

**LHMU – UNION RECOGNITION AND JOB SECURITY AGREEMENT –
DEPARTMENT OF HEALTH – ABORIGINAL AND ETHNIC HEALTH
WORKERS 2005**

Agreement No. 13 of 2005

1. TITLE

This Agreement shall be known as the LHMU – Union Recognition and Job Security Agreement – Department of Health - Aboriginal and Ethnic Health Workers 2005.

2. ARRANGEMENT

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3. AREA, INCIDENCE AND PARTIES BOUND

3.1 This agreement applies throughout the State of Western Australia and is binding on the parties and on employees engaged by the Employer to work in any of the classifications listed in Clause 24 - Wages of the LHMU – Department of Health Aboriginal and Ethnic Health Workers - (Federal) Agreement 2005.

3.2 The parties to the agreement are:

- (a) The Liquor, Hospitality and Miscellaneous Union, WA Branch.
- (b) The Minister for Health in his incorporated capacity under s.7 of the *Hospitals and Health Services Act 1927* (WA) as:
 - (i) the Hospitals formerly comprised in the Metropolitan Health Service Board,
 - (ii) the Peel Health Services Board,
 - (iii) the South West Health Board,

(iv) the WA Country Health Service.

- 3.3 (a) The Director General of Health is the delegate of the Minister for Health in his incorporated capacity under s.7 of the *Hospitals and Health Services Act 1927* (WA). In this capacity the Director General acts as the “Employer” for the purposes of this Agreement.
- (b) If the Director General of Health onward delegates any capacity to act as the “Employer” to a Chief Executive of a Health Service or to any other office holder the Director General of Health shall inform the Union in writing of the terms of the delegation. An office holder who acts in accordance with the terms of a delegation from the Director General of Health shall be deemed to have acted as the “Employer” for the purposes of this Agreement.
- 3.4 This Agreement applies to approximately 100 employees.

4. DEFINITIONS

“Agreement” means the LHMU Union Recognition and Job Security Agreement – Department of Health Aboriginal and Ethnic Health Workers – 2005.

“Award” means the Health Workers – Community and Child Health Services Award 2000.

“Commission” means the Western Australian Industrial Relations Commission.

“Employer” means any of the employers’ party to this Agreement referred to in subclauses 3.2 and 3.3.

“Hospital” means any public hospital, health care facility or other facility controlled by one of the Employers’ party to this Agreement.

“Multi Purpose Service” (MPS) means an integrated health and aged care service delivery model provided by one service provider for rural communities within a designated area. Current services provided by an MPS may include but are not limited to Hospital, nursing home, hostel/lodge, home and community care (HACC) child health, community health, allied health and other health services which may change from time to time.

“Union” means the Liquor, Hospitality and Miscellaneous Union, WA Branch.

5. DATE AND PERIOD OF OPERATION

This Agreement shall take effect from the date of registration and remain in force until 31 July 2007.

6. RELATIONSHIP TO AWARDS AND AGREEMENTS

- 6.1 This Agreement shall be read in conjunction with the Health Workers’ Community and Child Health Services Award, 2000, provided that where there is any direct inconsistency between the express terms of this Agreement and the Award, the express terms of the Award shall take precedence to the extent of any such inconsistency.

6.2 This Agreement shall be read in conjunction with the LHMU – Department of Health Aboriginal and Ethnic Health Workers (Federal) Agreement 2005 ('the Federal Agreement'), provided that where there is any direct inconsistency between the express terms of this Agreement and the Federal Agreement, the express terms of the Federal Agreement shall take precedence to the extent of any such inconsistency.

6.3 This Agreement shall be read in conjunction with the Western Australian Government/Australian Liquor, Hospitality and Miscellaneous Workers Union Redeployment, Retraining and Redundancy Agreement 2004 (RRR Agreement), provided that where there is any inconsistency between the express terms of this Agreement and the RRR Agreement, the express terms of the RRR Agreement shall take precedence to the extent of any such inconsistency.

7. REPLACEMENT OF AGREEMENT

7.1 The parties agree to commence genuine negotiations for a replacement agreement no later than 3 months prior to the date this agreement expires.

7.2 The Employer will provide Union Representatives paid leave to participate in the process of negotiating a replacement agreement to this Agreement, and the Federal Agreement.

