Employer Services

Human Resources, Workplace Relations, Award Supply Services

EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

WE ARE ONLY A PHONE CALL AWAY
(07) 3220 3500

Disclaimer:

This Modern Award is believed to be accurate in the form provided at the time of issue.

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EMPLOYER SERVICES

Educational Services (Teachers) Award 2010

Briefing Sheet

N.B. – No employee can suffer a reduction in their "take home" pay as a result of this Modern Award taking effect. Wage rates contained in this copy of the award reflect ultimate rates of pay only; as a result of the transitional provisions (Schedule A) some employees may not reach these rates of pay until July 2014.

Introduction of <u>increased</u> entitlements:

In the event that this Modern Award introduced increased wage rates, casual loadings or penalty rates (e.g. shift loadings, etc) for an employee, the employer has the option of gradually phasing-up to the higher amounts by utilising the transitional provisions in Schedule A. Prior to July 2014, it is possible for an employer to lawfully pay less than the actual amounts contained in this award (providing that the employer is correctly utilising the transitional provisions). If utilising the phasing-in provisions, the minimum rate which is payable to an employee at any point in time should be determined using the phasing-in schedules contained in Schedule A. Only the difference between the previous instrument and the Modern Award provisions as at 1 January 2010 can be phased-in – increases awarded by Fair Work Australia as part of an Annual Wage Review must be paid in full each year.

Introduction of <u>reduced</u> entitlements:

In the event that the Modern Award introduced a decreased rate of pay, casual loading or penalty (e.g. shift loadings, etc) for an employee, the phasing-out provisions in Schedule A **<u>MUST</u>** be applied by the employer to determine the employee's minimum entitlements at any point in time. **Please note** as a result of the transitional provisions it is possible that an employer may have to continue to pay rates in excess of those displayed in this award for years to come and potentially increase those rates from time to time even if they are in excess of the Modern Award rates.

Every effort has been made to ensure this briefing sheet is free from error and/or omission

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WAGE RATES APPLICABLE FROM
FIRST FULL PAY PERIOD COMMENCING (PPC) ON OR AFTER
1 JULY 2010

TEACHERS - Other than those working in 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, e.g. long day care.

Full Time Teachers

Classification	Annual	Fortnightly	Weekly
Level 1	39,640	1519.40	759.70
Level 2	40,458	1550.70	775.40
Level 3	41,558	1592.90	796.40
Level 4	43,058	1650.40	825.20
Level 5	44,558	1707.90	853.90
Level 6	45,954	1761.40	880.70
Level 7	47,350	1814.90	907.40
Level 8	48,850	1872.40	936.20
Level 9	50,350	1929.90	964.90
Level 10	51,850	1987.40	993.70
Level 11	53,350	2044.80	1022.40
Level 12	54,850	2102.30	1051.20

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Part-time teachers

A part time teacher's salary shall be calculated on a proportionate basis having regard to the proportion of the full time teaching load being worked by a full time teacher in the school, e.g. If the face-to-face full time teaching load in the school is 21.5 hours per week, a teacher being engaged to teach 10.75 hours would be paid 50% of the full time rate.

Refer clauses 14.4 & 10.2 of Award for further clarification regarding calculation of part-time teacher rates of pay.

Casual Teachers

N.B. Where the employee is engaged for less than five consecutive days, the rate payable to a casual employee will be no higher than that applicable to Level 8.

Classification	**Full-Day**	**Half Day**	**Quarter Day***
Level 1	189.93	94.96	47.48
Level 2	193.85	96.93	48.46
Level 3	199.10	99.55	49.78
Level 4	206.30	103.15	51.58
Level 5	213.48	106.74	53.37
Level 6	220.18	110.09	55.04
Level 7	226.85	113.43	56.71
Level 8	234.05	117.03	58.51
Where the employee is engaged for five or more consecutive days, the rate payable will be the appropriate rate for the employee's classification when all relevant service is taken into account – in such instances, the rates below *may* be applicable:			
Level 9	241.23	120.61	60.31
Level 10	248.43	124.21	62.11
Level 11	255.60	127.80	63.90
Level 12	262.80	131.40	65.70

* 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, a casual employee in a school will be paid for a minimum of half a day.

Notes:

1. A 3-year trained teacher commences on Level 1
2. A 4-year trained teacher commences on Level 3
3. A 5-year trained teacher commences on Level 4

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WAGE RATES APPLICABLE FROM
FIRST FULL PAY PERIOD COMMENCING (PPC) ON OR AFTER
1 JULY 2010

TEACHERS - Working 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, e.g. long day care.

