

# NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY

## EMPLOYEE COLLECTIVE AGREEMENT 2008 -2011

### *WORKPLACE RELATIONS ACT 1996*

#### *Part 8, Division 2 s327 – Employee Collective Agreement*

#### 1. TITLE

This agreement will be known as the North Australian Aboriginal Justice Agency Employee Collective Agreement 2008-2011.

#### 2. ARRANGEMENT

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**3. PARTIES BOUND**

The parties to this Agreement are the North Australian Aboriginal Justice Agency and all its employees.

**4. COMMENCEMENT DATE and PERIOD of OPERATION**

- 4.1 This Agreement will commence in accordance with the provisions of the Workplaces Relations Act 1996 and expires on September 1, 2011 and thereafter remains in force in accordance with the requirements of the Act

**5. AGREEMENT RE-PRESENTED AFTER FAILING THE NO DISADVANTAGE TEST**

- 5.1 Original clause 5 “Relationship to Pre Reform Awards and Protected Award Conditions” has been omitted and replaced with this clause.

- 5.2 The original proposal failed the No Disadvantage Test (NDT) because a number of terms and conditions were deemed by the Workplace Authority to have been reduced when compared against the reference instrument the “Northern Territory Aboriginal Legal Aid Services Award 2001”.

The advice from the Chamber of Commerce NT is that the reference instrument is not in use anywhere in Australia. The only mention of its usage is a Central Australian Aboriginal Legal Aid Service which has a comprehensive workplace agreement in place which is read in conjunction with a 1991 version of this instrument. In any event this instrument relates back to a period when Aboriginal Legal Aid Services were more in tune with the Australian Public Service. This has not been the case for several years.

The following sub-clause deals with the specific issues raised by the Workplace Authority before going on to focus on those areas of the agreement which are clearly beyond the reference instrument.

- 5.2.1 **Term or Condition:** Increased ordinary hours.  
**Comment:** Amounts to 9 minutes per day over reference instrument  
**Response in this agreement:** No change proposed.
- 5.2.2 **Term or Condition:** Span of hours  
**Comment:** Prescriptive span of hours in reference instrument not considered a benefit.

**Response in this Agreement:** No change proposed.

**5.2.3 Term or Condition:** Additional public holiday during Christmas/New Period

**Comment:** This is very much a public service condition

**Response in this Agreement:** No change proposed

**5.2.4 Term or Condition – Overtime**

**Comment –** Employees prefer the arrangements as provided for in the Appendix

**Response in this Agreement –** Contents of appendix now incorporated in body of agreement as clause 33

**5.2.5 Term or Condition – Annual Leave (for employees in remote areas)**

**Comment –** Amounts to two extra days in remote locations

**Response in this Agreement –** No change proposed

**5.2.6 Term or Condition:** Ceremonial leave

**Comment:** Both reference instrument and agreement ceremonial leave provisions discretionary.

**Response in this Agreement:** No change proposed

**5.2.7 Term or Condition:** Bereavement leave

**Comment:** Bereavement leave clause in reference agreement fails the quantum test because it is deducted from personal leave.

**Response in this Agreement –** Bereavement leave clause in agreement better than reference instrument – therefore no change proposed.

**5.2.8 Term or Condition:** District allowance

**Comment:** Absorbed into higher rates (clause 5.3.1)

**Response in this agreement:** Changes to clause 16.3. Now includes “the following allowances will be paid to Katherine and Nhulunbuy staff (pro rata if less than full time) on a fortnightly basis:

Katherine.....\$2600

Nhulunbuy.....\$4470.