- (a) Six (6) months prior to the expiry date of this Agreement the Employer shall release an agreed number of representatives to attend negotiation planning meetings.
- (b) The Union may determine from which workplaces representatives will be drawn, provided that, if more than one representative is drawn from any one facility, the operation of that facility shall not be unduly affected.
- (c) Any dispute about the number to be released from any particular facility shall be dealt with via the Dispute Settlement Procedure.
- (d) The conditions under which leave is granted shall be same as prescribed under clause 12.
- (e) The maximum entitlement to leave during the prescribed period shall be a total of twelve (12) hours plus the reasonable travel time required to attend meetings.
- (f) The Employer shall facilitate phone and video link-ups where necessary to enable the participation of Union representatives from remote areas in the negotiation of a replacement agreement.

8. AIM OF THE AGREEMENT

The aims of the Agreement are:

- (a) to enable the parties to develop and implement strategies which:
 - recognise and achieve productivity improvements without impairing the quality of health care; and
 - enhance job satisfaction, security and remuneration
- (b) to recognise and facilitate the Union and its representatives' role in contributing to the development and implementation of the strategies referred to in subclause 8(a).

9. CONSULTATION MECHANISM

- 9.1 A Consultative Committee shall be established at a workplace when the Union or the relevant Employer notifies the other of its intention to do so.
- 9.2 The Union and relevant Employer shall meet and jointly determine the structure and process (including elections and timetables) of the Consultative Committee.
- 9.3 Consultative Committees shall be made up of representatives of the Employer and the Union.
- 9.4 Consultative Committees are for the purpose of progressing the issues raised in this Agreement.
- 9.5 Each employee nominated by the Union who has not previously received training shall be released to attend the Union training course before the first consultative committee meeting.
- 9.6 The Employer shall provide reasonable resources to ensure effective and informed employee participation, including access to all relevant information and a reasonable period of time of release to facilitate the consultative process.
- 9.7 Union representatives shall be paid for attendance at Consultative Committee meetings as if they had worked their normal roster.
- 9.8 Union representatives shall be given time off in lieu when they attend a Consultative Committee meeting in their own time; such time to be equal to total travel and meeting time.
- 9.9 The Employer shall be responsible for the keeping of proper records of the Consultative Committee. At the conclusion of each meeting, the Employer shall forward minutes of the Consultative Committee to members of the Committee.
- 9.10 An officer of the Union is entitled to attend a meeting of the Consultative Committee and address the Committee on any issue, but shall not vote on any motion.

10. PERMANENCY OF EMPLOYMENT AND RELIEF COVER

10.1 Commitments

- (a) The parties to this Agreement agree that permanent employment is the preferred form of engagement for employees covered by this Agreement.
- (b) The parties to this Agreement agree that casual employment is not the preferred method of delivery of services, and the Employer will work towards minimising the use of casual workers.

10.2 Fixed Term Contracts

- (a) Fixed term employees may only be engaged for the following situations:
 - (i) Unexpected or unplanned leave.
 - (ii) Parental Leave.
 - (iii) Long Service Leave.
 - (iv) Long term sick leave.

- (v) Workers compensation.
- (b) Special projects.
 - (i) Employees undertaking an accredited course of study.
 - (ii) To temporarily fill vacancies, where a decision has been made that the vacancy will be filled, while the recruitment process is undertaken.
 - (iii) Leave Without Pay.
 - (iv) Where the substantive occupant is working in another position for a temporary period that may involve higher duties.
 - (v) The substantive occupant agrees to work part-time for one or more periods.
 - (vi) The substantive occupant is seconded to another position.
 - (vii) Annual Leave where staffing arrangements are such that it is impractical to maintain a pool of staff to provide annual leave cover.
 - (viii) Accrued Days Off where staffing arrangements are such that it is impractical to maintain a pool of staff to provide ADO leave cover.
 - (ix) Any other situations as agreed between the Employer and the Union, either at an industry or local level.
- (c) The contract of employment of a fixed term contract employee shall include the starting and finishing dates of employment, or in lieu of a finishing date, the specific circumstances relating to the situations as prescribed in subclause (a).
- (d) The Employer shall provide to the Union, on request, the particulars of fixed term contract utilisation in a particular facility or part of a facility. The Employer shall provide such detail as is reasonably necessary to demonstrate that the fixed term contract utilisation is in each case consistent with the commitment given in this clause.

10.3 Casual Engagement

- (a) Casual employees may only be engaged for unplanned short-term work requirements.
- (b) The Employer shall provide to the Union, on request, the particulars of casual utilisation in a particular facility or part of a facility as follows:
 - (i) Number of individual casual employees engaged in each classification;
 - (ii) Number of hours worked by casual employees in each classification;
 - (iii) The amount paid per month for casual staff in each classification;

10.4 The Union may negotiate for increases in the number of permanent positions where an excessive use of casual employment or fixed term contract employment is identified.

