marking in an External marking setting employees will carry identification cards at all times during the marking process. Employees will replace photographs in the event of the loss of a card.

9.4 Other Facilities

Marking centres will be provided with adequate toilets, first-aid facilities and eating areas.

10. Recruitment and Appointment of Marking Staff

10.1 Supervisors of Marking

Supervisor of Marking applications will be considered by a Selection Committee chaired by the Director's nominee. The following factors will be used in selecting the most eligible applicant.

10.1.1 Previous marking experience as a Senior Marker, Coordinating Senior Marker or Assistant Supervisor of Marking.

10.1.2 Substantial and recent teaching experience at a senior level.

10.1.3 Demonstrated high level organisational, management and leadership skills. eg. position on staff.

10.1.4 Demonstrated ability to manage a complex operation such as a marking centre.

10.1.5 Qualifications in the subject - university degree or recognised equivalent.

10.1.6 Membership of professional bodies associated with the subject, eg. curriculum committees, professional associations, etc.

10.2 Criteria for Marker Selection

10.2.1 NESAs will ensure that subject specific criteria used by the Supervisor of Marking (SOM) when making his/her selection/non-selection conforms with the general selection criteria and has been applied consistently across the subject/course.

The following general criteria will be used in selecting markers.

10.2.1.1 Total number of years teaching the subject/course - As a general guide, three years' experience teaching the subject/course at a senior level will be regarded as a minimum requirement for appointment as a marker.

10.2.1.2 Recent teaching of the subject/course - As a general guide, an applicant who has not taught the course/subject in the last 3 years is regarded as not having recent teaching experience.

10.2.1.3 Retired applicants - The requirement for adequate recency of teaching will mean that, in most cases, retired applicants will not be eligible for appointment.

- 10.2.1.4 Qualifications - Normally a degree with a major in the subject or a program of study deemed to be equivalent is required for appointment as a marker.
- 10.2.1.5 Current position within the school - School Principals are not eligible for appointment as a marker. Preference is given to teachers directly involved in the organisation and teaching of the subject.
- 10.2.1.6 Part-time and casual teachers - In most cases, applicants who are casual teachers will not have sufficient teaching experience. However, there may be instances where the applicant is a casual teacher but has had experience teaching blocks of senior classes which may amount to the minimum required years teaching experience for appointment.
- 10.2.1.7 Turnover of markers - Where there are sufficient suitable applicants a minimum of 10 per cent of markers appointed each year will not have marked previously. This is a policy aimed at increasing the pool of teachers with marking experience in each subject.
- In subjects where the number of applicants exceeds the number of available positions, a limit on the number of years for appointment to marking may be applied.
- 10.2.1.8 Topic expertise - Where necessary, an applicant may be appointed on the basis of the expertise they have in a particular area of the subject/course.
- 10.2.1.9 Previous satisfactory marking - Although previous marking experience should be considered in determining an applicant's qualifications for appointment, NESAs will not automatically reappoint a marker from the previous year. Markers deemed to have an unsatisfactory performance level may not be appointed in subsequent years.
- 10.2.1.10 Other relevant experience in promoting the subject - An applicant who has not had any recent experience teaching the course or the subject may be appointed if NESAs deem their experience relevant to the marking program.
- 10.2.1.11 Distance - Appointment of markers will be restricted to teachers who can ensure that they will be able to commence marking as scheduled each day. Any applicant who is outside reasonable distance from the marking centre must show ability to get there on time.
- Applicants who live a long distance from the marking centres but have indicated that they intend to take leave if appointed will be considered eligible in terms of this criterion.
- 10.2.1.12 Declaration and approval - The application must include a declaration by the Principal or Dean of Studies at TAFE or relevant supervisor that
- (i) the information provided by the applicant is, to the best of their knowledge, correct;
 - (ii) the application is approved.
- 10.2.1.13 Selection of markers is based on the information provided on the application. NESAs will not contact an applicant who has not provided information that is crucial in determining that person's eligibility. Applicants are responsible for providing complete and accurate information.
- 10.2.1.14 If a marker's application is submitted after the closing date, the applicant will only be appointed if there is a shortage of qualified applicants.

