OUTLINE OF SUBMISSION

1. South East Water Corporation (SE Water) makes this application to seek to have managerial staff to be covered by the Water Industry Award 2010 (Award) to be compensated by way of an annualised salary.

2. The application is restricted to levels 9 and 10 of the Award. The employees covered by these levels are managers and have responsibilities and pay commensurate to such classifications.

3. The clause being sought to be inserted is the same type of clause found to be fair and reasonable by the Full Bench to include in Clerks- Private Sector Award 2010. This clause has been tested thoroughly tested and found to be appropriate.\(^1\) Enclosed as Attachment 1 is a copy of the said clause.

SE Water Industrial Instrument

4. SE Water employs its managerial staff in accordance with South East Water Senior Officer & Manager Award 2003 (“Enterprise award”), which is an

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\(^1\) FWA 2012 9025
Enterprise Award. Attached as Attachment 2 is a copy of the said Enterprise Award.²

5. There are 119 employees out of 580 employees at SE Water that are covered by the Enterprise Award and impacted by the annualised salary provision.³

6. Managerial employees view themselves as being covered by salaried arrangements and they are appropriately covered on that basis.⁴

7. This industrial instrument, is subject of a separate application for modernisation. The sole reason for such an application is to enable SE Water to maintain annualised salaries for managerial employees. This is not SE Water’s preferred option ⁵.

Annualised Wage and Salary Arrangements

8. The Award Modernisation process and subsequent reviews of the Modern Awards have developed a central theme of creating a modern and flexible workplace relations system. Such a proposition is from the objects of Part 10A⁶ of the Act but additionally through the introduction of such provisions in other Modern awards as well as the development of provisions such as the model flexibility clause. These have been introduced to provide braod flexibility, subject to the safeguard that an employee is not ‘disadvantaged’ as a result of such flexibilities.

9. SE Water contends that the Fair Work Act 2009 directly provides for the potential inclusion of annualised salary provisions within Awards. Relevantly sub-section 139(1) of the Act provides that a modern award may include terms about;

“(f) annualised wage arrangement that;

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² Para 2 of Statement of Shane Leversha
³ Para 3 and 4 of Statement of Shane Leversha
⁴ Para 4-10 of statement of Sonya Morgan and Para 2-7 of Stephen Allen
⁵ Paragraph xx of Statement of Shane Leversha
⁶ Section 576A(2)(c) of the Workplace Relations Act 1996.
(i) have regard to the patterns of work in an occupation, industry or enterprise; and
(ii) provide an alternate to the separate payment of wages and other monetary entitlements; and
(iii) include appropriate safeguards to ensure that individual employees are not disadvantaged”

10. Further, the legislature’s intent regarding the operation of annualised salary arrangements has been identified in the explanatory memorandum to the Workplace Relations Amendment (Transition to Forward to with Fairness) Bill 2008 as follows;

“54. Annualised wage or salary arrangements (annualised wage arrangements) would involve an employer paying an employee an overall amount averaged over the course of a year that is inclusive of the employee’s wage (or salary) and other award based monetary entitlements eg penalty rates. An employer could use this method of paying an employee instead of paying the employee’s wages (or salary), and other monetary entitlements separately through the year.

55. The scope of this allowable modern award matter would be limited by new subparagraph 576J(1)(f)(iii) which would ensure that a modern award term providing for an annualised wage arrangement must include appropriate safeguards to ensure that individual employees are not disadvantaged when compared with what they would have received, had they been paid the entitlements separately throughout the year.”

11. Significantly, there is no indication in the above extract that it was intended that an employer would be required to obtain an employee’s agreement in order to adopt this method of paying employees.
12. SE Water accepts that the Full Bench in deliberating on this issue explained in its 12 September 2008 Statement that annualised wage and salary arrangements would not generally be included within modern awards on the following basis:

“[26] A number of parties suggested that annualised wage and salary arrangements be included in modern awards. Such arrangements are provided for in the Act. No substantial case was put for inclusion of these arrangements on a general basis and we have considered the situation award by award. We do not consider that such provisions should be included in modern awards as a matter of course. Where there are similar arrangements in a relevant pre-reform award or NAPSA, where there is a consensus, or where there is a case on the merits based on the nature of the industry or patterns of work the situation may be different. Most of the exposure drafts do not contain such arrangements.”

13. The presence of annualised salary clauses in the Clerks- Private Sector Award 2010 and the Contract Call Centres Award 2010 are each based on provisions in pre-modern awards that have a long history. Annualised salary / exemption clauses have been a feature of the clerical and administrative industry for decades before the making of the modern award.

14. SE Water has history of applying annualised salaries for its employees. It is also a feature for managerial employees to receive annualised salaries.

15. SE Water’s application merely seeks to have the Award reflect the terms applicable to managers in the industry. This is no different to the principles applied by the Commission in determining Annualised Salary provisions in the Clerks and Contract Call Centre Awards.

Pre Modern Awards
16. In determining the making of the Award, the Commission had reviewed the Federal pre reform awards which applied in the industry, the two main awards were the Regional Water Authorities Award 1999 (AP795612) and the Rural water Industry award 2001( AP 806 351). Both Awards provide for annualised salary arrangements. In the Regional water Authorities Award 1999, it is clear the clause contained an annualised salaries clause. In particular, clause 13 provided for salary arrangements. In the Rural Water Industry Award 2001, Clause 11 provides for the option to enter into annualised salaries.

17. Further, SE Water submits that it is a feature of its industrial arrangements as well as those of the industry, to have enterprise awards or enterprise agreements. Such industrial arrangements provided for annualised salaries for senior employees. It appears that the industry pre-reform awards as well as those enterprise awards and enterprise agreements provide for salary arrangements as a common feature for senior employees.

18. A review of the Award Modernisation process of this Award seems to indicate that the issue of annualised salaries was not raised and thereby not, in our submissions, appropriately ventilated before the Full Bench. Certainly no decision pertaining to annualised salaries was considered by the Full Bench.7

19. In the most recent review of the Award in 2012, the issue was again not ventilated. SE Water submits that this is a partly attributable to the fact that Enterprise Awards were a feature in this industry. To note, the Local Government Industry Award 2010 was varied to include an annualised salary clause.8 Whilst this was a consent position between the parties, it is to be noted that annualised salaries was found to be a common in the industry.

7 [2009] AIRCFB 945
8 [2013] FWC 2936
20. A review of the Awards which applied in the industry as identified by the list of awards from Attachment B of the Award Modernisation statement issued by a Full Bench of the Commission on 29 June 2009, indicates a predominance of enterprise awards in the industry and NAPSA’s. Attachment 3 to this submission identifies these instruments and outlines the number that have salary arrangements and/or exemptions from paying overtime, usually from managerial classifications.

21. It is clear from these instruments, that a feature of the industry is the payment of salaries. It therefore follows, that applying the principles applied by the Commission in providing for Annualised Salary provisions in the Clerks and Contract Call Centre Modern Awards should result in such a provision being applied to the Award.

THE COMMON LAW

22. SE Water is well aware that for managers, there are options to consider the utilisation of common law contracts and offsetting. This thought is not an adequate mechanism to ensure appropriate payment for managers covered by an award.

