



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/266)

EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

[MA000077]

Educational services

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

PLACE, XX MONTH YEAR

4 yearly review of modern awards – Educational Services (Teachers) Award 2010 – modern award varied.

A. Further to the decision [[YEAR] FWCFB XXXX] issued by the Full Bench of the Fair Work Commission on XX MONTH YEAR, the *Educational Services (Teachers) Award 2010* is varied as follows:

1. By deleting all clauses, schedules and appendices.
2. By inserting the clauses and schedules attached.

B. This determination comes into operation from [XX MONTH YEAR]. In accordance with s.165(3) of the *Fair Work Act 2009*, this determination does not take effect until the start of the first full pay period that starts on or after [XX MONTH YEAR].

PRESIDENT

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Educational Services (Teachers) Award 20XX

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Part 1—Application and Operation of this Award

1. Title and commencement

- 1.1 This award is the *Educational Services (Teachers) Award 20XX*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

2. Definitions

In this award, unless the contrary intention appears:

Act means the *Fair Work Act 2009* (Cth).

all other teachers means an employee who does not have the qualifications of a 3 year, 4 year or 5 year trained teacher.

children's services and early childhood education industry has the meaning given in clause 4.2(b).

defined benefit member has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth).

director means the employee appointed by the employer to be responsible for the overall management and administration of a service in which an early childhood/preschool teacher is employed.

employee means a person employed as a teacher in the school education industry or children's services and early childhood education industry who is a national system employee within the meaning of the [Act](#).

employer means national system employer within the meaning of the [Act](#).

exempt public sector superannuation scheme has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth).

5 year trained teacher means a teacher who has completed a degree in education or early childhood education that requires 4 years of full-time study at an Australian university and in addition has completed a postgraduate degree at an Australian university requiring at least one year of full-time study, or the equivalent as determined by the National Office of Overseas Skills Recognition, or the relevant State or Territory teacher registration authority, or in the case of early childhood teachers the relevant licensing and accreditation authority.

4 year trained teacher means a teacher who has completed a degree in education or early childhood education that requires 4 years of full-time study at an Australian university or the equivalent as determined by the National Office of Overseas Skills Recognition, or the relevant State or Territory teacher registration authority, or in the case of early childhood teachers the relevant licensing and accreditation authority.

MySuper product has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth).

NES means the National Employment Standards as contained in [sections 59 to 131](#) of the [Act](#).

non-term weeks means weeks in the school year other than term weeks and include periods designated as school holidays for students; where a preschool operates according to terms that approximate school terms, non-term week will have the same meaning.

on-hire means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client.

preschool means a service in the children's services and early childhood education industry which usually operates during hours and terms which approximate those of a recognised school, and includes a kindergarten, day school or nursery school.

principal means the employee appointed by the employer to the most senior leadership position in a school.

school education industry has the meaning given in clause 4.2(a).

school year means the period of 12 months from the day employees are required to attend the school for the new educational year or the calendar year, as determined by the school, and includes term weeks and non-term weeks.

standard rate means the minimum annual rate applicable to Level 1 in clause 17.1.

teacher means a person employed as such by a school, children's service or early childhood education service and who performs duties which include delivering an educational program, assessing student participation in an education program, administering an education program and performing other duties incidental to the delivery of the education program. So as to remove any doubt, teacher includes a teacher in a senior leadership position, but not a principal or deputy principal.

term weeks means the weeks in the school year that students are required to attend school as set out in the school calendar of each school; where a preschool operates according to terms that approximate school terms, term weeks will have the same meaning.

3 year trained teacher means a teacher who has completed a degree in education or early childhood education that requires 3 years of full-time study at an Australian university or the equivalent as determined by the National Office of Overseas Skills Recognition, or the relevant State or Territory teacher registration authority, or in the case of early childhood teachers the relevant licensing and accreditation authority.

2 year trained teacher means any teacher employed in the children's services and early childhood education industry as at the commencement of this award who has completed a 2 year full-time course in early childhood education and who has been recognised as an early childhood teacher by the relevant State or Territory licensing and accreditation authority.

3. The National Employment Standards and this award

- 3.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 3.2 Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.
- 3.3 The employer must ensure that copies of the award and the [NES](#) are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

4. Coverage

- 4.1 This industry award covers employers throughout Australia in the school education industry, children's services and early childhood education industry and their employees as defined in clause 2—Definitions to the exclusion of any other modern award.
- 4.2 For the purposes of this award:
- (a) **school education industry** means the provision of education, including preschool or early childhood education, in a school registered and/or accredited under the relevant authority in each State or Territory or in an early childhood service operated by a school and includes all operations of the school. Where the provision of school education is directed, managed and/or controlled by a central or regional administration of a system of schools it may also include the persons involved in providing such services to schools; and
 - (b) **children's services and early childhood education industry** means the industry of long day care, occasional care (including those occasional care services not licensed), nurseries, childcare centres, day care facilities, family based childcare, out-of-school hours care, vacation care, adjunct care, in-home care, kindergartens and preschools, mobile centres and early childhood intervention programs.
- 4.3 This award covers any employer which supplies labour on an on-hire basis in the school education industry and the children's services and early childhood education industry in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in those industries. Clause 4.3 operates subject to the exclusions from coverage in this award.
- 4.4 This award does not cover:

- (a) a person engaged solely to instruct students on an individual basis for example, in the areas of music, language, dance and/or to instruct students in choir, band, string ensemble or other similar small group (but not including an employee teaching the school curriculum);
- (b) a sports coach, assistant, or trainer (other than a member of the teaching staff of a school);
- (c) a person employed as a teacher/integration aide, helper, classroom assistant, or director/supervisor in or in connection with childcare, preschool, long day care centres, childminding centres or outside of school hours care services (other than a university qualified early childhood teacher);
- (d) a member of a recognised religious teaching order and/or Minister of Religion (other than a teacher who is not engaged in that capacity) or a person engaged for the purpose of religious instruction, supervision of prayers, or to undertake other religious duties of a non-teaching nature; or
- (e) a principal or deputy principal, however named.

4.5 The award does not cover:

- (a) an employee excluded from award coverage by the [Act](#);
- (b) employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees;
- (c) who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees;

4.6 Where an employer is covered by more than one award, an employee of that employer is covered by the classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

5. Individual flexibility arrangements

5.1 Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

- (a) arrangements for when work is performed; or
- (b) overtime rates; or

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- (c) penalty rates; or
- (d) allowances; or
- (e) annual leave loading.