- 10.2.1.15 In selecting markers, consideration will be given to a balanced representation of markers from Government Schools, Catholic Schools, Independent Schools, Institutes of TAFE and universities.

10.2.2 Criteria Specific to Marker Selection -

- 10.2.2.1 Appointment to more than one marking session - In order to give as many suitably qualified applicants the opportunity to participate in marking, applicants will generally be appointed to only one course and to one session where there is both a practical and written component.
- 10.2.2.2 Appointed markers will need to be available for all marking sessions, including briefing and pilot marking, and will have agreed to this and all other conditions of employment when submitting their application. Applicants who do not agree to the conditions of employment will not be appointed.

10.3 Criteria Specific to Selection of Marking Staff for Onscreen Marking

Markers applying for onscreen marking where the marking is not to occur in a Corporate Marking Centre must ensure that they can provide access to a fast and reliable internet service for the purposes of marking.

10.4 Provision of Information

- (a) The unions party to the award shall have access to information concerning the application of criteria for particular applicants.
- (b) The unions shall have access to information on the distribution of applicants appointed from various schools and different education systems.
- (c) An applicant who is not appointed shall be advised of the reason for non-appointment.

11. Termination of Services

An employee is entitled to 48 hours' notice of termination of services, or the equivalent of two days' ordinary pay in the relevant employment classification, except where termination of services is on account of misconduct of any kind or any unsatisfactory standard of work or voluntary withdrawal by the employee.

12. Qualifications

The minimum qualifications and experience for employment under this award shall be determined by the Chief Executive Officer.

13. Reporting of Performance

A system of appraisal of performance of Employees will be undertaken during the HSC marking. This will involve provision of an individual report at the conclusion of marking to Employees showing:

- (i) an overall grading of his/her performance;
- (ii) supporting information relating to accuracy and rate of marking;
- (iii) an indication of his/her attendance record throughout the marking;
- (iv) a written comment describing his/her performance throughout the marking; and for Senior Markers
- (v) an indication of his/her performance relating to leading a marking team, the production of marking kits and monitoring marking.

14. Family Leave Provisions

14.1 The Chief Executive Officer must not fail to re-engage an Employee because:

14.1.1 The Employee or Employee's spouse is pregnant; or

14.1.2 The Employee is or has been immediately absent on parental leave

The rights of an employer in relation to engagement and re-engagement of Employees are not affected, other than in accordance with this clause.

14.2 Personal Carers entitlement for Employees

14.2.1 Employees are entitled to not be available to attend work, or to leave work if they need to care for a family member who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to evidentiary requirements set out below in sub-clause 14.3, and the notice requirements set out in sub-clause 14.4.

14.2.1.1 A family member for the purposes of above is:

a spouse or family member; or

a de facto spouse being a member of the opposite sex to the Employee who lives with the Employee as her husband or as his wife on a bona fide domestic basis although not legally married to that Employee; or

a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent or legal guardian), a grandparent, grandchild or sibling of the Employee or of the spouse or de facto spouse of the Employee; or

a same sex partner who lives with the Employee as the de facto partner of that Employee on a bona fide domestic basis; or a relative of the Employee who is a member of the same household, where for the purposes of this definition:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

"household" means a family group living in the same domestic dwelling

14.2.2 The Chief Executive Officer and the Employee shall agree on the period which the 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 Employee is not entitled to any payment for the period of non-attendance.

14.2.3 The Chief Executive Officer must not fail to re-engage an Employee because the Employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage an Employee are otherwise not affected.

14.3 The Employee, shall if required,

14.3.1 Establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or

14.3.2 Establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such an emergency resulted in the person concerned requiring care by the Employee.

In normal circumstances, an Employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

14.4 The Employee must, as soon as reasonably practical and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the Employee will inform the employer within 24 hours of the absence (drawn from AIRC order (PR964989)).

14.5 Bereavement entitlements for Employees

14.5.1 Employees are entitled to not be available to attend work or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).

14.5.2 The Chief Executive Officer and the Employee shall agree on the period for which the Employee will be entitled to not be available to attend work. In the absence agreement, the Employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The Employee is not entitled to any payment for the period of non-attendance.

14.5.3 The Chief Executive Officer must not fail to re-engage the Employee because the Employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage an Employee are otherwise not affected.

