



MISCELLANEOUS WORKERS KINDERGARTENS AND CHILDCARE CENTRES (STATE) AWARD

Level 3, 222 Pitt Street Sydney NSW 2000

PO Box A2178 Sydney South NSW 1235

Telephone: 02 8267 4365

Fax: 02 8267 4225

PART A**1. CONTENTS**

SECTION	TITLE
1	Contents
2	Name of Award
3	Definitions
4	Contract of Employment
4A	Secure Employment Provisions
5	Hours
6	Implementation of a 38 Hour week
7	Rostered Days off duty
8	Classification Structure
9	Wages
10	Additional Rates and Allowances
11	Saturday and Sunday Work
12	Overtime
13	Make up Time
14	Payment of Wages
15	Miscellaneous Conditions
16	Job Sharing
17	Relieving in other positions
18	Sick Leave
19	Public Holidays
20	Annual Leave
21	Annual Leave Loading
22	Long Service Leave
23	Parental Leave
24	Personal Carer's Leave
25	Bereavement Leave
26	Jury Service
27	Redundancy
28	Inservice Preschools and OOSHC Centres
29	Meetings and Activities

SECTION	TITLE
30	Professional development
31	Examination and Study Leave
32	Supported Wage
33	Superannuation
34	Anti Discrimination
35	Dispute Settling Process
36	Exemptions
37	Salary Packaging
38	Leave Reserved
39	Area Incidence and Duration
Appendix A	Casual Service Card
Appendix B	Parental Leave

2. NAME OF AWARD

This Award shall be known as the Miscellaneous Workers Kindergarten and Child Care Centres (State) Award 2006.

3. DEFINITIONS

- (i) Full-Time Employee - means an employee employed and paid by the week subject to clause 4, Contract of Employment and clause 5 (i) of the award.
- (ii) Part-time Employee - means an employee who works a constant number of ordinary hours less than the ordinary number of hours prescribed for full-time employees in subclause (i) of this clause and clause 5 (i) of the award.
- (iii) Casual Employee - means an employee engaged and paid as such.
Notation: Certain casual employees may have rights to make an election to convert their employment under the provisions of Clause 4A of this award.
- (iv) Temporary Employee - means an employee engaged to work full-time or part-time for a specified period which is not more than two years but not less than 20 days.

Such employees shall be engaged solely for the following specified purposes:

- to replace existing employees proceeding on annual leave, maternity leave, long service leave, workers compensation or leave without pay;
- to occupy specially funded positions;
- to occupy positions approved by the Department of Community Services which vary a centre's licence;
- to occupy positions resulting from seasonal employment fluctuations in a locality;
- to occupy positions resulting from increases in enrolments.

Notation: Employees engaged pursuant to (4) and (5), above, shall not be engaged in such a way that would displace existing employees or future permanent employees.

- (v) Day - means the period from midnight to midnight.
- (vi) Union - means The Liquor, Hospitality and Miscellaneous Union, New South Wales Branch.
- (vii) Night Shift - means any shift finishing subsequent to midnight and at or before 8.00am or any shift commencing at or after midnight and before

5.00am.

- (viii) Afternoon Shift - means any shift finishing after 6.30pm and at or before midnight.
- (ix) Early Morning Shift - means any shift commencing at or after 5.00am and before 6.30am.
- (x) Night Shift, Non-rotating - means any shift system in which night shifts are worked which do not rotate or alternate with another shift so as to give the employee at least one third of the employee's working time off night shift in each roster cycle.

4. CONTRACT OF EMPLOYMENT

- (i) All employees will be engaged on a probationary period of three months. Except for the first three months of employment, the employment of a full-time or part time employee may be terminated by a week's notice given by either party or by the payment or forfeiture, as the case may be, of one week's wages in lieu of such notice. This shall not affect the right of an employer to dismiss any employee without notice for misconduct and in such cases wages shall be paid up to the time of dismissal only.

During the first three months of employment, the employment may be terminated by a day's notice given by either party or by the payment or forfeiture, as the case may be, of one day's wages in lieu of such notice.

- (ii) Payment During Vacations: Notwithstanding the foregoing provisions, where an establishment is closed during a vacation period and no work is available, an employee shall be paid the ordinary rate of pay during such a period provided that during the Christmas vacation only an employee with insufficient credit of annual leave to maintain the ordinary rate of pay during the said vacation period may be stood down without pay for a maximum of four weeks.

Provided further that where the employment of an employee is terminated by the employer in accordance with the provisions of this clause through no fault of the employee during the vacation, and such employee whose services are so terminated is re-employed by the same employer before the expiration of two weeks after the commencement of the next term, the contract of employment shall not be deemed to have been broken for the purposes of the *Long Service Leave Act 1955*. Any period of non-employment of any such employee who is so re-employed shall not count as qualifying service for the purposes of such Act.

- (iii) The employment of a casual employee may be terminated by one hour's notice.

- (iv) Upon request by an employee, the employer shall give an employee a signed statement of service upon termination. Such statement shall certify the period of commencing and ceasing employment and the class of work upon which the employee was employed. Note: with respect to casual employees, see paragraph (e) of subclause (i) of clause 8, Classification Structure of this award.
- (v) Employees terminating employment shall be paid all wages and other monies due forthwith, including any payments which may be due in lieu of annual leave and/or long service leave.
- (vi) Flexibility of Work

An employer may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of this award, provided that such duties are not designed to promote de-skilling.

Persons employed as Child Care Workers may be required to assist with duties incidental to their primary contact care role.

Any direction issued by an employer shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

4A. SECURE EMPLOYMENT PROVISIONS

- (i) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (ii) Casual Conversion

- (a) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (b) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.

- (c) Any casual employee who has a right to elect under paragraph (ii)(a), upon receiving notice under paragraph (ii)(a) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (d) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (e) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (f) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (ii)(c), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (ii)(c), discuss and agree upon:
- (1) whether the employee will convert to full-time or part-time employment; and
 - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (g) Following an agreement being reached pursuant to paragraph (e), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes

settlement procedure.

- (h) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (iii) Occupational Health and Safety
- (a) For the purposes of this subclause, the following definitions shall apply:
 - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
 - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (b) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
 - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
 - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
 - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
 - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (c) Nothing in this subclause (iii) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

(iv) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- (v) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANT A Ministerial Council.

(vi) Exemption

The above mentioned casual conversion clause will not apply to persons who perform work pursuant to the *Technical and Further Education Commission Act 1990*.

5. HOURS

- (i) Ordinary Working Hours - The ordinary working hours, inclusive of crib breaks, shall not, without payment of overtime, exceed an average of thirty eight per week. Such hours shall be worked as follows:
- (a) Day Workers - Between the hours of 6.30 a.m. and 6.30 p.m., Monday to Friday inclusive. The above hours shall be worked on each day in either one or two shifts provided that the total hours worked on any day shall not exceed the applicable hours provided for in clause 6 Implementation of 38 Hour Week without payment for overtime.
 - (b) Shift Workers - Fixed shifts of a duration provided for in Clause 6, Implementation of 38 hour week to be worked on five days of the week, Monday to Sunday inclusive.
- (ii) Notification of Hours - The employer shall, by legible notice displayed at some place accessible to the employees, notify the ordinary hours of commencing and ceasing work and the ordinary times of meal or crib breaks. Such hours, once notified, shall not be changed without the payment of overtime except by seven days' clear notice to the employee, or by mutual agreement between the employer and employee to waive or shorten the notice period, or due to an emergency outside the employer's control.

Any dispute as to the existence of an emergency will be dealt with in accordance with the dispute settling procedure of this award.

Notation: An 'emergency' must be given it's ordinary meaning. It is not to be understood to comprehend routine events, such as an employee having to remain at the end of their rostered hours, when a parent fails to arrive on time to collect a child. Such work, if required will involve overtime

to which the award overtime provisions will apply.

Notation: For part time employees see subclause (iii) of Clause 12, Overtime.

- (iii) Rest Pauses - All employees shall be allowed a rest break of ten minutes per shift between the second and third hour from starting time and, if the work exceeds seven hours from starting time the employee shall be allowed a further rest break of ten minutes, to be taken at a time mutually convenient to the employer and the employees in the establishment concerned, subject to the provisions relating to the supervision of children under the *Children and Young Persons (Care and Protection) Act 1998*.
- (iv) Crib Breaks - Not more than thirty minutes nor less than twenty shall be allowed to employees each day for a midday crib break between the fourth and fifth hour if such employee's shift exceeds five hours from commencement of work. Such crib breaks shall be counted as time worked.

Provided however that employee may, by agreement with the employer, leave the premises during the crib break. Where such reasonable request has been made by an employee, the employer shall give favourable consideration to any such request having regard to the provisions of the *Children and Young Persons (Care and Protection) Act 1998* relating to supervision of children. Such time away from the premises shall not count as time worked nor shall any payment be made for such time. A record of unpaid lunch periods shall be kept in the Time and Wages records.

- (v) Unpaid Meal breaks for those employed on or after 28 August 2000. An employer may direct an employee engaged on or after 28 August 2000 to take an unpaid meal break of up to thirty minutes between the fourth and fifth hour of the employee's shift provided that the shift exceeds five hours and having regard to the provisions of the *Children and Young Persons (Care and Protection) Act 1998* relating to supervision of children. During this unpaid time, the employee may leave the premises.
- (vi) Unpaid Meal breaks for those employed prior to 28 August 2000. With the prior written agreement of the employee, an employer may direct an employee engaged prior to 28 August 2000 to take an unpaid meal break of up to thirty minutes between the fourth and fifth hour of the employee's shift provided that the shift exceeds five hours and having regard to the provisions of the *Children and Young Persons (Care and Protection) Act 1998* relating to supervision of children. The prior agreement of the employee shall be recorded in the time and wages record. During this unpaid time, the employee may leave the premises.
- (vi) Employee performing duties during meal break. If an employee is required to perform duties during and unpaid meal break, the employee shall be paid at time and one half for the time worked with a minimum payment as for fifteen minutes work. Where the employee works more than fifteen minutes, the payment shall be as for thirty minutes.

6. IMPLEMENTATION OF 38 HOUR WEEK

6A. Ordinary Hours of Work

- (i) The ordinary hours of work shall not exceed an average of 38 per week, as provided in clause 5, Hours, of this award.
- (ii) In respect of employees engaged prior to 28 August 2000, the 38 hour week is to be implemented by the working of a 19 day month in accordance with sub-clause 6.B. Provided that, with the consent of the employee, the ordinary hours of work may be implemented in accordance with (b), (c), (d), or (e) of sub-clause (iii) of this clause. The consent of the employee must be in writing and a notation of the consent shall be kept in the time and wages record.
- (iii) In respect of employees engaged on or after 28 August 2000, ordinary hours of work in accordance with clause 5, Hours of this award, may be implemented in one of the following ways:-
 - (a) by working a 19 day month; or
 - (b) by working 3x10 hour shifts and 1x8 hour shift per week; or
 - (c) by working 4 x 9.5 hour shifts per week; or
 - (d) by working 5 x 7.6 hour shifts per week; or
 - (e) by working 4 x 8 hour shifts and 1 x 6 hour shift per week.

6B 19 Day Month

- (iv) An employee shall accrue two hours per week or 0.4 of an hour (i.e., 24 minutes) for each eight hour shift or day worked, to give an entitlement to take an accrued rostered day off in each four week cycle as though worked.
- (v)
 - (a) Each day of paid leave taken (including annual leave but not including long service leave or any period of paid or unpaid stand-down as provided in clause 4 (ii) of this award) and any public holiday occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes. Provided however that accrued days off shall not be regarded as part of annual leave for any purpose.
 - (b) Notwithstanding the provisions of paragraph (a) of this subclause, an employee shall be entitled to no more than 12 paid accrued days off in any twelve months of consecutive employment.
 - (c) An employee who has not worked a complete four week cycle in order to accrue a rostered day off, shall be paid a pro rata amount for credits accrued for each day worked in such cycle payable for the rostered day off or, in the case of termination of employment, on termination, (i.e. an amount of 24 minutes for each 8 hour day worked).