10.5 For the purposes of this clause “impractical” means not operationally viable because of factors such as the cost, the size or location of a facility.

10.6 The Employer shall respond in writing to a request for particulars of fixed term contract, and casual employment within 21 days of the request being made in writing by the Union.

10.7 Existing part-time, casual and fixed term contract employees within a Hospital / facility shall be provided with the opportunity to fill vacant permanent positions. External applicants will only be

considered where there is no suitable pool of existing casuals, part-time or fixed term contract employees with the required skills within the Hospital / facility.

11. COMMITMENT TO BARGAINING

Employees engaged to work in classifications covered under the Award or the Federal Agreement will not be employed under any form of individual contract or agreement made pursuant to the Workplace Relations Act 1996, or the Industrial Relations Act 1979, as amended or superseded from time to time.

12. UNION AND REPRESENTATIVES' RECOGNITION AND RIGHTS

12.1 Recognition

- (a) The Employer recognises the rights of the Union to organise and represent its members. Union representatives have a legitimate role and function in assisting the Union in the tasks of recruitment, organising, communication and representing members interests in the workplace.
- (b) The Employer shall distribute, with any pre-employment and/or orientation package the Employer ordinarily distributes to new employees, a flyer/information sheet provided by the Union. The flyer/information sheet shall provide information regarding Union membership, pay and conditions and representation of Union members within the workforce.
- (c) All management representatives will treat Union Representatives with respect and without victimisation.

12.2 Union Representatives will be granted:

- (a) An assurance that issues raised will be promptly dealt with as per Clause 14 - Dispute Settlement Procedure.
- (b) Genuine consultation by the Employer for decisions impacting on Union members or employees eligible to be Union members.
- (c) Paid time to communicate during the Representatives' ordinary working hours with Union members and attend to Union business in the workplace. This will be negotiated at each Hospital/health service.
- (d) Representatives shall consult with the Employer when paid time off is required. Any disagreements shall be dealt with via the Dispute Settlement Procedure.

12.3 The Union shall give the names of Union Representatives to the relevant Employers in writing.

12.4 Facilities

- (a) (i) The relevant Awards and Agreements shall be displayed on notice boards in the workplace where it is easily accessible to employees;
- (ii) Employees on request shall be provided with a copy of this Agreement by the Employer. The Employer shall make sufficient copies available for this purpose.

- (b) Union Representatives will be provided with:
- (i) Access to facilities including basic communication and information resources such as telephone, fax, e-mail, photocopier, stationery and access to meeting rooms to meet with individuals or groups of members and perform Union business.
 - (ii) Access to all relevant information, including appropriate awards, agreements, job descriptions and policies.
 - (iii) Lockable notice boards in the ratio of one (1) notice board for every 200 beds or part thereof. Access to the Notice Board will be restricted to authorised Union Delegates. It is the responsibility of the Delegate to ensure that only authorised Union material is placed on the notice board.
 - (iv) A lockable cabinet.

12.5 Organising the Workplace

Provided appropriate notice is given and the operation of the organisation is not unduly affected, Union Representatives shall have:

- (a)
 - (i) A list of new employees, provided by the Employer each month, which identifies the time of commencement of new employees, their employment status, occupation, hours of work and work location
 - (ii) Time to discuss the benefits of Union membership with a new employee as part of their induction.
 - (iii) Where the Employer conducts a group induction, which may be on or off site, the Union shall be given at least 14 days notice of the time and place of the induction. The Union will be entitled to at least thirty minutes to address new employees without Employer representatives being present.
- (b) Access to a private sheltered area for meetings of members. Details to be decided by local arrangement.
- (c) Access to rosters providing information regarding work location and shifts of employees. The rosters will be provided within five working days of request.
- (d) Quarterly paid general Union meetings, to a maximum duration of 1 hour. These meetings are to be arranged at a local level.
- (e)
 - (i) Paid monthly Union delegate meetings for each Hospital to a maximum of two (2) hours.
 - (ii) Quarterly paid regional delegate meetings to a maximum of two hours (plus reasonable travel time).
 - (iii) The option to aggregate the time available for meetings, pursuant to (i) and (ii) above, to meet the needs of country delegates.

- (f) Subject to compliance with the relevant clinical protocols at each facility, the right to enter the Employers premises during working hours, including meal breaks, for the purpose of discussing with employees covered by this Agreement the legitimate business of the Union, or for the purpose of investigating complaints concerning the application of this Agreement/Award, but shall in no way unduly interfere with the work of the employees.
- (g) Subject to compliance with the relevant clinical protocols at each facility, the Secretary or authorised Union representative will be able to move freely within the Hospital/service, and shall not be required to be accompanied by any employee or agent of the Employer, but shall in no way unduly interfere with the work of the employees.

