



TEACHERS NON-GOVERNMENT PRE-SCHOOL (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

ARRANGEMENT

CLAUSE NUMBER	TITLE
1	Definitions
2	Salaries
3	Payment on Termination and Adjustment of Salary for Teachers who commence employment after the Pre-School Service Date and for teachers who take approved leave without pay
4	Annual Holiday Loading
5	Director's and Authorised Supervisor's Allowance
6	Personal Leave
7	Miscellaneous
8	Other Leave
9	Union Representatives
10	Terms of Engagement and Information to be provided to Teachers
11	Procedure for dealing with Job Performance Problems
12	Disputes and Grievance Procedures
13	Savings Clause and Leave Reserved
14	Superannuation
15	Enterprise Consultation
16	Labour Flexibility
17	Anti-Discrimination
18	Settlement of Award
19	Area, Incidence and Duration
Part C	Redundancy

1. DEFINITIONS

For the purposes of this award, except for subclause (b) or (u) of this clause and Clause 5 -Director's and Authorised Supervisor's Allowance, all reference to teachers in this award shall include Director or Authorised Supervisor, and:

- (a) **"Teacher"** means any person employed as such in a pre-school, as defined in subclause (c) of this clause and any person employed as such in an Early Intervention Service, as defined in subclause (h) of this clause where the hours and conditions of work of a teacher in such an Early Intervention Service approximate those hours and conditions of work of a teacher in a recognised school.
- (i) **"Full-Time Teacher"** means any teacher other than a casual, temporary, or part-time teacher.
- (ii) **"Part-Time Teacher"** means any teacher who is engaged to work regularly and not more than 0.8 of the normal hours which a full-time teacher at a Full Day Care Centre is required to attend. Provided that a part-time teacher may work up to 0.9 of the normal hours of a full-time teacher if he or she is entitled to a preparation session equivalent to 0.1 of a teacher's normal hours. Provided further that a part-time teacher employed as at 31 January 1990 shall not be required by that employer to work in excess of 0.8 of the normal hours of a full-time teacher.
- (iii) **"Temporary Teacher"** means a teacher employed to work full-time or part-time for a specified period which is not more than a full Pre-School year but not less than 20 days.
- Provided that a teacher may be employed for a specific period in excess of a full Pre-School year but not more than two full Pre-School years where such a teacher is replacing a teacher who is on leave for a specified period in excess of a full Pre-School year."
- (iv) **"Casual Teacher"** means a teacher engaged as required by an employer for up to 20 working days in any one period of employment. Provided that the period may be extended as required by the employer if the employer has been notified that the permanent teacher will be absent beyond the twenty day period.
- (b) **"Director"** means the teacher who is responsible for the day to day operation and management of the Early Childhood Services Centre as defined in subclause (d) of this clause, holding Early Childhood qualifications as defined in subclause (p), (q), (r) and (s) of this clause.

- (c) **"Pre-School"** means a kindergarten, day school or nursery school, and shall include:-
- (i) Sessional Care Centres, and
 - (ii) Full Day Care Centres.

It shall not include a Recognised School, Long Day Care Centre or Multi-Purpose Centre.

- (d) **"Full Day Care Centre"** means a child care establishment which does not operate on a sessional basis, but which usually operates during hours and terms which approximate those of a recognised school.
- (e) **"Sessional Care Centre"** means a child care establishment which operates on the basis of morning and/or afternoon sessions, and which usually operates during hours and terms which approximate those of a recognised school.
- (f) **"Long Day Care Centre"** means a child care establishment which usually provides services over a period of approximately eight hours or more each day for approximately 48 weeks or more during the year.
- (g) **"Multi-Purpose Centre"** means a child care establishment which usually provides the services of one or more of the above centres (but not solely a combination of subclauses (d) and (e) of this clause), and/or other children's services, and shall include a Neighbourhood Children's Centre.
- (h) **"Early Intervention Service"** means a service which provides individual programmes for developmentally delayed or disabled children, or children at risk of being developmentally delayed or disabled, aged 0-6 years, aimed at providing assistance to the child and his or her family in the areas of physical, emotional, social and educational needs.
- (i) **"Unit"** means a group or class of children which does not at any one time exceed 25 children but which need not necessarily consist of the same children at all times.
- (j) **"Infants Department"** means Kindergarten, Grades 1 and 2 in a recognised school.
- (k) **"Recognised School"** means a school registered under the provisions of the *Education Reform Act 1990*.

- (l) **"Recognised Teacher Training Institution"** means an Australian College of Advanced Education, Australian Teachers College or Australian Institute of Education recognised by the Tertiary Education Commission.
- (m) **"Recognised University"** means an Australian University which is recognised by the Tertiary Education Commission.
- (n) **"Graduate"** means a teacher who holds a degree from a Recognised University or Recognised Teacher Training Institution.
- (o) **"Category UG2 Level"** means a course of study leading to a Category UG2 Diploma award as described in Statement No. 1, Nomenclature and Guidelines for awards in Advanced Education, August 1972 (as amended), issued by the Australian Council on Awards in Advanced Education, and recognised by the said Council for inclusion in the National Register of Awards in Advanced Education.
- (p) **"Category PG1 Level"** means a course of study leading to a Category PG1 Graduate Diploma (at the 19.1 level) as described in Statement No. 1, Nomenclature and Guidelines for Awards in Advanced Education, August 1972 (as amended), issued by the Australian Council on Awards in Advanced Education, and recognised by the said Council for inclusion in the National Register of Awards in Advanced Education.
- (q) **"Equivalent Qualifications or Equivalent Course"** means a qualification or course as the case may be which the employer and the teacher agree as being equivalent to the qualification or course prescribed by the clause in question in this award, or which the Conciliation Committee determines as being so equivalent.
- (r) **"Two Years Trained Teacher"** means:
 - (i) A teacher who has satisfactorily completed a two year full-time course of Study in Early Childhood Education at a Recognised Teacher Training Institution; or
 - (ii) A teacher who was employed as a Two Years Trained Teacher as at 1 February 1991; or
 - (iii) A teacher who has acquired other equivalent qualifications; and
 - (iv) A teacher who is not otherwise classified as a Three Years Trained Teacher or a Four Years Trained Teacher shall for the purposes of salary be paid as a Two Years Trained Teacher.

- (s) **"Three Years Trained Teacher"** means:
- (i) A teacher who has satisfactorily completed a Three Years full-time course of study in Early Childhood Education at a Recognised Teacher Training Institution; or
 - (ii) A teacher who, in addition to satisfying the requirements for classification as a Two Years Trained Teacher, has satisfactorily completed a course of study at Category UG2 level; or
 - (iii) A teacher who has acquired other equivalent qualifications; or
 - (iv) A teacher who was employed as a Three Years Trained Teacher as at 1 January 1985; or
 - (v) A three year Primary School trained teacher who has been recognised as equivalent by the New South Wales Department of Community Services.