- (vii) Subject to subclause (v) of this clause, an employee shall accrue an entitlement to rostered days off in any twelve months of consecutive employment to the extent provided in the following table:

Number Of Weeks Establishment Open Per Year	Accrued Days Off Per Year
41 weeks	10.25
42 weeks	10.50
43 weeks	10.75
44 weeks	11.00
45 weeks	11.25
46 weeks	11.50
47 weeks	11.75
48 weeks - 52 weeks	12.00

6C. Implementation of 19 Day Month

- (viii) By mutual agreement between the employer and employee concerned, the employer may fix one work day in every fourth week as an accrued rostered day off to the extent of such rostered days off accrued in accordance with subclause

- (ix) of this clause; or

Accumulation

- (ix) Establishments Operating 48-52 Weeks

The employee may accrue sufficient accrued days off to enable such days to be taken as rostered days off to a maximum block of five (5) days at any one time in any twelve (12) months of consecutive employment, and provided that no two (2) blocks of rostered days off shall follow on consecutively.

The employee shall take such rostered days off by mutual agreement with the employer.

(x) Establishments Operating 41 - 47 Weeks

Accumulated rostered days off shall be taken during non-term time, including but not limited to the period of paid stand-down provided in Clause 4 (ii) of this award.

6D. Part Time Employees

- (a) A part time employee as defined in clause 3 (ii) of this award who is regularly rostered to work ordinary hours over five days per week shall accrue an entitlement to rostered days off in the same ratio of weeks worked to accrued days as set out in subclause (vi) of this clause. A part time employee may choose to be paid the appropriate higher hourly rate (that is a rate based on a 38-hour divisor, as set out in clause 7(ii) in lieu of accruing an entitlement to rostered days off subject to mutual agreement between employer and employee. A notation of such agreement shall be kept in the Time and Wages Records.

Provided that in respect of part time employees engaged on or after 28 August 2000, the employer may require that such employee be paid the higher rate in lieu of the rostered day off.

- (b) Where rostered days off are taken the provisions of subclause 6C of this clause shall apply.
- (c) A part-time employee as defined in subclause (ii) of clause 3, Definitions, who works less than five days per week shall be paid for all hours worked (on the basis of a 38-hour divisor) subject to subclause (iv) of clause 9, Wages in lieu of an entitlement to rostered days off subject to mutual agreement between the employer and the employee/s.

6E. Casual Employees

A casual employee as defined in subclause (iii) clause 3, Definitions, shall be paid for all hours worked subject to subclause (v) of clause 9, Wages in lieu of an entitlement to accrued days off prescribed by this clause.

7. ROSTERED DAYS OFF DUTY

(i) Rostering

- (a) Notice - Except as provided in paragraph (b), an employee shall be advised by the employer at least four weeks in advance of the day or days he or she is to be rostered off duty.
- (b) Substitution - An individual employee with the agreement of the employer may substitute the day he or she is rostered off duty for another day.

- (c) Payment of Wages - Subject to Clause 14, Payment of Wages, of this award, where an employee is paid by cash or cheque and such employee is rostered off duty on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day.
- (d) Accumulation - Rostered days off may accumulate in accordance with subclause (iv) of clause 6, Implementation of 38 Hour Week of this award.
- (ii) Payment of Rostered Days Off - For every ordinary hour paid for, payment to the employee of one twentieth (5%) of the hourly rate will be withheld by the employer and then paid in the pay week in which the employee's rostered day off is taken. Notation: The withholding of payment for rostered days off for part time employees may also be implemented by applying a divisor of 40 in lieu of a 38 divisor to the appropriate full time rate of pay used to determine the part time rate applicable.
- (iii) Rostered Day Off Falling on a Public Holiday - Where an employee's rostered day off falls on a public holiday the employee and the employer shall agree to the substitution of an alternative day off. Provided however that where such agreement is not reached the substituted day may be determined by the employer.
- (iv) Sick Leave and Rostered Days Off- An employee is not eligible for sick leave in respect of absences on rostered days off as such absences are outside the ordinary hours of duty.
- (v) Bereavement & Rostered Days Off - An employee shall not be entitled to payment for Bereavement leave in respect of absences on rostered days off as such absences are outside the ordinary hours of duty.
- (vi) Work on Rostered Day Off - Except as provided in paragraph (b) of subclause (i) of this clause, any employee required to work on a rostered day off shall be paid in accordance with the provisions of clause 12, Overtime, of this award and an alternative day shall be granted as a rostered day off.

8. CLASSIFICATION STRUCTURE

- (i) Implementation of Classification Structure
 - (a) The employer shall determine the appropriate classification for each position in the service having regard to the needs of the service. The employer may choose not to appoint anyone to a particular classification in the Award, subject to the provisions of the *Children and Young Persons (Care and Protection) Act 1998* and/or the *Children's Services Regulations 2004*.

- (b) An employee will be appointed to the position and the corresponding classification in this award having regard to the duties required by the employer to be undertaken by the employee, the qualifications of the employee and the employee's length of service.
- (c) An employee shall commence on the step in the appropriate classification commensurate with the number of years of employment in early childhood and child care services for children aged 0 -12 years whether conducted by the employer or not and shall progress thereafter in accordance with the award.

Progression through the steps of each classification in this clause for part-time and casual employees shall be based on full-time equivalent service.

- (d) Calculation of Employment: When calculating employment for the purposes of this clause, one year of employment may be deducted for every period of five year's absence from early childhood and child care services.
- (e) Employment History on Engagement:
 - (1) Full time or Part time employees - upon engagement, an employee shall establish the employee's employment history in early childhood and child care services for the purposes of determining, where necessary, the appropriate step applicable under the classification structure set out in subclause (ii) of this clause.
 - (2) Casual employees - a casual employee shall maintain and keep up to date a record of employment as set out in Appendix A of this award. Such record shall be signed by the employer at the conclusion of each period of casual employment.
- (f) An employee may apply for a higher classification when a position becomes available in the service subject to the employee possessing the requisite qualifications and appropriate selection procedures for the particular service being followed.
- (g) Any dispute in relation to the implementation of the classification structure shall be dealt with in accordance with Clause 35 - Dispute Settling Procedure of this award.
- (h) Translation
 - (1) Existing employees whose duties fall within the classification structure set out in this award should confer with their employer and seek to reach agreement on any translation that may apply to the employee's classification as a result of the introduction of new classifications in this award.

- (2) Employees will translate to new classifications, if applicable, on the basis of the following principles:

where an existing employee retains their existing classification, they will retain their current incremental position in that classification based on their years of experience in the industry;

where an existing employee is subsequently reclassified to a higher classification, they will be paid at the rate for the classification to which they are appointed to in accordance with 8(i)(c).

Co-ordinators will be classified according to their qualifications, the service type, and the number of licensed child care places.

New employees will be classified and paid according to the appropriate table in Part B Monetary Rates of this award.

(ii) Classification Structure

An employer shall classify the position to which an employee is appointed in accordance with the following structure:

Child Care Support Worker (as defined)

Child Care Support Worker (Qualified Cook) (as defined)

Child Care Worker (as defined)

Step	
1	on engagement without early childhood or child care service
2	after 1 year's employment in this classification, or the satisfactory completion of an AQF Certificate III in Children's Services (with less than 12 months employment in an early childhood or child care service)
3	after 2 year's employment in this classification
4	after 3 year's employment in this classification
5	after 1 year's employment in this classification, in addition to the satisfactory completion of an AQF Certificate III in Children's Services.

Advanced Child Care Worker (as defined)

Step	
1	on engagement with early childhood or child care service
2	after 1 year's employment in this classification
3	after 2 year's employment in this classification

Advanced Child Care Worker (Qualified) (as defined)

Step	
1	on engagement with early childhood or child care service
2	after 1 year's employment in this classification
3	after 2 year's employment in this classification
4	required to supervise other Associate Diploma or Diploma qualified employees within the group they have responsibility for

Assistant Co-ordinator (as defined)

Assistant Co-ordinator Qualified (as defined)

Co-ordinator (as defined)

Level		
1	OOSH	on engagement with an Out Of School Hours centre
2	LDC/Pre-School	on engagement with long day care or Pre-School service up to 29 licensed places
3	LDC/Pre-School	on engagement with long day care or Pre-School service up to 69 licensed places.
4	LDC/Pre-School	on engagement with long day care or Pre-School service with 70 licensed places or more.

Co-ordinator Qualified (as defined)

Level		
1	OOSH	on engagement with an Out Of School Hours Centre
2	LDC/Pre-School	on engagement with long day care or Pre-School service up to 29. licensed places
3	LDC/Pre-School	on engagement with long day care or Pre-School service up to 69 licensed places.
4	LDC/Pre-School	on engagement with long day care or Pre-School service with 70 licensed places or more.

- (iii) Child Care Support Worker means an employee appointed by the employer to perform some or all of the following duties:

assisting a qualified cook;

laundry work;

cleaning;

gardening;

cooking (where the employee is unqualified);

driving (as part of other duties);

handy work; and

other duties as required by the employer as are within the knowledge, skills and capabilities of the carer, including duties at a higher classification; provided that this does not promote de skilling.

- (iv) Child Care Support Worker (Qualified Cook) - means an employee who holds basic qualifications in cooking, and who is appointed by the employer to cook meals in the service. An employee in this classification may be required by the employer to perform other duties as required by the employer as are within the knowledge, skills and capabilities of the employee including duties at a higher or lower classification; provided that this does not promote de skilling.
- (v) Child Care Worker - means a carer appointed by the employer to contribute to the development of and assist in the implementation of the child care program under the general direction of and responsible to a supervisor who is regularly present with the group of children. Qualifications are not required for Steps I to 4.
- (a) An employee who has completed an AQF Certificate III in Children's Services shall be paid no less than Child Care Worker Step 2.

- (b) An employee who has completed both an AQF Certificate III in Children's services and 12 months equivalent full-time service in a child care service, or has successfully completed an approved Certificate III traineeship of no less than 12 months duration, shall be classified at Step 5.
- (c) An employee at this level is responsible for their own work and may be required by the employer to perform some or all of the following duties:

positively interact with children, give each child individual attention and comfort as required; assist to implement daily routines;

assist with ensuring a safe, healthy and clean indoor and outdoor environment for children;

supervise the activities of a group of children for short periods of time during the day;

work with other staff members to ensure the smooth running of the service subject to the service policies and procedures;

understand and work according to the service policies and procedures;

assist in the development and/or evaluation of the program;

assist in the observation and evaluation of the children's development;

assist with the recording of children's development and assist in planning for the ongoing development of the child;

communicate with parents as instructed;

attend to incidental cleaning and housekeeping or associated with individual and group activities, experiences and routines;

perform incidental administrative duties including but not limited to: completing receipts, signing deliveries, ruling up the roll, checking the roll and the like;

other duties as required by the employer as are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

- (d) An employee at this level may be required by the employer to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998*.
- (e) Employees appointed to the position of child care worker, but required to perform the duties of an advanced child care worker, will be paid the higher rate applicable to that classification.