**5.2.9 Term or Condition:** Travel allowance

**Response in this Agreement –** A number of HR policies and procedures included at clause 33

**5.2.10 Term or Condition:** Remote locality fares allowance (for employees with dependents)

**Comment:** No intention to extend this benefit to dependents

**Response in this Agreement –** Employer has added the following at clause 16.1. All employees with 12 months qualifying service with NAAJA are entitled to an annual airfare to assist the employee travel

from Darwin. The scale for Katherine and Nhulunbuy is \$1350 and \$1650 respectively

**Term or Condition:** Higher duties allowance

**Comment:** Provided for at 11.8

**Response in this Agreement:** No change proposed

**Term or Condition:** Motor vehicle allowance

**Comment:** Internal policy and procedure exists

**Response in this Agreement:** No change proposed

**Term or Condition:** Camping allowance

**Comment:** Internal policy and procedure exists

**Response in this Agreement:** No change proposed

**Term or Condition:** Redundancy

**Comment:** Reference instrument provision is an unfunded public sector provision

**Response in this Agreement:** No change

**5.3 Benefits in first workplace agreement proposal that are ongoing into this revised offer that do not appear to have been taken into consideration when the NDT was applied or where more information is required to allow the benefit to be assessed when applying the NDT**

**5.3.1 Term or Condition:** Rates of Pay

**Comment:** Rates of pay are significantly ahead of those in the reference instrument

**Response in this Agreement:** Inclusion of the following clause in relation to the rates of pay in the reference instrument at 11.1.1:

“On a weighted average basis no rate of pay in this agreement will be less than 10% greater than the relevant rate in the pay scale set by the Australian Fair Pay Commission in relation to the NT Aboriginal Legal Aid Services Award”

**5.3.2 Term or Condition:** Salary Sacrifice

**Comment:** Salary Sacrifice using the employer’s PBI status is equivalent to about a 15% pay increase. According the Workplace Ombudsman salary sacrifice is only available where provision is made in either a contract of employment or a workplace instrument. The employer will only make it available through a workplace instrument. The reference instrument makes no provision for salary sacrifice.

**Response in this Agreement:** Remains in agreement

**5.3.3 Term or Condition:** Long Service Leave

**Comment:** The Agreement provides for pro rata after 5 years as opposed to pro rata after 7 with qualification

**Response in this Agreement:** Benefit continues in this proposal

- 5.3.4 **Term or Condition:** Reimbursement of loss or damage to personal effects  
**Response in this Agreement:** Internal policy and procedure exist  
**Response in this agreement:** No change proposed

## 6. DEFINITIONS

“**Employee**” means a person employed by North Australian Aboriginal Justice Agency.

“**Employer**” means North Australian Aboriginal Justice Agency and may also be referred to as NAAJA.

“**Standard**” means the Australian Fair Pay and Conditions Standard

## 7. ANTI-DISCRIMINATION

7.1 It is the intention of the parties to help prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

7.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the parties must make every endeavor to ensure that neither the agreement provisions nor their operation are directly or indirectly discriminatory in their effects.

7.3 Nothing in this clause is to be taken to affect:

7.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation; and

7.3.2 an employee pursuing matters of discrimination in any state or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission.

## 8. DISPUTE RESOLUTION PROCEDURE

8.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows:

- 8.1.1 The employee and their supervisor meeting and conferring on the matter; and
- 8.1.2 If the matter is not resolved at such a meeting, the parties shall arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.
- 8.1.3 If the matter cannot be resolved it may be referred to the Australian Industrial Relations Commission.
- 8.1.4 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

## 9. **MODES of EMPLOYMENT and ORDINARY HOURS**

- 9.1 **Permanent Full Time Employee.** An employee who is engaged on an ongoing full time basis at an average of 37.5 hours per week.
- 9.2 **Permanent Part – Time Employee.** An employee who is engaged on an ongoing part-time basis being less than 37.5 hours per week. A part-time employee will be paid a rate of pay and other entitlements on a pro-rata basis.
- 9.3 **Fixed Term/Fixed Task Employee (working full time or part – time hours).** An employee engaged for a specific term or to complete a specific task. The employer may engage under one of the following two instruments-
  - 9.3.1 Employed with the entitlements as per a permanent/part-time appointment or,
  - 9.3.2 A 20 % loading on top of base salary in lieu of paid personal leave, annual leave and public holidays.
- 9.4 **Casual Employee –** An employee engaged on a needs basis without any expectation of ongoing employment. A casual employee shall be paid a 20% casual loading in lieu of paid personal leave, annual leave and public holidays.
- 9.5 **Probation period**