NOTE: Agreement to vary the application of the terms under clauses 5.1(b) and (c) can only be made by employees covered by the provisions of Schedule A—Hours of Work and Related Matters—Teachers employed in early childhood services operating for at least 48 weeks per year.

- 5.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- 5.3** An agreement may only be made after the individual employee has commenced employment with the employer.
- 5.4** An employer who wishes to initiate the making of an agreement must:
 - (a) give the employee a written proposal; and
 - (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- 5.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- 5.6** An agreement must do all of the following:
 - (a) state the names of the employer and the employee; and
 - (b) identify the award term, or award terms, the application of which is to be varied; and
 - (c) set out how the application of the award term, or each award term, is varied; and
 - (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
 - (e) state the date the agreement is to start.
- 5.7** An agreement must be:
 - (a) in writing; and
 - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- 5.8** Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 5.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.

5.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.

5.11 An agreement may be terminated:

- (a) at any time, by written agreement between the employer and the employee; or
- (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the [Act](#)).

5.12 An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.

5.13 The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

6. Requests for flexible working arrangements

6.1 Employee may request change in working arrangements

Clause 6 applies where an employee has made a request for a change in working arrangements under section 65 of the [Act](#).

NOTE 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in section 65(1A). Clause 6 supplements or deals with matters incidental to the [NES](#) provisions.

NOTE 2: An employer may only refuse a section 65 request for a change in working arrangements on 'reasonable business grounds' (see section 65(5) and (5A)).

NOTE 3: Clause 6 is an addition to section 65.

6.2 Responding to the request

Before responding to a request made under section 65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

NOTE 1: The employer must give the employee a written response to an employee's section 65 request within 21 days, stating whether the employer grants or refuses the request (section 65(4)).

NOTE 2: If the employer refuses the request, then the written response must include details of the reasons for the refusal (section 65(6)).

6.3 What the written response must include if the employer refuses the request

- (a) Clause 6.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 6.2.
- (b) The written response under section 65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (c) If the employer and employee could not agree on a change in working arrangements under clause 6.2, then the written response under section 65(4) must:
 - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
 - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

6.4 What the written response must include if a different change in working arrangements is agreed

If the employer and the employee reached an agreement under clause 6.2 on a change in working arrangements that differs from that initially requested by the employee, then the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

6.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 31—Dispute resolution.

7. Facilitative provisions

7.1 A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned.

7.2 Facilitative provisions in this award are contained in the following clauses:

Clause	Provision	Agreement between an employer and:
28.2	Substitution of public holidays	An individual
A.1.3	Ordinary hours of work—teachers employed in early childhood services	An individual
A.4.2	Time off instead of overtime payment	An individual
A.6.1	Annual leave in advance	An individual
A.6.2	Cashing out of annual leave	An individual

Part 2—Types of Employment and Classifications

8. Types of employment

8.1 Employees under this award will be employed in one of the following categories:

- (a) full-time employment;
- (b) part-time employment;
- (c) casual employment; or
- (d) fixed term employment.

9. Terms of engagement

9.1 On appointment, the employer will provide the employee (other than a casual employee) with a letter of appointment stating:

- (a) the classification and rate of salary applicable on commencement;
- (b) the employee’s face-to-face teaching load; and
- (c) details of their extra curricular commitment.

9.2 In the case of a part-time employee, the letter of appointment will include the employee’s teaching load expressed as a percentage of a full-time load in the school and state their extra curricular commitment will generally be, on balance, in the same proportion to their teaching load as that of a full-time teacher.

9.3 Where the employer engages the employee on a fixed term basis, the letter of appointment will inform the employee of:

- (a) the reason the employment is fixed term;
- (b) the date of commencement; and
- (c) the period of the employment.

10. Full-time employees

A full-time employee is engaged to work an average of 38 ordinary hours per week.

11. Part-time employees

11.1 A part-time employee is an employee who is engaged to work on a regular basis for less than, but not more than **90%** of, the hours of a full-time employee in the school, children's service, or early childhood education service.

11.2 If the hours of a part-time employee rise above **90%** of the hours of a full-time employee, the employee will be considered full-time.

11.3 A part-time employee who requests to work above **90%** of full-time hours, but less than full-time, will not be considered to be full-time and will be remunerated for the actual hours worked.

11.4 A part-time employee is entitled to the benefits under this award on a pro rata basis. The pro rata basis will be calculated by dividing the number of face-to-face teaching hours prescribed for the part-time employee from time to time by the usual number of face-to-face teaching hours prescribed for a full-time employee in the school, children's service or early childhood education service.

11.5 An employer cannot vary a part-time employee's teaching load or days of attendance unless:

(a) the employee consents; or

(b) where such a variation is required as a result of a change in funding, enrolment or curriculum, the employer provides 7 weeks' notice in writing in the case of a school teacher or 4 weeks' notice in the case of an early childhood teacher, or where the change would result in a reduction in salary, the salary of the teacher is maintained for a period of 7 weeks in the case of a school teacher or 4 weeks in the case of an early childhood teacher.

12. Casual employees

12.1 Casual employment means employment on a day-to-day basis for a period of not more than 4 consecutive weeks, or 4 consecutive term weeks in the case of a teacher in a school or preschool.

12.2 A casual engagement may be extended by agreement between the teacher and the employer provided the total period of the engagement:

(a) does not exceed one school term in the case of teachers in a school or preschool; or

(b) a total of 10 weeks in any other case.

12.3 The rates of pay for a casual employee are contained in clause 17.5.

13. Fixed term employees

13.1 An employee may be employed for a fixed period of time for a period of at least 4 weeks but not more than 12 months on either a full-time or part-time basis to:

- (a) undertake a specified project for which funding has been made available;
- (b) undertake a specified task which has a limited period of operation; or
- (c) replace an employee who is on leave, performing other duties temporarily or whose employment has terminated after the commencement of the school year.

13.2 Where the replacement arrangement under clause 13.1(c) extends beyond 12 months, the fixed term employment may be extended for up to a further 12 months.

14. Classifications

14.1 Duties of an employee

The duties of a teacher may, include, in addition to teaching, activities associated with administration, review, development and delivery of educational programs and co-curricular activities.