Full Time Teachers

Classification	Annual	Fortnightly	Weekly
Level 1	41,226	1580.10	790.10
Level 2	42,076	1612.70	806.40
Level 3	43,220	1656.60	828.30
Level 4	44,780	1716.40	858.20
Level 5	46,340	1776.20	888.10
Level 6	47,792	1831.80	915.90
Level 7	49,244	1887.50	943.70
Level 8	50,804	1947.30	973.60
Level 9	52,364	2007.10	1003.50
Level 10	53,924	2066.80	1033.40
Level 11	55,484	2126.60	1063.30
Level 12	57,044	2186.40	1093.20

Part time Teachers

A part time teacher's salary shall be calculated on a proportionate basis having regard to the proportion of the full time teaching load being worked by a full time teacher in the service, e.g. If the face-to-face full time teaching load in the service is 21.5 hours per week, a teacher being engaged to teach 10.75 hours would be paid 50% of the full time rate.

Refer clauses 14.4 & 10.2 of Award for further clarification regarding calculation of part-time teacher rates of pay.

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Casual Teachers

N.B. Where the employee is engaged for less than five consecutive days, the rate of pay payable to a casual employee will be no higher than that applicable to Level 8.

Classification	Full-Day	Half Day	Quarter Day
Level 1	197.53	98.76	49.38
Level 2	201.60	100.80	50.40
Level 3	207.08	103.54	51.77
Level 4	214.55	107.28	53.64
Level 5	222.03	111.01	55.51
Level 6	228.98	114.49	57.24
Level 7	235.93	117.96	58.98
Level 8	243.40	121.70	60.85
Where the employee is engaged for five or more consecutive days, the rate payable will be the appropriate rate for the employee's classification when all relevant service is taken into account – in such instances, the rates below *may* be applicable:			
Level 9	250.88	125.44	62.72
Level 10	258.35	129.18	64.59
Level 11	265.83	132.91	66.46
Level 12	273.30	136.65	68.33

Notes:

1. A 3-year trained teacher commences on Level 1
2. A 4-year trained teacher commences on Level 3
3. A 5-year trained teacher commences on Level 4

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ALLOWANCES APPLICABLE FROM
FIRST FULL PAY PERIOD COMMENCING (PPC) ON OR AFTER
1 JULY 2010

Clause no.	Allowance	Amount	
15.1(a)	*Director's Allowance:* An early childhood/preschool teacher who is appointed as a Director of a service will be paid the following allowance in addition to the minimum rate of pay for their classification:		
	• Level 1 (Centre with no more than 39 places)	$4559.00 $174.74 $87.37	per annum per fortnight per week
	• Level 2 (Centre with 40 – 59 places)	$5649.00 $216.52 $108.26	per annum per fortnight per week
	• Level 3 (Centre with 60 or more places)	$6858.00 $262.86 $131.43	per annum per fortnight per week
15.4(a)	*Vehicle Allowance:* An employee required by the employer to use their own motor vehicle in the performance of duties must be paid the following:		
	(i) Motor Car	74 cents	per k/m
	(ii) Motorcycle	25 cents	per k/m

15.3	*Leadership Allowance* *(Applicable to Teachers in Schools only):* (Refer clause 15.3 for criteria for determining application of allowance)					
	% of standard Rate	**Fortnightly Allowance**	**% of standard Rate**	**Fortnightly Allowance**	**% of standard Rate**	**Fortnightly Allowance**
Category	**A**		**B**		**C**	
Level 1	8.00	$121.50	7.00	$106.40	6.30	$95.70
Level 2	5.50	$83.60	4.75	$72.20	4.00	$60.80
Level 3	2.75	$41.80	2.35	$35.70	1.60	$24.30

N.B. It should not be assumed that the above table reflects every allowance payable under the award. The above list identifies allowances provided for as a set monetary amount within the award only. Refer to clause 15 for a comprehensive list of allowances payable, including those that require direct reimbursement of actual costs incurred/outlaid by an employee.