23. The common law principles of ‘off set’ were succinctly summarised by a five member Full Bench of Fair Work Australia (FWA) in the ‘Absorption Case’, which concerned the interpretation of the absorption clause in the transitional provisions of modern awards:

“[14] The AIG relied on the summary of relevant principles concerning set-off contained in a decision of the Western Australian Industrial Appeal Court in James Turner Roofing Pty Ltd v Peters. In that case Justice Anderson summarised those principles as follows:

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9 [2009] AIRCFB 641
10 Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers Union and Australian Industry Group [2010] FWAFB 4488
“1. If no more appears than that (a) work was done; (b) the work was covered by an award; (c) a wage was paid for that work; then the whole of the amount paid can be credited against the award entitlement for the work whether it arises as ordinary time, overtime, weekend penalty rates or any other monetary entitlement under the award.

2. However, if the whole or any part of the payment is appropriated by the employer to a particular incident of employment the employer cannot later claim to have that payment applied in satisfaction of his obligation arising under some other incident of the employment. So a payment made specifically for ordinary time worked cannot be applied in satisfaction of an obligation to make a payment in respect to some other incident of employment such as overtime, holiday pay, clothing or the like even if the payment made for ordinary time was more than the amount due under the award in respect of that ordinary time.

3. Appropriation of a money payment to a particular incident of employment may be express or implied and may be by unilateral act of the employer debtor or by agreement express or implied.

4. A periodic sum paid to an employee as wages is prima facie an appropriation by the employer to all of the wages due for the period whether for ordinary time, overtime, weekend penalty rates or any other monetary entitlement in respect of the time worked. The sum is not deemed to be referable only to ordinary time worked unless specifically allocated to other obligations arising within the employer/employee relationship.

5. Each case depends on its own facts and is to be resolved according to general principles relating to contracts and to debtors and creditors.”

24. The above ‘off-set’ principles were considered in great detail by the Full Bench in the Absorption Case and ultimately the Full Bench found that subclause 2.2 in modern awards (which is a standard transitional provision)
allows employers to absorb the increases in wages and allowances arising out of the award modernisation process into existing over-award payments, despite the common law provisions.\footnote{Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union and Australian Industry Group [2010] FWAFB 4488 at [18] and [19]}
25. The Full Bench held that subclause 2.2 was not intended to modify the common law ‘off-setting’ principles but rather was intended to deal with award obligations.\(^{12}\) The clause did not extend to regulating matters in common law contracts.\(^{13}\)

**THE LEGISLATIVE INTENTION**

26. Employers and employees are free to rely on common law off-setting principles when entering into a common law contract of employment; however the existence of these principles at common law must not negate the opportunity for employers to rely on annualised salary clauses in modern awards as a means of remunerating employees.

27. This view reflects the legislative intention incorporated within paragraph 139(1)(f) of the *Fair Work Act 2009* (FW Act) and in former 576J(1)(f) of the *Workplace Relations Act 1996*, which permit modern awards to include terms about annualised wage arrangements.

28. In explaining Parliament’s intent that annualised wage arrangements would be part of the modern award system, the explanatory memorandum to the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008* said:

> "Annualised wage or salary arrangements"

53. New paragraph 576J(1)(f) would make allowable in awards annualised wage or salary arrangements that:

\(^{12}\) Ibid, at [18] and [19]
\(^{13}\) Ibid, at [18] and [19]
have regard to the pattern of work in an occupation;
provide an alternative to the separate payment of wages or salaries, and other monetary entitlements; and
include appropriate safeguards to ensure that individual employees are not disadvantaged.

54. Annualised wage or salary arrangements (annualised wage arrangements) would involve an employer paying an employee an overall amount averaged over the course of a year that is inclusive of the employee’s wages (or salary) and other award-based monetary entitlements eg penalty rates. An employer could use this method of paying an employee instead of paying the employee’s wages (or salary), and other monetary entitlements separately throughout the year.

55. The scope of this allowable modern award matter would be limited by new subparagraph 576J(1)(f)(iii) which would ensure that a modern award term providing for an annualised wage arrangement must include appropriate safeguards to ensure that individual employees are not disadvantaged when compared with what they would have received, had they been paid the entitlements separately throughout the year.”

29. If the Tribunal was to disregard the above legislative intention, and form the view that annualised salary provisions were not necessary because the common law enables parties to enter into ‘off-setting’ arrangements, paragraph 139(1)(f) would have no work to do.

30. The practical effect of an annualised salary clause is not to nullify the operation of the common law, but to provide employers with a simple and easy to understand statutory alternative.14

14 See Fair Work Act 2009, section 134(g)
31. Annualised salary clauses remove the barriers that inadvertently prevent employers from entering into and complying with off-setting arrangements in common law contracts. The Annualised salary clauses as found in the Clerks Award which is adopted in SE Water’s application clearly set out the rules that apply when seeking to remunerate an employee via an annualised salary arrangement. The common law is not so clear.

32. If a common law contract containing an off-setting arrangement is disputed, it would require interpretation by a Court, which could potentially be very costly and time consuming for the parties involved.

33. The proposed clause Award removes the need for employers and employees to enter into a common law contract to give effect to an annualised salary arrangement and permits the arrangement to be made within the context of the modern award. The practical implication of this is – if an underpayment arises because of a breach of the annualised salary clause, it can be dealt with by the Fair Work Ombudsman (FWO) and the Federal Magistrates Court, as a matter of industrial law. There is no need for complex legal arguments about the common law principles and whether there has been a breach of contract, express or otherwise.

34. When the circumstances of existing employees is considered the problems increase exponentially. Many employers and employees would be very uncomfortable with the notion of entering into new common law contracts with every existing employee covered under an award that includes an annualised salary arrangement. Indeed, in many cases this would be impossible to achieve because of employee and union resistance.
Enterprise Award Modernisation

35. SE Water has applied to have its Enterprise Award modernised. As outlined in its application, the sole reason for such application is to preserve the ability to have annualised salary provisions.

36. Enterprise Award applications have to meet the tests set out in Division 2 of Part 2 of Schedule 6 of the (Transitionals Provisions and Consequential Amendment) Act 2009.

37. For an application to modernise an Enterprise Award, it must meet the modern enterprise award objective and the following tests:

4 The enterprise instrument modernisation process

... (5) In deciding whether or not to make a modern enterprise award, and in determining the content of that award, FWA must take into account the following:

(a) the circumstances that led to the making of the enterprise instrument rather than an instrument of more general application;

(b) whether there is a modern award (other than the miscellaneous modern award) that would, for the enterprise instrument, cover the persons who are covered by the instrument, or whether such a modern award is likely to be made in the Part 10A award modernisation process;

(c) the content, or likely content, of the modern award referred to in paragraph (b) (taking account of any variations of the modern award that are likely to be made in the Part 10A award modernisation process);

(d) the terms and conditions of employment applying in the industry in which the persons covered by the enterprise instrument operate, and the extent to which those terms and conditions are reflected in the instrument;

(e) the extent to which the enterprise instrument provides enterprise-specific terms and conditions of employment;

(f) the likely impact on the persons covered by the enterprise instrument, and the persons covered by the modern award referred to in paragraph (b), of a decision to make, or not make, the modern enterprise award, including any impact on the ongoing viability or competitiveness of any enterprise carried on by those persons;

15 EM2013/73
(g) the views of the persons covered by the enterprise instrument.

(h) any other matter prescribed by the regulations.