14.5.4 The Employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the Employee will inform the employer within 24 hours of the absence (Drawn from AIRC order (PR964989)).

SECTION 4 - RATES OF PAY AND ALLOWANCES

15. Rates of Pay and Allowances

15.1 The monetary rates covered by this award are set out in tables 1-5 of Schedule 1 of this award:

Table 1 - Weekday, Weekday Supplementary, Weeknight/Saturday and Sunday Rates

Table 2 - External and Corporate Per Unit marking rates

Table 3 - Languages other than English (LOTE) Examiner Hourly Rates

Table 4 - Other Rates and Allowances

Table 5 - Hourly Rates floor to apply to Corporate Onscreen Marking

15.2 Rates of Pay

Subject to the provisions of clause 15.2.7:

15.2.1 Weeknight/Saturday rates are hourly rates paid to Employees from 3.30 pm on any weekday and for all time worked on a Saturday. These rates include a loading of 11.4% on the Weekday rates to compensate for all disabilities.

- 15.2.2 The Weekday Supplementary rates apply to Employees from 9 am on a weekday until 3.30 pm for Corporate Marking and Itinerant Marking where a teacher is released on pay from another employer.
- 15.2.3 The Weekday rates apply to Employees from 9 am on a weekday until 3.30 pm for Corporate Marking and Itinerant Marking where the Employee is not normally employed in a teaching position for which paid relief is provided during marking. This provision does not apply to those Employees to which clause 15.2.2 applies.
- 15.2.4 Sunday rates are hourly rates paid to employees for all times worked on Sundays and attract a loading of 50% above the Weekday rate.
- 15.2.5 Languages other than English (LOTE) examiners and casuals shall be paid at the rates specified at Table 1 for markers, except in the case of LOTE Examiners who work less than a full day on weekdays who are to be paid at the hourly rates specified at Table 3, calculated by dividing the Weekday Supplementary rates at clause 15.2.2 by $5\frac{1}{2}$ being the number of paid hours compensated by the Weekday Supplementary rates.
- 15.2.6 External and Corporate Per Unit Marking Rates:
- (a) Where marking is conducted in an External marking mode the rates for such External marking are as set out in Table 2 provided that where the paper is less than three hours in length the rate is determined as a fraction of the three hour rate e.g. for a two hour paper the payment is two thirds of the three hour rate.
 - (b) Where the marking is undertaken on a question basis the payment will be calculated by dividing the relevant rate for such paper by the number of questions unless otherwise specified in clause 15.2.7(c) or in Table 2.
 - (c) For Onscreen HSC marking, other than mathematics, where the marking is undertaken on a question basis the Per Unit Rate of Pay method of payment will be calculated by multiplying the relevant rate for each paper by the percentage of the total mark value of the paper represented by the question concerned.
 - (d) Corporate Onscreen HSC markers remuneration will be based on the greater of:
 - (i) the total number of papers or questions marked onscreen multiplied by the applicable Per Unit Rate of Pay; and,
 - (ii) the total hours of overall Onscreen Marking undertaken, multiplied by the applicable hourly rate of pay as specified in Table 5 of Schedule 1. For this purpose, the total hours of Onscreen Marking undertaken by individual markers will be the elapsed time of Onscreen Marking as recorded by NESA's onscreen marking software for each marker.
- 15.2.7 Marking staff engaged in External Onscreen Marking will receive an allowance for compensation for the use of private Information and Communications Technologies (ICT) facilities (including broadband) as set out in Table 4 item 6 of Schedule 1.
- 15.2.8 Senior Markers may choose to engage in External Onscreen Marking as Markers outside the fixed hours provided at clause 8 and will be remunerated according to the per unit rate of pay as per Table 2 Schedule 1.
- 15.2.9 Senior Markers engaged in corporate or external onscreen marking and working as Senior Markers according to fixed hours will be remunerated according to Table 1 Schedule 1.
- 15.3 As the Employees are engaged on a casual basis for a maximum of up to six weeks, the rates set out in clause 15.2 incorporate loadings for casual engagement, sick leave and pro rata holiday pay. The pro rata holiday pay incorporated in the rates in the said clause was calculated as $1/12$ of the hourly rate.