14.2 Recognition of previous service

- (a) On appointment, an employee will be classified and placed on the appropriate level on the wage scale in clause 17—Minimum rates, according to their qualifications and teaching experience. For the purpose of this award **teaching experience** does not include employment as a teacher in a TAFE program (unless the teacher is employed to teach a Vocational and Educational Training (VET) program) or in an English Language School.
- (b) Service as a part-time teacher will normally accrue on a pro rata basis according to the percentage of a full-time teaching load undertaken in any year. However, subject to clause 11.3, where the hours are more than **90%** of a full-time load, service will count as a full-time year.
- (c) In the case of a casual employee, the equivalent of a full-time year of teaching service is 200 full casual days in Australian schools.
- (d) In the case of an early childhood/preschool teacher, the following will count as service:
 - (i) teaching experience in preschools, kindergartens, multi-purpose centres, early intervention services, long day care centre and other similar services;
 - (ii) teaching experience of children from 4 to 8 years (or in the infants department) of a school registered and/or accredited under the relevant authority in each state or territory;
 - (iii) service as a lecturer in early childhood education or child development, as a child development officer or equivalent; and

- (iv) service as a diploma qualified childcare worker, at the rate of one year for every 3 years' service up to a maximum of 4 years.

14.3 Evidence of qualifications

- (a) On engagement, the employer may require that the employee provide documentary evidence of qualifications and teaching experience.
- (b) If an employer considers that the employee has not provided satisfactory evidence, and advises the employee in writing to this effect, then the employer may decline to recognise the relevant qualification or experience until evidence is provided. The employer will not unreasonably refuse to recognise the qualifications or teaching experience of an employee.
- (c) Where an employee has completed further teaching experience with another employer (for example during unpaid leave) or additional qualifications after commencement of employment, they will be entitled to be classified accordingly and back paid from the date of completion of the experience or qualifications, provided the employee provided satisfactory evidence to the employer within 3 months of completion. In all other cases the employee will be classified and paid from the date satisfactory evidence is provided.

14.4 Progression

- (a) An employee who is 3 year trained will commence on Level 1 of the wage scale in clause 17—Minimum rates and progress according to normal years of service to Level 12 of the scale.
- (b) An employee who is 4 year trained will commence on Level 3 of the wage scale in clause 17—Minimum rates and progress according to normal years of service to Level 12.
- (c) An employee who is 5 year trained will commence on Level 4 of the wage scale in clause 17—Minimum rates and progress according to normal years of service to Level 12 of the scale.
- (d) All other teachers and 2 year trained teachers as defined in clause 2—Definitions will commence on Level 1 of the wage scale in clause 17—Minimum rates and progress according to normal years of service to a maximum of Level 5.

Part 3—Hours of Work

15. Ordinary hours of work

- 15.1 Clause 15 of the award provides for industry specific detail and supplements the [NES](#) that deals with maximum weekly hours.
- 15.2 Clause 15 does not apply to teachers, including a teacher appointed as a Director, employed in an early childhood service which operates for 48 or more weeks per year who are covered by the provisions of Schedule A—Hours of Work and Related

Matters—Teachers employed in early childhood services operating for at least 48 weeks per year.

- 15.3** Notwithstanding the [NES](#), and due to the operational requirements of employers in the industry, the ordinary hours of an employee under this award may be averaged over a 12 month period.
- 15.4** The ordinary hours of work for an employee during term weeks are variable. In return, an employee is not generally required to attend for periods of time when the students are not present, subject to the needs of the employer with regard to professional development, student free days and other activities requiring the employee's attendance.
- 15.5** The maximum number of days that the employee will be required to attend during term weeks and non-term weeks is 205 in each school year.
- 15.6** The following circumstances are not included when calculating the 205 employee attendance days:
- (a) co-curricular activities that are conducted on a weekend;
 - (b) school related overseas and interstate trips, conferences and similar activities undertaken by mutual consent during non-term weeks;
 - (c) when the employee appointed to a leadership position is performing duties in non-term weeks that are directly associated with the leadership position;
 - (d) when the employee has boarding house responsibilities and the employee is performing those duties during term weeks and non-term weeks; and
 - (e) exceptional circumstances, such as the requirement to provide pastoral care to students in the event of a tragedy in the school community, in which an employee may be recalled to perform duties relating to their position.
- 15.7** The provision of clause 15.5 does not apply to employers that adhere to the calendar and school year of a foreign country.
- 15.8** The employer will provide written notice of the term weeks and days in non-term times on which the employees are required to attend, 6 months in advance of the requirement to attend.
- 15.9** The annual salary and any applicable allowances payable under this award are paid in full satisfaction of an employee's entitlements for the school year or a proportion of the school year. The employee's absence from school during non-term weeks is deemed to include their entitlement to annual leave.

16. Breaks

16.1 Unpaid meal break

- (a) An employee will be entitled to an unpaid meal break of 30 consecutive minutes no later than 5 hours after commencing work.

- (b) Clause 16.1(a) does not apply to teachers employed in early childhood services operating for at least 48 weeks per year who are covered by the provisions of Schedule A—Hours of Work and Related Matters—Teachers employed in early childhood services operating for at least 48 weeks per year.

16.2 Paid meal break

If a teacher employed in an early childhood service is required to remain on the premises during the meal break they will be entitled to a paid meal break of between 20 and 30 minutes no later than 5 hours after commencing work.

Part 4—Wages and Allowances

17. Minimum rates

NOTE: A transitional pay equity order taken to have been made pursuant to item 30A of Schedule 3A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) has effect in accordance with that item. A relevant transitional pay equity order operates in Queensland as provided for in item 30A (6) and (7).

- 17.1 The minimum wage payable to a full-time employee will be determined in accordance with the provisions of clause 14—Classifications, and the following table.

Classification	Minimum annual rate (full-time employee)
	\$
Level 1	51,518
Level 2	52,580
Level 3	54,011
Level 4	55,959
Level 5	57,909
Level 6	59,724
Level 7	61,538
Level 8	63,486
Level 9	65,437
Level 10	67,386
Level 11	69,337
Level 12	71,284

NOTE: See Schedule B—Summary of Rates of Pay for a summary of hourly rates of pay, including overtime and penalty rates.

17.2 A full-time employee who works in a children’s or early childhood service which usually provides services over a period of at least 8 hours each day for 48 weeks or more (such as a long day care centre) will be paid an additional **4%** on the rates set out in clause 17.1 on the basis that the employee is not covered by the provisions of clause 15—Ordinary hours of work.

17.3 The weekly rate of pay for an employee will be determined by dividing the annual rate by 52.18 and the fortnightly rate by dividing the annual rate by 26.09.

17.4 Part-time employee rates

A part-time employee will be paid pro rata, at the same rate as a full-time employee in the same classification, in accordance with the provisions of clause 11—Part-time employees.