- (vi) Advanced Child Care Worker - means an unqualified carer appointed by the employer with the responsibility to develop, plan and implement the child care program. An employee at this level is responsible to the overall employer of a service and may be responsible for the direction of other staff within the group for which they have responsibility. An employee at this level may be required by the employer to perform some or all of the following duties:

has direct responsibility for the management of a group or groups of children in conjunction with the employer of the service;

ensure the maintenance of a healthy and safe work environment;

ensure a safe, healthy and clean indoor and outdoor environment for children;

liaise with parents as to needs of the children and the service;

maintain appropriate and up-to-date records;

ensure that programs are planned, implemented and evaluated for each child in their care;

ensure that all regulations, licensing guidelines, service policies and procedures are observed;

carry out administrative duties which relate to effective room management and child care responsibilities;

other duties as required by the employer as are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended and administer first aid as required.

An employee at this level will be required to continue to demonstrate the skills and knowledge required for the position.

- (vii) Advanced Child Care Worker: Qualified - means a qualified carer who holds a Diploma in Children's Services, an Associate Diploma in Social Science (Child Studies) from TAFE or equivalent qualifications which are recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, appointed by the employer with the responsibility to develop, plan and implement the child care program. An employee at this level is responsible to the overall employer of a service and may be responsible for the direction of other staff within the group for which they have responsibility. An employee at this level may be required by the employer to perform some or all of the following duties:

has direct responsibility for the management of a group or groups of children in conjunction with the employer of the service;

ensure the maintenance of a healthy and safe work environment;

ensure a safe, healthy and clean indoor and outdoor environment for children;

liaise with parents as to needs of the children and the service;

maintain appropriate and up-to-date records;

ensure that programs are planned, implemented and evaluated for each child in their care;

ensure that all regulations, licensing guidelines, service policies and procedures are observed;

carry out administrative duties which relate to effective room management and child care responsibilities;

other duties as required by the employer as are within the knowledge, skills and capabilities of the carer including duties at a lower classification; provided this does not promote de skilling.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and administer first aid as required.

An employee at this level will be required to continue to demonstrate the skills and knowledge required for the position.

Advanced Child Care Worker Qualified Step 4 means a qualified carer who holds the Associate Diploma in Social Science (Child Studies), Diploma in Children's Services or equivalent qualifications which are recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and who is appointed by the employer to a position where the employee is required to supervise other Associate Diploma or Diploma qualified employees within the group they have responsibility for.

- (vii) Assistant Co-ordinator - means carer appointed by the employer to perform administrative and management functions which assist in the co-ordination administration and management of a service, under direction from and responsible to a supervisor who is regularly present at the service. In addition to those of an Advanced Child Care Worker, an employee at this level may be required by the employer to perform some or all of the following duties:

Supervise, direct and co-ordinate the activities of groups of children across the service.

Co-ordinate and manage day-to-day staffing matters across the service.

Perform administrative duties which assist in the effective management of the service.

Ensure that groups within the service meet programming, planning administrative and regulatory requirements.

other duties as required by the employer which are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

An employee will not be regarded as working at this level for undertaking responsibilities such as evaluating and improving the activities of a service.

An employee will not be regarded as working at this level for relieving in a supervisory position to fill a temporary absence where the provisions of Clause 17 'Relieving Other Positions' of this Award apply.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and administer first aid as required.

- (ix) Assistant Co-ordinator Qualified means a carer who holds a Diploma in Children's Services, or an Associate Diploma in Social Science (Child Studies) from TAFE or equivalent qualifications which are recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, appointed by the employer to perform administrative and management functions which assist in the coordination administration and management of a service, under direction from and responsible to a supervisor who is regularly present at the service. In addition to those of an Advanced Child Care Worker Qualified, an employee at this level may be required by the employer to perform some or all of the following duties:

Supervise, direct and co-ordinate the activities of groups of children across the service.

Co-ordinate and manage day-to-day staffing matters across the service.

Perform administrative duties which assist in the effective management of the service.

Ensure that groups within the service meet programming, planning administrative and regulatory requirements.

other duties as required by the employer which are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

An employee will not be regarded as working at this level for undertaking responsibilities such as evaluating and improving the activities of a service.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and administer first aid as required.

- (x) Co-ordinator - means a carer appointed by the employer to co-ordinate, administer and manage a service. An employee at this level is required to

perform all of the following duties:

be accountable to the employer for the administration of the service;

co-ordinate and manage the day-to-day operations of the service;

manage staff through liaison and consultation with the employer;

oversee and ensure the implementation and maintenance of a healthy, safe and clean environment for staff and children;

ensure day-to-day administrative tasks are completed appropriately, including requirements for funding and licensing;

ensure the Service adheres to all relevant regulations and licensing guidelines;

ensure all appropriate records are maintained;

liaise with and consult with parents regarding the needs of the children and the community;

liaise with management to ensure that all matters and procedures relating to government funding are complied with in accordance with appropriate guidelines and, where applicable, submissions for funding to relevant authorities are made and funds applied in accordance with the relevant guidelines and approvals;

assist with the preparation of budgets in consultation with the employer, making appropriate recommendations and manage service financial responsibilities within approved levels;

attend meetings as required by the employer consistent with position responsibilities.

In addition an employee may be required to perform some or all of the following duties:

develop, implement and evaluate service policies and procedures and ensure these and licensing conditions are met in consultation with the employer;

prepare and present reports regarding Service issues;

develop goals and directions for the service in consultation with staff and management in line with early childhood policy and practice;

ensure that Government guidelines on priority access to services are adhered to;

other duties as required by the employer which are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and administer first aid as required.

- (xi) Co-ordinator: Qualified means a qualified carer who holds the Diploma in Children's Services, an Associate Diploma in Social Science (Child Studies) from TAFE or equivalent qualifications which are recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and who is appointed by the employer to co-ordinate, administer and manage a service. An employee at this level is required to perform the following duties:

be accountable to the employer for the administration of the Service;

co-ordinate and manage the day-to-day operations of the service;

manage staff through liaison and consultation with the employer;

oversee and ensure the maintenance and implementation of a healthy, safe and clean environment for staff and children;

ensure day-to-day administrative tasks are completed appropriately, including requirements for funding and licensing;

ensure the Service adheres to all relevant regulations and licensing guidelines;

ensure all appropriate records are maintained;

liaise with and consult with parents regarding the needs of the children and the community;

liaise with management to ensure that all matters and procedures relating to government funding are complied with in accordance with appropriate guidelines and, where applicable, submissions for funding to relevant authorities are made and funds applied in accordance with the relevant guidelines and approvals;

assist with the preparation of budgets in consultation with the employer, making appropriate recommendations and manage service financial responsibilities within approved levels;

attend meetings as required by the employer consistent with position responsibilities.

In addition an employee may be required to perform some or all of the following duties:

acts as Authorised Supervisor in accordance with the *Children and Young Persons (Care and Protection) Act 1998* as amended, where required by the employer;

develop, implement and evaluate Service policies and procedures and ensure these and licensing conditions are met in consultation with the employer;

prepare and present reports regarding service issues;

develop goals and directions for the service in consultation with staff and management in line with early childhood policy and practice;

ensure that government guidelines on priority access to services are adhered to;

other duties as required by the employer which are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and administer first aid as required.

- (xii) Co-ordinator Level 1 (Out Of Schools Hours) - means a Co-ordinator (as defined) appointed to an OOSH service who does not hold a Diploma Children's Services, an Associate Diploma in Social Science (Child Studies), or equivalent qualifications which are recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended.
- (xiii) Co-ordinator Level 2 - LDC / Pre School means a Co-ordinator (as defined) appointed to a Long Day Care or Pre School service of up to 29 licensed places.
- (xiv) Co-ordinator Level 3 - LDC / Pre School means a Co-ordinator (as defined) appointed to a Long Day Care or Pre School service of between 30 and 69 licensed places.
- (xv) Co-Ordinator Level 4 - LDC / Pre School means a Co-ordinator (as defined) appointed to a Long Day Care or Pre School service of 70 licensed places or more.
- (xvi) Co-ordinator Qualified Level 1 (Out Of School Hours) means a Co-ordinator Qualified (as defined) appointed to an OOSH service.
- (xvii) Co-ordinator Qualified Level 2 - LDC / Pre School means a Co-ordinator Qualified (as defined) appointed to a Long Day Care or Pre School service of up to 29 licensed places.
- (xviii) Co-ordinator Qualified Level 3 - LDC / Pre School means a Co-ordinator Qualified (as defined) appointed to a Long Day Care or Pre School service of between 30 and 69 licensed places.
- (xix) Co-ordinator Qualified Level 4 - LDC / Pre School means a Co-ordinator Qualified (as defined) appointed to a Long Day Care or Pre School service of 70 licensed places or more.

9. WAGES

- (i) Full-Time Employees
 - (a) Rates:- The minimum rate of pay for the classifications as set out in clause 8, Classification Structure, of employees engaged in Long day Care Centres or services operating more than 41 weeks per year shall be the rates as set out, in Table IB and 1C - Wages, of Part B, Monetary Rates.

- (b) Rates:- The minimum rate of pay for the classifications as set out in clause 8, Classification Structure, of employees engaged in Pre-Schools or services operating 41 weeks per year shall be the rates as set out, in Table IB and ID - Wages, of Part B, Monetary Rates.
- (c) The adjustments to rates of pay in this award may be offset against:
 - (1) any equivalent overaward payments, and/or
 - (2) award wage increases since 29 May 1991 other than safety net, State Wage Case and minimum rates adjustments.
- (ii) Savings Clause - Leading Hand and First Aid Allowance: With the exception of employees classified as Co-ordinators under the new structure, an employee who is employed as at July 8, 1997 and who is currently appointed as a leading hand and/or appointed first aid attendant and is in receipt of an allowance for such appointment(s) shall continue to receive the amount of such allowance(s), as an over award payment, whilst they continue in employment in that position with that employer.
- (iii) Part time Employees:
 - (a) Rates - For each hour worked during ordinary time, part-time employees shall be paid the hourly equivalent of the minimum weekly wage prescribed by this award for the class of work performed by them.
 - (b) Minimum Starts
 - 1. Child Care Support Worker. A part-time employee engaged as a Child Care Support Worker or Child Care Support Worker (Qualified Cook) working a single shift on any day shall be paid a minimum of two hours for each start.
 - 2. Out of School Hours Care. A part-time employee working a single shift shall be paid a minimum of two hours for each start.
 - 3. Broken Shift Workers. A part-time employee working a broken shift pursuant to paragraph (a) Day Workers of subclause (i) of Clause 5, Hours, of this award, shall be paid a minimum of two hours for each of the two shifts so worked.
 - 4. All other part-time employees shall be paid a minimum of three hours for each start.

(iv) Casual Employees

(a) Rates. Casual employees, for each hour worked during ordinary time shall be paid the hourly equivalent of the minimum weekly wage prescribed by this award for the class of work performed by them, plus an additional amount of 15 per centum of the appropriate weekly rate. Casuals are entitled to annual leave payments under the *Annual Holidays Act, 1944*. The employer must make the payment by adding an additional one twelfth of the ordinary time casual hourly rate to the aggregate ordinary pay after each engagement.

(b) Minimum Starts

1. Child Care Support Worker A casual employee engaged as a Child Care Support Worker or Child Care Support Worker (Qualified Cook) working a single shift on any day shall be paid a minimum of two hours for each start.
2. Out of School Hours Care A casual employee working a single shift shall be paid a minimum of two hours for each start.
3. Broken Shift Workers A casual employee working a broken shift pursuant to paragraph (a) Day Workers of subclause (i) of Clause 5, Hours, of this award, shall be paid a minimum of two hours for each of the two shifts so worked.
4. All other casual employees shall be paid a minimum of three hours for each start.

(v) The hourly rates for part-time and casual employees shall be calculated to the nearest whole cent, any amount less than half a cent in the result to be disregarded.