All new employees, other than casual employees, will be subject to a probation period of three months.
- 9.6 **Ordinary Hours**

The ordinary hours of work are worked between Monday and Friday

## **10. OVERTIME and TIME IN LIEU**

Authorised overtime will be taken as time in lieu in accordance with the policies and procedures of the workplace.

## **11 RATES of PAY**

**11.1** Rates of Pay will be subject to the following determinants.

**11.1.1** “On a weighted average basis no rate of pay in this agreement will be less than 10% greater than the relevant rate in the pay scale set by the Australian Fair Pay Commission in relation to the NT Aboriginal Legal Aid Services Award”

**11.1.2** On commencement of this Agreement all rates of pay will have been scrutinised by the employer with regard to market forces.

**11.1.3** The employer will monitor and if necessary increase any rate of pay to reflect market conditions.

**11.1.4** All rates of pay will be increased by a minimum of 3% on the first pay period beginning on or after the 1<sup>st</sup> of February each year of the Agreement.

**11.1.5** Every employee has the right to negotiate his or her rate of pay with the employer on their anniversary date

**11.1.7** An employee can elect to salary sacrifice in accordance with the employer’s salary sacrifice program.

**11.1.8** When an employee is required by the employer to work at a higher level for a period of time of one week or longer the employer will initiate discussions on a higher rate of pay for the period

## **12. LONG SERVICE LEAVE**

**12.1** Long service leave will be in accordance with the NT Long Service Leave Act with the exception that employees will be;

- Eligible to take pro rata Long Service Leave after five years,
- Be paid pro rata Long Service Leave upon leaving the service after five years continuous service, and
- That service with other Legal Aid services and agreed Aboriginal organisations is recognised as relevant service for the purpose of accessing long service leave on a pro-rata non financial basis.

**12.2** Leave without pay may be approved in conjunction with long service leave where a period of leave without pay equal to the period requested

as long service leave is taken. This in effect enables staff to take long service leave at half pay.

**13. FIRST AID CERTIFICATE ALLOWANCE**

The Chief Executive Officer may from time to time appoint up to five employees as First Aid officers. Where the Chief Executive Officer is satisfied that an employee possesses a First Aid Certificate and continuing ability commensurate with that qualification and the employee has first aid responsibilities, the employee will so be appointed and paid an allowance of \$12.00 per week

**14. COMMUNITY LANGUAGE ALLOWANCE**

**14.1 Criteria**

The Chief Executive Officer may approve the payment of Community Language Allowance to an employee where the following conditions are met.

**14.1.1** There is an identifiable and continuing need for the particular skills possessed by the employee in providing client or staff services. Language skills are required for communication in languages other than English including using Aboriginal and Torres Strait Islander and AUSLAN or other deaf communication skills; and

**14.1.2** The employee's language competence is of the standard set out under 14.2. 1.

**14.2 Rates**

Rate payable is \$2500.00 per annum.

**14.2.1** Community language allowance rate I (Language Aide) is payable to an employee who:

**14.2.1 (a)** passes the Language Aide Test conducted by the National Accreditation Authority for Translators and Interpreters (NAATI); or

**14.2.1(b)** is assessed to be at the equivalent level by an individual or body approved by the Chief Executive Officer.