38. For SE Water to succeed in its application to modernise its Enterprise Award, it must meet the above tests.

39. These tests were first considered by a Full Bench of FWA in the Bank of Queensland Agents Award Case. The Decision required the need for the tests to be applied to the circumstances of the case in the overall context of the modern award system. In short, the Full Bench expressed this as follows:

“[28] Like any applicant, the agents bear the onus of making a case for the modernisation of the agents award. The application must be decided in a context in which the outcome will determine whether a modernised award or the BFI award will apply. This is underlined by the terms of item 9(3) of Schedule 6 to the Transitional Act. That item provides that if Fair Work Australia decides not to make a modern enterprise award to replace an enterprise instrument, the instrument terminates when that decision comes into operation. While the agents award has a significant history, it must now be considered against the terms of a modern industry award that covers a wide range of businesses, large and small, in the banking, finance and insurance industry. The departures from the BFI award sought in the amended application are small in number. The evidence and material relating to the operations of the OMBs do not support a conclusion that the conditions sought should apply instead of the industry safety net provisions. Having considered the reasons advanced by the agents in the context of the matters which must be taken into account under item 4(5) we have concluded that a modern enterprise award should not be made to cover the OMBs. The agents award should not be modernised. The application is dismissed.”

40. In the application to modernise the Pizza Hut - SDA Employee Relations Award 2000 the Full Bench also decided against the Employer. In its Decision the Full Bench found at paragraph 39 onwards:

“In our view the consensual nature of the enterprise award is a factor in support of its retention. It indicates that there has been a desire for enterprise specific terms and conditions and an acceptance of that notion by the SDA. However the fundamental review of award structures brought about by award modernisation and the single national safety net established by modern awards reduces the
significance of this factor. Yum was an active participant in the award modernisation process and made submissions that were adopted by the Australian Industrial Relations Commission (AIRC) that a fast food industry award should be made separate from the General Retail Industry Award 2010. There is no doubt that the parties to the award have been active - and indeed proactive - in relation to award coverage for Pizza Hut employees and the history bears that out. Changed circumstances and the way in which the award modernisation process operated require a reconsideration of the appropriateness of an enterprise award. 

We accept that the part-time provisions of the Fast Food Award can be described as less flexible for the employers than the corresponding provisions of the Pizza Hut Award and Pizza Hut - SDA National Employee Relations Agreement 2009 and Pizza Hut - SDA National Employee Relations Agreement 2010 (the Agreements). To the extent that this is a problem for Pizza Hut, it does not arise immediately - only when the Agreements cease to apply - and then only if the existing arrangement is not replicated in a replacement agreement.

We consider that there are avenues available to apply the Fast Food Award provisions in a way that allows flexibility by agreement and complies with the requirements of the Award. We also consider that the alleged problems are not confined to Pizza Hut and its franchisees. They are common to many other take away pizza and fast food operators who operate in a similar or identical manner. The availability of a review of award provisions for the industry as a whole in 2012 and 2014 also diminishes the significance of this matter further.

We do not believe that Yum has established that its operations are distinguishable from other employers such as to establish the need for a different penalty rate regime. The availability of flexibility and consistency of costs should be balanced against the impact on employees and appropriate community standard penalty payments. Again if the balance is not right and the attainment of loaded rates under the Fast Food Award is considered overly restrictive then the content of that award could be reconsidered as part of the award review processes.

However in our view it has failed to establish that it is in a unique position in this regard. Many other fast food operators are relevantly in an identical position to Pizza Hut employers in terms of their market and labour needs. If the Fast Food Award provisions require reconsideration on the basis of the types of arguments advanced by Yum, then they can just as conveniently, and in our view more appropriately, be dealt with by the entire industry covered by the modern award as part of a future award review.
41. SE Water has real cause to have real concerns that in its application to modernise its Enterprise Award, it has high hurdle to overcome. Put simply, its application is solely to retain the annualised salary provisions of the Enterprise Award. As already identified, annualised salaries are a feature of the industry and not just SE Water. As such the more appropriate course for ventilating the need to retain annualised salary provisions as sought by SE Water is through an application to vary or review of the relevant Modern Award.

42. SE Water, agrees that this matter should have been ventilated at the time of the 2 yearly review and certainly is an issue which can be ventilated at the 4 yearly review.

43. SE Water submits that as its Enterprise Award, but for its application, expired as at the 1 January 2014, it is not in a position to wait for the 4 yearly review process to have the issue, subject to this application to be determined.

44. It is necessary to meet the modern Award Objective. The prevalence of salary arrangements the industry as well the clauses within enterprise awards operating in industry means that such clauses are necessary for employers and employees in the industry. This is more so, when Enterprise Awards and NAPSA’s have expired. SE Water further submits that its omission from the Award is due to an omission.

45. For reasons set out above SE Water submits that there is merit to grant this application.

10 June 2014

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1 MA000004
2 AE877415
3 AE880937
1. **Annualised salaries**

The following provisions are to apply to employees employed in classifications Level 9 and 10 in accordance with Schedule B

1.1 Annual salary instead of award provisions

(a) An employer may pay an employee an annual salary in satisfaction of any or all of the following provisions of the award:

(i) clause 14—Minimum weekly wages;

(ii) clause Error! Reference source not found.—Allowances;

(iii) clauses 25.5 and 6—Overtime and penalty rates; and

(iv) clause Error! Reference source not found.—Error! Reference source not found..

(b) Where an annual salary is paid the employer must advise the employee in writing of the annual salary that is payable and which of the provisions of this award will be satisfied by payment of the annual salary.

1.2 Annual salary not to disadvantage employees

(a) The annual salary must be no less than the amount the employee would have received under this award for the work performed over the year for which the salary is paid (or if the employment ceases earlier over such lesser period as has been worked).

(b) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions which are satisfied by the payment of the annual salary.

1.3 Base rate of pay for employees on annual salary arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of the annual salary equivalent to the relevant rate of pay in clause 14—Error! Reference source not found. and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.
Attachment 2

AP835789 - South East Water Limited Senior Officers and Managers Award 2003

This Fair Work Australia consolidated award incorporates all amendments up to and including 5 December 2005 (variation PR966029).

Clauses affected by the most recent amendment(s) are:

11. Wages/salaries

About this Award:
This award supersedes the South East Water Limited Senior Officers and Managers Award 1995 [AW796670].

Printed by authority of the Commonwealth Government Printer.

Disclaimer:
Please note that this consolidated award is prepared by the staff of Fair Work Australia and is believed to be accurate but no warranty of accuracy or reliability is given and no liability is accepted for errors or omissions or loss or damage suffered as a result of a person acting in reliance thereon.

Copies of official decisions, awards and orders of Fair Work Australia and the Australian Industrial Relations Commission (prior to 1 July 2009) can be accessed at no cost through Fair Work Australia’s website (www.fwa.gov.au) or purchased from any office of Fair Work Australia.
AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of award pursuant to Item 51 of Part 2 of Schedule 5 of the Workplace Relations and Other Legislation Amendment Act 1996 (C No 641 of 1999)

SOUTH EAST WATER LIMITED SENIOR OFFICERS AND MANAGERS

AWARD 1995

(ODN C No. 39114 of 1995)

[AW796670 Print M8792]

Water, sewerage and drainage services

SENIOR DEPUTY PRESIDENT KAUFMAN

MELBOURNE, 20 JULY 2004

Award simplification.