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AWARD SUMMARY INFORMATION

Full-time Employment:
(Clause 19 & Schedule B, Clause B.1)

Schools (not including Early Childhood Services):
Full-time hours may be regarded as 38 per week, which may be averaged over a 12 month period, provided that a teacher may not be required to attend during term or non-term weeks for more than 205 days in each school year.
[For full details of what can be required of a full-time employee refer to clause 19.]
Early Childhood Services (e.g. Long Day Care Centres):
A full-time employee's ordinary hours of work will be 38 per week, which may be averaged over a period of up to four weeks.

Part-time Employment:
(Clause 10.4)

A part-time employee is an employee who is engaged to work on a regular basis for less than 90% of the full-time number of hours. A part-time employee who is required by the employer to work more than 90% of the full-time number of hours shall be considered to be full-time. If an employee requests to work more than 90% of the full-time number of hours, the employee may still be regarded as part-time and be remunerated according to the actual number of hours worked.
A part-time employee is to be remunerated pro rata on the basis of the proportion of face to face teaching hours of a full time teacher in the particular school/service.

Casual Employment:
(Clauses 10.5 & 14.5)

Casual employment means employment on a day to day basis for a period not exceeding 4 consecutive term weeks. Casuals receive a loading of 25% on the permanent rate **up to a maximum classification of Level 8** (if engaged for less than five (5) consecutive days) and are engaged on the basis of:

- A full day;
- ½ day; or
- ¼ day.

Where employed for five (5) or more days the employee will be paid at the appropriate rate for the employee's classification when all relevant service is taken into account (i.e. up to Level 12 classification).

Notice of Termination - Employer & Employee (other than Casuals)
(Clause 11)

Schools (not including Early Childhood Services):
7 weeks' notice in term time (inclusive of the NES provision).
Early Childhood Services (e.g. Long Day Care Centres):
4 weeks' notice (inclusive of the NES provision).
If the employee is over 45 years of age and has completed at least two years of service the NES notice period will apply.

Redundancy:
(Clause 12)

Refer to Division 11 of the National Employment Standards (NES). Provided that the employee will only be entitled to the greater of the notice provisions of clause 11 and the NES provisions for notice and redundancy.

Classifications:
(Clause 13)

Refer to clause 13 of the Award for entrance and progression arrangements.

Breaks:
(Clause 20)

Schools (not including Early Childhood Services):
All employees shall be entitled to an unpaid meal break of 30 minutes, no later than 5 hours after commencing work.

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Breaks (cont.):
(Schedule B Clause B.3)

Early Childhood Services (e.g. Long Day Care Centres):
Where the employee is required to remain on the premises during the meal break the employee shall be entitled to a paid meal break of no more than 30 minutes or less than 20 minutes, no later than five hours after commencing work. Such paid meal break shall be counted as part of the employee's ordinary hours.
In the event that the employee elects, with the employer's permission, to leave the premises or elects not to be on-call during the meal break, the meal period shall be unpaid.

Overtime:
(Clause 19 & Schedule B Clause B.4)

Schools (not including Early Childhood Services):
The ordinary hours of work for an employee during term weeks are variable. 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.
Early Childhood Services (e.g. Long Day Care Centres) only:
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 a half for the first three hours and double time thereafter.
TOIL may be accrued by mutual agreement between the employer and employee. TOIL is taken on a time for time basis (that is, an hour off for each hour of overtime worked) and must be taken within 4 weeks of accrual or paid out at the appropriate overtime rates.

Annual Leave:
(Clauses 22 & 23)

Schools (not including Early Childhood Services):
As per the NES and the following:
- Generally taken to be the 4-week period immediately following the end of the final school term;
- Guidelines for calculating pro-rata payment for an employee who has performed less than the full school year are contained in clauses 22.2 - 22.8 of the Award.
- Annual leave loading is calculated in accordance with the formula contained in clause 23.3.

Early Childhood Services (e.g. Long Day Care Centres) only:
Full-time employees – 4 weeks per year (pro rata for part-time employees) plus 17.5% annual leave loading.

Personal/carer's Leave:
(Clause 24)

Full-time employees – 10 days per year (pro rata for part-time employees).
Award defaults to NES for detailed provisions – note requirement in NES, s107, regarding "reasonable evidence".

Compassionate Leave:
(Clause 24)

Full-time employees – up to 2 days per permissible occasion (pro rata for part-time employees). Refer to NES for detailed provisions.

Public Holidays:
(Clause 26)

Public Holidays are as per the NES. Permanent employees who are not required to work on a public holiday will be entitled to payment for the ordinary hours they would have worked on that day of the week had it not been a public holiday.