**15. TRAVEL and ACCOMMODATION ALLOWANCES**

**15.1** Travel and Accommodation Allowances will be accordance with the employer's policies and procedures as varied from time to time

**16. REMOTE LOCALITIES LEAVE FARES and ALLOWANCES**

- 16.1** All employees with 12 months qualifying service with NAAJA are entitled to an annual airfare of \$1150 in the case of Darwin, \$1350 for Katherine and \$1650 in the case of Nhulunbuy employees
- 16.2** This entitlement will become due and payable on the anniversary of the employee's appointment, provided that service has been continuous and not affected by any period of leave without pay. The period of qualifying service will be extended by any period of leave without pay.
- 16.3** The following allowances will be paid to Katherine and Nhulunbuy staff (pro rata if less than full time) on a fortnightly basis:
- Katherine.....\$2600  
Nhulunbuy.....\$4470

**17. RELOCATION ASSISTANCE FOR NEW STAFF**

New employees may be eligible for relocation assistance as per the employer's policies and procedures.

**18. PUBLIC HOLIDAYS**

**18.1** Designated holidays

An employee will observe the following 10 holidays each year;

- 1 January (New Year's Day) or, if that day falls on a Saturday or Sunday, the following Monday;
- 26 January (Australia Day) or, if that day falls on a Saturday or Sunday, the following Monday;
- Good Friday;
- The Monday following Good Friday
- 25 April (Anzac Day)
- the day observed to celebrate the anniversary of the birthday of the Sovereign
- "May Day" as proclaimed by the Northern Territory Government;
- "Regional show day" as proclaimed by the Northern Territory Government;
- "Picnic Day" as proclaimed by the Northern Territory Government;

- 25 December (Christmas Day) or, if that day falls on a Saturday or Sunday, the following Monday\*
- 26 December (Boxing Day) or, if that day falls on a Saturday, the following Monday,\*

\*Note – Should the 25<sup>th</sup> of December and the 26<sup>th</sup> of December be Saturday and Sunday respectively the public holidays will be observed on the following Monday and Tuesday

## **18.2 Other holidays as gazetted**

Where any other day is proclaimed or Gazetted by the Minister to be a public holiday pursuant to the NT Public Holidays Act, that day will be observed as a public holiday.

## **18.3 Local agreements**

Where the Chief Executive Officer and a majority of affected employees agree, another day may be substituted for any holiday prescribed under clause 18. 1.

## **19. NAIDOC DAY**

An employee will be deemed to be on special duty where s/he is participating in official activities on National Aborigines and Islanders Observance Committee Day and be entitled to all normal salary and allowance entitlements for a period up to but not exceeding the employee's ordinary hours of duty during that day.

## **20 AFTER HOURS SERVICE**

**20.1** NAAJA provides a 24 hour emergency on-call service to clients who have been arrested and are in custody. All staff employed as Criminal Solicitors and Client Service Officers are expected to be available for inclusion on a roster to provide this on-call emergency service. The service offered includes telephone information, advice, bail applications over the phone and visits to places of detention on weekends and public holidays for the purposes of arranging bail.

**20.2** Staff on a weekly roster will;

**20.2.1** be provided with a mobile phone that will be used for legitimate on-call purposes only, and

**20.2.2** either be granted leave of absence of 4 hours duty on an afternoon agreed with their supervisor without being required to attend work or be rostered as on-call, or be paid an additional \$80.00 per week while rostered as being on-call.

**21. JURY SERVICE**

**21.1 Leave granted**

Leave of absence will be granted by the Chief Executive Officer to enable an employee to attend court as a juror.

**21.2 Remuneration**

An employee required to attend jury service during ordinary working hours may be reimbursed an amount equal to the difference between the amount paid for such jury service and the amount of wages the employee would have received in respect of the ordinary time worked had the employee not been on jury service, having reasonable regard to:

**21.2.1** the duration of attendance; and

**21.2.2** any expenses incurred by the employee while attending court to serve as a juror.

**21.3 Notification**

An employee will notify the employer as soon as possible of the date the employee is required to attend jury service.

**21.4 Proof**

An employee will give the employer proof of attendance, the duration of attendance and the amount received for jury service.

**21.5 Counts as service**

Leave of absence granted under this subclause will count as service for all purposes.