ORDER

A. Further to the decision issued by the Commission on 20 July 2004, [PR949751] the above award is varied as follows:

By deleting all clauses, schedules and appendices and inserting the following:
PART 1 - APPLICATION AND OPERATION OF AWARD

1. TITLE

This award shall be referred to as the South East Water Limited Senior Officers and Managers Award 2003.
2. **ARRANGEMENT**

**Part 1 - Application and operation of award**

1. Title
2. Arrangement
3. Operation of award and parties bound
4. Relationship with other awards
5. Definitions
6. Anti-discrimination

**Part 2 - Award flexibility**

7. Enterprise flexibility

**Part 3 - Communication, consultation and dispute resolution**

8. Prevention and settlement of disputes

**Part 4 - Employer and employees duties, employment relationship and related arrangements**

9. Contract of employment
10. Conditions of employment

**Part 5 - Wages and related matters**

11. Wages/salaries [PR966029]
12. Payment of wages/salaries
13. Accident pay
14. Travelling expenses

**Part 6 - Hours of work, breaks, overtime, shift work, weekend work**

15. Hours of work

**Appendix A - Work level descriptions - Senior officers**

**Appendix B - Work level descriptions - Managers**
3. **OPERATION OF AWARD AND PARTIES BOUND**

3.1 This award shall come into operation from the first pay period to commence on or after 20 July 2004 and shall remain in force for a period of 12 months.

3.2 The award shall be binding on South East Water Limited in respect of all its employees in the classifications listed in clause 11 - Wages/salaries, whether members of the undermentioned unions or not and the Association of Professional Engineers, Scientists and Managers, Australia (APESMA), and the Australian Municipal, Administrative, Clerical and Services Union (ASU).
4. RELATIONSHIP WITH OTHER AWARDS

4.1 This award shall supersede the South East Water Limited Senior Officers and Managers Award 1995 [AW796670 Print M8792].

4.2 Reference to the South East Water Limited Officers Award 2003 [AW835773 PR949725] also means any replacement enterprise agreement which operates in lieu of that award.
5. **DEFINITIONS**

5.1 **Commission** shall mean the Australian Industrial Relations Commission.

5.2 **SEWL** means South East Water Limited.

5.3 **Unions** shall mean the Australian Municipal Administrative, Clerical and Services Union, and the Association of Professional Engineers, Scientists and Managers, Australia.
6. ANTI-DISCRIMINATION

6.1 It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the Workplace Relations Act 1996 (the Act) through respecting and valuing the diversity of the workforce by helping to 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.

6.2 Accordingly, in fulfilling their obligations under the dispute resolution procedure clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.

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

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

6.3.2 junior rates of pay;

6.3.3 an employee, employer or registered organisation, pursuing matters of discrimination in any State or Federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;

6.3.4 the exemptions in s.170CK(3) and (4) of the Act.
PART 2 - AWARD FLEXIBILITY

7. ENTERPRISE FLEXIBILITY PROVISIONS

(See ss.113A, 113B of the Workplace Relations Act)

Where SEWL or employees wish to pursue an agreement at the enterprise or workplace about how the award should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs, the following process shall apply:

7.1 A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established.

7.2 For the purposes of the consultative process the employees may nominate the Union or Unions bound by this award or another person to represent them.

7.3 Where agreement is reached an application shall be made to the Commission.
PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

8. PREVENTION AND SETTLEMENT OF DISPUTES

Prevention and settlement of disputes shall be as prescribed in clause 9 - Prevention and settlement of disputes, of the South East Water Limited Officers Award 2003.
PART 4 - EMPLOYER AND EMPLOYEES DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

9. CONTRACT OF EMPLOYMENT

9.1 A Senior officer may be employed on a full-time, part-time or casual basis in accordance with clause 11.2 - Types of employment, of the South East Water Limited Officers Award 2003.

9.2 A full-time Senior officer may also be engaged on a temporary, fixed term, project or seasonal basis.

9.3 Termination of employment

9.3.1 The period of notice of termination shall be a minimum of four weeks by either the Senior officer/Manager or SEWL.

9.3.2 Except where inconsistent with clause 9.3.1, termination of employment shall be as prescribed by clause 11.4 - Termination of employment, of the South East Water Limited Officers Award 2003.

9.4 Total Remuneration arrangements

9.4.1 South East Water Limited and a Senior Officer may enter into a salary agreement which:

9.4.1(a) Must be in writing and signed by both parties; and

9.4.1(b) Either recorded in the time and wage records kept by the employer in accordance with Part 9A, Division I of the Workplace Relations Regulations; or

9.4.1(c) A notation placed in the record as to where a copy of the agreement may be inspected;

9.4.1(d) And which provides for:

9.4.1(d)(i) An overall requirement that employee will receive no less under the arrangement than the employee would have been entitled to if all award obligations had been met, taking account of the value of the provision of matters not comprehended by the award such as private use of an employer provided motor vehicle;

9.4.1(d)(ii) An annual review of the agreement;

9.4.1(d)(iii) Access to the AIRC for dispute resolution in accordance with the award dispute resolution procedure;
Details of any salary package arrangements;
Details of any other non-salary benefits provided to the employee;
Details of any performance pay arrangements and performance measurement indicators;
The involvement of the relevant union or an employee nominated representative;
The salary for the purposes of accident make up pay;

The agreement under 9.4.1 may, subject to 9.4.1(d)(i) also specify that the following award clauses may not apply:

From this award:
clause 11.5 Higher duties

From the South East Water Limited Officers Award 2003:
clause 15 Expenses and allowances
clause 18.3 Availability allowance
clause 19.3, 19.4, 19.5, 19.6, 19.7, 19.8, 19.9, 19.10 Overtime
clause 20.3.5 Meal Allowances

Notwithstanding this provision a total employment package arrangement entered into under clause 4.3 of the South East Water Limited Senior Officers and Managers Award 1995 shall continue to apply until the 20 July 2004 unless before that date:

the total package arrangement however described expires;
by agreement the arrangement is terminated;
either party seeks to review the arrangement having regard to the provisions of this clause.
10. CONDITIONS OF EMPLOYMENT

10.1 The general terms and conditions of employment relating to leave, public holidays and shift work shall be those prescribed by the South East Water Limited Officers Award 2003 and SEWL's policies as determined from time to time.

10.2 Appointment to a Senior officer or Manager position shall initially be to a particular position at a level; however the officer may for developmental or managerial requirements be transferred to another position at that level.
PART 5 - WAGES AND RELATED MATTERS

11. WAGES/SALARIES

[11.1 corrected and substituted by PR954072; PR966029 ppc 25Nov05]

11.1 The salaries in this award are expressed in minimum annual amounts.

<table>
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<th>Classification</th>
<th>Total minimum annual salary</th>
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<td>Manager</td>
<td>$57,643</td>
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</tbody>
</table>

11.2 An officer classified at AT5 to TP3 as defined by Melbourne Water Salaries Award 1992, who transferred to the classification of senior officer under this award, or was appointed directly to that classification, shall have no right to revert to coverage under the South East Water Limited Officers Award 1995 or any replacement agreement.

11.3 Provided that this clause shall not reduce the salary of senior officers or managers previously appointed to levels professional class 4 or 5 and senior administrator class 1 or 2 prior to the date of the creation of this award.

11.4 Absorption of safety net adjustments

[11.4 substituted by PR966029 ppc 25Nov05]

The rates of pay in this award include the arbitrated safety net adjustment payable under the safety net review - wages, June 2005 decision [PR002005]. This arbitratted safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitratted safety net adjustments.