17.5 Casual employee rates

- (a) The minimum rate payable to a casual employee will be:
 - (i) where the employee is engaged for less than 5 consecutive days—no higher than the rate at Level 8 in clause 17.1; or
 - (ii) where the employee is engaged for 5 or more consecutive days—the appropriate minimum rate for the classification as specified in clause 14—Classifications.

(b) The minimum rate for a casual employee will be calculated in accordance with the following table:

Full day	Weekly rate calculated in accordance with clause 17.3 divided by 5 plus 25%
Half day	Weekly rate calculated in accordance with clause 17.3 divided by 10 plus 25%
Quarter day	Weekly rate calculated in accordance with clause 17.3 divided by 20 plus 25%

- (c) **Minimum payments**
 - (i) Where a day is the usual required attendance time for an employee at a particular school and a half day is half the usual required attendance time; a casual employee in a school will be paid for a minimum of half a day.
 - (ii) A casual employee in a children’s service or early childhood education service will be paid for a minimum of a quarter day.

18. Payment of wages

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

18.1 All monies payable will be paid:

- (a) once each fortnight;
- (b) once every 4 weeks at the end of the first fortnight which includes payment for 2 weeks in arrears and 2 weeks in advance; or
- (c) once every month with the payment being made as nearly as possible on the middle of each month which includes one half month in arrears and one half month in advance.

18.2 An employer may elect to pay wages and allowances by cash, cheque or direct transfer. Where monies are paid by direct transfer, the employee has the right to nominate the financial institution and the account.

18.3 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
 - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) all other amounts that are due to the employee under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under clause 18.3(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

NOTE 1: Section 117(2) of the [Act](#) provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

NOTE 2: Clause 18.3(b) allows the Commission to make an order delaying the requirement to make a payment under clause 18.3. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the [Act](#), may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

19. Allowances

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

19.1 Employers must pay to an employee the allowances the employee is entitled to under clause 19.

NOTE: See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

19.2 Wage-related allowances—director’s allowance

(a) Clause 19.2 applies only to an early childhood/preschool teacher who is appointed as a Director.

(b) A full-time employee who is appointed as a Director will be paid, in addition to the amounts payable under clause 17—Minimum rates, the following allowance which is based on a percentage of the [standard rate](#), and calculated on the basis of the number of places in the centre for which they are responsible:

Level	Number of places	\$ per annum
1	Up to 39 places	5924.57
2	40–59 places	7341.32
3	60 or more places	8912.61

(c) A part-time employee who is appointed as a Director will be paid, in addition to the amounts payable under clause 17—Minimum rates, an allowance in accordance with the table in clause 19.2(b), on a proportionate basis to the hours they work.

(d) An employee required by the employer to act as a Director for at least 10 consecutive working days will be paid at the rate applicable to that position for the time they are in the position.

19.3 Wage-related allowances—leadership allowance

(a) Eligibility

(i) Clause 19.3 applies only to a teacher in a school.

(ii) A leadership allowance will be paid to an employee where the employer requires the performance of administrative, pastoral care and/or educational leadership duties additional to those usually required of teachers by the employer.

(iii) An allowance is linked to a position of leadership rather than tied to an individual employee.

(iv) The principal of the school determines who holds a position that is eligible for a leadership allowance.

(b) Notification

(i) The principal will provide written advice to an employee in receipt of an allowance of the position, its tenure, the duties required and the allowance to be paid.

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- (ii) The principal will advise the employee of the level to which the position equates.

(c) Structure of leadership allowances

Leadership allowances will be determined by student numbers and the level of responsibility undertaken, as follows:

(i) School size

Category	School size
Category A	School with more than 600 students
Category B	School with between 300–600 students
Category C	School with between 100–299 students

(ii) Level of responsibility

The level of additional responsibility can be categorised as either administrative, pastoral care or educational leadership, or a combination of these, as follows:

Level 1	Positions of leadership such as responsibility for the management of a major department or a pastoral care or educational leadership position of equivalent status.
Levels 2 and 3	Positions of leadership such as small learning area department heads, additional responsibilities such as co-ordination of a school publication, sports co-ordinator or similar responsibilities.

A school will apply these allowances to positions of responsibility which are appropriate to its structure.

- (d) The assignment of a position to a particular level in clause 19.3 will reflect the graduation of responsibilities exercised in each school, whether, administrative, pastoral care or educational leadership, with Level 1 being the most significant level of responsibility.
- (e) Positions of leadership will be available in both primary and secondary schools.
- (f) A school with less than 100 students will determine positions of responsibility and allowances which are appropriate to its structure.

(g) Amount

- (i) The allowances are based on a percentage of the [standard rate](#). The following allowances apply:

Category	\$ per annum		
	A	B	C
Level 1	4121.44	3606.26	3245.63

Category	\$ per annum		
	A	B	C
Level 2	2833.49	2447.11	2060.72
Level 3	1416.75	1210.67	824.29

- (ii) Where the position of leadership is shared, the payments may also be shared.

19.4 Expense-related allowances—vehicle allowance

- (a) An employee required by the employer to use the employee’s motor vehicle in the performance of duties must be paid the following allowances:

Vehicle	\$ per kilometer (km)
Motor car	0.78 per km with a maximum payment up to 400 km per week
Motorcycle	0.26 per km with a maximum payment up to 400 km per week

- (b) The employer must pay all expenses including registration, running and maintenance where an employer provides a motor vehicle which is used by an employee in the performance of the employee’s duties.

20. Superannuation

20.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

20.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

20.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the

employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 20.2.

- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 20.3(a) and 20.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 20.3(a) or 20.3(b) was made.

20.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) and 20.3(b) to one of the following superannuation funds or its successor:

- (a) NGS Super;
- (b) Australian Catholic Superannuation and Retirement Fund (ACSRF);
- (c) Catholic Super (CSF);
- (d) Combined Fund;
- (e) The Victorian Independent Schools Superannuation Fund;
- (f) HESTA Super Fund;
- (g) CareSuper;
- (h) AustralianSuper;
- (i) Tasplan;
- (j) Sunsuper;
- (k) Queensland Independent Education and Care Superannuation Trust;
- (l) AMP Superannuation Savings Trust;
- (m) Concept One the Industry Superannuation Plan;
- (n) Lutheran Super;
- (o) Christian Super;
- (p) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or

- (q) a superannuation fund or scheme of which the employee is a defined benefit member.