12.6 Representation

The Employer shall grant paid leave during ordinary working hours to an employee:

- (a) Who is required to give evidence before any industrial tribunal;
- (b) Who as a Union nominated representative of the employees is required to attend negotiations and/or conferences between the Union and Employer;
- (c) When prior agreement between the Union and Employer has been reached for the employee to attend official Union meetings preliminary to negotiations or industrial hearings;
- (d) Who as a Union nominated representative of the employees is required to attend joint Union/management consultative committees or working parties.

12.7 Union Dues

The Employer agrees, upon receiving written authorisation from an employee, to provide to the Union within five (5) working days the employee's bank account details and subsequent changes from time to time for the purpose of enabling the employee to establish direct debit facility for the payment of Union dues.

12.8 Paid Leave for Union Training

- (a) The Employer shall grant paid leave of absence to employees who are nominated by their Union to attend short courses conducted by the Union.
- (b) Paid leave of absence shall also be granted to attend similar courses or seminars as from time to time approved by agreement between the parties.
- (c) An employee shall be granted up to six (6) days paid leave each calendar year for Union training or similar courses or seminars. However, leave in excess of six days, and up to twelve days, may be granted in any one calendar year, provided that the total leave being granted in that year and in the subsequent year does not exceed twelve (12) days.
- (d) Country delegates will be paid travel time during normal working hours at the ordinary rate of pay to attend such training.

12.9 Rates of Pay During Absence on Union Training

- (a) Leave of absence will be granted at the ordinary rate of pay (including any relevant allowance) the employee would have received had they not been on leave.
- (b) Where a public holiday or rostered day off (including a rostered day off as a result of working a 38-hour week) falls during a Union Training course or seminar, a day off in lieu of that day will be granted.

12.10 Shift employees attending a Union Training course or seminar shall be deemed to have worked the shifts they would have worked had leave not been taken, and payment for such leave shall include shift penalties.

12.11 Application for Union Training Leave

Any application by an employee shall be submitted to the Employer for approval at least four (4) weeks before the commencement of the leave, provided that the Employer may agree to a lesser period of notice.

- 12.12 (a) The Employer shall not be liable for any expenses associated with an employee's attendance at Union training.
- (b) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the training.

12.13 Application

- (a) An employee shall not be entitled to paid leave to attend Union business other than as prescribed by this clause.
- (b) The provisions of this clause shall not apply to special arrangements made between the parties, which provide for unpaid leave for employees to conduct Union business.
- (c) The provisions of this clause shall not apply when an employee is absent from work without the approval of the Employer.

13. TIME AND WAGES RECORDS

13.1 In respect of each employee, the Employer shall keep or cause to be kept a time and wages record showing:

- (a) The name of the employee;
- (b) The nature of the work performed and whether full-time, part-time or casual;
- (c) The hours worked each day including roster details, if applicable;
- (d) The wages, allowances and overtime paid to each employee and any deductions made there from;
- (e) The date of birth of employees employed as junior;

- 13.2 Computerised time and wages records may be kept by the Employer and shall be deemed to satisfy the requirements of this clause to the extent of the information recorded.
- 13.3 Time and Wages Records available for inspection by the Union
- (a) The time and wages records shall be available for inspection by the Secretary or accredited official of the Union during the Employer's usual office hours, for the purpose of investigating a suspected breach of the Employer's obligations to its employees. When necessary the accredited official of the Union may take a copy of the record.
 - (b) The Union shall:
 - (i) give prior notification to the Employer on when it proposes to inspect the records, provided that such notice is at least 24 hours, or at least 48 hours where the relevant materials are not kept on the employer's business premises;
 - (ii) not conduct interviews during normal working hours in circumstances which will result in the employer's business being unduly interrupted or otherwise hampered; and
 - (iii) treat with confidentiality any information obtained from time and wage records.
- 13.4 If the Employer maintains a personal file or other file on an employee, the employee shall be entitled to examine all material on the file, and take copies, at a time that does not result in the Employer's business being unduly interrupted or otherwise hampered.

14. DISPUTE SETTLEMENT PROCEDURE

- 14.1 Any grievance, complaint or dispute arising under the Agreement or in the course of the employment of employees covered by the Agreement shall be dealt with in accordance with this clause.
- 14.2 The employee/s and the manager with whom the dispute has arisen shall discuss the matter and attempt to find a satisfactory solution, within three (3) working days. An employee may be accompanied by a Union representative.
- 14.3 If the dispute cannot be resolved at this level, the matter shall be referred to and be discussed with the relevant manager's superior and an attempt made to find a satisfactory solution, within a further three (3) working days. An employee may be accompanied by a Union representative.
- 14.4 If the dispute is still not resolved, it may be referred by the employee/s or Union representative to the Chief Executive Officer or his/her nominee.
- 14.5 Where the dispute cannot be resolved within five (5) working days of the Union representatives' referral of the dispute to the Chief Executive Officer or his/her nominee, either party may refer the matter to the Commission for conciliation and/or arbitration as required.