11.5 Higher duties

11.5.1 Performance of higher duties shall be regarded as part of the Senior officer/Manager development program.
11.5.2 Where a Senior officer or Manager is directed to act in a position of a higher classification level for a period of less than ten working days, no higher duties allowance shall be paid. Where the continuous period of higher duties is ten working days or more, an allowance equal to the difference between the Senior officers or Managers usual rate of pay and that of the higher position shall be paid for the period of ten working days or more.

11.6 Supported wage system

11.6.1 This clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:

11.6.1(a) Supported wage system means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in Supported Wage System: Guidelines and Assessment Process.

11.6.1(b) Accredited assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual’s productive capacity within the supported wage system.

11.6.1(c) Disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.

11.6.1(d) Assessment instrument means the form provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

11.6.2 Eligibility criteria

11.6.2(a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

11.6.2(b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers’ compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.
11.6.2(c) This clause does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of, or are eligible for, a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the *Disability Services Act*, or if a part only has received recognition, that part.

11.6.3 Supported wage rates

11.6.3(a) Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing, according to the following schedule:

<table>
<thead>
<tr>
<th>Assessed capacity</th>
<th>Prescribed award rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>(11.7.4)</td>
<td></td>
</tr>
<tr>
<td>10%*</td>
<td>10%</td>
</tr>
<tr>
<td>20%</td>
<td>20%</td>
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<td>30%</td>
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<td>80%</td>
<td>80%</td>
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<tr>
<td>90%</td>
<td>90%</td>
</tr>
</tbody>
</table>

[11.6.3(b) substituted by PR966029 ppc 25Nov05]

11.6.3(b) Provided that the minimum amount payable shall be not less than $62 per week.

11.6.3(c) * Where a person’s assessed capacity is 10%, they shall receive a high degree of assistance and support.

11.6.4 Assessment of capacity

For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the supported wage system and documented in an assessment instrument by either:

11.6.4(a) the employer and a union party to the award, in consultation with the employee or, if desired, by any of these;
11.6.4(b) the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

11.6.5 Lodgement of assessment instrument

11.6.5(a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Australian Industrial Relations Commission.

11.6.5(b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that, where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

11.6.6 Review of assessment

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the supported wage system.

11.6.7 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other workers covered by this award, paid on a pro rata basis.

11.6.8 Workplace adjustment

An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee’s capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

11.6.9 Trial period

11.6.9(a) In order for an adequate assessment of the employee’s capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding twelve weeks, except that, in some cases, additional work adjustment time (not exceeding four weeks) may be needed.

11.6.9(b) During that trial period, the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
11.6.9(c) The minimum amount payable to the employee during the trial period shall be no less than $62 per week.

11.6.9(d) Work trials should include induction or training, as appropriate, to the job being trialled.

11.6.9(e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under 11.7.4.
12. PAYMENT OF WAGES / SALARIES

12.1 Payment of salary shall be made fortnightly or four weekly at the election of SEWL into a bank/building society/credit union account nominated by the Senior officer/Manager or by cheque at the option of SEWL.

12.2 Provided that this shall not preclude a Senior officer/Manager and SEWL agreeing to a payment period different from that above.
13. **ACCIDENT PAY**

Accident Pay shall be as prescribed in clause 14 - Accident pay, of the South East Water Limited Officers Award 2003.
14. TRAVELLING EXPENSES

Where a Senior officer or Manager is required to transfer to another work centre, he/she shall be compensated for excess travelling costs for a period of up to three months. No compensation shall be payable where SEWL provides a vehicle for commuting to and from the new work location.
PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK

15. HOURS OF WORK

Hours of duty shall nominally average 38 per week. However, a Senior officer shall devote the whole of his/her time, attention and skills during business hours of SEWL and at such other times as may be reasonably necessary for the proper conduct of his/her responsibilities and duties.
APPENDIX A - WORK LEVEL DESCRIPTIONS SENIOR OFFICERS

1. SENIOR OFFICER (FORMERLY LEVEL 5 - ADMINISTRATIVE / TECHNICAL)

1.1 Definition

1.1.1 Positions at this level operate under broad policy and control and are:

- Senior Practitioners (multi-function); or
- Managers (multi-function)

1.1.2 Work at this level is carried out under limited direction and requires a level of accountability, complexity, competency and technical judgement and responsibility clearly beyond that of a Level 4 - Function Management Stream position.

1.2 Organisational relationship

These positions at the Section level of the organisation typically report to a Division Manager and are responsible for two functions which impact at the Division level.

1.3 Complexity

Work at this level tends to be largely analytical, complex and novel. Critical work may be undertaken under general direction.

1.4 Knowledge

Work at this level requires the completion of Level 4 Skill Enhancement Program and the commencement of Level 5 Skill Enhancement Program.

1.5 Qualifications

Refer to clause 6 - Entry qualifications, of Appendix A of South East Water Limited Officers Award 2003.

1.6 Features

1.6.1 Work at this level requires the need to exercise independence and discretion in determining overall strategies, priorities, work standards, the allocation of resources within the limits of the work program and the formulation of policy and associated principles, practices and procedures, relative to the functions under control of the position.

1.6.2 An integral part of the duties will be to train subordinates and to work to the full extent of training and competencies.
1.6.3 A Senior practitioner at this level operates in accordance with broad objectives and is expected to apply significant technical knowledge and technical judgement in one or more disciplines or fields, directly relevant to the work area.

1.6.4 A Manager at this level leads, directs and coordinates multi Function work involving a considerable variety of activities. Managers at this level have responsibility for human, physical and financial resources under their control, and the work may also include coordination of projects involving staff from a range of disciplines.

2. SENIOR OFFICER (FORMERLY TECHNICAL PROFESSIONAL LEVEL 3)

2.1 Definitions

2.1.1 Positions at this level typically have a role as a Senior professional practitioner and/or Professional supervisor.

2.1.2 The Senior professional practitioner is responsible for activities and performs complex professional work under limited direction which is critical at the Section or Division level of the organisation.

2.1.3 The Professional supervisor at this level undertakes the ongoing supervision and coordination of professional and other staff.

2.2 Organisational relationship

Positions are at the unit level of the organisation and normally report to Senior officer/Senior engineer/Senior scientist class 1 or 2.

2.3 Qualifications

Refer to Professional Qualifications at clauses 5.1, 5.4, 5.5, 5.7, 5.8, 5.9, 5.10, 5.11 and 5.12 of the South East Water Limited Officers Award 2003.

2.4 Features

2.4.1 The position will be responsible for supervising the activities of a unit or team of professional practitioners and other staff, including allocating and checking their work, establishing and monitoring standards and developing and implementing training programs.

2.4.2 In addition to the supervisory responsibilities, a position with this role may carry out complex work associated with the Unit.

2.4.3 A Senior professional practitioner would be expected to provide advice on areas of responsibility to Senior management. However, an opinion from a higher level would normally be sought where issues are critical to a higher level of the organisation.
2.4.4 The position may also be expected to contribute to policy development relating to areas of responsibility and would normally operate under limited direction when involved in professional work.

2.4.5 An integral part of the duties will be the supervision of subordinates and to work to the full extent of training and competencies.

2.4.6 Work at this level requires the completion of Level 2 Professional Officer Skill Enhancement Program and the commencement of Level 3 Professional Officer Skill Enhancement Program.

3. SENIOR OFFICER (SENIOR ENGINEER/SENIOR SCIENTIST)

3.1 Definitions

3.1.1 Positions at this level typically have a role as a Senior professional practitioner and/or Professional supervisor.