Part 5—Leave and Public Holidays

21. Annual leave

- 21.1 Annual leave is provided for in the [NES](#). Clause 21 of the award provides industry specific details and supplements the [NES](#) which deals with annual leave.

NOTE: Where an employee is receiving over-award payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the [Act](#)).

- 21.2 An employee in a school, preschool or kindergarten must take annual leave during non-term weeks. Leave must generally be taken, in the case of an employee whose employment with the employer is continuing into the next school or preschool year, in the 4-week period immediately following the final term week of the current school or preschool year, unless otherwise agreed with the employer.
- 21.3 An employee may only take annual leave re-credited in accordance with the [NES](#) during non-term weeks as directed by the employer.

22. Pro rata payment of salary inclusive of annual leave

- 22.1 Clause 22 of the award provides industry specific detail and incorporates the [NES](#) entitlement with respect to annual leave.

- 22.2 Clause 22 does not apply to teachers employed in early childhood services operating for at least 48 weeks per year covered by Schedule A—Hours of Work and Related Matters—Teachers employed in early childhood services operating for at least 48 weeks per year.

- 22.3 For the purpose of clause 22:

- (a) **school or preschool service date** means the date from which employees are paid at the commencement of the school/preschool year in their first year of service with the employer; and
- (b) **employee** means an employee other than a casual employee.

- 22.4 The provisions of clause 22 will apply:

- (a) in the calculation of payment of pro rata salary where an employee's employment ceases; or
- (b) in the calculation of payment of pro rata salary if:
 - (i) an employee commenced employment after the school or preschool service date; or

- (ii) an employee has taken leave without pay of more than 2 term weeks since the school or preschool service date; or
- (iii) the hours which an employee has worked at school or preschool have varied since the school or preschool service date.

22.5 Calculation of payments

The calculation is as follows:

$$P = \frac{S \times C}{B} - D$$

P is the payment due

S is the total salary paid in respect of term weeks, or part thereof, since the school or preschool service date or the date of employment in circumstances where the employee has been employed by the employer since the school or preschool service date.

B is the number of term weeks, or part thereof in the school or preschool year

C is the number of non-term weeks, or part thereof, in the school or preschool year

D is the salary paid in respect of non-term weeks, or part thereof, that have occurred since the school or preschool service date or date of employment in circumstances where the employee has been employed by the employer since the school or preschool service date

22.6 The formula in clause 22.5 is intended to be used to calculate the pro rata salary inclusive of annual leave owing to an employee in respect of the school/preschool year in which the formula is applied.

22.7 Employees who commence employment after the commencement of the school or preschool year

An employee who commences employment after the usual date of commencement at a school or preschool in any school/preschool year, will be paid from the date the employee commences provided that at the end of the last school/preschool term or final semester in that year, the employee must be paid an amount calculated pursuant to clause 22.5 and will receive no salary or other payment other than payment under clause 22.7 until:

- (a) the school or preschool service date or the resumption of Term 1; or
- (b) first semester in the following school/preschool year.

22.8 Employees who take approved leave without pay

Where an employee takes leave without pay with the approval of the employer for a period which (in total) exceeds more than 2 term weeks in any year, the employee will be paid a salary calculated in accordance with clause 22.8 as follows:

- (a) if the leave without pay commences and concludes in the same school/preschool year, the payment will be calculated and made at the conclusion of the last school/preschool term or final semester in that year;
- (b) if the leave without pay is to conclude in a school/preschool year following the school/preschool year in which the leave commenced:
 - (i) at the commencement of the leave, a payment will be calculated and made in respect of the school/preschool year in which the leave commences; and
 - (ii) at the end of the last school/preschool term or final semester in that year in which the leave concludes, a payment will be calculated and made in respect of that school/preschool year.
- (c) If the employee returns early from leave any payment under clause 22.8(b)(i) will be taken into account in calculating the amount owed to the employee at the end of the last school/preschool term or final semester in that year.

23. Annual leave loading

23.1 Clause 23 of the award provides for industry specific detail and supplements the [NES](#) which deals with annual leave.

23.2 An employee who has served throughout the school year is entitled to a leave loading of **17.5%** on 4 weeks' annual leave. The loading will normally be paid:

- (a) at the time that the employee is paid annual leave or pro rata annual leave; or
- (b) on the termination of employment by either party.

23.3 Leave loading is to be calculated using the following formula:

$$\frac{[\text{Weekly rate} \times 4 \times \mathbf{17.5\%}] \times \text{term weeks worked by the employee in that school year}}{\text{Total term weeks in that school year}}$$

For example, in the case of an employee with a weekly salary of **\$1000** on termination of employment (or at the end of the final term week in the school year) who was employed at the school for 20 of the 38 term weeks in that school year, the calculation will be as follows:

$$\mathbf{\$1000} \times 4 \times \mathbf{17.5\%} = \mathbf{\$700}$$

$$\mathbf{\$700} \times 20/38 = \mathbf{\$368.42}$$

23.4 Clause 23.3 does not apply to teachers covered by Schedule A—Hours of Work and Related Matters—Teachers employed in early childhood services operating for at least 48 weeks per year.

23.5 Despite clauses 23.2 and 23.3, an employer may pay annual leave loading to the employee with each wage payment throughout the school year by increasing the annual rate of pay as at the commencement of the school year, or as subsequently varied, by **1.342%**.

23.6 An employer that elects to pay leave loading with each wage payment throughout the school year will advise the employee in their letter of appointment.

24. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the [NES](#).

25. Parental leave and related entitlements

Parental leave and related entitlements are provided for in the [NES](#).

26. Community service leave

Community service leave is provided for in the [NES](#).

27. Unpaid family and domestic violence leave

Unpaid family and domestic violence leave is provided for in the [NES](#).

NOTE 1: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

28. Public holidays

28.1 Public holiday entitlements are provided for in the [NES](#).

28.2 Substitution of public holidays

- (a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the [NES](#).
- (b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the [NES](#).

28.3 Part-day public holidays

For provisions in relation to part-day public holidays see Schedule G—Part-day Public Holidays.

Part 6—Consultation and Dispute Resolution

29. Consultation about major workplace change

29.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

29.2 For the purposes of the discussion under clause 29.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

- (a) their nature; and
- (b) their expected effect on employees; and
- (c) any other matters likely to affect employees.

29.3 Clause 29.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

29.4 The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 29.1(b).

29.5 In clause 29 **significant effects**, on employees, includes any of the following:

- (a) termination of employment; or
- (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
- (c) loss of, or reduction in, job or promotion opportunities; or
- (d) loss of, or reduction in, job tenure; or
- (e) alteration of hours of work; or

- (f) the need for employees to be retrained or transferred to other work or locations;
or
- (g) job restructuring.