15.4 Minimum Payments

15.4.1 No employee engaged in corporate marking shall be paid for less than 3 hours from the time of starting work except for markers subject to the provisions of clause 15.6.3(c) who will receive no less than for 4 hours from the time of starting work.

15.4.2 Languages other than English (LOTE) Examiners shall be paid a minimum of 3 hours for each weekday at the rates per hour as set out in Table 3 of Schedule 1.

15.4.3 Languages other than English (LOTE) Casuals shall be paid a minimum of 3 hours at the Weekday rate for Markers as set out in Table 1 of Schedule 1.

15.4.4 Corporate Markers engaged

- (a) from 9 am and who work beyond 3.30 pm shall be paid a minimum of 2 hours at the Weeknight/Saturday rate for those hours; and,
- (b) on a Saturday shall be paid a minimum of 3 hours from the time of starting work on Saturdays.

15.4.5 Itinerant Markers engaged:

- (a) from 9 am and who work beyond 3.30 pm shall be paid successive extensions of one half hour at the Weeknight/Saturday rate for those hours; and,
- (b) on a Saturday shall be paid a minimum of 3 hours calculated from the time of starting work on Saturdays.

15.4.6 This clause does not entitle any Employee to minimum payments who arrives late or who exceeds meal break times or leaves the marking centre early and works less than the minimum payment hours.

15.5 Meal Allowance

A meal allowance, as set out in Item 2 of Table 4, is payable to an employee on each day of corporate marking (including briefing and pilot marking sessions) where the Employee works for at least an hour before and an hour after the meal break. The requirement for an Employee to work before and after a meal break to be paid a meal allowance is waived for LOTE Examiners and LOTE Casuals.

15.6 Travel Allowances

15.6.1 Travelling allowances for all Employees engaged in corporate marking, except for markers engaged in corporate marking outside the metropolitan areas of Sydney, Newcastle and Wollongong, will be limited to the rates set out in item 3 of table 4 irrespective of the distance travelled.

15.6.2 Marking Staff engaged in Itinerant Marking are entitled to the travel allowances shown in Item 4 (a) of Table 4, except for their attendance at pilot marking and briefing sessions. The travel allowance for itinerant marking is based on the use of a private motor vehicle paid on the basis of cents per kilometre up to 8,000 km per annum at the rate set out in Item 4 (a) of Table 4 and is payable to persons marking itinerantly in respect of each kilometre travelled in excess of the total distance between the person's usual place of residence and their usual place of work and in circumstances where a rental motor vehicle is not utilised. Marking Staff engaged in Itinerant Marking attending pilot marking and briefing sessions will be paid a Travel Allowance at the rate set out in Item 3 of Table 4.

Note: Itinerant Markers have up to one hour of unpaid travelling time. Additional travelling time is paid pursuant to clause 8.7.

15.6.3 Marking Staff engaged in corporate marking outside the metropolitan areas of Sydney, Newcastle and Wollongong shall be paid:

- (a) the Travel Allowance as set out in Item 3 of Table 4; and in addition (where applicable).
- (b) for travel in excess of 40 km per day from the person's daily place of residence during the marking period to the marking centre and return, up to a maximum of 160 km where the person provides evidence of the additional travel involved. The amount shall be an amount per kilometre as set out in Item 4 (b) of Table 4; or
- (c) when the supplementary kilometre allowance at paragraph (b) above is not claimed on a daily basis and subject to the person's usual place of residence being outside the Sydney metropolitan area and more than 100 kilometres from the marking centre, the Travel Allowance as set out in item 5 of table 4 Schedule 1 once per engagement;

15.6.4 Marking Staff engaged in itinerant marking who normally reside outside the Sydney metropolitan area who attend briefing sessions inside the Sydney metropolitan area shall be paid the Travel Allowance at item 5 of table 4 Schedule 1 once per engagement subject to the person's usual place of residence being more than 100 kilometres from the briefing session venue.

15.7 Subsistence Allowances for Itinerant Marking

Marking Staff engaged in itinerant marking outside the metropolitan area of Sydney who are required to stay overnight at a place other than their usual place of residence during the marking period, shall be entitled to the payment of the daily allowance at item 1(a) of table 4 Schedule 1. The entitlement to this allowance will apply for periods of 24 hours and for any periods less than 24 hours will be compensated by the payment of the hourly allowance at item 1(b) of table 4 Schedule 1.

