

Educational Services (Teachers) Award 2010

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Part 1—Application and Operation

1. Title

This award is the *Educational Services (Teachers) Award 2010*.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

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

award-based transitional instrument has the meaning in the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)

all other teachers means an employee who does not have the qualifications of a three year, four year or five year trained teacher

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 who is a national system employee as defined in sections [13](#) and [30C](#) of the Act

employer means a national system employer as defined in sections [14](#) and [30D](#) of the Act

enterprise award-based instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

five year trained means a teacher who has completed a degree in education that requires four 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

four year trained means a teacher who has completed a degree in education that requires four 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

NES means the National Employment Standards as contained in [sections 59 to 131](#) of the *Fair Work Act 2009* (Cth)

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non-term weeks means weeks in the school year other than term weeks and include periods designated as school holidays for students

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

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.

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 14—Minimum salary

teacher means a person employed as such by a school and who performs duties which include delivering an educational programme, assessing student participation in an education programme, administering an education programme and performing other duties incidental to the delivery of the education programme. 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

three year trained means a teacher who has completed a degree in education that requires three 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

3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

4.1 This award, subject to clauses 4.2, 4.3 and 4.4, covers employers throughout Australia in the school education industry and their employees as defined in clause 3.1 to the exclusion of any other modern award.

4.2 The award does not cover an employee excluded from award coverage by the Act.

4.3 The award does not cover 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.

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 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. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. The National Employment Standards and this award

The [NES](#) and this award contain minimum conditions of employment for employees covered by this award.

7. Award flexibility

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;

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- (b) allowances; and
- (c) leave loading.

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

7.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to.

7.4 The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

7.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

7.6 Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

7.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

7.8 The agreement may be terminated:

- (a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
- (b) at any time, by written agreement between the employer and the individual employee.

7.9 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employer to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representative or representatives, if any.
- (b) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

8.2 Employer to discuss change

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

9. Dispute resolution

- 9.1 In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

- 9.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to Fair Work Australia.
- 9.3** The parties may agree on the process to be utilised by Fair Work Australia including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved, Fair Work Australia may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

10.1 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.

10.2 Terms of engagement

- (a) On appointment, the employer will provide the employee (other than a casual employee) with a letter of appointment stating the classification and rate of salary applicable on commencement, the employee's face-to-face teaching load and details of their extra curricular commitment.
- (b) 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 that their extra curricular commitment will generally be, on balance, in the same proportion to their teaching load as that of a full-time teacher.
- (c) Where the employer engages the employee on a fixed term basis, the letter of appointment will inform the employee of the reason the employment is fixed term, the date of commencement and the period of the employment.

10.3 Full-time employment

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

10.4 Part-time employment

- (a) 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. If the hours of a part-time employee rise above 90%, the employee will be considered to be full-time.
- (b) 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.
- (c) An employee (full-time or part-time) 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.
- (d) An employer cannot vary a part-time employee's teaching load or days of attendance unless:
 - (i) the employee consents; or
 - (ii) where such a variation is required as a result of a change in funding, enrolment or curriculum, the employer provides seven weeks' notice in writing, or where the change would result in a reduction in salary, the salary of the teacher is maintained for a period of seven weeks.

10.5 Casual employment

- (a) Casual employment means employment on a day-to-day basis for a period of not more than four consecutive term weeks.
- (b) A casual engagement may be extended by agreement between the teacher and the employer provided the total period of the engagement does not exceed one school term.
- (c) The rates of pay for a casual employee are contained in clause 14.4.

10.6 Fixed term employment

- (a) An employee may be employed for a fixed period of time for a period of at least four weeks but no more than 12 months on either a full-time or part-time basis to:
 - (i) undertake a specified project for which funding has been made available;
 - (ii) undertake a specified task which has a limited period of operation; or
 - (iii) replace an employee who is on leave, performing other duties temporarily or whose employment has terminated after the commencement of the school year. Provided that where the replacement arrangement extends beyond 12 months, the fixed term employment may be extended for up to a further 12 months.

11. Termination of employment

11.1 Notice of termination is provided for in the NES. This clause of the award provides industry specific detail and supplements the NES that deals with termination of employment.

11.2 Notice of termination by an employer

Subject to clause 12.5, the employment of an employee (other than a casual employee) will not be terminated without at least seven term weeks' notice (inclusive of the notice required under the NES), the payment of seven 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 seven.

11.3 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer.