**22. CEREMONIAL LEAVE**

**22.1** Ceremonial leave without pay may be granted, with approval of the Chief Executive Officer, to an employee of Aboriginal or Torres Strait Islander descent:

**22.1.1** for ceremonial purposes connected with the death of a member of the immediate family or extended family and is in addition to the provisions of Compassionate Leave; or

**22.1.2** for other ceremonial obligations under Aboriginal and Torres Strait Islander law and tradition.

**22.2 Period of leave**

The maximum period of ceremonial leave that may be granted to an employee is 10 days in any calendar year.

**23. STUDY LEAVE**

Study leave is available in accordance with the employer's policies and procedures.

**24. SICK LEAVE**

**24.1 Entitlement**

**24.1.1** An employee is entitled to up to 15 days full pay sick leave for absence due to personal illness or injury on completion of each 12 month period of service.

**24.1.2.** In the first year of service employees will accrue an entitlement of one day sick leave for each completed month of service and 3 further days on completion of the twelfth month of service.

**24.2. Accumulation of sick leave**

**24.2.1** An employee is entitled to accumulate any sick leave not used by the employee.

**24.2.2** An employee is entitled to use accumulated full pay sick leave for personal illness or injury if the employee has already used the current year's full pay sick leave.

**24.3. Grant of leave**

**24.3.1** When an employee is medically unfit for duty, the Chief Executive Officer may grant the employee leave of absence:

**24.3.1(a)** Without production of medical evidence, to the extent of 5 single working days in any sick leave year, provided that no more than 2 of those days are consecutive working days; or

**24.3.2(b)** On production of satisfactory medical evidence, to the extent of sick leave credits, at full pay, where the period of absence required is one day or more.

**24.3.3(c)** Where sick leave precedes or follows a public holiday, the Chief Executive Officer may demand that a medical certificate be produced.

24.3.4(d) Provided the employee has given notice of his or her intention to access sick leave unless such notice is not practical under the circumstances

**24.4 Sick on annual leave**

An employee who is medically unfit for duty for one day or longer while on annual leave and who produces satisfactory medical evidence, may apply for sick leave. Annual leave will be re-credited to the extent of the period of sick leave granted.

**24.5. Sick leave without pay**

Sick leave without pay may be granted by the Chief Executive Officer where paid sick leave credits are exhausted. In exceptional circumstances and at the employee's request, an employee may be granted sick leave without pay while paid sick leave credits remain. A period of absence on sick leave without pay will not count as service.

**24.6. Maximum period of sick leave**

The maximum continuous period of sick leave will be 78 weeks, of which no more than 52 weeks may be paid sick leave. Leave of absence due to illness beyond 78 weeks will be treated as if the employee has been granted additional sick leave without pay, subject to the production of satisfactory medical evidence. It is acknowledged that there may be an occasion when this will be overridden by the Standards set by the Workplace Relations Act.

**24.7 Retirement**

No sick leave credit will accrue, or grant be made, to an employee after the date of the employee's retirement.

**24.8 Pay Out of Sick Leave**

24.8.1 On termination of employment, employees with 7 years continuous service with NAAJA will be entitled to a payout of 20% of unused sick leave credits.

**25. CARER'S LEAVE**

**25.1. Entitlement**

25.1.1. An employee with responsibilities in relation to members of either their immediate family or household who need their care and support is entitled to use up to 10 days per annum of their sick leave entitlement to provide care and support for such persons when they are ill. Leave may be taken for part of a single day.

- 25.1.2.** The entitlement to use carer's leave is subject to the employee being responsible for the care of the person concerned.
- 25.1.3.** The employee must, if required by the Chief Executive Officer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such to require care by another.
- 25.1.4.** In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.
- 25.1.5.** The employee must, where practicable, give the Chief Executive Officer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee must notify the Chief Executive Officer by telephone of such absence at the first opportunity on the day of absence.