15.8 The allowances contained in subclauses 15.5, 15.6 (except for the allowances payable pursuant to subclause 15.6.3(c) and 15.6.4) and subclause 15.7 shall be adjusted in accordance with the rates as approved from time to time by the Secretary, NSW Treasury. (The allowances payable pursuant to subclause 15.6.3 (c) and 15.6.4 shall be adjusted in accordance with pay increases to this award).

16. Deduction of Unions' Membership Fees

- (i) The unions shall provide the employer with a schedule setting out unions' fortnightly membership fees payable by members of the unions in accordance with the unions' rules.
- (ii) The unions shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of unions' fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.
- (iii) Subject to (i) and (ii) above, the employer shall deduct union fortnightly membership fees from the pay of any employee who is a member of the union in accordance with the unions' rules, provided that the employee has authorised the employer to make such deductions.
- (iv) Monies so deducted from employees' pay shall be forwarded regularly to the unions together with all necessary information to enable the unions to reconcile and credit subscriptions to employees unions' membership accounts.
- (v) Unless other arrangements are agreed to by the employer and the unions, all unions membership fees shall be deducted on a fortnightly basis.
- (vi) Where an employee has already authorised the deduction of union's membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

17. Superannuation

- 17.1 All Employees shall be entitled to occupational superannuation at the appropriate Superannuation Guarantee Contribution (SGC) rate for all payments pursuant to clause 15.2 Rates of Pay.

18. Salary Sacrifice to Superannuation

- 18.1 Notwithstanding the salaries prescribed by Schedule 1, Monetary Rates, an employee may elect, subject to the agreement of the employee's department or agency, to sacrifice a portion of the wage/salary payable under clause 15, Rates of Pay and Allowances, to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. In this clause, "superannuable salary" means the employee's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations.

- 18.2 Where the employee has elected to sacrifice a portion of that payable salary to additional employer superannuation contributions:

- (a) subject to Australian Taxation law, the sacrificed portion of salary will reduce the salary subject to appropriate PAYG taxation deductions by the amount of that sacrificed portion; and
- (b) any allowance, penalty rate, payment for unused leave entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an employee is entitled under this award or any applicable award, Act or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under the said clause 15 in the absence of any salary sacrifice to superannuation made under this award.

- 18.3 the Employee May Elect to Have the Portion of Payable Salary which is Sacrificed to Additional Employer Superannuation Contributions:

- (a) paid into the superannuation scheme established under the *First State Superannuation Act 1992* as optional employer contributions; or
- (b) subject to the department or agency's agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.

- 18.4 Where an employee makes an election in terms of subclause 18.3 of this clause, the employer shall pay the portion of salary, the subject of election, to the relevant superannuation fund.

- 18.5 Where the employee is a member of a superannuation scheme established under:

- (a) the *Police Regulation (Superannuation) Act 1906*;
- (b) the *Superannuation Act 1916*;
- (c) the *State Authorities Superannuation Act 1987*;
- (d) the *State Authorities Non-contributory Superannuation Act 1987*; or
- (e) the *First State Superannuation Act 1992*,

the employee's department or agency must ensure that the amount of any additional employer superannuation contributions specified in subclause 18.1 of this clause is included in the employee's superannuable salary which is notified to the New South Wales public sector superannuation trustee corporations.

- 18.6 Where, prior to electing to sacrifice a portion of his/her salary to superannuation, an employee had entered into an agreement with his/her department or agency to have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause 18.5 of this

clause, the department or agency will continue to base contributions to that fund on the salary payable under clause 15 to the same extent as applied before the employee sacrificed portion of that salary to superannuation. This clause applies even though the superannuation contributions made by the department or agency may be in excess of superannuation guarantee requirements after the salary sacrifice is implemented.

SECTION 5 - AWARD COMPLIANCE AND RELATED MATTERS

19. Nomination of Unions' Representatives

- 19.1 In each marking section union members will be permitted, at the commencement of marking, the necessary time to meet for the purpose only of nominating a union representative. Such meeting may be announced using a public address system (if possible) provided that there is no undue disruption to other nearby markers.