3.1.2 The Senior professional practitioner is responsible for activities and performs complex professional work under limited direction which is critical at the Section or Division level of the organisation.

3.1.3 The Professional supervisor at this level undertakes the ongoing supervision and coordination of professional and other staff.

3.2 Qualifications

Refer to Professional Qualifications, Appendix A, South East Water Limited Officers Award 2003.

3.3 Organisational relationship

Positions are at the Unit level of the organisation and normally report to Senior officer/Senior engineer/Senior scientist class 1 or 2.

3.4 Features

3.4.1 The position will be responsible for supervising the activities of a unit or team of Professional; Practitioners and other staff, including allocating and checking their work, establishing and monitoring standards and developing and implementing training programs.

3.4.2 In addition to the supervisory responsibilities, a position with this role may carry out complex work associated with the Unit.

3.4.3 A Senior professional practitioner would be expected to provide advice on areas of responsibility to senior management. However, an opinion from a higher level would normally be sought where issues are critical to a higher level or the organisation.
3.4.4 The position may also be expected to contribute to policy development relating to areas of responsibility and would normally operate under limited direction when involved in professional work.

3.4.5 An integral part of the duties will be the supervision of subordinates and to work to the full extent of training and competencies.

3.4.6 Work at this level requires the completion of Level 2 Professional Officer Skill Enhancement Program and the commencement of Senior engineer Class A Skill Enhancement Program.
APPENDIX B - WORK LEVEL DESCRIPTIONS MANAGERS

1. MANAGER (FORMERLY SENIOR OFFICER CLASS 1)

1.1 Definition

1.1.1 Positions at this level operate under broad direction and control and are:

- Senior specialists; or
- Senior section managers.

1.1.2 Work at this level is carried out under broad direction and requires a level of accountability, complexity, competency and technical judgement clearly beyond that of a level 5 multi functional stream position.

1.2 Organisational relationship

These positions at the section level of the organisation typically report to a General Manager and are responsible for three functions which impact at the division level.

1.3 Complexity

Positions at this level typically operate in broadly structured and dynamic environments characterised by new and ever-changing client and/or customer demands, broadly stated objectives and policy, the need for frequent face-to-face decision making in determining outcomes and/or courses of action. Complex and novel work tend to become more prominent at this level. Critical work is undertaken under broad direction.

1.4 Knowledge

Work at this level required the completion of level 5 skill enhancement program and the commencement of Senior officer class 1 enhancement program.

1.5 Qualifications

Refer to entry qualifications, Appendix A, South East Water Limited Officers Award 2003.

1.6 Features

1.6.1 Work at this level requires the need to exercise independence and discretion in determining overall strategies, priorities, work standards, the allocation of resources within the limits of the work program and the formulation of policy and associated principles, practices and procedures and work of a novel, complex or critical nature.

1.6.2 An integral part of the duties will be to train subordinates and to work to the full extent of training an competencies.
1.6.3 A Senior specialist is accountable for the quality and relevance of advice within their field of expertise, operates in accordance with corporate objectives and is expected to apply a comprehensive and extensive knowledge and judgement in at least two disciplines or fields.

1.6.4 A Senior manager at this level directs and coordinates work over a range of functions and disciplines.

2. MANAGER (FORMERLY SENIOR OFFICER CLASS 2)

2.1 Definition

2.1.1 Positions at this level operate under broad direction and are:

- Principal specialists; or
- Principal section managers.

2.1.2 Work at this level is carried out under broad direction and requires a level of accountability, complexity, competence and technical judgement and responsibility clearly beyond that of a Class 1 Senior officer position.

2.2 Organisational relationship

These positions at the section level of the organisation typically report to a General manager and are responsible for more than three functions which impact at the division level.

2.3 Complexity

Work is analytical, complex and novel in nature with a significant requirement for critical work being a feature of the level.

2.4 Knowledge

Work at this level requires the completion of Senior officer Class 1 Skill Enhancement Program and the commencement of Senior officer Class 2 Skill Enhancement Program.

2.5 Qualifications

Refer to entry qualifications, Appendix A, South East Water Limited Officers Award 2003.

2.6 Features

2.6.1 Work at this level requires the need to exercise independence and discretion in determining overall strategies, priorities, work standards, the allocation of resources within the limits of the work program and the formulation of policy and associated principles, practices and procedures and work of a novel, complex and critical nature.
2.6.2 An integral part of the duties will be to train subordinates and to work to the full extent of training and competencies.

2.6.3 A Principal specialist is accountable for the quality and relevance of advice within their field of expertise.

3. MANAGER (FORMERLY SENIOR ENGINEER / SENIOR SCIENTIST CLASS 1)

3.1 Definitions

3.1.1 Positions at this level typically have a role as a Professional manager and/or Professional specialist.

3.1.2 The Professional manager directs and controls a function of a section comprising a number of teams involved in a range of inter-related activities including complex professional work which is limited in scope.

3.1.3 The Professional specialist under broad direction performs complex professional work which is critical at the division level of the organisation.

3.2 Qualifications

Refer to Professional Qualifications, Appendix A, South East Water Limited Officers Award 2003.

3.3 Organisational relationship

Positions are at the section level of the organisation and normally report to a General Manager and therefore would be subject to broad direction.

3.4 Features

3.4.1 Under broad policy and direction a Professional manager at this level would control and direct the activities of a section which is responsible for a function comprising a number of teams involved in a range of inter-related activities including complex professional work which is limited in scope.

3.4.2 The position would be expected to provide considerable direct input into the professional work carried out in terms of establishing standards, reviewing work and approval of output.

3.4.3 The position would also be expected to contribute to the development and implementation of policies and practices relating to the activities controlled.

3.4.4 Under broad policy and direction a Professional specialist at this level would carry out complex and critical professional work relating to a major function.
3.4.5 In this role the Professional specialist would be expected to provide technological and strategic advice to senior managers and a wide range of other personnel across the directorate.

3.4.6 An integral part of the duties will be the supervision of subordinates and to work to the full extend of training and competencies.

3.4.7 Work at this level requires the completion of Level 3 Professional Officer Skill Enhancement Program and the commencement of Senior engineer/Senior Scientist Class 1 Skill Enhancement Program.

4. MANAGER (FORMERLY SENIOR ENGINEER/SENIOR SCIENTIST CLASS 2)

4.1 Definitions

4.1.1 Positions at this level typically have a role as a Professional manager and/or Professional specialist.

4.1.2 The Professional manager would direct and control work of a section which is responsible for at least two functions and involved in work from different professional disciplines, discipline streams or diverse activities.

4.1.3 The Professional specialist under broad direction performs complex and novel professional work which is critical at the corporate level of the organisation.

4.2 Qualifications

Refer to Professional Qualifications, Appendix A, South East Water Limited Officers Award 2003.

4.3 Organisational relationship

Positions at the section level of the organisation normally report to a General manager.

4.4 Features

4.4.1 Under broad policy control and direction a Professional manager at this level would direct and control work of a section which is responsible for at least two functions and involved in work from different professional disciplines, discipline streams or diverse activities. A major task in this role is to establish programs, policies and standards and coordinate the work of the section to ensure that targets and standards are met.