(vi) Juniors: Junior Child Care Workers employed shall be paid the following percentages of the appropriate adult rate of pay specified for the classification under which the junior is engaged:

Age	Percentage (per week)
Under 17 years of age	70
At 17 years of age	80
At 18 years of age	90
At 19 years of age	100

The above mentioned percentages shall be calculated to the nearest ten cents, provided however that any broken part often cents in the result less than five cents shall be disregarded.

- (vii) Junior Employees (Special Conditions): Junior employees employed otherwise than in accordance with subclause (vii), of this clause, shall be paid the appropriate adult rate of pay. The employment of junior employees is further subject to the following conditions:-
- (a) The ratio of juniors to adults employed in any capacity in any establishment shall not exceed the following ratios -
- Where up to 20 children are catered for - one junior to one adult.
Where over 20 children are catered for - one junior to two adults.
- (b) Junior employees engaged as trainee Advanced Child Care Worker shall be required, as a condition of employment, to train as such, employees shall attend the Associate Diploma of Social Science (Child Studies) Course or such other technical college course as is necessary.
- (c) The employer shall, in respect of each trainee Advanced Child Care Worker, pay all fees and charges necessary to attend and complete the said course and shall, if necessary, allow the employee time off duty without deduction of pay to attend the said course.
- (viii) Phasing in and Savings provision
- (a) Savings
- No employee shall suffer a reduction in wages and/or allowances as a result of the insertion of the new classification structure into this award on 7 March 2006.
- (b) Commencement
- The rates of pay set out in this award will apply on and from the first pay period after 7 March 2006.
- (c) Phasing in of Increases. Where the employee's current rate of pay is below the total new end rate of pay specified in this Award for the classification appropriate to the employee, the difference will be phased in according to the following provisions:

Date	Increase	
7 March 2006	4%	
1 September 2006	4%	Or, the balance of the remaining increase, if less than 4 per cent
1 March 2007	4%	Or, the balance of the remaining increase, if less than 4 per cent
1 September 2007	4%	Or, the balance of the remaining increase, if less than 4 per cent
1 March 2008		The balance of the remaining increase.

- (d) The employer and employee may agree to earlier implementation dates for wage increases than those set out in subclause (c) above.
- (e) In the event that the employer and the employee cannot reach agreement as envisaged by clause 8(i)(h)(l), or in the event that a dispute arises as the transitional arrangements referred to in clause 8, the procedures specified in clause 35 - Dispute Settling Procedure must be followed.

10. ADDITIONAL RATES AND ALLOWANCES

- (i) Straight Shifts: The following additional allowances for shift work shall be paid to employees in respect of work performed during ordinary hours for shifts as defined in subclauses (vii), (viii), (ix) and (x) of Clause 3, Definitions, of this award:

	Percentage
Early morning shift	10%
Afternoon shift	15%
Night shift, rotating with day or afternoon shift	17.5%
Night shift, non-rotating	30%

- (ii) Broken Shifts - Employees working broken shifts as provided in paragraph (a) of subclause (i), of clause 5, Hours, shall be paid the following additional allowances:
 - (a) For each broken shift so worked - a shift allowance in accordance with Item 1 of Table 2 Additional Rates and Allowances, of Part B, Monetary Rates.

- (b) Excess fares allowance - at the rate in accordance with Item 2 of the said 2.
- (iii) Uniform Laundry Allowance - In the event of an employee being required to wear a uniform such uniform shall be provided by and laundered at the employer's expense, or, by mutual agreement, such employees shall be paid a uniform laundry allowance, in accordance with Item 3 of the said Table 2.
- (iv) Cooks Uniform Laundry Allowance - Where an employer requires a cook to wear an ordinary white overall or wrap, coat, cap, apron and trousers, usually worn by cooks, such garments shall be laundered either at the employer's expense or at the option of the employer, the employee shall be paid a cooks uniform laundry allowance, in accordance with Item 4 of the said Table 2.
- (v) First Aid Certificate:
 - (a) If an employer requires an employee who is not required to have a first aid certificate under the award definition of the classification, to obtain and/or maintain such a qualification, the employee shall be allowed time off without loss of pay for the purpose of completing the course required. The cost of the course shall be met by the employer.
 - (b) Employers who require employees to attend to medical procedures such as administering epi pens, suppositories and drip feeding shall ensure staff are adequately trained in such procedures, before being required to undertake them. The cost of any such training will be met by the employer.
- (vi) Qualification Allowances
 - (a) An employee who has completed successfully the Commercial Cookery Basic Training Course at TAFE or a course deemed by the employer to be an equivalent qualification, shall be paid an additional allowance in accordance with Item 5 of the said Table 2, such amount shall be part of the ordinary rate of pay for all award purposes.
 - (b) An employee who has completed successfully the Hotel and Restaurant Cookery Course at the Sydney Technical college or a course deemed by the employer to be an equivalent qualification, shall be paid an allowance in accordance with Item 6 of the said Table 2, such amount shall be part of the ordinary rate of pay for all award purposes.
 - (c) An employee shall advise the employer of the date of completion of such course as specified in paragraph (a) and/or (b) of this subclause.
- (vii) The rate of pay for a Support Worker (Qualified Cook) provided for in subclause (i) of clause 9, Wages of this award shall include any

allowance for the responsibility of directing or supervising the duties of an assistant cook when such is employed.

- (viii) Board and Lodging : An employer shall not be compelled to board and/or lodge any worker but where board and/or lodging are provided the employer shall be entitled to deduct in respect of all workers the following amounts:-
- (a) For full board of twenty-one (21) meals per week, an amount equal to 18.5 per cent of the adult basic wage.
 - (b) For full lodging for seven (7) days per week, an amount equal to 7 per cent of the adult basic wage.
 - (c) Where by mutual consent, part board and/or part lodgings are provided the deductions referred to in subclauses (a) and (b), of this clause, may be made on a pro-rata basis. Non-residential employees shall not suffer any deductions for meals provided unless by mutual consent.
- (ix) Authorised Supervisor Allowance: An employee (other than a Co-ordinator: Qualified or a Coordinator) who is required by the employer to act as an Authorised Supervisor in accordance with the *Children and Young Persons (Care and Protection) Act 1998*, as amended, shall be paid an amount as set out in Item 8, of the said Table 2. The daily rate for such allowance shall be calculated by dividing the weekly allowance by 5.

11. SATURDAY AND SUNDAY WORK

- (i) Ordinary Hours - Shift Workers - Shift workers required to work their ordinary hours on a Saturday and/or Sunday shall as prescribed by subclause (i)(b) of clause 5, Hours of this award, be paid for all time so worked at the following rates:
- | | |
|---------------|-------------------|
| Saturday Work | Time and one-half |
| Sunday Work | Double time |
- (ii) The rates prescribed in this clause shall be in substitution for and not cumulative upon the shift work allowances prescribed in subclause (i) of clause 10, Additional Rates and Allowances, of this award.
- (iii) Overtime - Day Workers
- (a) Overtime performed on Saturday shall be paid for at the rate of time and one half for the first three hours and double time thereafter with a minimum payment of not less than four hours at such rate.
 - (b) Overtime performed on Sundays shall be paid for at the rate of double time,
- (iv) Overtime - Shift Workers
- (a) Overtime performed on Saturday shall be paid for at the rate of time

and one half for the first two hours and double time thereafter.

- (b) Overtime performed on Sundays shall be paid for at the rate of double time.

12. OVERTIME

- (i) Subject to subclause (iii) of this clause and subclauses (iii) and (iv) of clause 11, Saturday and Sunday Work of this award, for all work done outside ordinary hours the rates of pay shall be time and one half for the first two hours and double time thereafter. In computing overtime each day's work shall stand alone.
- (ii) Where overtime or extra shifts are required to be worked, the employer shall give preference for such work to employees as classified and covered by the terms of this award where it is reasonably practicable to do so.

- (iii) Part-time employees -

If a part-time employee agrees to work additional hours, the additional hours must be paid at the same rate as full time employees are paid under the award. The work must be paid for at the ordinary hourly rate for all hours unless they fall outside the ordinary hours fixed by this Award for full-time employees. Any hours worked in addition to ordinary full-time hours must be paid at the overtime rate applicable to full-time employees under this Award.

- (iv) Meal Money: An employee required to work overtime in excess of one and one half hours shall either be paid an allowance in accordance with Item 7 of Table 2 of Part B, Monetary Rates or be supplied with a meal of equivalent value.
- (v) Time Off in Lieu of Overtime : Where an employee performs duty on overtime the employee may at the employee's request and with the agreement of the employer subsequently be released from duty in ordinary hours subject to the following conditions:
 - (a) The agreement shall be in writing and be kept with the time and wages records;
 - (b) Where an employee takes subsequent time off the relevant and equivalent period of overtime shall be paid for at ordinary rates of pay; all other overtime worked and in respect of which time off is not taken shall be paid for at the appropriate overtime rate otherwise provided in this award;
 - (c) Where an employee elects to take any period/s of time off in ordinary hours in accordance with this clause such time off shall be with pay and shall equate to the relevant period/s of overtime worked;

- (d) Time off may be taken only in respect of overtime worked between Monday to Friday inclusive;

- (e) Payment for any period/s of overtime worked and in relation to which the employee elects to take time off may be paid by the employer to the employee in the pay period in which the time off is taken;
- (f) An employee may not accumulate more than 20 hours of equivalent time off which shall be taken within four weeks of its accrual. Where such time off is not taken the period/s of overtime referable thereto shall be paid for in the next relevant pay period at the appropriate overtime rate otherwise applicable.
- (vi) Reasonable Overtime: Subject to clause (vii) an employer may require an employee to work reasonable overtime at overtime rates.
- (vii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (viii) For the purposes of clause (vii) what is unreasonable or otherwise will be determined having regard to:
 - 1) any risk to employee's health and safety;
 - 2) the employee's personal circumstances including any family responsibilities;
 - 3) the needs of the workplace or enterprise;
 - 4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - 5) any other relevant matter.

13. MAKE UP TIME

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

14. PAYMENT OF WAGES

- (i) Wages shall be paid weekly or fortnightly in ordinary working time. An employee kept waiting after the normal ceasing time for the payment of wages shall be paid at overtime rates from the normal ceasing time until payment is made. Casual employees shall be paid within one hour of the termination of the employment or on the normal pay day for the establishment.

- (ii) Where an employer and employee agree, the employee may be paid the employee's wages by cheque or direct transfer into the employee's bank (or other recognised financial institution) account. Notwithstanding this provision, if the employer and the majority of employees agree, all employees may be paid their wages by cheque or direct transfer into an employee's bank (or other recognised financial institution) account.
- (iii) Where payment is made by cheque the employer shall ensure that clearance of such cheque is made available by the appropriate bank or, alternatively, an employer may make a direct deposit by cheque to the appropriate bank for transfer to nominated employee accounts to ensure access by the employee to wages on the nominated pay day.

15. MISCELLANEOUS CONDITIONS

- (i) **Boiling Water:** Hot water shall be provided by the employer where practicable.
- (ii) **Accommodation for Meals:** Employers shall allow employees to partake of their meals, crib breaks or tea breaks in a suitable place protected from the weather and every such employee shall leave such place in a thoroughly clean condition.
- (iii) **Rubber Boots:** Where employees are required to work outside or in toilets in wet conditions they shall be supplied with rubber boots, which should remain the property of the employer.
- (iv) **Rubber Gloves:** Where employees are required to clean toilets or to use acids or other injurious substances or detergents they shall be supplied with rubber gloves, which shall remain the property of the employer and shall be replaced by the employer when unserviceable.
- (v) **Dressing Accommodation:** Where it is necessary or customary for employees to change their dress or uniform suitable dressing rooms or dressing accommodation and individual lockable lockers shall be provided.
- (vi) Clean overalls shall be supplied by the employer for all outdoor staff where such employee requires same.
- (vii) A first aid kit shall be supplied and be readily available to all employees.
- (viii) All materials, equipment, etc. required for the work and for cleaning purposes shall be supplied by the employer.
- (ix) Protective clothing, overalls or uniforms supplied pursuant to this award shall remain the property of the employer and shall be returned upon termination of employment.