Transitional Provisions:
(Schedule A)

This award contains transitional provisions which allow for the phasing in of certain wage rates, casual loadings and penalties. Refer to Schedule A of the award for full details.

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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 and transitional

2.1 This award commences on 1 January 2010.

2.2 The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

2.3 This award contains transitional arrangements which specify when particular parts of the award come into effect. Some of the transitional arrangements are in clauses in the main part of the award. There are also transitional arrangements in Schedule A. The arrangements in Schedule A deal with:

- minimum wages and piecework rates
- casual or part-time loadings
- Saturday, Sunday, public holiday, evening or other penalties
- shift allowances/penalties.

2.4 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, Fair Work Australia may make any order it considers appropriate to remedy the situation.

2.5 Fair Work Australia may review the transitional arrangements in this award and make a determination varying the award.

2.6 Fair Work Australia may review the transitional arrangements:

(a) on its own initiative; or

(b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or

(c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or

(d) in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

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

agreement-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

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

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

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

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

five year trained teacher means a teacher who has completed a degree in education or early childhood 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, or in the case of early childhood teachers the relevant licensing and accreditation authority

four year trained teacher means a teacher who has completed a degree in education or early childhood 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, or in the case of early childhood teachers the relevant licensing and accreditation authority

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

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 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, 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

three year trained teacher means a teacher who has completed a degree in education or early childhood 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, or in the case of early childhood teachers the relevant licensing and accreditation authority

transitional minimum wage instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

two 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 two 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

3.2 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 to 4.6, covers employers throughout Australia in the school education industry, children's services and early childhood education industry and their employees as defined in clause 3.1 to the exclusion of any other modern award.

4.2 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 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 that industry. This subclause operates subject to the exclusions from coverage in this award.

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

4.4 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.

4.5 The award does not cover employees 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 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.

4.7 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;

(b) allowances;

(c) leave loading;

(d) overtime rates; and

(e) penalty rates.

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, children's service or early childhood education service. 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, children's service or early childhood education service.

(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 in the case of a school teacher or four 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 seven weeks in the case of a school teacher or four weeks in the case of an early childhood teacher.

10.5 Casual employment

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

(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 in the case of teachers in a school or preschool or a total of 10 weeks in any other case.

(c) The rates of pay for a casual employee are contained in clause 14.5.

10.6 Fixed term employment

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:

(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. 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—schools

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 employer—other than schools

The employment of an employee (other than a casual employee) will not be terminated without at least four weeks' notice (inclusive of the notice required under the NES), or four preschool term weeks in the case of a preschool employee, or the payment of four weeks' salary instead of notice. If the employee is over 45 years of age and has completed at least two years of service the NES notice period will apply.

11.4 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.

11.5 If an employee fails to give the notice specified in clause 11.2 or 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.

11.6 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.

11.7 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.

11.8 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.

11.9 Termination of casual employment—early childhood teachers

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.

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 11.6.

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 11.3; 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-based transitional instrument or enterprise agreement 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 programs 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 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; provided that 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 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, 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 and two year trained 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 year $
1	39,640
2	40,458
3	41,558
4	43,058
5	44,558
6	45,954
7	47,350
8	48,850
9	50,350
10	51,850
11	53,350
12	54,850

14.2 A full-time employee who works in a children's or early childhood service which usually provides services over a period of at least eight 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 14.1 on the basis that the employee is not covered by the provisions of clause 19—Ordinary hours of work.

14.3 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.

14.4 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.

14.5 Casual employee

(a) The salary payable to a casual employee will be:

(i) no higher than the salary at Level 8 in clause 14.1 where the employee is engaged for less than five consecutive days; or

(ii) where the employee is engaged for five or more consecutive days 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 14.3 divided by 5 plus 25%
Half day	Weekly rate calculated in accordance with clause 14.3 divided by 10 plus 25%
Quarter day	Weekly rate calculated in accordance with clause 14.3 divided by 20 plus 25%

(b) Provided that:

(i) a casual employee in a school 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; and

(ii) a casual employee in a children's service or early childhood education service may be paid for a minimum of a quarter day.

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, an annual 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.

Level	% of standard rate per year
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-based transitional instrument or enterprise agreement 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-based transitional instrument or enterprise agreement 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

This clause applies only to a teacher in a school.

(a) Eligibility

(i) 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.

(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.
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 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.