**25.2. Unpaid Carer's Leave**

**25.2.1. Entitlement**

**25.2.2.** An employee may elect, with the consent of the Chief Executive Officer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.

**25.2.3** Unpaid carer's leave will not count as service for any purpose.

**26. COMPASSIONATE LEAVE**

**26.1.** An employee is entitled to 2 days paid leave on each occasion of the death or serious illness of a member of the employee's immediate family or household.

**26.2** Proof of death or serious illness must be provided to the satisfaction of the Chief Executive Officer, if requested

**27. SPECIAL LEAVE**

The Chief Executive Officer may grant an employee special leave of absence with pay not exceeding three (3) days in any year where the employee can establish circumstances of a personal emergency or critical event.

**28. PARENTAL LEAVE**

- 28.1** Parental Leave will be accordance with the provisions of the Workplace Relations Act with the addition of the following.
- 28.1.1** **Maternity Leave**
- 28.1.1(a)** An eligible employee will be entitled to up to 12 weeks' paid leave .
- 28.1.1(b)** To be eligible to receive paid maternity leave, an employee must have 12 months' continuous service
- 28.1.2** **Paternity Leave**
- 28.1.2(a)** An eligible employee will be entitled to up to one weeks' paid leave
- 28.1.2(b)** To be eligible to receive paid paternity leave, an employee must have 12 months' continuous service
- 29.** **ANNUAL LEAVE**
- 29.1** An employee after completion of twelve months continuous service will be entitled to a period of five weeks annual leave (exclusive of public holidays).
- 29.2** At the discretion of the employer, pro-rata annual leave may be approved after three months continuous service.
- 29.3** Where an employee ceases employment, the employee will be entitled to payment in lieu of unused leave credits and any pro-rata uncredited annual leave.
- 29.4** Each employee going on annual leave will be paid such salary as they would have received in respect of the ordinary time that they would have worked had they not been on leave during the relevant period. Employees will be entitled to be paid this entitlement by NAAJA prior to the employee proceeding on annual leave.
- 29.5** An employee on higher duties immediately prior to proceeding on annual leave will be paid at the higher rate for the whole of the period of annual leave, where there is a reasonable expectation that higher duties allowance would have continued if leave had not been taken.
- 29.6** In addition to normal salary payment for annual leave, an employee will be entitled to annual leave loading. Annual leave loading will be calculated at 17.5% of the taxable annual leave salary payment. Annual leave loading is not payable on payment of unused leave credits on termination

**29.7** If on the date of accrual in any accrual period of annual leave, an employee's annual leave credit exceeds 10 weeks, the employee will, during the period commencing on that date of accrual and ending three calendar months later, apply for a period of annual leave equal to at least that excess credit. The employer will grant any such application submitted by the employee at least to the extent that it covers the excess credit.

**30 NOTICE PERIOD**

**30.1 Notice of termination by employer is in accordance with Workplace Relations Act for which the notice period is as follows:**

<b>Period of continuous service</b>	<b>Period of notice</b>
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

**30.1.1** In addition to the notice employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

**30.1.2** Payment in lieu of the prescribed notice must be made if the appropriate notice period is not required to be worked. Provided that employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

**30.1.3** The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period. That total must be calculated on the basis of:

**30.1.3(a)** the employee's ordinary hours of work (even if not standard hours); and

**30.1.3(b)** the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and

**30.1.3(c)** any other amounts payable under the employee's contract of employment.

**30.1.4** The period of notice in this clause does not apply:

**30.1.4(a)** in the case of dismissal for serious misconduct;

- 30.1.4(b) to apprentices;
- 30.1.4(c) to employees engaged for a specific period of time or for a specific task or tasks;
- 30.1.4(d) to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or
- 30.1.4(e) to casual employees.