20. Dispute Resolution Procedures

- 20.1 Subject to the provisions of the *Industrial Relations Act 1996*:
- 20.1.1 Should any dispute, question or difficulty arise concerning industrial matters occurring in a particular workplace, then the employee or the union's workplace representative will raise the matter with relevant Supervisor of Marking as soon as practicable.
- 20.1.2 The Supervisor of Marking will discuss the matter with the employee or the union's workplace representative with a view to resolving the matter or by negotiating an agreed method and time frame for proceeding.
- 20.1.3 Should the above procedure be unsuccessful in producing a resolution of the dispute, question or difficulty or should the matter be of a nature which involves multiple workplaces, then the employee or the union may raise the matter with the Director with a view to resolving the dispute, question or difficulty or by negotiating an agreed method and time frame for proceeding.
- 20.1.4 Where the procedures in the preceding paragraph do not lead to resolution of the dispute, question or difficulty, the matter will be referred to the Chief Executive Officer and the Branch Secretary, Division Secretary and General Secretary of the respective unions. They or their nominees will discuss the dispute, question or difficulty with a view to resolving the matter or by negotiating an agreed method and time frame for proceeding.
- 20.1.5 Should the above procedures not lead to a resolution, then either party may apply to the Industrial Relations Commission of New South Wales.
- 20.2 Whilst the procedures outlined in clause 20.1 of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties, or, in the case involving health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any staff member or member of the public.

21. No Further Claims

- 21.1 Except as provided by the *Industrial Relations Act 1996*, there shall be no further rates of pay or conditions claims by the parties prior to 31 December 2018 in relation to matters expressly contained in this award.

22. Anti-Discrimination

- 22.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

- 22.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 22.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 22.4 Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to persons under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 22.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

23. Work Health and Safety

- 23.1 For the purposes of this clause, the following definitions shall apply:
- (a) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust, corporation and/or person) which has at its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
 - (b) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that employer which might otherwise have been carried out by the other employer's own employees.
- 23.2 If the employer engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises, the employer shall do the following (either directly, or through the agency of the labour hire or contract business):
- (a) consult with employees of the labour hire business and/or contract business regarding the workplace health and safety consultative arrangements;
 - (b) provide employees of the labour hire business and/or contract business with the appropriate health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
 - (c) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
 - (d) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

- 23.3 Nothing in this clause is intended to affect or detract from any obligation or responsibility upon a labour hire business under the *Work Health and Safety Act 2011* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- 23.4 Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

24. Area Incidence and Duration

- 24.1 This award:
- 24.1.1 This award rescinds and replaces the Higher School Certificate Marking and Related Casual Employees Rates of Pay and Conditions Award 2014 published 24 June 2016 (379 I.G. 785).
- 24.1.2 This award shall commence on 1 July 2017 with a nominal term until and including 31 December 2018.
- This award remains in force until varied or rescinded, the period for which it was made having already expired.
- 24.2 Covers all casual employees employed by NESA pursuant to the Act engaged to mark the Higher School Certificate examinations at various locations determined by the Chief Executive Officer, NSW Education Standards Authority.

SCHEDULE 1

Table 1 - Weekday, Weekday Supplementary, Weeknight/Saturday and Sunday Rates:

Classification	Weekday Rates		Weekday Supplementary Rates		Weeknights and Saturday Rates		Sunday Rates	
	Per Hour from		Per Day from		Per Hour from		Per Hour from	
	1/7/17	1/7/18	1/7/17	1/7/18	1/7/17	1/7/18	1/7/17	1/7/18
	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Marker	79.53	81.52	77.08	79.01	88.59	90.80	119.25	122.23
LOTE Examiner	-	-	77.08	79.01	88.59	90.80	119.25	122.23
LOTE Casual	79.53	81.52	-	-	88.59	90.80	119.25	122.23
Senior Marker	98.69	101.16	90.93	93.20	109.90	112.65	148.05	151.75
Assistant Supervisor of Marking	114.13	116.98	105.18	107.81	127.12	130.30	171.13	175.41
Supervisor of Marking	126.41	129.57	116.49	119.40	140.80	144.32	189.68	194.42