(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:

	% of standard rate		
Category	**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-based transitional instrument or enterprise agreement 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 *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 or its successor:

(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;

(i) AustralianSuper;

(j) Tasplan;

(k) Sunsuper;

(l) Queensland Independent Education and Care Superannuation Trust;

(m) AMP Superannuation Savings Trust;

(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 in an early childhood service which operates for 48 or more weeks per year, who are covered by the provisions of Schedule B – 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.

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 clauses 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

20.1 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 B – Hours of Work and Related Matters – Teachers employed in early childhood services operating for at least 48 weeks per year.

20.2 Where 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 no more than 30 minutes, and no less than 20 minutes no later than five hours after commencing work.

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 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 four-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 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 B - 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 or preschool service date;

(ii) an employee has taken leave without pay of more than two 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.

22.3 Calculation of payments

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

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

22.4 For the purpose of this clause:

(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.

22.5 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/preschool 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 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 this clause until the school or preschool service date or the resumption of Term 1 or 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 two term weeks in any year, the employee will be paid a salary calculated in accordance with this clause 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; and

(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; or

(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.

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 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.

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 x 4 x 17.5% = $700

$700 x 20/38 = $368.42

23.4 Clause 23.3 does not apply to teachers covered by Schedule B – 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 1.342%. 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—Transitional Provisions

A.1 General

A.1.1 The provisions of this schedule deal with minimum obligations only.

A.1.2 The provisions of this schedule are to be applied:

(a) when there is a difference, in money or percentage terms, between a provision in a relevant transitional minimum wage instrument (including the transitional default casual loading) or award-based transitional instrument on the one hand and an equivalent provision in this award on the other;

(b) when a loading or penalty in a relevant transitional minimum wage instrument or award-based transitional instrument has no equivalent provision in this award;

(c) when a loading or penalty in this award has no equivalent provision in a relevant transitional minimum wage instrument or award-based transitional instrument; or

(d) when there is a loading or penalty in this award but there is no relevant transitional minimum wage instrument or award-based transitional instrument.

A.2 Minimum wages – existing minimum wage lower

A.2.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

(a) was obliged,

(b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or

(c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage lower than that in this award for any classification of employee.

A.2.2 In this clause minimum wage includes:

(a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;

(b) a piecework rate; and

(c) any applicable industry allowance.

A.2.3 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

A.2.4 The difference between the minimum wage for the classification in this award and the minimum wage in clause A.2.3 is referred to as the transitional amount.

A.2.5 From the following dates the employer must pay no less than the minimum wage for the classification in this award minus the specified proportion of the transitional amount:

First full pay period on or after	
1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.2.6 The employer must apply any increase in minimum wages in this award resulting from an annual wage review.

A.2.7 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.3 Minimum wages – existing minimum wage higher

A.3.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

(a) was obliged,

(b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or

(c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage higher than that in this award for any classification of employee.

A.3.2 In this clause minimum wage includes:

(a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;

(b) a piecework rate; and

(c) any applicable industry allowance.

A.3.3 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

A.3.4 The difference between the minimum wage for the classification in this award and the minimum wage in clause A.3.3 is referred to as the transitional amount.

A.3.5 From the following dates the employer must pay no less than the minimum wage for the classification in this award plus the specified proportion of the transitional amount:

First full pay period on or after	
1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.3.6 The employer must apply any increase in minimum wages in this award resulting from an annual wage review. If the transitional amount is equal to or less than any increase in minimum wages resulting from the 2010 annual wage review the transitional amount is to be set off against the increase and the other provisions of this clause will not apply.

A.3.7 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.4 Loadings and penalty rates

For the purposes of this schedule loading or penalty means a:

- casual or part-time loading;
- Saturday, Sunday, public holiday, evening or other penalty;
- shift allowance/penalty.

A.5 Loadings and penalty rates – existing loading or penalty rate lower

A.5.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

(a) was obliged,

(b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or

(c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a lower rate than the equivalent loading or penalty in this award for any classification of employee.

A.5.2 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument for the classification concerned.

A.5.3 The difference between the loading or penalty in this award and the rate in clause A.5.2 is referred to as the transitional percentage.

A.5.4 From the following dates the employer must pay no less than the loading or penalty in this award minus the specified proportion of the transitional percentage:

First full pay period on or after	
1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.5.5 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.6 Loadings and penalty rates – existing loading or penalty rate higher

A.6.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

(a) was obliged,

(b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or

(c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a higher rate than the equivalent loading or penalty in this award, or to pay a particular loading or penalty and there is no equivalent loading or penalty in this award, for any classification of employee.