- (t) **"Four Years Trained Teacher"** means:
- (i) A teacher who is a graduate in Education (four years full-time course); or
 - (ii) A teacher who is a graduate and who holds a Diploma in Education from a recognised University or Recognised Teacher Training Institution; or
 - (iii) A teacher who is a graduate and who has in addition satisfactorily completed a course of study at Category PG1 Level; or
 - (iv) A teacher who was employed as a Four Years Trained Teacher as at 1st January, 1985; or
 - (v) A teacher who has acquired other equivalent qualifications; or
 - (vi) A four year Primary School trained teacher who has been recognised as equivalent by the New South Wales Department of Community Services.

- (u) **"Authorised Supervisor"** means:

A teacher who is appointed as Authorised Supervisor under the *Children and Young Persons (Care and Protection) Act 1998* or its replacement, that is, as the person who is authorised under the Act to have the overall supervision of the provision of the child care service to which it relates and who is not appointed as a Director".

2. SALARIES

2.1 The minimum fortnightly salary payable to full-time teachers shall, subject to the other provisions of this award, be calculated by dividing the per annum rates as set out in Table 1 - Rates of Pay, of Part B, Monetary Rates, by 26.07.

(a) Two Years Trained Teacher

- (i) A Two Years Trained Teacher shall commence on Step 1 of the scale and progress according to normal years of service to Step 10 of the scale.
- (ii) A Two Years Trained Teacher who, by further study satisfactorily completes the equivalent of one third of a degree course, shall be paid an additional increment with retention of normal incremental date and shall thereafter progress according to normal years of service to Step 10 of the scale.
- (iii) A Two Years Trained Teacher who, as at 1 October 1991, has completed nine or more years service shall progress to Step 10 of the scale from that date.

(b) Three Years Trained Teacher

- (i) A Three Years Trained Teacher shall commence on Step 1 of the scale and progress according to normal years of service to Step 11 of the scale.
- (ii) A Three Years Trained Teacher who, as at 1 February 1991, has completed eight or more years of full-time service, or its part-time equivalent, shall progress to Step 9 of the scale with retention of normal incremental date, and shall thereafter progress according to normal years of service to Step 11 of the scale.
- (iii) A Three Years Trained Teacher being paid on Steps 1 to 10 of the scale who, by further study satisfactorily completes the equivalent of one third of degree course, shall receive a salary advance of one increment with retention of incremental date and shall thereafter progress in accordance with normal years of service to Step 11 of the scale.

(c) Four Years Trained Teacher

- (i) A Four Years Trained Teacher shall commence on Step 1 of the scale and progress, according to normal years of full-time service as a teacher in early childhood education

services for children aged up to 8 years whether conducted by the employer or not, to Step 9 of the scale.

- (ii) A Four Years Trained Teacher who, as at 1 February 1991, has completed eight or more years of full-time service, or its part-time equivalent, shall progress to Step 9 of the scale with retention of normal incremental date.

2.2 Part-Time and Temporary Teachers

- (a) A part-time teacher, including a temporary part-time teacher, shall be paid at the same rate as a full-time teacher with the corresponding classification, but in that proportion which the teachers normal hours of attendance bears to the hours which a full-time teacher at a Full Day Care Centre is normally required to attend.
- (b) A temporary full-time teacher shall be paid at the same rate as that prescribed for a full-time teacher with the corresponding classification.

2.3 Casual Teachers

- (a) The salary payable to a casual teacher shall be the appropriate rate prescribed by subclause 2.1 of this clause, in accordance with years of full-time service, divided by 816 in the case of a quarter day payment, or 408 in the case of half day payment, or 204 in the case of daily payment; PROVIDED that the maximum rate payable shall be as follows:

Two Years Trained	Fourth Step
Three Years Trained	Fourth Step
Four Years Trained	Fourth Step

- (b) The said rates include the pro rata payment in respect of annual holidays, to which the teacher is entitled in accordance with the *Annual Holidays Act, 1944*.

2.4 Travelling Expenses

- (a) Where a teacher is required to use his or her vehicle in connection with the teacher's employment, other than for journeys between home and the place of employment the teacher shall be paid an allowance per kilometre of travel, as set out in Item 1 of Table 3, Other Rates and Allowances, of Part B, Monetary Rates.

- (b) Travelling and other out of pocket expenses reasonably incurred by a teacher in the course of duties required by the employer shall be reimbursed by the employer.

2.5 Calculation of Service

- (a) For the purpose of this clause, any teacher if required by the employer so to do, shall upon engagement establish to the satisfaction of the employer, the length of his or her teaching service in a Pre-School, Long Day Care Centre, Multipurpose Centre, Early Intervention Service, or in the Infants Department of a recognised school or within an Infants Department of schools registered or certified under the appropriate legislation in other States or Territories of the Commonwealth of Australia, and the period so established shall be taken to be the length of such service for the purpose of that employment.
- (b) For the purpose of this clause, a period of service other than service within paragraph (a) of this subclause, shall be counted as service in accordance with the following principles:
 - (i) A period of service as a lecturer in early childhood education or child development, as a child development officer, or as a Family Day Care Co-ordinator or equivalent shall be recognised as service;
 - (ii) A period of service as a carer in the child care industry, including service as a Family Day Care carer (as recognised under State Government Regulations), and a Child Care Certificate worker or equivalent, shall be recognised as service at the rate of one increment for each completed three years so engaged to a maximum of four increments.
- (c) For the purpose of calculating service:
 - (i) Any employment as a full-time employee (including employment as a temporary full-time employee) as referred to in paragraphs (a) and (b) of this subclause shall be counted as service.
 - (ii) The amount of service of a part-time teacher (including a temporary part-time teacher) shall be calculated by reference to the ratio which the number of hours taught by the teacher in any year bears to the normal number of hours taught by a full-time teacher at a Full Day Care Centre in the same year; Provided that a period of part-time service in terms of paragraph (b) of this subclause shall count as service in the proportion that the part-time employment bears to full-time employment in that occupation.

- (iii) Casual teachers shall be entitled to normal incremental progression for each total of 204 full days of service or its equivalent; PROVIDED that only service performed in the preceding four years shall be included in determining incremental progression.
- (iv) Provided also that the salary incremental date of any teacher who has taken leave without pay may be altered by adding the period of such leave without pay to the salary incremental date applicable to that teacher prior to the leave without pay.

2.6 Re-Classification

The transfer to a higher salary scale of a teacher who has completed a course of training which makes the teacher eligible to be so transferred and the progression of such teacher through the salary steps on that higher salary scale shall be effected as follows:

- (a) A teacher seeking such transfer shall make application in writing to the employer and shall attach to such application documentary evidence establishing that he or she has had or will have conferred on him or her the diploma, degree or equivalent recognition of the completion of the course of training which makes him or her eligible to be so transferred.
- (b) Where an application is made under paragraph (a) of this subclause, which establishes that a teacher is eligible to be transferred to a higher salary scale, such transfer shall take effect:
 - (i) From the beginning of the first pay period to commence on or after the date the teacher undertook the last paper in the final examination in the course of training which creates the eligibility for transfer, or from the beginning of the first pay period to commence on or after the date of completion of formal course requirements, whichever is the later. Provided that the application for transfer is received by the employer no later than the first Pre-School day of the Pre-School term following the conferral of the diploma, degree or equivalent recognition of the completion of such course of training; or
 - (ii) Where the application for transfer is not received by the employer within the time specified in subparagraph [i] of this paragraph, from the beginning of the first pay period to commence on or after the date on which the employer receives such application.