11.4 If an employee fails to give the notice specified in clause 11.3 the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

11.5 Job search entitlement

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

11.6 Exclusions

Employees who are excluded from coverage of the notice of termination provisions the NES are also excluded from coverage of the notice of termination provisions in this award.

11.7 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.

12. Redundancy

12.1 Redundancy pay is provided for in the NES. This clause of the award provides industry specific detail and supplements the NES which deals with redundancy.

12.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to under the NES if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference

between the former ordinary time rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

12.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the NES period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

12.4 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of NES notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the NES notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 11.5.

12.5 Interaction of this clause with clause 11—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 11.2; or
- (b) notice of termination and severance payments under the NES.

12.6 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 this clause.

12.7 Transitional provisions

- (a) Subject to clause 12.7(b) an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a notional agreement preserving a State award:
 - (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and
 - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the notional agreement preserving a State award is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.

- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) Clause 12.7 ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

13. Classifications

13.1 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 programmes and co-curricular activities.

13.2 Recognition of previous service

- (a) On appointment, an employee will be classified and placed on the appropriate level on the salary scale in clause 14—Minimum salary, 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 programme (unless the teacher is employed to teach a Vocational and Educational Training (VET) programme) 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; provided that where the hours are at least 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 four to eight 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 three years service up to a maximum of four years.

13.3 Evidence of qualifications

- (a) On engagement, the employer may require that the employee provide documentary evidence of qualifications and teaching experience. If an employer considers that the employee has not provided satisfactory evidence,

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and advises the employee in writing to this effect, then the employer may decline to recognise the relevant qualification or experience until such evidence is provided. Provided that the employer will not unreasonably refuse to recognise the qualifications or teaching experience of an employee.

- (b) 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 three months of completion. In all other cases the employee will be classified and paid from the date satisfactory evidence is provided.

13.4 Progression

- (a) An employee who is three year trained will commence on Level 1 of the salary scale in clause 14—Minimum salary and progress according to normal years of service to Level 12 of the scale.
- (b) An employee who is four year trained will commence on Level 3 of the salary scale in clause 14 and progress according to normal years of service to Level 12.
- (c) An employee who is five year trained will commence on Level 4 of the salary scale in clause 14 and progress according to normal years of service to Level 12 of the scale.
- (d) All other teachers as defined in clause 3.1 will commence on Level 1 of the salary scale in clause 14 and progress according to normal years of service to a maximum of Level 5.

14. Minimum salary

- 14.1 The minimum salary per annum payable to a full-time employee will be determined in accordance with the provisions of clause 13—Classifications, and the following table.

Level	Per Annum
	\$
1	38 283
2	39 101
3	40 201
4	41 701
5	43 201
6	44 597
7	45 993
8	47 493
9	48 993
10	50 493

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Level	Per Annum
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11	51 993
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12	53 493
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14.2 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.

14.3 Part-time employee

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 10.4.

14.4 Casual employee

The salary payable to a casual employee will be no higher than the salary at Level 8 in clause 14.1 unless the employee is engaged for more than five consecutive days. In the latter case the salary will be the appropriate salary for the classification as specified in clause 13—Classifications, calculated in accordance with the table below:

Full day	Weekly rate calculated in accordance with clause 14.2 divided by 5 plus 25%
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Half day	Weekly rate calculated in accordance with clause 14.2 divided by 10 plus 25%
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Provided that a casual employee will be paid for a minimum of half a day; where a day is the usual required attendance time for an employee at that school and a half day is half the usual required attendance time.

15. Allowances

15.1 Director's allowance

This clause applies only to an early childhood/preschool teacher who is appointed as a Director.

(a) A full-time employee who is appointed as a Director will be paid, in addition to the amounts payable pursuant to clause 14—Minimum salary, on a fortnightly basis, an allowance 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 where:

(i) Level 1 refers to a centre with no more than 39 places;

(ii) Level 2 refers to a centre with 40–59 places; and

(iii) Level 3 refers to a centre with 60 or more places.

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Level	Per annum % of standard rate
1	11.50
2	14.25
3	17.30

- (b) A part-time employee who is appointed as a Director will be paid, in addition to the amounts payable pursuant to clause 14—Minimum salary, an allowance in accordance with the table in clause 15.1(a), on a proportionate basis to the hours they work.
- (c) 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.

15.2 District allowances

(a) Northern Territory

An employee in the Northern Territory is entitled to payment of a district allowance in accordance with the terms of an award made under the *Workplace Relations Act 1996* (Cth):

- (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and
- (ii) that would have entitled the employee to payment of a district allowance.