16. JOB SHARING

- (i) Definitions 'Job Sharing' may be defined as the occupation of a full-time or part-time position by two employees (job sharers) sharing all of the duties and responsibilities of the position.
- (ii) General Employment Conditions
 - (a) A job share position shall only be created by mutual agreement between the employer and the employee occupying the position to be job shared.
 - (b) Subject to the provisions of subclause (iii) of this clause relating to overtime, job sharers will be employed on pro-rata hours, wages and conditions for the relevant classification or grade of the position filled.
 - (c) Before any job sharing arrangements are approved, the employer shall provide each prospective job sharer with a copy of this clause and obtain her or his acceptance of the job share position to be worked.
 - (d) Job sharers will discuss with the employer arrangements to determine how the job is to be split and agree the hours to be worked by each job sharer including the arrangements to be adopted when one job sharer is absent.
 - (e) Where a job share position is of a specific duration and instead of being filled by two existing employees an additional employee must be engaged to share the position, such additional employee shall be advised that the position is only available for the duration sought and approved.
- (iii) Hours of Duty
 - (a) The hours of work of job sharers shall be worked in accordance with clause 5, Hours of this award.
 - (b) The hours of job sharers once established will not be changed except by mutual consent of both the job sharers and the employer or subject to the operational requirement of the centre. Where an employer is required to change a job sharers hours because of the operational requirement of the centre, the employer shall give the job share employees notice in accordance with subclause (ii) of Clause 5, Hours of this award.
 - (c) The total weekly hours of job sharers of a full-time position shall not exceed an average of 38 hours per week to be worked in accordance with Clause 6, Implementation of the 38 Hour Week. Hours worked in excess of the arrangements set out in the said Clause 6 by a job sharer shall be paid in accordance with Clause 12, Overtime of this award.

- (d) Job Sharers shall not be entitled to accrue credits towards rostered days off provided for under clause 6, Implementation of 38 Hour Week and clause 7, Rostered Days Off Duty of this award.
- (iv) Leave
- (a) Job sharers shall be entitled to all leave provisions available under this award on a pro rata basis.
 - (b) Job sharers may take annual leave or other leave at the same time or separately.
 - (c) Job sharers may be asked and may agree to cover for the absences of the other job share employees. Such coverage may be either for part of the absence or for the full period.
 - (d) All leave arrangements wherever possible will be made by mutual agreement between both job sharers and the employer.
 - (e) Where a job share employee agrees to cover for the other job share employee whilst he or she is on leave, they shall be paid at ordinary rates for the extra days or extra hours worked subject to the provisions of paragraph (f) of this subclause.
 - (f) Where the absence of one job sharer on leave is covered by the other job sharer the aggregate number of hours worked shall not exceed those of a full-time employee without the payment of overtime.
- (v) Redundancy. Subject to the provisions of clause 27, Redundancy of this award where a job share position is made redundant then the job sharers shall be entitled to the provisions of the said clause 27.
- (vi) Termination of Employment
- (a) The position of a job sharer may be terminated in accordance with the relevant provisions of clause 4, Contract of Employment of this award.
 - (b) Where one job sharer has terminated the position of the remaining job sharer shall not be prejudiced.
 - (c) Where one job-sharer has terminated, the position may be filled internally or externally provided that any replacement employee is advised of the job share nature of the position and particularly when the position is of a specific duration, or the remaining job-sharer may be offered the option of occupying the full position on a permanent basis.
 - (d) Any replacement employee shall also be advised of the provisions of this clause applying to the job share position.

17. RELIEVING IN OTHER POSITIONS

- (i) Employees employed at work for which a higher rate is fixed shall be paid such higher rate whilst so employed. If employed for four hours or more on the higher class of work employees shall be paid the higher rate for the whole of that day.
- (ii) Where an employee is called upon to perform duties for which a lower rate is fixed the employee shall suffer no reduction in pay.

18. SICK LEAVE

For exemptions to certain provisions of this clause for certain categories of employees, see clause 36, Exemptions of this award.

- (i) A full time employee is entitled to 15 days sick leave in the first year of employment, and 12 days in each subsequent year. Any leave accrued and not utilised accumulates to a maximum of 120 days.
- (ii) A part time employee is entitled to pro rata sick leave commensurate with the proportion which their ordinary hours bears to 38 hours per week.
- (iii) The employee shall provide to the employer a doctors certificate in respect of absences of two days or more or where the sick leave occurs before or after a public holiday, rostered day off or weekend.
- (iv) A Statutory Declaration shall be accepted in respect of any single day absences.
- (v) The employee shall, as soon as reasonably practicable and in any case within 24 hours of the commencement of such absence, inform the employer of an inability to attend for duty and, and as far as practicable, the estimated duration of the absence.

Payment During the Initial Three Months of Service

- (vi) Paid sick leave which may be granted to a staff member in the first three months of service shall be limited to five days' paid sick leave unless the centre approves otherwise. Paid sick leave in excess of five days granted in the first three months of service shall be supported by a satisfactory medical certificate.
- (vii) Following the completion of three months of service with an employer the employee shall be entitled to the balance of leave not taken up to a maximum of 15 days in the first year of service.

Infectious Diseases at the Centre or Service

- (viii) Consideration shall be given to extending the sick leave amount in the circumstances where an infectious disease or illness has been identified at the centre, and an employee is subsequently infected.

Workers Compensation

- (ix) An employee shall not be entitled to sick leave for any period in respect of which the employee is entitled to workers compensation.
- (x) Notwithstanding anything contained in subclause (i), of this clause, a weekly employee suffering injury through an accident arising out of and in the course of employment (not being an injury in respect of which there is an entitlement to workers' compensation) necessitating his or her attendance during working hours on a doctor, chemist or trained nurse, or at a hospital, shall not suffer any deduction from his or her pay for the time (not exceeding four hours) so occupied on the day of the accident and shall be reimbursed by the employer for all expenses reasonably incurred in connection with such attendance and expenses shall include fares.

Definition of Week

- (xi) For the purpose of this clause "week" means:-
 - (a) In the case of part-time employees - the number of ordinary weekly hours regularly worked by such employees;
 - (b) in the case of all other weekly employees - thirty eight hours.

Savings for sick leave accruals

- (xii) Employees engaged at 7 March 2006 who have accrued in excess of 120 days of sick leave under previous accruals will not have their entitlement reduced as a consequence of this award. Such accruals in excess of 120 days will, as of 7 March 2006 be capped at that higher level, and that level will form the maximum accrual for the employee whilst employed by the same employer.
- (xiii) Current employees will receive the sick leave allowances in sub clause (i) of this clause on their next anniversary with their current employer.

19. PUBLIC HOLIDAYS

- (i) The days on which the following holidays are observed shall be holidays, namely, New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Eight Hour Day, Christmas Day and Boxing Day and any day which may hereafter be proclaimed as a public holiday throughout the State of New South Wales, and the first Monday in August or such other day as is mutually agreed between the employer and an employee or the employer and the majority of employees. Provided that for pre-schools operating 41 weeks per year

only, the first Monday in August may be subsumed into a period of paid stand-down provided in clause 4(ii) of this award.

- (ii) The above holidays falling on an ordinary working day shall be paid for if not worked, irrespective of such holidays falling in a vacation period.
- (iii) Employees required to work on any of the above holidays shall be paid at the rate of double time and one-half with a minimum payment of four hours at such rate.
- (iv) (a) Where a holiday occurs on the rostered day off of a seven day shift worker as provided for in subclause (i)(b) of clause 5, Hours and:
 - (1) the employee is not required to work on that day, the employer shall pay such employee eight hours' ordinary pay in respect of such day;
 - (2) the employee is required to work on that day, the employer shall pay such employee eight hours' ordinary pay in respect of such time and in addition at the rate of time and one-half for the first eight hours (with a minimum payment of four hours) and double time and one-half thereafter.
- (b) The employer may, in lieu of the payment of eight hours' ordinary pay prescribed in paragraph (a) of this subclause, add a day to the annual leave period.
- (c) Any day or days added in accordance with this subclause shall be the working day or working days immediately following the annual leave period to which the employee is entitled to under clause 20, Annual Leave, of this award.
- (d) Where the employment of an employee has been terminated and the employee thereby becomes entitled under section 4 of the *Annual Holidays Act 1944*, to payment in lieu of an annual holiday with respect to a period of employment, the employee shall be entitled also to an additional payment for each day accrued to the employee under this clause at the appropriate ordinary rate of pay, if payment has not already been made in accordance with paragraph (a) of this subclause.
- (v) For the purpose of this clause any employee whose ordinary hours of work commence before and continue past midnight shall be regarded as working on a holiday only if the greater number of the employee's working hours fall on the holiday, in which case all time worked shall be regarded as holiday work; provided that if the number of ordinary hours worked before and past midnight is equal, all ordinary time worked shall be regarded as time worked on the day on which the shift commenced.

20. ANNUAL LEAVE

- (i) All employees except seven day shift workers - see *Annual Holidays Act 1944*.
- (ii) Seven Day Shift Workers - in addition to the leave provided by section 3 of the *Annual Holidays Act 1944*, a seven day shift worker at the end of each year of employment shall be entitled to the additional leave as prescribed below:-
 - (a) If during the year of employment the employee has served continuously as a seven day shift worker, the additional leave with respect to that year shall be one week.
 - (b) If during the year of employment the employee has served only a portion of it as a shift worker, the additional leave shall be 3.5 hours for each completed month of employment as a shift worker, or provided that where the additional leave is or comprises a fraction of a day, such fraction shall not form part of the leave period and any such fraction shall be discharged by payment only.

Where the employment of a seven day shift worker is terminated and the shift worker thereby becomes entitled under section 4 of the *Annual Holidays Act 1944*, to payment in lieu of an annual holiday with respect to a period of employment, he or the shift worker shall be entitled to an additional payment of 3.5 hours at such ordinary rate of pay for each completed month of service as a seven day shift worker.

- (iii) For the purposes of this clause, a seven day shift worker means an employee whose ordinary working hours includes Sundays and/or holidays on which the shift worker may be regularly rostered for work.

21. ANNUAL LEAVE LOADING

- (i) In this clause the *Annual Holidays Act 1944*, is referred to as "the Act".
- (ii) Before an employee is given and takes his or her annual holiday, or where, by agreement between the employer and the employee the annual holiday is given and taken in more than one separate period, then before each of such separate periods, the employer shall pay the employee a loading determined in accordance with this clause (Note: The obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance - see subclause (vi)).
- (iii) The loading is payable in addition to the pay for the period of holidays given and taken and due to the employee under the Act and this award.