4.4.2 Under broad policy control and direction a Professional specialist at this level would be responsible for complex, novel and critical professional work including developing, implementing and monitoring policies, strategies, procedures and standards relating to a professional discipline or area of professional work. This work would normally have corporate wide implications and significant impact.
4.4.3 In carrying out the work there is a requirement for a high degree of originality and analytical and conceptual skills in the resolution of particularly complex technological or policy issues. The work requires expert knowledge in a professional or technological field and in most cases a comprehensive knowledge of relevant legislation and policies. The position will involve constant adaptation of existing principles to new and unusual problems and involves frequent changes in policy, program or technology requirements.

4.4.4 A Manager at this level leads, directs and coordinates multi function work involving a considerable variety of activities. Managers at this level have responsibility for human, physical and financial resources under their control, and the work may also include coordination of projects involving staff from a range of disciplines.

**end of text**
### Summary of Water, sewerage and drainage services awards - Attachment 3

Note: The following list of awards has been extracted from Attachment B of the Award Modernisation statement issued by a Full Bench of the Commission on 29 June 2009 [[2009] AIRCFB 641].

<table>
<thead>
<tr>
<th>AIRC Industry</th>
<th>Publication Title</th>
<th>Pub ID</th>
<th>Annualised Salary</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industries not otherwise assigned</td>
<td>Electricity, Gas and Water Supply Industry Sector - Minimum Wage Order - Victoria 1998</td>
<td>AP780695</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>Regional Water Authorities Award 1999</td>
<td>AP795612</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>Rural Water Industry Award 2001</td>
<td>AP806351</td>
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<td>Water, sewerage and drainage services</td>
<td>Australian Inland Salaried Employees Award 2002</td>
<td>AP820495</td>
<td>Clause 12- salary</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>Campaspe Asset Management Services Pty. Ltd. (Coliban Water) Award 2004</td>
<td>AP836616</td>
<td>Clause 4 – exemption provisions</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>Coliban Region Water Authority Award 2001</td>
<td>AP806353</td>
<td>Clause 8 and 10- salary and exemption from overtime</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>Melbourne and Metropolitan Board of Works Superannuation Award 1987</td>
<td>AP788072</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>Melbourne Water Award 2000</td>
<td>AP790306</td>
<td>Clause 20 and 14- salary and exemption from overtime</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>Melbourne Water Senior Officers Award 2002</td>
<td>AP832432</td>
<td>Clause 11 wages and salaries</td>
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<td>Water, sewerage and drainage services</td>
<td>Metropolitan Water Supply Sewerage and Drainage Employees Western Australia Award 2003</td>
<td>AP822083</td>
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<tr>
<td>Northern Territory</td>
<td>Northern Territory Power and Water Corporation Employees Award 2002</td>
<td>AP819558</td>
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<tr>
<td>Northern Territory</td>
<td>Northern Territory Professional Engineers (Power and Water Authority) Award 2001</td>
<td>AP807115</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>Parks Victoria Award 2002</td>
<td>AP830825</td>
<td>Clause 16 salaries</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>Professional Engineers - Hunter Water Corporation - Award 2001</td>
<td>AP812597</td>
<td>Clause 13 and 15 – salary and only reasonable</td>
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</table>

✓ = Comparative schedules created for pre-reform award/NAPSA.
<table>
<thead>
<tr>
<th>Industry</th>
<th>Award Description</th>
<th>Award Number</th>
<th>Notes</th>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>SEQWater Salaried Staff Award 2003</td>
<td>AP826487</td>
<td>Clause 14 and 21- salary and exemption provisions</td>
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<td>Water, sewerage and drainage services</td>
<td>South East Water Limited Officers Award 2003</td>
<td>AP835773</td>
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<td>South East Water Limited Senior Officers and Managers Award 2003</td>
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<td>Water, sewerage and drainage services</td>
<td>Sydney Water (Senior Managers) Award 2001</td>
<td>AP809076</td>
<td>Clause 19- Remuneration package</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>Sydney Water and Australian Water Technologies P/L (Professional Engineers) Award 2000</td>
<td>AP809077</td>
<td>Clause 14- Overtime exemptions</td>
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<tr>
<td>Water, sewerage and drainage services</td>
<td>United Water International Employees Award 2001</td>
<td>AP817846</td>
<td>Clause 39 and 44 – salaries and exemptions from overtime</td>
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<td>Water, sewerage and drainage services</td>
<td>Yarra Valley Water Award 2000</td>
<td>AP803969</td>
<td>Clause 22- annualised salary</td>
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<td>Water, sewerage and drainage services</td>
<td>Yarra Valley Water Senior Officers Award 2006</td>
<td>AP847175</td>
<td>Clause 11 and 13</td>
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<td>Water, sewerage and drainage services</td>
<td>Goldenfields Water County Council Enterprise Award 2004</td>
<td>AN120233</td>
<td>NSW</td>
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<td>Water, sewerage and drainage services</td>
<td>Hunter Water Australia (State) Award</td>
<td>AN120251</td>
<td>Clause 12 – remuneration package</td>
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<td>Hunter Water Corporation Employees (State) Award 1999</td>
<td>AN120252</td>
<td>Clause S1</td>
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<td>Water, sewerage and drainage services</td>
<td>Sydney Water Award 2004</td>
<td>AN120532</td>
<td>NSW</td>
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<td>Water, sewerage and drainage services</td>
<td>Water Corporation (Staff) Award 2003</td>
<td>AN160332</td>
<td>Clause 32 and schedule A- salary and overtime exemptions</td>
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<td>Water, sewerage and drainage services</td>
<td>North West Water Authority Enterprise Award</td>
<td>AN170072</td>
<td>Clause 8- Salaries</td>
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</tbody>
</table>

X- already raised in submission
Blank – no relevant clause
IN FAIR WORK COMMISSION
Fair Work Act 2009

S157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective

South East Water Corporation
(AM2013/26)

Water Industry Award 2010
(ODN 2008/92)

STATEMENT OF SHANE LEVERSHA

I, Shane Leversha, People Services Manager of South East Water Corporation
20 Corporate Drive, Heatherton, Victoria, do solemnly and sincerely state and declare:

1. I am the People Services Manager of South East Water Corporation (“SE
Water”). I have held this position since ( state date). I am duly authorised to
make this statement and the contents contained herein are true and correct to
the best of my knowledge.

2. South East Water has employed a group of senior managers and
technical specialists under the South East Water Senior Officer &
Manager Award 2003 (“Enterprise award”), and its precursors, since its
formation. These employees are classified in this Enterprise Award as
levels 9 to 10.

3. There are approximately 119 employees out of 580 employees at SE
Water that are covered by the Enterprise Award and impacted by a
potential loss of the annualised salary clause.

4. South East Water pays these employees an annual salary in accordance
with the Annualised Salaries provision of the Enterprise Award.

5. These classifications cover SE Water’s senior managers and technical
experts, who receive a salary. On my calculation, these salaries exceed
the rates payable in both the Enterprise Award and the Water Industry
Modern Award 2010.

6. These employees work flexible hours as they determine, subject that
they complete the duties required. On an average these employees work
38 hours a week. Enclosed as Attachment “SL1” is a paysheet which
identifies an example of the payments they receive.

7. The Enterprise Award, subject to the determination of the application
made by SE Water to modernise it, should have ceased to operate as at
31 December 2013.
8 Cessation of the Enterprise Award would have resulted in the employees identified in paragraph 2 to be covered by the Water Industry Award 2010 (“Modern Award”). Unfortunately the Modern Award does not provide for annualised salaries.

9 As such and in order to maintain continuity of the annualised salary provisions for those employees, SE Water made 2 applications. One was to modernise the Enterprise Award and the other to seek a variation of the Modern Award to include an annualised salary clause.