30.1.5 **Continuous service** is as provided for in the long service leave provisions

## 30.2 **Notice of termination by an employee**

30.2.1 During the term of employment, an employee may resign on the giving of four weeks' notice or such lesser notice as is agreed between the employee and the Chief Executive Officer. Failure to give appropriate notice may result in the employer withholding ordinary earnings to the extent of the shortfall

30.2.2 If an employee fails to give the notice specified the employer has the right to withhold monies due to the employee for time worked to the same value as the notice period.

## 31 **REDUNDANCY**

### 31.1 **Definitions**

31.1 **Redundancy** occurs when an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.

31.1.2 **Week's pay** means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:

- overtime;
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses;
- remote allowances; and
- any other ancillary payments of a like nature.

**31.1.3 Transfer to lower paid duties**

Where an employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

**31.1.4 Severance pay**

**31.1.4(a) Severance pay**

An employee whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

<b>Period of continuous service</b>	<b>Severance pay</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	18 weeks' pay

**31.1.4(b)** Continuity of service shall be calculated in the manner prescribed by the long service leave provisions

**31.1.5 Employee leaving during notice period**

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in clause 30.1 - Notice of Termination. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

**31.1.6 Job search entitlement**

**31.1.6(a)** During the period of notice of termination given by the employer in accordance with clause 30.1, an employee shall be allowed up to one

day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

**31.1.6(b)** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

### **31.1.7 Transmission of business**

**31.1.7(a)** The provisions of this clause are not applicable where a business is before or after the date of this award, transmitted from an employer (in this subclause called the **transmittor**) to another employer (in this subclause called the **transmittee**), in any of the following circumstances:

**31.1.7(a)(i)** Where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee; or

**31.1.7(a)(ii)** Where the employee rejects an offer of employment with the transmittee:

- in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
- which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.

### **31.1.8 Employees exempted**

This clause does not apply to:

- employees terminated as a consequence of serious misconduct that justifies dismissal without notice;
- probationary employees;
- trainees;
- employees engaged for a specific period of time or for a specified task or tasks; or
- casual employees.

## **32. SUMMARY DISMISSAL**

- 32.1** After making appropriate inquiries the Chief Executive Officer may summarily dismiss an employee where the Chief Executive Officer concludes that the employee:
- 32.1.1** Has committed serious misconduct; ("serious misconduct" includes, but is not limited to: wilfully disobeying a lawful direction; being negligent or careless in the performance of duties; engaging in improper conduct as an employee; contravening statutory duties or fundamental terms and conditions of employment); or
- 32.1.2** Has engaged in behaviour that has brought or could bring NAAJA into disrepute and which seriously compromises its ability to work effectively with its clients.
- 32.2** Nothing in this clause prevents the Chief Executive Officer from taking other disciplinary action.

### **33. HR POLICIES AND PROCEDURES**

The following policies and procedures are included in the agreement as being applicable at the time this agreement was lodged with the Workplace Authority

#### **33.1. TRAVEL ALLOWANCE**

If an employee is required to be absent overnight on official NAAJA business, the employee is entitled to be paid, before undertaking the travel, for a meal which will occur within the period of absence.

If an employee is required to be absent overnight on official business, the employee will be paid camping allowance or may elect to be accommodated at NAAJA's expense or to be paid an overnight accommodation allowance which is paid in recognition of additional expenses which may be incurred.

Where accommodation and/or meals of a standard comparable to a hotel are supplied at no cost to the employee who is required to be absent overnight on official business, those components of travel allowance will not be paid to the employee.

#### **Incidentals**

If an employee is required to be absent on official business, the employee is entitled to be paid, before undertaking the travel, incidental expenses for each day or part of a day within the period of absence.

#### **Meals and incidental costs**

The travelling allowance component paid for meals and incidental expenses per night spent away on approved official business is as follows:

Breakfast	\$15.00
Lunch	\$18.00
Dinner	\$28.00
Incidentals	\$15.00

#### **Accommodation**

The amount paid directly by NAAJA for accommodation expenses to the hotel or equivalent per night spent away on approved official business is the actual cost of the accommodation. However where an employee elects to arrange their own accommodation with family or friends, they will be paid an overnight accommodation allowance of \$40.00.