A.6.2 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument.

A.6.3 The difference between the loading or penalty in this award and the rate in clause A.6.2 is referred to as the transitional percentage. Where there is no equivalent loading or penalty in this award, the transitional percentage is the rate in A.6.2.

A.6.4 From the following dates the employer must pay no less than the loading or penalty in this award plus the specified proportion of the transitional percentage:

First full pay period on or after	
1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.6.5 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.7 Loadings and penalty rates – no existing loading or penalty rate

A.7.1 The following transitional arrangements apply to an employer not covered by clause A.5 or A.6 in relation to a particular loading or penalty in this award.

A.7.2 Prior to the first full pay period on or after 1 July 2010 the employer need not pay the loading or penalty in this award.

A.7.3 From the following dates the employer must pay no less than the following percentage of the loading or penalty in this award:

First full pay period on or after	
1 July 2010	20%
1 July 2011	40%
1 July 2012	60%
1 July 2013	80%

A.7.4 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

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

B.1 Ordinary hours of work

B.1.1 Subject to this clause, a full-time employee's ordinary hours of work will be 38 per week.

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

B.1.3 The ordinary hours of work will be worked between the hours of 6.00 am and 6.30 pm on any five days between Monday and Friday and will not exceed eight hours in duration. Subject to the provisions of clause 7—Award flexibility, 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.

B.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 double time of the ordinary rate of pay until released from duty.

B.2 Rostered days off

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

B.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.

B.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.

B.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 B.2.2.

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

B.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.

B.2.6 An employee will not be entitled to more than 12 rostered days off in any 12 months of consecutive employment.

B.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 B.2.2.

B.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 B.2.2.

B.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.

B.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.

B.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.

B.2.12 Where a service operates for less than 48 weeks per year and the employee receives more than four weeks' paid leave per year, the employee will accrue rostered days off to a maximum of seven days in any 12 months of consecutive employment. Any days accrued in excess of seven will be subsumed into the period of paid leave.

B.3 Breaks

B.3.1 Meal break

(a) 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.

(b) 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.

B.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.

B.4 Overtime

B.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 a half for the first three hours and double time thereafter.

(b) Notwithstanding clause B.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.

B.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 B.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.

B.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.

B.5 Shiftwork

B.5.1 For the purposes only of calculating the loadings provided for this clause:

(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 B.5.1(a) by 5; and

(c) the rate of pay for a casual is first calculated in accordance with the provisions of clause 14.5.

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

Shift	**% of ordinary rate**
Early morning shift (any shift commencing at or after 5.00 am and before 6.00 am)	10
Afternoon shift (any shift finishing after 6.30 pm and at or before midnight)	15
Night shift, rotating with day or afternoon shift	17.5
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)	30
Saturday	25

EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

AWARDS DISPLACED LIST

(This list is not part of the Award)

N.B. This list has been compiled to assist Employer Services' clients in understanding which existing NAPSA's and Pre-reform Federal Awards have been displaced by this Modern Award. The list below has been compiled with reference to the operations of Employer Services' clients as we understand them; this list does not represent a comprehensive list of all awards across Australia which may have been displaced by the Modern Award. This list is a guide only and reflects awards serviced by Employer Services as at 31 December 2009. If you have concerns about whether this Modern Award applies to your business, please contact Employer Services on (07) 3220 3500.

Name of Instrument (existing as at 31 December 2009)	**Notes**
Child Care Industry Award – State 2003 (QLD)	This Modern Award only extends to coverage of employees previously engaged as Teachers under these NAPSA's.
Early Childhood Education Award – State 2003 (QLD)	
Teachers Award – Non-Governmental Schools 2003 (QLD)	
Teachers (Non-Governmental Pre-schools) (State) Award 2006 (NSW)	

EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

AWARD VARIATION INDEX

(This index is not part of the Award)

Clauses Varied	Nature of Amendment	Date of Operation
New Award Issued	Award Modernisation Process	1 January 2010
Clause 3.1	Definitions of employee and employer amended	1 January 2010
Clause 14.1 & Briefing Sheet (wages and allowances tables)	Wage rates and allowances increased in accordance with 2010 Annual Wage Review	ppc 1 July 2010

(This index should be inserted at the back of the Award)