29.6 Where this award makes provision for alteration of any of the matters defined at clause 29.5, such alteration is taken not to have significant effect.

30. Consultation about changes to rosters or hours of work

30.1 Clause 30 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

30.2 The employer must consult with any employees affected by the proposed change and their representatives (if any).

30.3 For the purpose of the consultation, the employer must:

- (a) provide to the employees and representatives mentioned in clause 30.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

30.4 The employer must consider any views given under clause 30.3(b).

30.5 Clause 30 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

31. Dispute resolution

31.1 Clause 31 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

31.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

31.3 If the dispute is not resolved through discussion as mentioned in clause 31.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

31.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 31.2 and 31.3, a party to the dispute may refer it to the Fair Work Commission.

- 31.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 31.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 31.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 31.
- 31.8** While procedures are being followed under clause 31 in relation to a dispute:
- (a) work must continue in accordance with this award and the [Act](#); and
 - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 31.9** Clause 31.8 is subject to any applicable work health and safety legislation.

Part 7—Termination of Employment and Redundancy

32. Termination of employment

NOTE: Sections 117 and 123 of the [Act](#) set out requirements for notice of termination by an employer under the [NES](#). Clauses 32.1 and 32.2 require an employer to give a greater minimum period of notice than that generally required under the [NES](#).

32.1 Notice of termination by an employer—schools

- (a) Clause 32.1 applies to an employee employed in a school.
- (b) Subject to clause 33.4, the employment of an employee (other than a casual employee) will not be terminated without at least 7 term weeks' notice (inclusive of the notice required under the [NES](#)), the payment of 7 weeks' salary instead of notice, or part notice and part payment instead of notice provided that the total weeks' notice and weeks' payment instead equal 7.

32.2 Notice of termination by an employer—other than schools

- (a) Clause 32.2 applies to an employee who is not employed in a school.
- (b) The employment of an employee (other than a casual employee) will not be terminated without at least 4 weeks' notice (inclusive of the notice required under the [NES](#)), or 4 preschool term weeks in the case of a preschool employee, or the payment of 4 weeks' salary instead of notice. If the employee is over 45 years of age and has completed at least 2 years of service, the [NES](#) notice period will apply

32.3 Notice of termination by an employee

- (a) The notice of termination required to be given by an employee is the same as that required of the employee's employer under clause 32.1 or 32.2.
- (b) If an employee does not give the period of notice required under clause 32.3(a), then the employer may deduct from wages due to the employee under this award an amount that is no more than 2 weeks' wages for the employee.
- (c) If the employer has agreed to a shorter period of notice than that required under clause 32.3(a), then no deduction can be made under clause 32.3(b).
- (d) Any deduction under clause 32.3(b) must not be unreasonable in the circumstances.

32.4 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 32.4 is to be taken at times that are convenient to the employee after consultation with the employer.

32.5 Exclusions

Employees who are excluded from coverage of the notice of termination provisions in the [NES](#) are also excluded from coverage of the notice of termination provisions in this award.

32.6 Statement of service

Upon the termination of employment of an employee (other than a casual employee) the employer will provide upon the request of the employee, a statement of service setting out the commencement and cessation dates of employment.

32.7 Termination of casual employment by an employer—early childhood teachers

- (a) Clause 32.7 applies to a casual early childhood teacher.
- (b) On termination of casual employment, the employer will indicate on the employee's service card the length of service with the employer. Upon request a casual employee will also be given a statement setting out the number of days of duty worked by the employee during the period of the engagement.

33. Redundancy

NOTE: Redundancy pay is provided for in the [NES](#). See sections 119–123 of the [Act](#). Clause 33 provides industry specific detail and supplements the [NES](#).

33.1 Transfer to lower paid duties on redundancy

- (a) Clause 33.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.

- (b) The employer may:
 - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or
 - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 33.1(c).
- (c) If the employer acts as mentioned in clause 33.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

33.2 Employee leaving during redundancy notice period

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 33 or under sections 119–123 of the [Act](#) had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

33.3 Job search entitlement

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 33.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 33.3(b).
- (d) An employee who fails to produce proof when required under clause 33.3(b) clause is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 32.4.

33.4 Interaction of clause 33 with clause 32—Termination of employment

Where the employee's employment is terminated on the grounds of redundancy, the employee will be entitled only to the greater of:

- (a) notice of termination under clause 32.1 or 32.2; or
- (b) notice of termination and severance payments under the [NES](#).

33.5 Part-time employees

If a part-time employee's hours are reduced, without their consent, by more than 25% they will be entitled to the provisions of clause 33.

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Schedule A—Hours of Work and Related Matters—Teachers employed in early childhood services operating for at least 48 weeks per year

A.1 Ordinary hours of work

A.1.1 A full-time employee's ordinary hours of work will be 38 per week which may be averaged over a period of 4 weeks.

A.1.2 The ordinary hours of work will be worked between 6.00 am and 6.30 pm, on any 5 days between Monday and Friday, and will not exceed 8 hours on any day.

A.1.3 Subject to the provisions of clause 5—Individual flexibility arrangements, by agreement between an employer and an employee, an employee may be rostered to work up to a maximum of 10 hours in any one day.

A.1.4 Breaks between periods of duty

(a) An employee will be entitled to a minimum break of 10 consecutive hours between the end of one period of duty and the beginning of the next. This applies in relation to both ordinary hours and where overtime is worked.

(b) Where an employer requires an employee to continue or resume work without having a 10 hour break off duty, the employee is entitled to be absent from duty without loss of pay until a 10 hour break has been taken, or be paid at 200% of the minimum hourly rate of pay until released from duty.

A.2 Rostered days off

The employer and employee may agree that the ordinary hours of work provided by clause A.1—Ordinary hours of work will be worked over 19 days in each 4 week period, in which case the following provisions will apply.

A.2.1 The employee will work 152 hours over 19 days in each 4 week period with one rostered day off on full pay in each period.

A.2.2 An employee will accrue 24 minutes for each 8 hour day worked to give the employee an entitlement to take rostered days off.

A.2.3 Each day of paid leave taken by an employee (but not including long service leave, or any period of stand-down, any public holiday or any period of absence for which workers compensation payments apply occurring during any cycle of 4 weeks) will be regarded as a day worked for the purpose of accruing an entitlement under clause A.2.2.