(b) Western Australia

An employee in Western Australia is entitled to payment of a district allowance in accordance with the terms of a notional agreement preserving a State award or an award made under the *Workplace Relations Act 1996* (Cth):

- (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and
- (ii) that would have entitled the employee to payment of a district allowance.

- (c) Clause 15.2 ceases to operate on 31 December 2014.

15.3 Leadership allowance

(a) Eligibility

- (i) A leadership allowance will be paid to an employee where the employer requires the performance of administrative, pastoral care and/or

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educational leadership duties additional to those usually required of teachers by the employer.

- (ii) An allowance is linked to a position of leadership rather than tied to an individual employee.
- (iii) 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.
- (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 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.
Level 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 this clause 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.

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- (f) A school with less than 100 students will determine positions of responsibility and allowances which are appropriate to its structure.

(g) **Amount**

The allowances are based on a percentage of the standard rate.

- (i) The following allowances apply:

Category	% of standard rate		
	A	B	C
Level 1	8.00	7.00	6.30
Level 2	5.50	4.75	4.00
Level 3	2.75	2.35	1.60

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

15.4 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:

(i) **Motor car**

\$0.74 per kilometre with a maximum payment up to 400 kilometres per week.

(ii) **Motorcycle**

\$0.25 per kilometre with a maximum payment up to 400 kilometres 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.

15.5 Adjustment of expense-related allowances

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.

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

16. Accident pay

16.1 Subject to clause 16.2, an employee is entitled to accident pay in accordance with the terms of:

- (a) a notional agreement preserving a State award that would have applied to the employee immediately prior to 1 January 2010 or an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and
- (b) that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.

16.2 The employee's entitlement to accident pay under a notional agreement preserving a State award or award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.

16.3 This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.

16.4 This clause ceases to operate on 31 December 2014.

17. Payment of salary

17.1 All monies payable will be paid:

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

17.2 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. Superannuation

18.1 **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

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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.

18.2 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.

18.3 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 18.2.
- (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 clause 18.1(a) and (b) no later than 28 days after the end of the month in which the deduction authorised under clause 18.1(a) or (b) was made.

18.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 18.2 and pay the amount authorised under clause 18.1(a) and (b) to one of the following superannuation funds:

- (a) Non-Government Schools Superannuation Fund (NGS Super);
- (b) Catholic Superannuation and Retirement Fund (CSRF);
- (c) National Catholic Superannuation Fund (NCSF);
- (d) Catholic Super (CSF);
- (e) Combined Fund;
- (f) The Victorian Independent Schools Superannuation Fund;
- (g) HESTA Super Fund;
- (h) Asset Super;

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- (i) AustralianSuper;
- (j) Tasplan;
- (k) Sunsuper;
- (l) Queensland Independent Education and Care Superannuation Trust;
- (m) AMP Occupational Superannuation Fund;
- (n) Concept One Superannuation Plan;
- (o) Westscheme;
- (p) Lutheran Super;
- (q) Australasian Conference Association Superannuation Trust Australia;
- (r) Christian Super; or
- (s) 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.

Part 5—Hours of Work and Related Matters

19. Ordinary hours of work

- 19.1** This clause of the award provides for industry specific detail and supplements the NES that deals with maximum weekly hours. This clause does not apply to teachers, including a teacher appointed as a Director, employed by a school 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
- 19.2** 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.
- 19.3** 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.
- 19.4** The maximum number of days that the employee will be required to attend during term weeks and non-term weeks will be 205 in each school year.

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- 19.5** 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.
- 19.6** The provisions of 19.2 and 19.3 do not apply to employers that adhere to the calendar and school year of a foreign country.
- 19.7** The employer will provide written notice of the term weeks and days in non-term times on which the employees are required to attend, six months in advance of the requirement to attend.
- 19.8** 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.

20. Breaks

An employee will be entitled to an unpaid meal break of 30 consecutive minutes no later than five hours after commencing work. This clause does not apply to teachers 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.

Part 6—Leave and Public Holidays

21. Annual leave

- 21.1** Annual leave is provided for in the NES. This clause of the award provides industry specific details and supplements the NES which deals with annual leave.
- 21.2** Annual leave must be taken during non-term weeks, and must generally be taken, in the case of an employee whose employment with the employer is continuing into the next school year, in the four-week period immediately following the final term week of the current school year, unless otherwise agreed with the employer.
- 21.3** An employee may take annual leave re-credited in accordance with the NES only during non-term weeks as directed by the employer.

22. Pro rata payment of salary inclusive of annual leave

22.1 This clause of the award provides industry specific detail and incorporates the NES entitlement with respect to annual leave. This clause 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.