Table 2- External and Corporate Per Unit Marking Rates on and from

HSC	1/7/2017 Rates per unit 2.5%	1/7/2018 Rates per unit 2.5%
(a) Mathematics		
Payments will be on a per question basis Base Rate (Mathematics in Practice/Mathematics in Society/General Mathematics paper from 2001)	3.154	3.233
2-3 Unit paper - Mathematics paper from 2001	4.504	4.617
3 Unit Additional paper - Mathematics Extension 1 paper from 2001	4.883	5.005
4 Unit Additional paper - Mathematics Extension 2 Paper from 2001	5.332	5.465
(b) Other subjects -		
Payments will be on a per three hour paper basis Base Rate	28.55	29.26
3 Unit Additional Paper	35.66	36.55

Table 3 - Languages Other than English (LOTE) Examiners Hourly Rates on and from

A. Weekday Examining	1/7/2017 Rates per hour 2.5%	1/7/2018 Rates per hour 2.5%
1. Languages other than English (LOTE) Examiners	14.04	14.39

Table 4 - Other Rates and Allowances

Item No	Clause No.	Brief Description	1/7/17	1/7/17	1/7/18	1/7/18
			Amount \$	Amount \$	Amount \$	Amount \$
			(a) Daily rate \$	(b) Hourly rate \$	(a) Daily rate \$	(b) Hourly rate \$
1	15.7	Travelling Allowance -				
		Capital City Rate	310.95	12.96	310.95	12.96
		Newcastle	290.95	12.12	290.95	12.12
		Wagga Wagga	269.95	11.25	269.95	11.25
		Port Macquarie	265.95	11.08	265.95	11.08
		Maitland	277.95	11.58	277.95	11.58
		Wollongong	261.95	10.91	261.95	10.91
		Orange	280.95	11.71	280.95	11.71
		Broken Hill	248.45	10.35	248.45	10.35
		Dubbo	248.45	10.35	248.45	10.35
		Bathurst	248.45	10.35	248.45	10.35
		Other Country Centres	226.45	9.44	226.45	9.44
2	15.5	Meal Allowance (based on the Overtime Meal rate (which is the same for breakfast, lunch or dinner) provided by The Treasury Review of Meal, Travelling and other Allowances).	2017 29.40		2018 29.40	

3	15.6.1 15.6.3(a)	Travel Allowances (based on 40 km multiplied by the use of private motor vehicle casual rate pursuant to clause (15.8). Employees engaged in Corporate Marking in metropolitan areas of Sydney, Newcastle and Wollongong. Markers engaged in Corporate marking outside the metropolitan areas of Sydney, Newcastle and Wollongong	10.56 per day	10.56 per day
4	(a) 15.6.2 (b) 15.6.3(b)	Motor Vehicle allowance - distances exceeding travel to and from usual place of residence and usual place of work: Itinerant markers Markers engaged in Corporate marking outside the metropolitan areas of Sydney, Newcastle and Wollongong in excess of 40 km up to maximum 160 km per day	0.660 0.264	0.660 0.264
			1/7/2017	1/7/2018
5	15.6.3(c) 15.6.4	Travel Allowance fixed payment for: Markers engaged in Corporate marking outside the metropolitan areas of Sydney, Newcastle and Wollongong not claiming the allowance at 15.6.3(a) on a daily basis whose usual place of residence is outside the Sydney metropolitan area in excess of 100 km from the marking centre Itinerant markers who reside outside Sydney metropolitan area attending briefing sessions inside the Sydney metropolitan area where the person's usual place of residence is in excess of 100 km from the briefing session venue.	148.55 234.68 once per engagement	152.26 240.55 once per engagement
6	15.2.8	External Onscreen Marking ICT Allowance for use of ICT facilities broadband	12.61 once per engagement	12.93 once per engagement

Table 5 - Hourly Rates Floor to apply to Corporate Onscreen Marking:

Classification	Weekday Rates		Weekday Supplementary		Weeknights and Saturday Rates		Sunday Rates	
	Per Hour from		Per Day from		Per Hour from		Per Hour from	
	1/7/17	1/7/18	1/7/17	1/7/18	1/7/17	1/7/18	1/7/17	1/7/18
	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Marker	78.77	80.74	76.34	78.25	87.75	89.94	118.11	121.06

P. KITE, Chief Commissioner.

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