A.2.4 Rostered days off will not be regarded as part of the employee's annual leave for any purpose.

A.2.5 An employee will not be entitled to personal leave in respect of illness whilst on a rostered day off. In the event of a rostered day off falling on a public holiday, the employer and the employee will agree on a substitute day.

- A.2.6** An employee will not be entitled to more than 12 rostered days off in any 12 months of consecutive employment.
- A.2.7** An employee who is scheduled to take a rostered day off before having worked a complete 4 week cycle will be paid a pro rata amount for the time that the employee has accrued in accordance with clause A.2.2.
- A.2.8** An employee whose employment is terminated in the course of a 4 week cycle will be paid a pro rata amount for the time that the employee has accrued in accordance with clause A.2.2.
- A.2.9** Rostered days off will be determined by mutual agreement between the employer and the employee, having regards to the needs of the place of employment.
- A.2.10** An employee will be advised by the employer at least 4 weeks in advance of the day on which the employee is to be rostered off duty.
- A.2.11** Nothing in clause A.2 will entitle an employee who works less than 38 hours per week to accumulate rostered days off pursuant to clause A.2.
- A.2.12** Where a service operates for less than 48 weeks per year and the employee receives more than 4 weeks' paid leave per year, the employee will accrue rostered days off to a maximum of 7 days in any 12 months of consecutive employment. Any days accrued in excess of 7 will be subsumed into the period of paid leave.

A.3 Breaks

A.3.1 Meal break

- (a) An employee will be entitled to a paid meal break of between 20 and 30 minutes no later than 5 hours after commencing work.
- (b) By agreement with the employer, an employee may leave the premises or elect not to be on call during the meal break. In that case the meal time will not count as time worked and nor will payment be made for that time.
- (c) Where an employee is called back to perform any duties within the centre or the break is interrupted for any reason the employee will be paid **150%** of the minimum hourly rate for a minimum of 15 minutes and thereafter to the nearest quarter hour until an uninterrupted break, or the balance of the break, is taken.

A.3.2 Non-contact time

- (a) An employee responsible for programming and planning for a group of children will be entitled to at least 2 hours' non-contact time per week for the purpose of planning, preparing, evaluating and programming activities.
- (b) During non-contact time an employee must not be required to supervise children or perform other duties directed by the employer.

A.4 Overtime

A.4.1 Overtime rates

- (a) An employee will be paid overtime for all authorised work performed outside of or in excess of the ordinary or rostered hours at **150%** of the minimum hourly rate for the first 3 hours and **200%** of the minimum hourly rate thereafter.
- (b) Despite clause A.4.1(a), part-time employees who agree to work in excess of their normal hours will be paid at ordinary time for up to 8 hours provided that the additional time worked is during the ordinary hours of operation of the early childhood service.
- (c) No part-time employee may work in excess of 8 hours in any day without the payment of overtime.

A.4.2 Time off instead of overtime payment

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause A.4.2.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in clause A.4.2(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by clause A.4.2 is set out at Schedule D—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule D—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause A.4.2 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause A.4.2 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause A.4.2 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause A.4.2(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause A.4.2 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause A.4.2 will apply, including the requirement for separate written agreements under clause A.4.2(b) for overtime that has been worked.

NOTE: If an employee makes a request under section 65 of the [Act](#) for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the [Act](#)).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause A.4.2 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause A.4.2.

A.4.3 Make-up time

An employee may elect, with the consent of the employer, to work make-up time under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.

A.5 Shiftwork

A.5.1 For the purposes only of calculating the shift rates provided for clause A.5:

- (a) a weekly rate of pay is calculated by dividing the employee’s annual salary, including applicable allowances, by 52.18;
- (b) a daily rate of pay is calculated by dividing the weekly rate as provided for in clause A.5.1(a) by 5; and
- (c) the rate of pay for a casual is first calculated in accordance with the provisions of clause 17.5.

A.5.2 A shift rate is payable to employees required to perform shiftwork in accordance with the following:

Shift	% of minimum hourly rate
Early morning shift (any shift commencing at or after 5.00 am and before 6.00 am)	110
Afternoon shift (any shift finishing after 6.30 pm and at or before midnight)	115
Night shift, rotating with day or afternoon shift	117.5
Night shift, non-rotating (any shift finishing after midnight and at or before 8.00 am or any shift commencing at or after midnight and before 5.00 am which does not rotate or alternate with other shifts so as to give the employee at least one third of their shifts off night shift in each roster cycle)	130
Saturday	125

A.6 Annual leave

A.6.1 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
 - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
 - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.

NOTE: An example of the type of agreement required by clause A.6.1 is set out at Schedule E—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule E—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause A.6.1 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause A.6.1, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

A.6.2 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause A.6.2.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause A.6.2.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause A.6.2 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
 - (ii) the date on which the payment is to be made.
- (e) An agreement under clause A.6.2 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause A.6.2 as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause A.6.2.

NOTE 2: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause A.6.2.

NOTE 3: An example of the type of agreement required by clause A.6.2 is set out at Schedule F—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Cash Out Annual Leave.

A.6.3 Excessive leave accruals: general provision

NOTE: Clauses A.6.3 to A.6.5 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause A.6.4 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause A.6.5 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

A.6.4 Excessive leave accruals: direction by employer that leave be taken

- (a) If an employer has genuinely tried to reach agreement with an employee under clause A.6.3(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under clause A.6.4(a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause A.6.3, A.6.4 or A.6.5 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under clause A.6.4(a) that is in effect.
- (d) An employee to whom a direction has been given under clause A.6.4(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in clause A.6.4(d) may result in the direction ceasing to have effect. See clause A.6.4(b)(i).

NOTE 2: Under section 88(2) of the [Act](#), the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

A.6.5 Excessive leave accruals: request by employee for leave

- (a) Clause A.6.5 comes into operation from 24 May 2018.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause A.6.3(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (c) However, an employee may only give a notice to the employer under clause A.6.5(b) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause A.6.4(a) that, when any other paid annual leave arrangements (whether made under clause A.6.3, A.6.4 or A.6.5 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (d) A notice given by an employee under clause A.6.5(b) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause A.6.3, A.6.4 or A.6.5 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (e) An employee is not entitled to request by a notice under clause A.6.5(b) more than 4 weeks' paid annual leave in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under clause A.6.5(b).