22.2 The provisions of this clause will apply:

- (a) in the calculation of payment in regard to pro rata salary where an employee's employment ceases; or
- (b) in the calculation of payment in regard to pro rata salary if:
 - (i) an employee commenced employment after the school service date;
 - (ii) an employee has taken leave without pay of more than two term weeks since the school service date; or
 - (iii) the hours which an employee has worked at school have varied since the school service date.

22.3 Calculation of payments

$$P = \frac{s \times c - d}{b}$$

P is the payment due

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

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

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

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

22.4 For the purpose of this clause:

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

22.5 The formula in clause 22.3 is intended to be used to calculate the pro rata salary inclusive of annual leave owing to an employee in respect of the school year in which the formula is applied.

22.6 Termination of employment

An employee will be entitled on termination of employment to a payment calculated in accordance with this clause.

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

An employee who commences employment after the usual date of commencement at a school in any school year, will be paid from the date the employee commences, provided that at the end of the last school 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 this clause until the school service date or the resumption of Term 1 or first semester in the following school 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 two term weeks in any year, the employee will be paid salary calculated in accordance with this clause as follows:

- (a) If the leave without pay commences and concludes in the same school year, the payment will be calculated and made at the conclusion of the last school term or final semester in that year; and
- (b) If the leave without pay is to conclude in a school year following the school 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 year in which the leave commences; or
 - (ii) at the end of the last school term or final semester in that year in which the leave concludes, a payment will be calculated and made in respect of that school year.

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 term or final semester in that year.

23. Annual leave loading

23.1 This clause 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 four 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.

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

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

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:

$$\$1000 \times 4 \times 17.5\% = \$700$$

$$\$700 \times 20/38 = \$368.42$$

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 Notwithstanding clauses 23.2 and 23.3, an employer may pay annual leave loading to the employee with each salary 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 1.346%. Where an employer elects to pay leave loading with each salary payment throughout the school year, the employer 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. Community service leave

Community service leave is provided for in the NES.

26. Public holidays

26.1 Public holidays are provided for in the NES.

26.2 Substitution of public holidays

An employer may substitute a public holiday or part holiday for another day or part day to be taken during term weeks in the school year.

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 Subject to this clause, a full-time employee's ordinary hours of work will be 38 per week.

A.1.2 The ordinary hours of work may be averaged over a period of four weeks.

A.1.3 The ordinary hours of work will be worked between the hours of 6.30 am and 6.30 pm on any five days between Monday to Saturday and will not exceed eight hours in duration.

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 ordinary rate of pay until released from duty.

A.2 Rostered days off

An 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 four week period, in which case the following provisions will apply.

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

A.2.2 An employee will accrue 24 minutes for each eight 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 four 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.

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- A.2.7** An employee who is scheduled to take a rostered day off before having worked a complete four 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 four 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 four weeks in advance of the day on which the employee is to be rostered off duty.
- A.2.11** Nothing in this clause will entitle an employee who works less than 38 hours per week to accumulate rostered days off pursuant to this clause.

A.3 Breaks

A.3.1 Meal break

An employee will be entitled to a paid meal break of no more than 30 minutes, and no less than 20 minutes no later than five hours after commencing work. Provided that an employee may, by agreement with the employer, 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 such time.

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 at time and a half 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

An employee responsible for programming and planning for a group of children will be entitled to a minimum of two hours per week, during which the employee is not required to teach or supervise children or perform other duties directed by the employer, for the purpose of planning, preparing, researching and programming activities.

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 the rate of time and one half for the first three hours and double time thereafter.
- (b) Notwithstanding 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 eight hours provided that the additional time worked is during the ordinary hours of operation of the early childhood service. No part-time employee may work in excess of eight hours in any day without the payment of overtime.

A.4.2 Time off instead of overtime payment

- (a) An employee and an employer may agree that an employee will be provided with time off instead of being paid an overtime payment for all authorised work performed outside of or in excess of the ordinary or rostered hours.
- (b) Overtime taken as time off during ordinary time hours must be taken at the ordinary time rate, that is, an hour for each hour worked.
- (c) Where an employee and an employer have agreed to time off instead of payment for overtime under clause A.4.2(a) and such time has not been taken:
 - (i) within four weeks of accrual; or
 - (ii) during the non-term weeks agreed in writing between an employee and an employer;

an employer must, if requested by an employee, provide payment, at the rate provided for the payment of overtime in the award, for any overtime worked.

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.