- (iv) The loading is to be calculated in relation to any period of annual holiday to which the employee becomes or has become entitled under the Act and this award (but excluding days added to compensate for public or special holidays worked or public or special holidays falling on an employee's rostered day off not worked), or where such a holiday is given and taken in separate periods, then in relation to each such separate period. (Note: See subclause (vi) as to holidays taken wholly or partly in advance).
- (v) The loading is the amount payable for the period or the separate period, as the case may be, stated in subclause (iv) of this clause at the rate per week of 17.5 per cent of the appropriate ordinary weekly time rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing his or her annual holiday together with, where applicable, the following allowances prescribed by clause 10, Additional Rates and Allowances, in subclause (vii) Leading Hands and subclause (vi) Qualification Allowances of this award, but shall not include any other allowances, penalty rates, shift allowances, overtime rates or any other payment prescribed by this award.
- (vi) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; Provided that, if the employment of such an employee continues until the day when he or she would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such holiday, and is to be calculated in accordance with subclause (v), of this clause, applying the award rates of wages payable on that day. This subclause applies where an annual holiday has been taken wholly or partly in advance and the entitlement to the holiday arises after that date.
- (vii) Where, in accordance with the Act the employer's establishment or part of it is temporarily closed down for the purpose of giving an annual holiday or leave without pay to the employee concerned -
 - (a) an employee who is entitled under the Act to an annual holiday and who is given and takes such a holiday shall be paid the loading calculated in accordance with subclause (v), of this clause;
 - (b) an employee who is not entitled under the Act to an annual holiday and who is given and takes leave without pay shall be paid in addition to the amount payable to him or her under the Act such proportion of the loading that would have been payable to him or her under this clause if he or she had become entitled to an annual holiday prior to the close down as his or her qualifying period of employment in completed weeks bears to 52.
- (viii) (a) When the employment of an employee terminates for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which he or she became entitled he or she shall be paid a loading calculated in accordance with subclause (v), of this clause, for the period not taken.

- (b) Except as provided in paragraph (a), of this subclause, no loading is payable on the termination of an employee's employment.
- (ix) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if he or she had not been on holiday; Provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.
- (x) By agreement between the employer and employee, the loading may be calculated in relation to such period of an employee's annual holiday as is equal to the period of annual holiday to which the employee is entitled for the time being under the *Annual Holidays Act 1944* at the end of either each calendar year or at the end of each year of the employee's employment. The employer will identify the payment on the employee's payslip when the payment is made.

Any agreement made pursuant to sub-clause (x) will be recorded in writing in the time and wages record.

22. LONG SERVICE LEAVE

See *Long Service Leave Act 1955*.

23. PARENTAL LEAVE

- (i) See Appendix B to this award.
- (ii) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (iii) Right to request
 - (a) An employee entitled to parental leave may request the employer to allow the employee:
 - (1) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (2) to extend the period of unpaid parental leave for a further

continuous period of leave not exceeding 12 months;

- (3) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under Clause 23(iii)(a)(2) and 23(iii)(a)(3) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under Clause 22(3)(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (iv) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

- (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return or other contact details which might affect the employer's capacity to comply with Clause 23(iv)(a).

24. PERSONAL/CARERS LEAVE

For exemptions to the provisions of this clause for certain categories of employees see clause 36, Exemptions of this award.

- (i) Use of sick leave
 - (a) An employee with responsibilities in relation to a class of person set out in 24(i)(c)(2) who needs their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement which accrues after September 12th, 1996 for absences to provide care and support for such persons when they are ill or who require care due to an unexpected emergency.
 - (b) The employee shall, if required,
 - (1) establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
 - (1) the employee being responsible for the care and support of the person concerned; and
 - (2) the person concerned being:
 - (a) a spouse of the employee; or
 - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
 - (d) a same sex partner who lives with the employee as the

de facto partner of that employee on a bona fide domestic basis; or

- (e) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
 - (1) "relative" means a person related by blood, marriage or affinity;
 - (2) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
 - (3) "household" means a family group living in the same domestic dwelling.

- (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes settling procedure at Clause 35 should be followed.

(ii) Unpaid leave for family purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 24(i)(c)(2) above, who is ill or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

(iii) Annual leave

- (a) To give effect to this clause an employee may elect, with the consent of the employer, to take annual leave not exceeding ten days in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph 24(iii)(a) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (d) An employee may elect with the employers agreement to take

annual leave at any time within a period of 24 months from the date at which it falls due.

(iv) Time Off in Lieu of Payment for Overtime

- (a) An employee may elect, with the consent of their employer, to take time off in lieu of payment of overtime at a time or times agreed with the employer.
- (b) Arrangements for taking overtime as time off shall be governed by Clause 12 - Overtime of the Award.

(v) Make-up time

An employee may elect, with the consent of their employer, to work "make-up time" in accordance with Clause 13 - Make Up Time of the Award.

(vi) Grievance process

In the event of any dispute arising in connection with any part of this clause, such dispute shall be processed in accordance with the dispute settling provisions of this award.

(vii) Personal Carers Entitlement for casual employees

- (a) Subject to the evidentiary and notice requirements in Clause 24(i)(b) and 24(i)(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in Clause 24(i)(c)(2) who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

25. BEREAVEMENT LEAVE

- (i) An employee other than a casual employee shall be entitled to up to two days bereavement leave without deduction of pay, up to and including the day of the funeral, on each occasion of the death of a person prescribed in (iii) below. Provided that where the death of a relative as defined occurs outside Australia and a memorial service is held, one day's leave without loss of any ordinary pay shall be allowed.
- (ii) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- (iii) Bereavement leave shall be available to the employee in respect to the death of a person prescribed by (i)(c)(2) of Clause 24 Carer's Leave, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (v) Bereavement leave may be taken in conjunction with other leave available under subclauses (i), (ii), (iii) (iv) and (v) of Clause 24 Personal/Carers Leave of this Award. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (vi) Bereavement entitlements for casual employees
 - (a) Subject to the evidentiary and notice requirements in Clause 25(ii) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in Clause 24(i)(c)(2).
 - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

26. JURY SERVICE

- (i) An employee shall be allowed leave of absence during any period when required to attend for jury service.
- (ii) During such leave of absence, an employee shall be paid the difference between the jury service fees received and the employee's normal rate of pay as if working.
- (iii) An employee shall be required to produce to the employer proof of jury service fees received and proof of requirement to attend and attendance on jury service and shall give the employer notice of such requirement as soon as practicable after receiving notification to attend for jury service.

27. REDUNDANCY

- (i) Application
 - (a) This clause shall apply in respect of full time and part time employees as set out in clause 9, Wages.
 - (b) In respect to employers who employ more than 15 employees immediately prior to the termination of employment of employees, in the terms of subclause (v) of this clause.
 - (c) Notwithstanding anything contained elsewhere in this award, this clause shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.
 - (d) Notwithstanding anything contained elsewhere in this award, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.
- (ii) Introduction Of Change
 - (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 shall notify the employees who may be affected by the proposed changes and the union to which they belong.

- (b) 'Significant effects' include termination of employment, major changes in the composition, operation or size of the employers 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 the matters referred to herein, an alteration shall be deemed not to have significant effect.

(iii) Employers Duty To Discuss Change

- (a) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in subclause (ii) of this clause, 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 shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- (b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (ii) of this clause.
- (c) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong 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 any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(iv) Discussions Before Terminations

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone pursuant to paragraph (a) of subclause (ii), of this clause and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of paragraph (a) of this subclause and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination of the employees concerned.

- (c) For the purposes of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(v) Notice For Changes In Production, Program, Organisation Or Structure

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from 'production', 'program', 'organisation' or 'structure' in accordance with paragraph (a) of subclause (ii) of this clause.

- (a) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of continuous service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(vi) Notice For Technological Change

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from 'technology' in accordance with paragraph (a) of subclause (ii) of this clause:

- (a) In order to terminate the employment of an employee the employer shall give to the employee 3 months notice of termination.

- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
 - (c) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the Long Service Leave Act 1955, the Annual Holidays Act 1944, or any Act amending or replacing either of these Acts.
- (vii) Time Off During The Notice Period
- (a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes of seeking other employment.
 - (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent.
- (viii) Employee Leaving During The Notice Period
- If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.
- (ix) Statement Of Employment
- The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.
- (x) Notice To Centrelink
- Where a decision has been made to terminate the employment of employees, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- (xi) Centrelink Separation Certificate
- The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an 'Employment Separation Certificate' in the form required by Centrelink.

(xii) Transfer To Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause (ii), of this clause, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, and the employer may at the employer's option make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new ordinary time rates for the number of weeks of notice still owing.

(xiii) Severance Pay

Where the employment of an employee is to be terminated pursuant to subclause (v) of this clause, subject to further order of the Industrial Relations Commission, the employer shall pay the following severance pay in respect of a continuous period of service:

- (a) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Under 45 Years of Age Entitlement
Less than 1 year —	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (b) Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	45 Years of Age & Over Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks

Years of Service	45 Years of Age & Over Entitlement
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

(c) 'Weeks Pay' means the all purpose rate of pay for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and all purpose allowances paid in accordance with this award.

(xiv) Incapacity To Pay

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (xiii) of this clause.

The Industrial Relations Commission shall have regard to such financial and other resources of the employer concerned as the Industrial Relations Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause (xiii) of this clause will have on the employer.

(xv) Alternative Employment

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (xiii) of this clause if the employer obtains acceptable alternative employment for an employee.

(xvi) Procedures Relating To Grievances

Grievances relating to individual employees will be dealt with in accordance with clause 33, Dispute Settling Procedure of this award.

28. IN-SERVICE - PRE-SCHOOLS AND OUT OF SCHOOL HOURS CARE CENTRES

- (i) This clause shall apply only to pre-schools operating 41 weeks per year and out of school hours care centres operating 41 weeks per year.
- (ii) Employees may be required to attend in-service courses totalling up to an accrued value time of 38 hours duration in any calendar year. In computing attendance at in-service courses, each year shall stand alone.
- (iii) Attendance at such in-service courses may be during stand-down (non-term) time.
- (iv) An employee attending in-service courses outside his or her ordinary hours of work shall accrue such hours as 'accrued value time' at the rate of one and a half hours accrued for each of the first two hours of such in-service attended and two hours accrued for each additional hour of in-service attendance thereafter. In computing 'accrued value time' each day's in-service shall stand alone.

Such 'accrued value time' shall count towards hours of attendance at in-service courses in accordance with subclause (ii) of this clause.

29. MEETINGS AND ACTIVITIES

An employee may be required to attend up to a maximum of two hours per month and co-ordinators up to four hours per month where such time involves parental meetings, staff meetings and other duties not including the supervision of children without any payment being due. Part-time employees may be required to attend such meetings outside of ordinary hours on a pro rata basis.

Any hours required to be worked in excess of those specified above will be paid in accordance with Clause 12 Overtime of this award.

30. PROFESSIONAL DEVELOPMENT, TRAINING AND PLANNING

- (a) Employees are responsible for ensuring that they are aware of new developments in early childhood education. However, the parties recognise that continuing professional development of employees is a joint responsibility of both the employer and the employee.
- (b) The employer may request an employee to attend any courses in non-term time or after hours relating to professional development, training and planning. The employee cannot unreasonably refuse to attend such courses, provided that a full-time employee who receives no more than four weeks' annual leave in a calendar year shall receive time in lieu for time spent at any courses outlined in this clause.

- (c) Any dispute in relation to attendance shall be dealt with in accordance with clause 35, Dispute Settling Procedure of this award.

31. EXAMINATION AND STUDY LEAVE

An employee who for the purpose of obtaining the Certificate III in Children's Services or the Diploma in Children's Services enrolls at a College of Technical and Further Education shall be granted leave with pay on the day of any examination required in the course. Provided that such leave of absence shall only be approved where a month's prior notice is given to enable alternate staffing arrangements to be effected.

32. SUPPORTED WAGE

Definition:

- (i) This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:
 - (a) "Supported wage system" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "(Supported Wage System: Guidelines and Assessment Process)".
 - (b) "Accredited assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
 - (c) "Disability support pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
 - (d) "Assessment instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

Eligibility criteria

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

(The clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment).

(The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of, or eligible for, a disability support pension, except with respect to an organisation which has received recognition under section 10 or section 12A of the Act, or if a part only has received recognition, that part).