A teacher who has completed a course of training entitling the teacher to transfer to a higher salary scale pursuant to this subclause shall, for the purpose of advancing through the steps on the higher salary scale to which the teacher has been so transferred, retain the teachers normal salary incremental date.

Provided that if the transfer of the teacher to the higher salary scale coincides with the teacher's normal salary incremental date, the increments shall be applied prior to the teacher being transferred to the higher salary scale.

- (c) The teacher shall be transferred to the salary step on the higher salary scale which shall be determined by the teacher's years of service on the lower salary scale.
- (d) The transfer to a higher salary scale of a teacher who has acquired a qualification (other than the completion of a course of training) which makes the teacher eligible to be so transferred, and the progression of such teacher through the steps on that higher salary scale shall be effected in accordance with the provisions of paragraphs (a), (b) and(c) of this subclause.

2.7 Payment of Salary

- (a) The salary payable to any full-time and part-time teacher pursuant to this clause shall be payable fortnightly or half monthly by either cash, cheque or electronic funds transfer into an account nominated by the teacher. Casual teachers may, by mutual agreement, be paid in the same manner as full-time teachers.
- (b) For the purposes of implementation of increases from a State Wage Case, a half monthly pay period shall be deemed to commence on the first date occurring after the operative date of any increase in salaries given under the State Wage Case decision, calculated by fortnightly periods commencing on the 31 January, 1977.
- (c) The rates of pay in this award include the adjustments payable under the State Wage Case of May 2001. These adjustments may be offset against:
 - (i) any equivalent overaward payments, and/or
 - (ii) award wage increases since 29 May 1991 other than safety net, State Wage Case and minimum rates adjustments.

- (d) Where the pay day for a half-monthly pay period fails on a Saturday, Sunday or public holiday, salaries shall be paid on the day not being a Saturday, Sunday or public holiday immediately preceding said pay day.

2.8 Overpayments

Where excess payments are made in circumstances which were not apparent or could not reasonably have been expected to be detected by the teacher, the relevant parties shall seek agreement on the matter of the overpayment including, when necessary and appropriate, discussion between the New South Wales Independent Education Union and relevant employer representatives.

2.9 Salary Packaging

- (a) Where agreed between the employer and a full-time or part-time employee, an employer may offer salary packaging in respect of the employees annual remuneration including allowances. Neither the employer nor the employee may be compelled to enter into a salary packaging agreement.
- (b) Salary packaging shall mean that the employee will have part of their annual remuneration including allowances packaged into a fringe benefit which does not constitute a direct payment to the employee but is payable to a bona fide third party.
- (c) 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:
 - (i) the employer shall ensure that the structure of any agreed remuneration package complies with taxation and other relevant legislation;
 - (ii) where there is an agreement to salary package, the agreement shall be in writing and made available to the employee;
 - (iii) 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, or if maintained manually, on request;
 - (iv) 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;

- (v) 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;
- (vi) 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:
 - (1) the ordinary time rate of pay that applied to the employee prior to the commencement of the salary packaging agreement; or
 - (2) the applicable rate specified in Table 1, Rates of Pay of this Award.
- (vii) 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;
- (viii) Superannuation Guarantee Contributions will be calculated with reference to the annual remuneration including allowances the employee would have been entitled to receive but for the salary packaging arrangement;
- (ix) any payment including any allowances, penalty rates, overtime, payment for unused leave entitlements shall be calculated by reference to the annual remuneration including allowances which would have applied to the employee but for the salary packaging arrangement and payable during employment or on termination of employment or on death;
- (x) unless there is agreement between the employer and the employee to the contrary, all salary packaging arrangements shall cease during any period

3. PAYMENT ON TERMINATION AND ADJUSTMENT OF SALARY FOR TEACHERS WHO COMMENCE EMPLOYMENT AFTER THE PRE-SCHOOL SERVICE DATE AND FOR TEACHERS WHO TAKE APPROVED LEAVE WITHOUT PAY

3.1 This clause will apply:

- (a) in lieu of the corresponding provisions of the *Annual Holidays Act, 1944*; and
- (b) notwithstanding any other provisions in this award.

3.2 The provisions of this clause shall apply where:

- (a) a teacher's employment ceases;
- (b) a teacher commences employment after the Pre-School service date; or
- (c) where a teacher takes approved leave without pay;

and payments shall be made to such teachers by application of the formula prescribed by subclause 3.3 of this clause and, if relevant, by the application of the provisions of subclauses 3.5 and 3.6 of this clause in combination.

3.3 Calculation of Payments

- (a) Payments made pursuant to this clause shall be calculated in accordance with the following formula:

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

Where:

- P is the payment due.
- S is the total salary paid in respect of term weeks, or part thereof, since the anniversary of employment (or date of employment in circumstances where a teacher has been employed by the Pre-School for less than one year).
- b is the number of term weeks, or part thereof, in the year.
- c is the number of non-term weeks, or part thereof, in the year.
- d is the salary paid in respect of non-term weeks, or part thereof, that have occurred since the anniversary of employment (or date of employment in circumstances where a teacher has been employed by the Pre-School for less than one year).

- (b) For the purpose of this clause:
 - (i) "Pre-School Service Date" means the usual commencement date of employment at a Pre-School for teachers who are to commence teaching on the first day of the first term.
 - (ii) "Teacher" means any teacher other than a casual teacher.

Termination of Employment

A teacher shall be entitled on termination of employment to a payment calculated in accordance with this clause.

Teachers Who Commence Employment After the Pre-School Service Date

Where a teacher commenced employment after the Pre-School Service Date in any Pre-School year and such employment is to continue into the next Pre-School year:

- (a) the teacher shall be paid at the conclusion of Term IV in the first calendar year of employment in accordance with this clause;
- (b) the anniversary of employment for the purposes of the calculation of payments under this clause shall in each succeeding year of employment be the Pre-School Service Date;
- (c) any period for which the teacher has not been paid by the operation of this subclause, shall be deemed to be leave without pay, and no salary or other payment other than payment under this clause shall be made.

Teachers Who Take Approved Leave Without Pay

Where a teacher takes leave without pay with the approval of his or her employer for a period which (in total) exceeds 20 pupil days in any year, he or she shall be paid salary calculated in accordance with this clause as follows:

- (a) If the leave without pay commences and concludes in the same Pre-School year:
 - (i) subject to subparagraph (ii) of this paragraph, the payment shall be calculated and made at the conclusion of Term IV of that Pre-School year; and

- (ii) if the leave without pay commences on the day following the last teaching day of a term and concludes on the day preceding the first teaching day of a term in the same year, a payment shall be calculated and made:
 - (A) at the commencement of the leave in respect of that year, and
 - (B) at the end of Term IV in accordance with paragraph (c) of this subclause.

(b) If the leave without pay is to conclude in a Pre-School year following the Preschool year in which the leave commenced:

- (i) at the commencement of the leave a payment shall be calculated and made in respect of the Pre-School year in which the leave commences, and
- (ii) at the end of Term IV in the Pre-School year in which the leave concludes a payment shall be calculated and made in respect of that Pre-School year.