10 Our analysis of the Modern Award indicates that employees identified in paragraph 2 would retain the majority of the terms and conditions that are relevant to them and SE Water, except for the ability to have an annualised salary.

11 It is SE Water’s preferred option to be covered by the Modern Award if the Award were able to provide for annualised salary provisions. In all other aspects the terms and conditions of the Modern Award suits SE Water’s requirements. It also provides a basis for SE Water to cover a wider group of employees than the current Enterprise Agreement. In addition, the flexibility in engaging employees under the Modern Award with an annualised salary clause would enable the organisation to adequately cater for the wide range of professions and technical/leadership responsibilities evident in the organisation.

12 Without an annualised salary provision in the modern award, SE Water will be left with no choice but to modernise the Enterprise Award. The modernisation of this Enterprise Award would not provide any other advantage or benefit to SE Water or the said employees.

13 The timely, costly and uncertain process of modernising the enterprise award for the sole purpose of maintaining an annualised salary clause for a small group of employee led SE Water to make the application to vary the Modern Award.

14 As there is no guarantee that the modernisation of the Enterprise Award would be successful, without the granting of SE Water’s application to vary the Modern award, it could be left in a position, where these employees would be covered by a modern award that does not have an annualised salary clause.

Shane Leversha
10 June 2014
<table>
<thead>
<tr>
<th><strong>Effective Date:</strong></th>
<th>31-Mar-14</th>
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</thead>
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**Name:** SAMPLE, Sample  
**No.:** 001038  
**Division:** People and Culture

<table>
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<tr>
<th><strong>1. Package Total</strong></th>
<th>$114,444</th>
<th>$0</th>
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<tr>
<td>Duty Allow</td>
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<table>
<thead>
<tr>
<th><strong>2. Less Company Notional Superannuation Contribution</strong></th>
<th>$9,324</th>
<th>357.37</th>
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<tbody>
<tr>
<td>Superannuable Salary :</td>
<td>$100,795</td>
<td>9.25%</td>
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<td></td>
<td>P</td>
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<table>
<thead>
<tr>
<th><strong>3. Less Vehicle Cost</strong></th>
<th>$4,325</th>
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<thead>
<tr>
<th><strong>4. Less Salary Sacrifice Options (If Applicable)</strong></th>
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<tbody>
<tr>
<td>Employee Salary Sacrifice Superannuation</td>
<td>0.00%</td>
<td>$0</td>
</tr>
<tr>
<td>Other Salary Sacrifice</td>
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<table>
<thead>
<tr>
<th><strong>5. PAYE Salary</strong></th>
<th>$100,795</th>
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<table>
<thead>
<tr>
<th><strong>6. Employee Post Tax Contribution amount</strong></th>
<th>$6,219</th>
<th>238.38</th>
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<thead>
<tr>
<th><strong>7. ZZZ - Comparison</strong></th>
<th>$0</th>
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<tr>
<th><strong>8. ZWIF - Defined Benefit Top Up</strong></th>
<th>$0</th>
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<thead>
<tr>
<th><strong>9. LLR - Leave Liability</strong></th>
<th>$57,7188</th>
<th>per hour</th>
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**NOTE:** Print new "REM" summary from Chris21 to ensure that TEC balances.
WITNESS STATEMENT OF SONYA MORGAN

I, Sonya Morgan of do solemnly and sincerely declare:

1. I am currently the Remuneration and Payroll Manager of South East Water Corporation ("SE Water"). I have held this position since 22\textsuperscript{nd} June 2011.

2. My duties include developing and implementing a contemporary, sustainable approach to remuneration and benefits and managing the end to end delivery of accurate and timely Payroll services to SE Water.

3. I commenced working with SE Water on the 22\textsuperscript{nd} June 2011. I was appointed as Remuneration and Payroll Manager.

4. My employment terms are currently governed by South East Water Senior Officer & Manager Award 2003. I am classified as a Senior Manager. I believe that this classification would equate to a level 9 of the Water Industry Award 2010.

5. I have been paid a salary for the entire period that I have been employed in my current role.

6. I work on average 40 hours per week. My salary compensates me for the hours I work.

7. I do not view my position as one which should attract an hourly rate. I choose the hours I work and my role involves a high level of autonomy to determine the hours I work, subject that I meet the requirements of my role. I am satisfied that I am well compensated for the hours that I work.

8. This suits my requirements and provides me flexibility in relation to how I work. If I were bound to Modern Award terms my employer may need to restrict that level of flexibility. As a senior employee, I would find that untenable.

9. Prior to working for SE Water, I worked as a Payroll Manager with Bristol-Myers Squibb. I was engaged on a contract of employment and paid a salary.

10. I wish to continue to be paid a salary and retain the flexibilities I have as a salaried employee.
11. I am aware that SE Water has brought an application to vary the Water Industry Award 2010 and an application to vary the South East Water Senior Officer & Manager Award 2003 (“Enterprise award”).

12. I support SE Water’s application to vary the Water Industry Award 2010 and understand that if it is successful in its application, it is likely to seek to withdraw its application to modernise the Enterprise Award. I support its application, with the full knowledge that if it is successful in its application this would mean that Water Industry Award 2010 would cover my employment as opposed to the Enterprise Award. I do not see that this change would diminish my terms and conditions that I currently enjoy.

Sonya Morgan
Date: 10 June 2014
IN FAIR WORK COMMISSION
Fair Work Act 2009

S157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective

South East Water Corporation
(AM2013/26)

Water Industry Award 2010
(ODN 2008/92)

WITNESS STATEMENT OF STEPHEN ALLEN

I, Stephen Allen of do solemnly and sincerely declare:

1. I am currently the Health and Safety Manager of South East Water Corporation ("SE Water"). I have held this position since 12th August 2013.


3. I commenced working with SE Water on the 12th August 2013. I was appointed as Health and Safety Manager.

4. My employment terms are currently governed by South East Water Senior Officer & Manager Award 2003. I am classified as a Senior Manager. I believe that this classification would equate to a level 10 of the Water Industry Award 2010.

5. I have been paid a salary for the entire period that I have been employed in my current role

6. I work on average 40 hours per week. My salary compensates me for the hours I work.

7. I do not view my position as one which should attract an hourly rate. I choose the hours I work and my role involves a high level of autonomy to determine the hours I work, subject that I meet the requirements of my role. I am satisfied that I am well compensated for the hours that I work.

8. This suits my requirements and provides me flexibility in relation to how I work. If I were bound to Modern Award terms my employer may need to restrict that level of flexibility. As a senior employee, I would find that untenable.
9. Prior to working for SE Water, I worked as a Health and Safety Manager with the Melbourne Cricket Ground. I was engaged on a contract of employment and paid a salary.

10. I wish to continue to be paid a salary and retain the flexibilities I have as a salaried employee.

11. I am aware that SE Water has brought an application to vary the Water Industry Award 2010 and an application to vary the South East Water Senior Officer & Manager Award 2003 ("Enterprise award").

12. I support SE Water’s application to vary the Water Industry Award 2010 and understand that if it is successful in its application, it is likely to seek to withdraw its application to modernise the Enterprise Award. I support its application, with the full knowledge that if it is successful in its application this would mean that Water Industry Award 2010 would cover my employment as opposed to the Enterprise Award. I do not see that this change would diminish my terms and conditions that I currently enjoy.

Stephen Allen
Date: 10 June 2014