Supported wage rates

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

Assessed Capacity Rate (Subclause (d))	% of Prescribed Award
*10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

Provided that the amount payable shall not be less than \$45.00 per week.

* Where a person's assessed capacity is ten percent, they shall receive a high degree of assistance and support.

Assessment of capacity

- (iv) For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage

System and documented in an assessment instrument by either:

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

Lodgement of assessment instrument

- (v) (a) All assessment instruments under the condition of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission.
- (b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where the union which is party to the award/agreement, is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

Review of assessment

- (vi) The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

Other terms and conditions of employment

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

Workplace adjustment

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

Trial Period

- (ix) (a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provision of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

- (b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- (c) The minimum amount payable to the employee during the trial period shall be no less than \$45.00 per week.
- (d) Work trials should include induction or training as appropriate to the job being trialled.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (iv) of this clause.

33. Superannuation

A. Definitions

- (i) "ASSET" means the Australian Superannuation Savings Employment Trust constituted by deed made 14 October 1987.
- (ii) "HESTA" means the Health Employees Superannuation Trust Australia, constituted by deed made 30 July 1987.
- (iii) "Union" means The Australian Liquor, Hospitality and Miscellaneous Workers Union of Australia, New South Wales Branch.
- (iv) "Eligible employee" means:
 - (a) a full-time employee engaged under the terms and conditions of this Award.
 - (b) a part-time or casual employee engaged under the terms and conditions of the above Award who earns two hundred dollars (\$200.00) or more per calendar month.
- (v) "Ordinary time earnings" means the weekly rate of pay for the employee's classification (including leading hand allowances, broken shift allowance, excess fares allowance, toilet cleaning allowance, qualification allowances and shift work premiums) and any overaward payments for ordinary hours of work.

B. Fund

- (i) For the purposes of this clause, contributions made by employers shall be made as follows:
 - (a) the employer shall offer each employee a choice between H.E.S.T.A. and A.S.S.E.T.

- (b) the employee shall nominate the fund into which contributions shall be made.
- (ii) Each employer bound by this award shall sign and execute an agreement to become a participating employer to either H.E.S.T.A. or A.S.S.E.T. dependent upon the fund chose by the employee.
- (iii) Each employer bound by this award shall become party to H.E.S.T.A. or A.S.S.E.T. upon the acceptance of the respective Trustee of a Deed of Adoption, duly signed and executed by each employer and the respective Trustee.
- (iv) An employee shall become eligible to join H.E.S.T.A. or A.S.S.E.T. in accordance with the following:
 - (a) in the case of an employee who is employed at 1 July 1988, from the beginning of the first pay period commencing on or after 1 July 1988, and
 - (b) in the case of an employee employed after 1 July 1988, from the beginning of the first pay period commencing on or after the employee's date of engagement.
- (v) An employer shall take all necessary steps to ensure an eligible employee becomes a member of the fund.

C. Contributions

- (i) Each employer shall pay to the respective Trustee in respect of each eligible employee an amount equal to three percentum of employee's ordinary time earnings for all ordinary hours worked from the date the employee becomes eligible in accordance with Clause 3(iv) of this award.
- (ii) A pro-rata deduction shall be made from the weekly contribution payable for any unauthorised absence of at least one day's duration.
- (iii) An employer shall not be required to contribute during any period of unpaid leave - such as unpaid sick leave, maternity leave or the like, or periods of workers compensation beyond the expiry of any entitlement to full pay in accordance with the *Workers Compensation Act, 1987*. Further an employer shall not be required to make additional contributions in respect of annual leave paid out on termination.
- (iv) Contributions shall be made at the end of each calendar month for periods of employment worked during that month.
- (v) Notwithstanding the date upon which an employee signs an Application Form, contributions in accordance with subclause (i) of this clause shall be made from the date when the employee became eligible for membership.

D. Records

The employer shall retain all records relating to the calculation of payments due to the fund/s in respect of each employee and such records shall be retained for a period of six years.

E. Exemptions

Employers of employees who are contributions or eligible to become contributors to the following Superannuation Funds or any scheme/s replacing such Funds shall be exempt from the provisions of this Award:

State Superannuation Fund

State Public Service Superannuation Scheme

Public Authorities Superannuation Scheme

34. ANTI-DISCRIMINATION

- (i) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act* 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act* 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
 - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to persons under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act* 1977;

- (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

Notes

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

35. DISPUTE SETTLING PROCEDURE

The parties agree that, subject to the provisions of the New South Wales *Industrial Relations Act 1996*, all grievances, claims or disputes shall be dealt with in the following manner so as to ensure the orderly settlement of the matters in question.

- (i) Any grievance or dispute which arises shall, where possible, be settled by discussion on the job between the employee(s) and the employee's immediate supervisor.
- (ii) If the matter is not resolved at this level, it will be further discussed between the affected employee(s), the union delegate (if any) or contact and the employer . Both the employer's industrial representative and the employee's union representative may be notified.
- (iii) If no agreement is reached the union representative or contact will discuss the matter with the employer's nominated industrial relations representative.
- (iv) Whilst the foregoing procedure is being followed work shall continue normally. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.
- (v) Should the matter still not be resolved it may be referred by the parties to the Industrial Relations Commission of New South Wales for settlement.

36. EXEMPTIONS

The provisions of clause 24, Personal/Carers Leave, Clause 25 Bereavement Leave and subclause (iv) of clause 18, Sick Leave shall not apply to employees of the following:

- (a) licensed child care centres, child minding centres, day nurseries and pre-school kindergartens attached to or operated by a non-Government school; or
- (b) licensed child care centres, child minding centres, day nurseries and pre-school kindergartens operated by a Catholic Diocese, a Catholic religious order or a Catholic parish; or
- (c) licensed child care centres, child minding centres, day nurseries and pre-school kindergartens operated by the following organisations:
 - (A) Society of St Vincent de Paul;
 - (B) AMIGOSS Co-operative Limited;
 - (C) Camperdown Child Care Centre Limited;
 - (D) Wunanbiri Pre-School; and
 - (E) St Patrick's SHOOSH Care Association Inc.

Such employees shall continue to be entitled to family leave provisions and additional sick leave in the first year of employment contained in the Miscellaneous Workers Kindergartens and Child Care Centres Family Leave (Catholic Kindergartens, Child Care Centres and Others and Independent Schools) (State) Award published 17 November 1995 (289 IG 519) as varied.

37. SALARY PACKAGING

- (i) Where agreed between the employer and a full-time or part-time employee, an employer may offer salary packaging in respect of salary. Neither the employer nor the employee may be compelled to enter into a salary packaging agreement.
- (ii) Salary packaging shall mean that the employee will have part of their salary packaged into a fringe benefit which does not constitute a direct payment to the employee but is payable to a bona fide third party.
- (iii) The terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions:
 - (a) the employer shall ensure that the structure of any agreed remuneration package complies with taxation and other relevant legislation;

- (b) where there is an agreement to salary package, the agreement shall be in writing and made available to the employee;
- (c) the employee shall have access to details of the payments and transactions made on their behalf. Where such details are maintained electronically, the employee shall be provided with a printout of the relevant information;
- (d) the employer has the right to vary or withdraw from a salary packaging agreement and/or withdraw from offering salary packaging in the event of changes to the operation of legislation that are detrimental to, or increase the costs of, salary packaging arrangements;
- (e) prior to entering into any salary packaging agreements, the employee will be given the opportunity by the employer to seek independent advice in respect of salary package arrangements including advice from the union;
- (f) in the event that the employer withdraws from a salary packaging agreement, the individual employee's salary will revert to whichever is the higher of:
 - (i) the ordinary time rate of pay that applied to the employee prior to the commencement of the salary packaging agreement; or
 - (ii) the applicable rate specified in Table 1, Rates of Pay of this Award.
- (g) notwithstanding any of the above arrangements, the employer or employee may cancel any salary packaging agreements by the giving of one month's notice of cancellation to the other party;
- (h) Superannuation Guarantee Contributions will be calculated with reference to the ordinary time rate of pay the employee would have been entitled to receive but for the salary packaging arrangement;
- (i) any allowance, penalty rates, overtime, payment for unused leave entitlements shall be calculated by reference to the ordinary time rate of pay which would have applied to the employee but for the salary packaging arrangement
- (j) unless there is agreement between the employer and the employee to the contrary, all salary packaging arrangements shall cease during any period of leave without pay, including periods of unpaid sick leave.

38. Leave Reserved

Leave is reserved to Employers First to apply in relation to unpaid meal break and crib break provisions in the Award.

39. AREA, INCIDENCE AND DURATION

This award rescinds and replaces the Miscellaneous Workers Kindergartens and Child Care Centres &c. (State) Award, published 22 June 2001 (325 I.G. 652), and all variations thereof.

It shall apply to all persons of the classes herein provided for within the jurisdiction of the Kindergartens, &c. (State) Industrial Committee.

This award shall take effect on and from the 7 March 2006 and shall remain in force for a period of three years.

APPENDIX A

RECORD OF CASUAL EMPLOYMENT

EMPLOYEE'S RECORD TO BE MAINTAINED BY EMPLOYEE

Name: _____

Number of years of training: _____

Name of qualification: _____

Year of attainment of this qualification: _____

Period of engagement (from date to date)	No. of days/hours worked in total, classification; years trained & step	Name, address & telephone number of Centre	Signed by Centre Director (signature, date & name)

APPENDIX B

PARENTAL LEAVE

Set out below are the provisions relating to Parental Leave contained in Part 4, Chapter 2, of the *Industrial Relations Act 1996*.

Division 1 - Parental Leave Generally

53. Employees to Whom Part Applies

This Part applies to all employees, including part time employees, but does not apply to casual or seasonal employees.

54. Entitlement to Unpaid Parental Leave

- (1) An employee is entitled to a total of 52 weeks unpaid parental leave in connection with the birth or adoption of a child, as provided by this Part.
- (2) Parental leave is not to extend beyond 1 year after the child was born or adopted.

Note: See also Part 5 relating to entitlements to part time work agreements.

55. What is Parental Leave?

- (1) For the purposes of this Part, parental leave is maternity leave, paternity leave or adoption leave.
- (2) Maternity leave is taken by a female employee in connection with the pregnancy or the birth of a child of the employee. Maternity leave consists of an unbroken period of leave.
- (3) Paternity leave is leave taken by a male employee in connection with the birth of a child of the employee or of the employee's spouse. Paternity leave consists of:
 - (a) an unbroken period of up to one week at the time of the birth of the child or other termination of the pregnancy (short paternity leave), and
 - (b) a further unbroken period in order to be the primary care-giver of the child (extended paternity leave).
- (4) Adoption leave is leave taken by a female or male employee in connection with the adoption by the employee of a child under the age of 5 years (other than a child who has previously lived continuously with the employee for a period of at least 6 months or who is a child or step child of the employee or of the employee's spouse). Adoption leave consists of:
 - (a) an unbroken period of up to 3 weeks at the time of the

placement of the child with the employee (short adoption leave), and

- (b) a further unbroken period in order to be the primary care giver of the child (extended adoption leave).

- (5) For the purposes of this Part, spouse includes a de facto spouse.

Note: Employees are also entitled to special maternity leave for recovery from a termination of pregnancy or illness related to pregnancy (section 71) and to special adoption leave up to 2 days to attend interviews or examinations for the purposes of adoption (section 72). The requirement of unbroken periods of leave is subject to section 63 (employee and employer may agree to interruption of parental leave by return to work).

56. This Part Provides Minimum Entitlements

- (1) This Part sets out the minimum entitlements of employees to parental leave.
- (2) The provisions of an industrial instrument, contract of employment or other agreement (whether made or entered into before or after the commencement of this Part) do not have effect to the extent that they provide an employee with a benefit that is less favourable to the employee than the benefit to which the employee is entitled under this Part.