(c) The payment to be made to a teacher at the conclusion of Term IV of a Pre-School year:

- (i) pursuant to section (B) of subparagraph (ii) of paragraph (a) of this subclause;
- (ii) or in circumstances where, with the agreement of the employer, a teacher who has been paid pursuant to subparagraph (i) of paragraph (b) of this subclause returns from leave during the Pre-School year in which the leave commenced, shall be determined by:
 - (A) applying the formula in subclause 3.3 of this clause as if no payment had been made to the teacher pursuant to section (A) of subparagraph (ii) of paragraph (a) of this subclause or subparagraph (i) of paragraph (b) of this subclause; and
 - (B) deducting from that amount the amount paid to the teacher pursuant to section (A) of subparagraph (ii) of paragraph (a) of this subclause or subparagraph (i) of paragraph (b) of this subclause.

Notwithstanding the provisions of paragraph (a) of subclause 3.1 of this clause, a teacher shall not pursuant to this clause be paid an amount in respect of a year of employment which is less than the amount to which the teacher would otherwise be entitled under the provisions of the *Annual Holidays Act 1944*, in respect of a year of employment.

4. ANNUAL HOLIDAY LOADING

- 4.1 Subject to subclause 4.6 of this clause, where a teacher other than a casual teacher, is given and takes his or her annual holiday commencing at the beginning of the Preschool summer vacation each year he or she shall be paid an annual holiday loading calculated in accordance with this clause.
- 4.2 The loading shall be payable in addition to the pay payable to the teacher for the period of the Pre-School vacation.
- 4.3 The loading shall be calculated:
- (a) in relation to such period of a teacher's annual holiday as is equal to the period of annual holiday to which the teacher is entitled for the time being under the *Annual Holidays Act, 1944* at the end of each year of the teachers employment; where relevant,
 - (b) the period of annual leave calculated under subclause 4.6 of this clause.
- 4.4 The loading shall be the amount payable for the period specified in subclauses 4.3 or 4.6 of this clause at the rate of 17¹/₂ per cent of the weekly equivalent of the teacher's annual salary.
- 4.5 For the purpose of this clause, "salary" shall mean the salary payable to the teacher at the first day of December of the year in which the loading is payable together with, where applicable, the allowance prescribed by paragraph (a) of subclause 5.1 of Clause 5 - Director's Allowance, but not including any other allowance or amount otherwise payable in addition to salary.

Provided:

Where subclause 4.6 of this clause applies, "salary" shall mean the salary (together with allowances payable as aforesaid) payable immediately prior to the payment made to the teacher pursuant to Clause 3 - Payment on Termination and Adjustment of Salary for Teachers Who Commence Employment After the Pre-School Service Date and for Teacher Who Take Approved Leave Without Pay, of this award.

- 4.6 Where a teacher receives a payment pursuant to the said Clause 3, including the case where a teachers employment is terminated during the Pre-School year for a reason other than misconduct, he or she shall be entitled to be paid for that part of such fraction of the annual holiday loading he or she would be entitled to for the full Pre-School year as is equal to the fraction which the number of

Pre-School weeks worked by him or her in that year bears to the number of weeks he or she would be normally required by the employer to work in a full Pre-School year.

5. DIRECTOR'S AND AUTHORISED SUPERVISOR ALLOWANCE

5.1 Director's Allowance

- (a) A full-time teacher who is appointed as a Director as defined in Clause 1 -Definitions, of this award shall be paid, in addition to the amounts payable pursuant to Clause 2 - Salaries, on a fortnightly basis, an allowance for a Director calculated by dividing the per annum rates set out in Table 2 -Director's Allowance, of Part B, Monetary Rates, by 26.07.
- (b) A part-time teacher who is appointed as a Director as defined in Clause 1 -Definitions, shall be paid, in addition to the amounts payable pursuant to Clause 2 - Salaries, an allowance in accordance with Table 2 - Director's Allowance, a proportionate basis to the hours they work.
- (c) Any teacher required by the employer to act as Director for at least ten consecutive working days shall be paid for so doing at the rate prescribed for that position.

Provided that a teacher shall not be required to carry out such duties in an acting capacity for more than a full year except that a teacher may be required to carry out such duties for up to two full years where such a teacher is replacing a Director who is on leave for a specified period in excess of a full year.

5.2 Authorised Supervisor's Allowance

- (a) A full-time teacher who is an Authorised Supervisor as defined in Clause 1 -Definitions, shall be paid an allowance as set out below and shall be advised by the employer on appointment which allowance is to apply:
 - (i) Where the licensee is involved in the operation of the service for an average of 20 hours or more per week or an average of 80 hours or more in a four week period and a Director is not employed, the Authorised Supervisor shall be paid, in addition to the amounts payable pursuant to Clause 2 - Salaries on a fortnightly basis an allowance by dividing the per annum rates set out in Table 4 - Authorised Supervisor's Allowance of Part B, Monetary Rates, by 26.07
 - (ii) Where the licensee is involved in the operation of the service for an average of less than 20 hours per week or an average of less than 80 hours over a four week period and a Director is

not employed, the Authorised Supervisor shall be paid, in addition to the amounts payable pursuant to Clause 2 - Salaries on a fortnightly basis an allowance by dividing the per annum rates set out in Table 5 - Authorised Supervisors Allowance of Part B, Monetary Rates, by 26.07.

- (iii) Where a Director is employed and is not the Authorised Supervisor, the Authorised Supervisor shall be paid in addition to the amounts payable pursuant to Clause 2 - Salaries on a fortnightly basis an allowance calculated by dividing the per annum rates set out in Table 4 - Authorised Supervisors Allowance.

Provided that a teacher appointed as an Authorised Supervisor who is not in receipt of the Directors Allowance, shall not be responsible for the day to day operation and management of the Early Childhood Services Centre.

- (b) Where a licensee proposes to change his/her hours of attendance which would result in a change in the entitlement of the allowance set out in Table 4 or 5 Authorised Supervisor's Allowance of Part B, Monetary Rates four weeks written notice will be given.
- (c) A part-time teacher who is appointed as an Authorised Supervisor, as defined in Clause 2 - Definitions of this Award, shall be paid, in addition to the amounts payable pursuant to Clause 3 - Salaries of this Award, an allowance in accordance with Table 4 or 5 - Authorised Supervisor's Allowance on a proportionate basis to the hours they work.
- (d) Any teacher required by the employer to acts as Authorised Supervisor for at least ten consecutive working days shall be paid for so doing at the rate prescribed for that position.

Provided that a teacher shall not be required to carry out such duties in an acting capacity for more than a full year except that a teacher may be required to carry out such duties for up to two full years where such a teacher is replacing a Authorised Supervisor who is on leave for a specified period in excess of a full year.

It is not intended that Directors shall be displaced by the appointment of an Authorised Supervisor as a result of the operation of this clause.

6. PERSONAL LEAVE

- 6.1 A full-time, temporary or part-time teacher shall be entitled to 15 days' leave with pay in the first year of service with the employer and 25 days' leave with pay in the second and subsequent continuous years of service with the same employer.