- 14.6 The period for resolving a dispute may be extended by agreement between the parties.
- 14.7 At all stages of the procedure the employee may be accompanied by a Union representative.
- 14.8 Notwithstanding the above the Union may raise matters directly with representatives of the Employer. In each case the Union and the Employer shall endeavour to reach agreement. If no agreement is reached either party may refer the dispute to the Commission for conciliation and/or arbitration.
- 14.9 The status quo (ie the condition applying prior to the issue arising) will remain until the issue is resolved in accordance with the procedures outlined above.

15. SALARY PACKAGING

- 15.1 For the purposes of this Agreement, salary packaging shall mean an arrangement whereby the wage or salary benefit arising under a contract of employment is reduced, with another or other benefits to the value of the replaced salary being substituted and due to the Health Worker.
- 15.2 A Health Worker may, by agreement with the Employer, enter into a salary packaging arrangement.
- 15.3 The Employer shall not unreasonably withhold agreement to salary packaging on request from a Health Worker.
- 15.4 The Employer shall not require a Health Worker to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional Employer provided benefits.
- 15.5 Where a Health Worker enters into a salary packaging arrangement they shall be required to enter into a separate written Agreement with the Employer that sets out the terms and conditions of such salary packaging arrangement provided that the terms of such agreement shall comply with the terms of this clause.
- 15.6 Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost to the Employer.
- 15.7 The salary packaging arrangement must also comply with relevant taxation laws and the employer shall not be liable for additional tax, penalties or other costs payable or which may be payable by the employee.
- 15.8 In the event of any increase or additional payments of tax or penalties associated with the employment of the Health Worker or the provision of employer benefits under the salary packaging agreement, such tax, penalties and any other costs shall be borne by the employee.
- 15.9 An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.
- 15.10 The Employer may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice if the Employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non cash benefits provided, provided that the Employer cannot retrospectively cancel any salary packaging arrangement.

- 15.11 Notwithstanding clauses 15.9 and 15.10 the Employer and the Health Worker may agree to forgo the notice period.
- 15.12 The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.
- 15.13 Clause 14 – Dispute Settlement Procedure shall be used to resolve any dispute arising from the operation of this clause.
- 15.14 For the purposes of this provision, any penalty rate, loading or other wage related allowances which would ordinarily be calculated on the basis of the wage rates expressed in Clause 24 - Wages of the Federal Agreement shall continue to be so calculated despite an election to participating in any salary packaging arrangement.

16. CONTRACTING OUT AND PRIVATISATION

- 16.1 Consistent with the commitments given in Clause 10 Permanency of Employment and Relief Cover, the parties recognise the importance of promoting long term job security and career development for employees subject to this Agreement.
- 16.2 With the exception of those contracts for services currently in existence, there will be no contracting out or privatisation of functions or duties performed by directly employed workers during the life of this Agreement.
- 16.3 Subject to successfully negotiating an efficiency and quality agreement between the parties to this Agreement, the Employer will not re-tender contracts for service currently in place which can be carried out by directly employed workers.
- 16.4 Negotiations to successfully return in house those functions or duties currently out-sourced will include the following factors;
 - (a) Whether the product delivered under the contract for services meets the expected outcomes in terms of efficiency, quality and safety;
 - (b) Public interest considerations such as quality of services and the safety of clients;
 - (c) Cost, in particular the wages differential (if any) between the rates of pay for employees current contracts and directly employed employees; and
 - (d) The impact the contract has on the job security and career development for employees subject to this Agreement.
- 16.5 Any agreement reached between the parties as a result of this process shall be written up into a document and signed by both parties. The parties agree to be bound by the agreement as recorded in this document. The document will then be binding and enforceable between the parties.

17. NO FURTHER CLAIMS

Except where specifically provided for in this Agreement, it is a condition of this Agreement that the parties will not make any further claims with respect to any matter related to wages and working conditions contained in this Agreement.

18. SIGNATORIES TO THE AGREEMENT

Dr Neale Fong
A/Director General of Health

____/____/____
Date

David Kelly
Secretary
Liquor Hospitality Miscellaneous Union, WA Branch

____/____/____
Date