57. Length of Service for Eligibility

- (1) An employee is entitled to parental leave only if the employee has had at least 12 months of continuous service with the employer.
- (2) Continuous service is service under one or more unbroken contracts of employment, including:
 - (a) any period of authorised leave or absence, and
 - (b) any period of part time work.

Note: Under Part 8 of this Chapter a period of service in the business of a former employer counts as service with a new employer to whom the business concerned has been transferred.

58. Notices and Documents Required to be Given to Employer

(1) Maternity Leave

The notices and documents to be given to the employer for the purposes of taking maternity leave are as follows:

- (a) The employee should give a least 10 weeks' written notice of the intention to take the leave.

- (b) The employee must, at least 4 weeks before proceeding on leave, give written notice of the dates on which she proposes to start and end the period of leave.
- (c) The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that she is pregnant and the expected date of birth.
- (d) The employee must, before the start of leave, provide a statutory declaration by the employee stating, if applicable, the period of any paternity leave sought or taken by her spouse.

(2) Paternity Leave

The notices and documents to be given to the employer for the purposes of taking paternity leave are as follows:

- (a) In the case of extended paternity leave, the employee should give at least 10 weeks' written notice of the intention to take the leave.
- (b) The employee must, at least 4 weeks before proceeding on leave, give written notice of the dates on which he proposes to start and end the period of leave.
- (c) The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that his spouse is pregnant and expected date of birth.
- (d) In the case of extended paternity leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
 - (i) if applicable, the period of any maternity leave sought or taken by his spouse, and
 - (ii) that he is seeking that period of extended paternity leave to become the primary care giver of a child.

(3) Adoption Leave

The notices and documents to be given to the employer for the purposes of taking adoption leave are as follows:

- (a) In the case of extended adoption leave, the employee should give written notice of any approval or other decision to adopt a child at least 10 weeks before the expected date of placement.
- (b) The employee must give written notice of the dates on which the employee proposes to start and end the period of leave, as soon as practicable after the employee is notified of the expected date of placement of the child but at least 14 days before proceeding on leave.

- (c) The employee must, before the start of leave, provide a statement from an adoption agency or another appropriate body of the expected date of placement of the child with the employee for adoption purposes.
- (d) In the case of extended adoption leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
 - (i) if applicable, the period of any adoption leave sought or taken by his or her spouse, and
 - (ii) that the employee is seeking that period of extended adoption leave to become the primary care giver of a child.
- (4) An employee does not fail to comply with this section if the failure was caused by:
 - (a) the child being born (or the pregnancy otherwise terminating) before the expected date of birth, or
 - (b) the child being placed for adoption before the expected date of placement, or if it was not otherwise reasonably practicable to comply in the circumstances.

In the case of the birth of a living child, notice of the period of leave is to be given within 2 weeks after the birth and the certificate of the medical practitioner is to state that the child was born and the date of birth. In the case of the adoption of a child, notice of the period of leave is to be given within 2 weeks after the placement of the child.

- (5) An employee must notify the employer of any change in the information provided under this section within 2 weeks after the change.
- (6) If required by the employer, an employee who applies for parental leave is to give the employer a statutory declaration, or enter into an agreement with the employer, that for the period of the leave the employee will not engage in any conduct inconsistent with the employee's contract of employment.

59. Continuity of Service

- (1) Parental leave does not break an employee's continuity of service, but is not to be taken into account in calculating an employee's period of service for any purpose.
- (2) However, parental leave counts as service for any purpose authorised by law or by any industrial instrument or contract of employment.

60. Parents Not to Take Parental Leave at the Same Time

- (1) An employee is not entitled to parental leave at the same time as his or her spouse is on parental leave under this Part.
- (2) If this section is contravened the period of parental leave to which the employee is entitled under this Part is reduced by the period of leave taken by his or her spouse.
- (3) This section does not apply to short paternity leave or short adoption leave.

61. Cancellation of Parental Leave

(1) Before Starting Leave

Parental leave applied for but not commenced is automatically cancelled if:

- (a) the employee withdraws the application for leave by written notice to the employer, or
- (b) the pregnancy concerned terminates other than by the birth of a living child or the placement of the child concerned does not proceed.

(2) After Starting Leave

If:

- (a) the pregnancy of an employee or an employee's spouse terminates other than by the birth of a living child while the employee or spouse is on parental leave, or
- (b) the child in respect of whom an employee is then on parental leave dies, or
- (c) the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee is entitled to resume work at a time nominated by his or her employer within 2 weeks after the date on which the employee gives his or her employer a notice in writing stating that the employee intends to resume work and the reason for the intended resumption.

3) Special Leave Not Affected

This section does not affect an employee's entitlement to special maternity leave under section 71.

62. Parental Leave and Other Leave

- (1) An employee may take any annual leave or long service leave (or any part of it) to which the employee is entitled instead of or in conjunction with parental leave.
- (2) However, the total period of leave cannot be so extended beyond the maximum period of parental leave authorised by this Part.
- (3) Any paid sick leave or other paid absence authorised by law or by an industrial instrument or contract of employment is not available to an employee on parental leave, except if the paid absence is annual leave or long service leave or with the agreement of the employer.

63. Employee and Employer may Agree to Interruption of Parental Leave by Return to Work

- (1) An employee on parental leave may, with the agreement of the employer, break the period of leave by returning to work for the employer, whether on a full time, part time or casual basis.
- (2) The period of leave cannot be extended by such a return to work beyond the maximum period of leave authorised by this Part.
- (3) Nothing in this section affects any other work undertaken by the employee during parental leave.

Note: - Section 58(6) requires the employee when taking parental leave to provided the employer with a statutory declaration, or enter into an agreement with the employer, that the employee will not engage during leave in any conduct inconsistent with the employee's contract.

64. Extension of Period of Parental Leave

- (1) An employee may extend the period of parental leave once only by giving the employer notice in writing of the extended period at least 14 days before the start of the extended period. The period of leave cannot be extended by such a notice beyond the maximum period of leave authorised by this Part.
- (2) An employee may extend the period of parental leave at any time with the agreement of the employer. The period of leave can be extended by such an agreement beyond the maximum period of leave authorised by this Part.
- (3) This section applies to an extension of leave while the employee is on leave or before the employee commences leave.

65. Shortening of period of Parental Leave

An employee may shorten the period of parental leave with the agreement of the employer and by giving the employer notice in writing of the shortened period at least 14 days before the leave is to come to an end.

66. Return to Work After Parental Leave

- (1) An employee returning to work after a period of parental leave is entitled to be employed in:
 - (a) the position held by the employee immediately before proceeding on that leave, or
 - (b) if the employee worked part time because of the pregnancy before proceeding on maternity leave - the position held immediately before commencing that part time work, or
 - (c) if the employee was transferred to a safe job under section 70 before proceeding on maternity leave - the position held immediately before the transfer.
- (2) If the position no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position as nearly as possible comparable in status and pay to that of the employee's former position.
- (3) This section extends to a female employee returning to work after a period of leave under section 71 (special maternity leave and sick leave).
- (4) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

Note: - An employee returning to work after parental leave may also have an entitlement to work part time under an industrial instrument or a part time work agreement under Part 5.

Division 2 - Miscellaneous Provisions

67. Employer's Obligations

- (1) Information to employees on becoming aware that an employee (or an employee's spouse) is pregnant, or that an employee is adopting a child, an employer must inform the employee of:

- (a) the employee's entitlements to parental leave under this Part, and
- (b) the employee's obligations to notify the employer of any matter under this Part.

An employer cannot rely on an employee's failure to give a notice or other document required by this Part unless the employer establishes that this subsection has been complied with in relation to the employee.

- (2) Records an employer must keep, for at least 6 years, a record of parental leave granted under this Part to employees and all notices and documents given under this Part by employees or the employer.

Maximum penalty: 20 penalty units.

68. Termination of Employment Because of Pregnancy or Parental Leave

- (1) An employer must not terminate the employment of an employee because:
 - (a) the employee or employee's spouse is pregnant or has applied to adopt a child, or
 - (b) the employee or employee's spouse has given birth to a child or has adopted a child, or
 - (c) the employee has applied for, or is absent on, parental leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

Maximum penalty: 100 penalty units.

- (2) For the purposes of establishing such a termination of employment, it is sufficient if it is established that the alleged reason for termination was one of two or more reasons for termination.
- (3) This section does not affect any other rights of a dismissed employee under this or any other Act or under any industrial instrument or contract of employment, or the rights of an industrial organisation representing such an employee.

Note: - A dismissed employee may also make a claim under Part 6 (unfair dismissals).

69. Replacement Employees

- (1) A replacement employee is a person who is specifically employed as a result of an employee proceeding on parental leave (including as a replacement for an employee who has been temporarily

promoted or transferred in order to replace the employee proceeding on parental leave).

- (2) Before a replacement employee is employed, the employer must inform the person of the temporary nature of the employment and of the rights of the employee on parental leave to return to work.

Maximum penalty: 50 penalty units.

- (3) A reference in this section to an employee proceeding on parental leave includes a reference to a pregnant employee exercising a right under section 70 to be transferred to a safe job.

70. Transfer to a Safe Job

- (1) This section applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or new born child. The assessment of such a risk is to be made on the basis of a medical certificate supplied by the employee and of the obligations of the employer under the Occupational Health and Safety Act 1983.
- (2) The employer is to temporarily adjust the employee's working conditions or hours of work to avoid exposure to that risk.
- (3) If such an adjustment is not feasible or cannot reasonably be required to be made, the employer is to transfer the employee to other appropriate work that:
 - (a) Will not expose her to risk; and
 - (b) Is as nearly as possible comparable in status and pay to that of her present work.
- (4) If such a transfer is not feasible or cannot reasonably be required to be made, the employer is to grant the employee maternity leave under this Part (or any available paid sick leave) for as long as is necessary to avoid exposure to that risk, as certified by a medical practitioner.
- (5) An employer who does not comply with any obligation imposed on the employer by this section is guilty of an offence.

Maximum penalty (subsection (5)): 50 penalty units.

71. Special Maternity Leave and Sick Leave. If the pregnancy of an employee terminates before the expected date of birth (other than by the birth of a living child), or she suffers illness related to her pregnancy, and she is not then on maternity leave:

- (a) the employee is entitled to such period of unpaid leave (to be known as special maternity leave) as a medical practitioner certifies to be necessary before her return to work, or
 - (b) the employee is entitled to such paid sick leave (either instead of or in addition to special maternity leave) as she is then entitled to and as a medical practitioner certifies to be necessary for her return to work.
72. Special Adoption Leave An employee who is seeking to adopt a child is entitled to up to 2 days unpaid leave if the employee requires that leave to attend compulsory interviews or examinations as part of the adoption procedure.

**KINDERGARTENS, &c, (STATE) CONCILIATION COMMITTEE
Industries And Callings**

All persons employed in or in connection with child care, child minding centres, day nurseries and preschool kindergartens in the State, excluding the County of Yancowinna; excepting -

Persons employed as teachers or teachers in training but not excepting unqualified teachers' aides, helpers or assistants;

Persons employed as teachers' aides in pre-school kindergartens and nurseries within the grounds of public schools;

Persons employed by the Department of Corrective Services;

Drivers of vehicles;

Employees of all city, municipal, shire and county councils;

Employees in child minding centres in public hospitals;

and excepting also employees within the jurisdiction of the following Conciliation Committees -

Private Hospital Employees (State);

Trained Nurses, &c. Other Than In Hospitals, &c, (State);

Voluntary Care Association Employees (State)