Provided during the first three months of service with an employer the period of leave shall not exceed five days. Following the completion of three months' service with an employer, the teacher shall be entitled to the balance of leave not taken up to maximum of 15 days in the first year of service.

6.2 The personal leave outlined in subclause 6.1 can be taken as:

- (a) Up to one day's leave on the date of the spouse's confinement or on the day on which she leaves hospital following a confinement; and/or
- (b) Up to one day's leave for the purpose of adopting a child; and/or
- (c)
 - (i) Up to three days' bereavement leave up to and including the day of the funeral, on the death within Australia of a member of the teacher's family or household (as defined in section (ii) of subparagraph (c) of subclause 6.7 1 of this clause). A teacher must notify the employer as soon as practicable of the intention to take bereavement leave and will provide, to the satisfaction of the employer, proof of death.
 - (ii) Bereavement leave shall be available to the teacher in respect of the death of a person prescribed for the purposes of personal/carer's leave as set out in subclause 6.7(1)(c)(ii) of this clause, provided that for the purpose of bereavement leave, the teacher need not have been responsible for the care of the person concerned.

Provided that a teacher shall not be entitled to bereavement leave under this clause during any period in respect of which the teacher has been granted other leave.

- (iii) Provided that bereavement leave may be taken in conjunction with other leave available under paragraphs 6.7.1, 6.7.2, and 6.7.3, of subclause 6.7 of this clause. In determining such a request the employer will give consideration will be given to the circumstances of the teacher and the reasonable operational requirements of the employer; and/or
- (iv) Bereavement entitlements for casual teachers
 - (1) Subject to the evidentiary and notice requirements in (i) casual teachers are entitled to not be available to attend work, or to leave work upon the death in

Australia of a person prescribed in (ii) of subparagraph (c) of subclause 6.7 1.

- (2) The employer and the teacher shall agree on the period for which the teacher will be entitled to not be available to attend work. In the absence of agreement, the teacher is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual teacher is not entitled to any payment for the period of non-attendance
- (3) An employer must not fail to re-engage a casual teacher because the teacher accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual teacher are otherwise not affected.

- (d) Up to one day's leave on the day of an examination of a course run by a recognised teaching institution undertaken by the teacher to further his or her early childhood teacher training; and/or
- (e) Personal Carer's leave in accordance with the provisions outlined in subclause 6.7 of this clause; and
- (f) Sick leave - a teacher may take all of their personal leave entitlement as sick leave provided that five days of their personal leave entitlement in every year is only used as sick leave.

6.3 The taking of leave outlined in subclause 6.2 of this clause shall be subject to the following conditions and limitations:

- (a) A teacher intending to take leave shall notify the employer at the earliest practicable opportunity and in any event prior to the commencement of the first activity for the day of:
 - (i) inability to attend work; and
 - (ii) the reason for their inability to attend work; and
 - (iii) the estimated duration of the absence.
- (b) A teacher who fails to comply with the procedure outlined in paragraph (a) of this subclause shall not be entitled to paid leave unless they can satisfy the employer that they took all reasonable steps to notify the employer or were unable to take such steps.
- (c) To qualify for sick leave, a teacher may be required to provide evidence satisfactory to the employer that they were sick.

- (d) A teacher shall not be entitled to sick leave for any period in respect of which such teacher is entitled to workers compensation.

6.4 Notwithstanding the provisions of subclauses 6.1 and 6.2 of this clause, the personal leave entitlement of a part-time teacher and temporary teacher shall be in that proportion which the teacher's number of working hours in a full Pre-School week bears to the number of working hours which a full-time teacher at that Pre-School is normally required to work.

6.5 Untaken leave in the second year of service and thereafter shall accumulate up to a maximum of 120 days. Subject to the provisions of subclause 6.7 - Personal Carer's Leave, such accumulated leave may only be taken as sick leave.

6.6 Transitional Arrangements

Notation: The following transitional arrangements will apply

- (a) Teachers employed prior to 18 October 1996 in accordance with the Teachers (Non-Government Pre-Schools) (State) Award published 15 July 1987 (245 I.G. 702), as varied, retained all full-pay sick leave accumulated in accordance with that award.
- (b) All half-pay sick leave entitlements accumulated prior to 18 October 1996 in accordance with the said award were converted to half the number of days on full pay and added to the existing, full-pay, sick leave accumulation.

6.7 Personal Carer's Leave

6.7.1 Use of Sick Leave

- (a) A teacher, other than a casual teacher, with responsibilities in relation to a class of person set out in subclause 6.7.1 (c)(ii) of this clause who needs the teacher's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for in subclauses 6.1 and 6.2 of this clause, for absences to provide care and support, for such persons when they are ill or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (b) The teacher shall, if required,
 - (i) establish either 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

- (ii) 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 teacher.

In normal circumstances, a teacher 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:
 - (i) the teacher being responsible for the care of the person concerned; and
 - (ii) the person concerned being:
 - a spouse of the teacher; or
 - 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
 - a child or an adult child (including an adopted child, a foster child or an ex nuptial child), parent (including foster parent and legal guardian), grandparent, grandchild or sibling of the teacher or spouse or defacto spouse of the teacher; or
 - a same sex partner who lives with the teacher as the de facto partner of that teacher on a bona fide domestic basis; or
 - a relative of the teacher who is a member of the same household, where for the purposes of this paragraph: -
 1. "relative" means a person related by blood, marriage of affinity;
 2. "affinity" means a relationship that one spouse because of marriage has to blood relatives or the other; and
 3. "household" means a family group living in the same domestic dwelling

- (d) A teacher 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 that person's relationship to the teacher, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the teacher to give prior notice of absence, the teacher 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 teacher shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and teacher's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 12 should be followed.

6.7.2 Unpaid Leave for Family Purpose

A teacher may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subclause 6.7.1 (c)(ii) above who is ill or who requires care due to an unexpected emergency.

6.7.3 Personal Carers Entitlement for Casual Teachers

- (a) Subject to the evidentiary and notice requirements in subclause 6.7.1(a) and 6.7.(b) of this clause, casual teachers are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 6.7.1 (c)(ii) of this clause 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 teacher shall agree on the period for which the teacher will be entitled to not be available to attend work. In the absence of agreement, the teacher is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual teacher is not entitled to any payment for the period of non-attendance.
- (c) An employer must not fail to re-engage a casual teacher because the teacher accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual teacher are otherwise not affected.

7. MISCELLANEOUS

7.1 The normal duties of teachers shall include playground duties, sports duties and usual extra-curricular activities associated with a Pre-School.

7.2 Crib Break

Not more than thirty (30) minutes nor less than 20 minutes shall be allowed to teachers each day for a midday paid crib break. Such crib break shall be counted as time worked.

Provided however that a teacher may, by agreement with the employer, leave the premises or elect not to be on call during the crib break. Where a reasonable request has been made by the teacher, the employer shall give favourable consideration to any such request. During this time the teacher cannot be counted as part of the child/staff ratios under the *Children (Care and Protection) Act 1987*. Such time away from the premises or not on call shall not count as time worked nor shall any payment be made for such time.