Schedule B—Summary of Rates of Pay

NOTE: A transitional pay equity order taken to have been made pursuant to item 30A of Schedule 3A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) has effect in accordance with that item. A relevant transitional pay equity order operates in Queensland as provided for in item 30A (6) and (7).

B.1 Casual employees

B.1.1 Casual employees—full day rates

	All employees	Teachers employed in early childhood services operating for at least 48 weeks per year				
	Full day rate	Early morning shift ²	Afternoon shift ³	Night shift (rotating) ⁴	Night (non-rotating) ⁵	Saturday
	% of casual full day rate					
	100%	110%	115%	117.5%	130%	125%
	\$	\$	\$	\$	\$	\$
Level 1	246.83	271.51	283.85	290.03	320.88	308.54
Level 2	251.92	277.11	289.71	296.01	327.50	314.90
Level 3	258.77	284.65	297.59	304.05	336.40	323.46
Level 4	268.11	294.92	308.33	315.03	348.54	335.14
Level 5	277.45	305.20	319.07	326.00	360.69	346.81
Level 6	286.15	314.77	329.07	336.23	372.00	357.69
Level 7	294.84	324.32	339.07	346.44	383.29	368.55
Level 8 ¹	304.17	334.59	349.80	357.40	395.42	380.21
Level 9	313.52	344.87	360.55	368.39	407.58	391.90
Level 10	322.85	355.14	371.28	379.35	419.71	403.56
Level 11	332.20	365.42	382.03	390.34	431.86	415.25
Level 12	341.53	375.68	392.76	401.30	443.99	426.91

¹ Where an employee is engaged for less than 5 consecutive days, the minimum rate payable to a casual employee will be no higher than the wage at Level 8.

² **Early morning shift** means a shift commencing at or after 5.00 am and before 6.00 am

³ **Afternoon shift** means a shift finishing after 6.30 pm and at or before midnight

⁴ **Night shift (rotating)** means a shift finishing after midnight and at or before 8.00 am, or a shift commencing at or after midnight and before 5.00 am, which rotates with day or afternoon shifts

⁵ **Night shift (non-rotating)** means a shift finishing after midnight and at or before 8.00 am, or a shift commencing at or after midnight and before 5.00 am, which does not rotate or alternative with other shifts so as to give the employee at least one third of their shift off night shift in each roster cycle

B.1.2 Casual employees—half day and quarter day rates

All employees	Half day rate	Quarter day rate¹
	% of casual rate	
	100%	100%
	\$	\$
Level 1	123.41	61.71
Level 2	125.96	62.98
Level 3	129.39	64.69
Level 4	134.05	67.03
Level 5	138.72	69.36
Level 6	143.07	71.54
Level 7	147.42	73.71
Level 8 ²	152.08	76.04
Level 9	156.76	78.38
Level 10	161.43	80.71
Level 11	166.10	83.05
Level 12	170.77	85.38

¹ Only casual employees employed in children’s service or an early childhood education service may be paid at a quarter day rate of pay.

² Where an employee is engaged for less than 5 consecutive days, the minimum rate payable to a casual employee will be no higher than the rate at Level 8.

Schedule C—Summary of Monetary Allowances

See clause 19—Allowances for full details of allowances payable under this award.

C.1 Wage-related allowances

C.1.1 The following wage-related allowances are based on the [standard rate](#) as defined in clause 2—Definitions as the minimum annual rate applicable to Level 1 in clause 17.1= \$51,518.

Allowance	Clause	% of standard rate	\$	Payable
Director’s allowance:	19.2(b)			
Level 1		11.50	5924.57	per annum
Level 2		14.25	7341.32	per annum
Level 3		17.30	8912.61	per annum
Leadership allowance:	19.3(g)			
Level 1A		8.00	4121.44	per annum
Level 1B		7.00	3606.26	per annum
Level 1C		6.30	3245.63	per annum
Level 2A		5.50	2833.49	per annum
Level 2B		4.75	2447.11	per annum
Level 2C		4.00	2060.72	per annum
Level 3A		2.75	1416.75	per annum
Level 3B		2.35	1210.67	per annum
Level 3C		1.60	824.29	per annum

C.1.2 Adjustment of wage-related allowances

Wage-related allowances are adjusted in accordance with increases to wages and are based on percentage of the [standard rate](#) as specified.

C.2 Expense-related allowances

C.2.1 The following expense-related allowances will be payable to employees in accordance with clause 19.4:

Allowance	Clause	\$	Payable
Vehicle allowance—use of own vehicle—motor car	19.4	0.78	per km ¹
Vehicle allowance—use of own vehicle—motorcycle	19.4	0.26	per km ¹

¹ With a maximum payment up to 400 km per week.

C.2.2 Adjustment of expense-related allowances

- (a) At the time of any adjustment to the [standard rate](#), each expense-related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Vehicle allowance	Private motoring sub-group

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Schedule D—Agreement for Time Off Instead of Payment for Overtime

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:

Date and time overtime started: ___/___/20___ am/pm

Date and time overtime ended: ___/___/20___ am/pm

Amount of overtime worked: _____ hours and _____ minutes

The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Schedule E—Agreement to Take Annual Leave in Advance

Link to PDF copy of [Agreement to Take Annual Leave in Advance](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:

The amount of leave to be taken in advance is: ____ hours/days

The leave in advance will commence on: ____/____/20____

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

[If the employee is under 18 years of age - include:]

I agree that:

if, on termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule F—Agreement to Cash Out Annual Leave

Link to PDF copy of [Agreement to Cash Out Annual Leave](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree to the employee cashing out a particular amount of the employee’s accrued paid annual leave:

The amount of leave to be cashed out is: ____ hours/days

The payment to be made to the employee for the leave is: \$_____ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: ____/____/20__

Signature of employee: _____

Date signed: ____/____/20__

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20__

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20__

Schedule G—Part-day Public Holidays

- G.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- G.2** Where a part-day public holiday is declared or prescribed between 6.00 pm and midnight, or 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday but as a result of exercising their right under the [NES](#) does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday but as a result of being on annual leave does not work, they will be taken not to be on annual leave during the hours of the declared or prescribed part-day public holiday that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e) Excluding annualised salaried employees to whom clause G.2(f) applies, where an employee works any hours on the declared or prescribed part-day public holiday they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked on the declared or prescribed part-day public holiday.
 - (g) An employee not rostered to work on the declared or prescribed part-day public holiday, other than an employee who has exercised their right in accordance with clause G.2(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
- G.3** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.
- G.4** This schedule is not intended to detract from or supplement the [NES](#).