#### **Necessary Expenses**

If the CEO is satisfied that the allowance payable to or on behalf of an employee under this clause is either insufficient to cover, or in excess of expenses reasonably incurred, the CEO may authorise payment of an amount necessary to meet the actual expenses on the presentation of official receipts.

#### **Same Day Travel**

If an employee is required to be absent from NAAJA on official business for a period of at least 12 hours, and, is not entitled, because the employee is not absent overnight, to be paid travelling allowance for the absence, the employee is entitled to be paid, before undertaking the travel, a travelling allowance for the absence at the part day rate of \$40.00. The employee must repay to NAAJA the full amount of travelling allowance if the employee does not undertake the travel or the actual period of absence on official business in relation to the travel is less than 12 hours.

#### **Camping Allowance**

If an employee is required to camp out or is employed in a camping party, the employee is entitled to be paid a camping allowance of \$40 per day.

### **33.2 RELOCATION EXPENSES**

New employees may be eligible for relocation assistance. Requests from new employees will be considered on their merits by the Chief Executive Officer.

Fifty percent of any entitlement will be reimbursed on commencement with NAAJA, the remaining 50% on completion of 12 months service.

### **33.3 TIME OFF IN LIEU AND OVERTIME**

NAAJA's standard day is 7 hours 30 minutes per day between 8.00 am and 4.30 pm for an employee who works 37.5 hours per week.

The starting and finishing times, including meal breaks, are subject to agreement between the section manager and employee.

In respect of specific job roles or specific circumstances, the CEO and section managers may alter the standard times to cater for a genuine operational need. The following variations are contemplated;

- For an employee performing reception or front counter duty, core time will commence at 8.00 am.
- For an employee rostered as Duty Solicitor, on court duty or as a CSO core time will commence at 8.30 am.
- For an employee performing reception (Darwin Office), core time will finish at 5.00 pm.
- Employees on field trips or other travel will be considered to be working a standard day.

An employee's attendance outside the hours of a standard day must be subject to the availability of work and the approval, which may be general or specific, of the employee's section manager. This means that an employee cannot spend long hours at the workplace just to build up a credit, there must be work to be done.

#### **Overtime**

NAAJA may offer overtime at the discretion of the Section Manager.

#### **Time Off In Lieu Of Approved Overtime**

Where an employee works outside normal hours of duty, the overtime worked can be taken as TOIL

The Section Manager will state on the employees leave form grounds/reasons for approval for the employee to take TOIL.

TOIL may only be accrued up to 15 hours. Once an employee has reached this limit no further credit of TOIL will be made until the balance is reduced. The immediate consequence of this policy is that no employee will carry more than 15 hours.

NAAJA will ensure that an employee is able to take TOIL at a time arranged by discussions between the employee and their section manager.

Under exceptional circumstances where the ceiling limit is likely to be exceeded due to the employee's bush court roster or travel time the employee and Section Manager will meet to discuss a time for the TOIL to be taken as soon as possible after the overtime has been worked.

Section Managers are responsible for ensuring that operating efficiency is maintained when employees take TOIL.

#### **33.4. LOSS OR DAMAGE TO PERSONAL EFFECTS**

Payment for the loss or damage other than normal wear and tear to clothing or personal effects is only considered if the loss or damage has occurred:

- in the course of an employee's official duties; and
- as a result of an employee not being negligent in the performance of his duties.

Employees who leave their personal belongings on NAAJA property do so at their own risk. Claims for loss or damage in these circumstances will not be approved. However the exception to this is where personal electrical appliances or equipment to be used for NAAJA purposes has the prior written authority of the appropriate Section Manager.

In determining compensation, the following criteria will be considered:

- any contributing negligence on the part of the claimant;
- the replacement cost of the article, less depreciation;
- the cost of repairs to the article;
- whether the claimant could reasonably have been expected to insure against the loss or damage.