However, if the teacher is called back to perform any duties within the centre or the break is interrupted for any reason the teacher shall be paid at time and a half for a minimum of 15 minutes and thereafter to the nearest quarter hour until an uninterrupted break or the balance of the break is taken.

Notation:

It is agreed between the parties that any agreement between the teacher and the employer concerning an unpaid crib-break must be genuine. For example, a teacher cannot be required by the employer to agree to an unpaid crib-break as a condition of ongoing employment. Any agreement should be recorded in writing and kept with pay records. It is agreed between the parties to the award that the IEU may apply to vary this provision during the nominal term of this award (while the employers retain the right to oppose the particular variation sought by the IEU) should the IEU be able to demonstrate that the clause is not operating as intended by the parties.

7.3 Professional Development, Training and Planning

- (a) Teachers are responsible for ensuring that they are aware of new developments in early childhood education. However, the parties recognise that continuing professional development of teachers is a joint responsibility of both the employer and the teacher.

- (b) The employer may request a teacher to attend any courses in non-term time or after hours relating to professional development, training and planning. The teacher cannot unreasonably refuse to attend such courses. Provided that a full-time teacher who receives no more than four weeks' annual leave in a year shall receive time in lieu for time actually spent at any courses outlined in this clause.
- (c) Teachers are responsible for ensuring that centres are ready for operation on the first day of each term.
- (d) Any dispute in relation to attendance shall be dealt with in accordance with Clause 12 - Disputes and Grievance Procedures.

7.4 First-Aid Certificate

- (a) Teachers shall be required to obtain and maintain an approved first-aid certificate.
- (b) Attendance at a first aid course shall be in the teacher's own time.

8. OTHER LEAVE

8.1 Long Service Leave

See the *Long Service Leave Act 1955*

8.2 Residential Study Leave

A teacher, who for the purposes of furthering his or her Early Childhood teacher training, enrolls in any course at a recognised University or recognised Teacher Training Institution shall be granted leave without pay for the purpose of attending any compulsory residential school which is a part of such course.

8.3 Parental Leave

8.3.1 Refer to the *Industrial Relations Act 1996 (NSW)*.

8.3.2 An employer must not fail to re-engage a regular casual teacher (see section 53(2) of the Act) because:

- (a) the teacher or teacher's spouse is pregnant; or
- (b) the teacher is or has been immediately absent on parental leave.

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

8.3.3 Right to Request

- (a) A teacher entitled to parental leave may request the employer to allow the teacher:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;to assist the teacher in reconciling work and parental responsibilities.
- (b) The employer shall consider the request having regard to the teacher's circumstances and, provided the request is genuinely based on the teacher'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 teacher's request and the employer's decision made under 8.3.3(a)(ii) and 8.3.3(a)(iii) must be recorded in writing.

- (d) Request to Return to Work Part-Time

Where a teacher wishes to make a request under 8.3.3(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 teacher is due to return to work from parental leave.

8.3.4 Communication During Parental Leave

- (a) Where a teacher 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:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing parental leave; and
 - (ii) provide an opportunity for the teacher to discuss any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing parental leave.
- (b) The teacher shall take reasonable steps to inform the employer about any significant matter that will affect the teacher's decision regarding the duration of parental leave to be taken, whether the teacher intends to return to work and whether the teacher intends to request to return to work on a part-time basis.

The teacher shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with subclause (a).

8.3.5 This variation shall take effect from 19 December 2005.

8.4 Jury Service

- (a) A full time or part time teacher required to attend for jury service during ordinary working hours shall be provided with paid leave for this purpose. The teacher shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of the teacher's attendance for such jury service and the amount of wage the teacher would have received in respect of the ordinary time he or she would have worked had he or she not been on jury service.
- (b) The teacher shall notify the employer as soon as possible of the date upon which he or she is required to attend for jury service. The teacher shall provide to the employer a copy of the summons to attend jury duty and a record of payments received as proof of attendance

9. UNION REPRESENTATIVES

- 9.1 The employer shall permit the union representative in the Pre-School to post union notices relating to the holding of meetings on a staff room notice-board.

- 9.2 The union representative shall be permitted in working hours (other than time-tabled teaching hours) to interview the employer on union business. Such interview shall take place at a time and place convenient to both parties.
- 9.3 Meetings of union members who are employed at the Pre-School may be held on the Pre-School premises at times and places reasonably convenient to both union members and the employer.

10. TERMS OF ENGAGEMENT AND INFORMATION TO BE PROVIDED TO TEACHERS

- 10.1 (a) The employer shall provide all full-time, part-time and temporary teachers with a letter of appointment on engagement stating the classification and rate of salary on appointment, the hours of operation of the Centre, the teachers' entitlements as to personal leave, annual leave and long service leave, the procedure as to alteration of days of attendance and notice on termination.
- (b) The hours of attendance of a full-time teacher may be varied at the commencement of each calendar year or by giving four weeks' notice during term time or with the agreement of the teacher at any time provided that the total hours of attendance cannot be increased except by mutual agreement.
- (c) The normal hours of work and days of attendance of a part-time teacher may be varied at the commencement of each calendar year or by giving four weeks' notice during term time, provided that the days of attendance and normal hours of work may be varied or increased at any time by mutual agreement between the employer and the teacher.
- 10.2 The employer may, if the employer deems appropriate, provide a teacher of children with special needs with a letter of appointment which outlines the teacher's teaching load, days of attendance, and place of employment which may be varied throughout the period of engagement. Such variations would occur from term to term with not less than four weeks' notice or otherwise by agreement.
- 10.3 The employment of a teacher during the first three calendar months of employment shall be probationary if the employer has advised the teacher on or prior to the engagement that there is a probationary period. Either party may terminate the employment during this period by two weeks notice.

The foregoing shall not affect the right of the employer to dismiss any teacher summarily for incompetence, misrepresentation, neglect of duty or other misconduct.

Notation: It is strongly recommended that prior to terminating a teacher's employment under this clause an employer:

- (a) clearly identify to the teacher the problems they have with his or her employment; and
- (b) clearly outline their expectations as to how a teachers performance should improve, and
- (c) give a teacher a reasonable time frame to improve his or her behaviour.

10.4 Subject to subclause 10.3 of this clause, the employment of any teacher (other than a casual teacher) shall not be terminated without at least four Pre-School term weeks notice on either side or the payment of or forfeiture of four weeks' salary in lieu of notice. Provided that such four weeks' notice shall expire within the Pre-School term during which it is given, and shall expire either:

- (a) at the end of the said Pre-School term, or
- (b) at least two weeks before the end of the said Pre-School term.

10.5 The foregoing shall not affect the right of the employer to dismiss summarily any teacher for incompetence, misrepresentation, neglect of duty or other misconduct.

10.6 Upon the termination of service of a teacher other than a casual teacher the employer shall provide a statement of service setting out the length of service, the age of children taught, the positions held and any special and/or additional duties performed by such teacher.

10.7 (a) On termination of casual employment, the employer shall indicate on the teacher's service card (see Attachment A - Record of Casual Employment) the length of service with that employer.

- (b) Upon request, a casual teacher shall be supplied with a statement setting out the number of days of duty undertaken by the casual teacher during the period of his or her engagement provided such request is made during or on termination of the casual engagement.

10.8 Where an employer proposes either:

- (a) to make alterations to the Pre-School in which a teacher is employed, or

- (b) to transfer a teacher from the Pre-School in which the teacher is employed,

which shall have the consequence that the provisions of this award will no longer apply to the teacher, the employer shall as soon as practicable in any case after a firm decision has been made, give the teacher notice of the change, and shall if the teacher so requests hold discussions:

- (i) with the teacher, or
- (ii) with a representative of the teacher,

as soon as practicable after making the decision and in any event not less than four weeks prior to the implementation of the decision.

10.9 Job Share

The parties recognise that job share involves the following principles:

- (a) Job share for all teachers shall mean dividing the one job so that job share teachers have equal responsibility or share responsibility.
- (b) The division of work has to be negotiated and mutually suitable to all parties.
- (c) Job share teachers are treated as part-time teachers and receive pro rata entitlements.
- (d) If a job share teacher is ill, or on annual leave or a rostered day off, then the other teacher may be offered the day(s) of work by the employer. This work, if accepted, is to be paid at ordinary rates in accordance with Clause 2 - Salaries.
- (e) If a job share teacher leaves the employment, the remaining teacher may be offered the residue of employment.

If the employer does not wish to offer the residue of employment or part thereof to the teacher, and the parties wish to continue the job share arrangement the employer may consult with the teacher about the implementation of a new arrangement, including the selection of a new teacher to fill the balance of the position. If the employer or the teacher does not propose to continue the job share arrangement the remaining teacher may be employed on a part-time basis.

- (f) Adequate opportunities for consultation between job share teachers will be provided by the employer.

- (g) The employer may determine the number of job share positions in any centre.

10.10 Redundancy

Refer to Part C of this award.

11. PROCEDURE FOR DEALING WITH JOB PERFORMANCE PROBLEMS

It is recommended that employers follow the procedure outlined below when dealing with job performance related problems:

- (a) Where a problem(s) arises with respect to a teacher's performance of his/her duties the employer should discuss the problem with the teacher who will be given an opportunity to respond.
- (b) The employer should:
 - (i) clearly identify the problem;
 - (ii) clearly outline their expectations;
 - (iii) set a reasonable period of time for the problem to be rectified;
 - (iv) provide a review period at the end of the time period; and
 - (v) note the results of the meeting in a diary.
- (c) If the problem(s) continues to exist then a formal warning should be given to the teacher in writing or in the presence of a witness. The warning should set out:
 - (i) what aspects of the teacher's performance need to be improved;
 - (ii) what should be done to rectify the problem;
 - (iii) what assistance will be provided;
 - (iv) a specified period for review; and
 - (v) the action already taken by the employer and what further action may be taken if the performance problem is not rectified.

The employer should note the results of the meeting in a diary.

- (d) If the specified problem(s) are not rectified, the employer should give the teacher a final warning. This may be in writing or issued in the presence of a witness specifying the process already taken by the employer and the fact that if the performance of the teacher does not improve the employment of the teacher will be terminated. The employer should identify the performance problem(s), the employer's expectations, the steps required to rectify the problem(s) and a time

period for review. The employer should note the results of the warning in a diary.

- (e) Where a teacher's performance improves as a result of a review period, the employer should notify the teacher that the period of review is completed and that the required improvement in the teacher's performance has been achieved.
- (f) The employer and teacher are entitled to have a witness present at any step in the process and may be represented by an industrial organisation of employees or an industrial organisation of employers.
- (g) An employer has a right to dismiss a teacher summarily for misrepresentation, neglect of duty or misconduct.
- (h) Nothing in this procedure shall be construed to override an employer's discretion to adopt a procedure other than contained in this clause. However, the employer should advise the teacher of any other procedure.

Nothing in this procedure shall be construed to remove the right of a teacher or employer to refer a dispute to the Industrial Relations Commission of New South Wales pursuant to the *Industrial Relations Act* 1996.

12. DISPUTES AND GRIEVANCE PROCEDURES

12.1 Procedures Relating to Grievances of Individual Teachers

- (a) The teacher shall notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
- (b) The grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- (c) Reasonable time limits must be allowed for discussion at each level of authority.
- (d) At the conclusion of the discussion, the employer must provide a response to the teacher's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- (e) While a procedure is being followed, normal work must continue.

- (f) The teacher may be represented by an industrial organisation of employees.

12.2 Procedures Relating to Disputes Etc. Between Employers and Teachers

- (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher level of authority.
- (b) Reasonable time limits must be allowed for discussion at each level of authority.
- (c) While a procedure is being followed, normal work must continue.
- (d) The employer may be represented by an industrial organisation of employers and the teachers may be represented by an industrial organisation of employees for the purposes of each procedure.

13. SAVINGS CLAUSE AND LEAVE RESERVED

13.1 A teacher's conditions of employment, other than those provided in this award, shall not be altered as a consequence of the introduction of this award.

13.2 Leave is reserved to the New South Wales Independent Education Union to apply in relation to procedures relating to child protection.

14. SUPERANNUATION

14.1 Definitions

For the purpose of this clause:

- (a) **"Basic earnings"** shall mean:
 - (i) the rate of salary prescribed from time to time by this award,
 - (ii) the amount of any allowance prescribed from time to time including the allowance payable to a Director and any shift loading which may be payable pursuant to this award.

- (b) **"Teacher"** means a teacher, Director or authorised supervisor and includes a casual, part-time, or temporary teacher.
- (c) **"HESTA"** means the Health Employees Superannuation Trust Australia, established by Trust Deed Articles on 30 July 1987.
- (d) **"ASSET"** means the Australian Superannuation Savings Employment Trust constituted by a Deed made 14 October 1987.

14.2 Fund

- (a) For the purposes of this clause, contributions made by employers in accordance with the provisions of subclause 14.3 of this clause shall be as follows:
 - (i) the employer shall offer each teacher a choice between HESTA or ASSET;
 - (ii) the teacher shall nominate the fund into which contributions shall be made.
- (b) Each employer shall become a participating employer in HESTA and/or ASSET in accordance with the choice of teachers of the employer.
- (c) Each employer shall become party to HESTA or ASSET upon the acceptance of the respective Trustee of a Deed of Adoption, duly signed and executed by each employer and the respective Trustee.
- (d) A teacher shall become eligible to join HESTA or ASSET in accordance with the following:
 - (i) in the case of a teacher who is employed at 1 July 1988, from the beginning of the first pay period commencing on or after 1 July 1988, and
 - (ii) in the case of a teacher employed after 1 July 1988, from the beginning of the first pay period commencing on or after the teachers date of engagement.

14.3 Benefits

- (a) Except as provided in paragraphs (c) and (d) of this subclause, each employer shall, in respect of each teacher employed by it, pay contributions to the respective Trustee at the rate of 3% of the teacher's basic earnings.

- (b) Contributions shall be paid at intervals and in accordance with the procedures and subject to the requirements of the respective Fund.
- (c) An employer shall not be required to make contributions pursuant to this clause in respect of a teacher in respect of a period when that teacher is absent from his or her employment without pay.
- (d) Part-time and casual teachers

An employer shall pay contributions pursuant to this clause in respect of a part-time teacher employed by it if the basic earnings of the teacher exceed \$200 for that calendar month.

An employer shall pay contributions pursuant to this clause in respect of a casual teacher employed by it for any calendar month in which the basic earnings of the teacher exceed \$200 for that calendar month.
- (e) Where a new teacher commences in employment, the employer shall advise the teacher in writing of the teacher's entitlements under this clause and of the action to be taken by the teacher to obtain the benefit of those entitlements.
- (f) Notwithstanding the date upon which a teacher signs an Application Form, contributions in accordance with paragraph (a) of this subclause shall be made from the date when the teacher became eligible for membership

14.4 Records

The employer shall retain all records relating to the calculation of payments due to the Fund(s) in respect of each teacher and such records shall be retained for a period of six years.

14.5 Exemptions

Employers of teachers who are eligible to become contributors to the following Superannuation Funds or any schemes replacing such Funds shall be exempt from the provisions of this clause:

State Superannuation Fund

State Public Service Superannuation Scheme

Public Authorities Superannuation Scheme

14.6 Leave is reserved to the Employers' Federation of New South Wales to vary this clause following the decisions of the Full Commission in the Nurses Superannuation Case Matter No. IRC 883, 884 and 995 of 1994.

15. ENTERPRISE CONSULTATION

Enterprises covered by this award shall establish a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity.

16. LABOUR FLEXIBILITY

- (a) An employer may direct a teacher to carry out such duties as are within the limits of the teachers skill, competence and training provided that such duties are not designed to promote deskilling.
- (b) An employer may direct a teacher to carry out such duties and use such tools and equipment as may be required provided that the teacher has been properly trained in the use of such tools and equipment.

Any direction issued by an employer pursuant to subclauses (a) and (b) of this clause shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

17. ANTI-DISCRIMINATION

17.1 It is the intention of the parties bound by this award to seek to achieve the objective of 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, age and responsibilities as a carer.

17.2 It follows that, in fulfilling their obligations under the dispute resolution procedure prescribed by this award that parties have obligations to take all reasonable steps to ensure that the operations 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.

17.3 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.

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

- (a) any conduct or act which is specifically exempt for 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 on any State or federal jurisdiction.

17.5 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 this 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."

18. SETTLEMENT OF AWARD

18.1 This award is made by consent as a settlement of the claims made by the Independent Education Union of NSW & ACT ("the IEU") in Matter Nos. 789 & 790 of 2005.

18.2 It is a term of this award that the IEU will not pursue any improvements in wages or conditions of employment, including any increases arising from the general increases given by the federal or state industrial tribunals, or the proposed Fair Pay Commission that arise during the term of this Award.

19. AREA, INCIDENCE AND DURATION

19.1 This award shall apply to all teachers employed in Pre-Schools licensed as child care centres under the *Children (Care and Protection) Act 1987*, and all teachers employed in Early Intervention Services where the hours and conditions of work of such teachers approximate those hours and conditions of work of a teacher in a recognised school, excepting:

- (a) Teachers of music or other individual arts who are remunerated on an individual fee basis; and
- (b) Members of a recognised religious teaching order and/or Clerks in Holy Orders, and/or Ministers of Religion (including a Minister-teacher or a Missionary-teacher who is a member of the Seventh Day Adventist Church and who teaches in a school operated by a local Conference of the Australasian Division of the Seventh Day Adventist Church) provided that application may be made on behalf of any such member to be included within the scope of this award; and
- (c) Employees of all city, municipal, shire and county Pre-Schools; and
- (d) Employees within the jurisdiction of the Independent Schools and Colleges, General Staff &c (State) Conciliation Committee and the Kindergartens &c (State) Conciliation Committee; and
- (e) Persons employed in Pre-Schools conducted by the KU Children's Services; and
- (f) Teachers covered by the Teachers (Catholic Early Childhood Service Centres and Pre-Schools) (State) Award made on 1 July 2005 as varied; and
- (g) Teachers covered by the Teachers (Independent Schools) (State) Award published on 17 June 2005 (351 I.G 76)

19.2 This award rescinds and replaces the Teachers (Non Government Pre-Schools) (State) Award published 8 August 2004 (335 I.G 788) and award review published on 27 May 2005(351 I.G 451).

19.3 This award shall take effect from 23 January 2006 provided that increases in rates of pay and allowances shall be effective from the first full pay period on or after 23 January 2006.

19.4 This award shall remain in force until 31 December 2008.

PART C - REDUNDANCY

1. REDUNDANCY

- 1.1 These provisions shall apply in respect of full-time and part-time teachers.
- 1.2 This clause shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of teachers.
- 1.3 Notwithstanding anything contained elsewhere in this award, the provisions of this part shall not apply to teachers with less than one year's continuous service and the general obligation on employers shall be no more than to give such teachers 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 teachers of suitable alternative employment.
- 1.4 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 teachers, apprentices or teachers 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.

2. EMPLOYERS DUTY TO NOTIFY AND DISCUSS

- 2.1 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 teachers, the employer shall notify the teachers who may be affected by the proposed changes and the union to which they belong.
- 2.2 The employer shall discuss with the teachers affected and the union to which they belong the introduction of such changes and the likely effect on the teachers and the measures taken to avert or mitigate the adverse effects of such changes.
- 2.3 '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 teachers to other work or locations and the restructuring of jobs.

3. DISCUSSIONS BEFORE TERMINATIONS

- 3.1 Where an employer has made a definite decision that the employer no longer wishes the job the teacher has been doing done by anyone and that decision may lead to the termination of employment, the employer shall hold discussions with the teachers directly affected and with the union to which they belong.
- 3.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subclause 3.1 of this clause 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 teachers concerned.
- 3.3 For the purposes of the discussion the employer shall, as soon as practicable, provide to the teachers 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 employees 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.

4. NOTICE FOR CHANGES IN PRODUCTION, PROGRAM, ORGANISATION OR STRUCTURE

- 4.1 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 Clause 2 of this Part.

- 4.1.1 In order to terminate the employment of a teacher the employer shall give to the teacher 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

4.1.2 In addition to the notice above, teachers 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.

4.1.3 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.

4.2 Notice For Technological Change

This paragraph sets out the notice provisions to be applied to terminations by the employer for reasons arising from 'technology' in accordance with Clause 2 of this part.

4.2.1 In order to terminate the employment of a teacher the employer shall give to the teacher 3 months notice of termination.

4.2.2 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.

4.2.3 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.

4.3 Time Off During the Notice Period

4.3.1 During the period of notice of termination given by the employer a teacher 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.

4.3.2 If a teacher has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the teacher shall, at the request of the employer, be required to produce proof of attendance at an interview or the teacher shall not receive payment for the time absent.

4.4 Teacher Leaving During the Notice Period

If the employment of a teacher is terminated (other than for misconduct) before the notice period expires, the teacher shall be entitled to the same benefits and payments under this clause had the teacher remained with the employer until the expiry of such notice. Provided that in such circumstances the teacher shall not be entitled to payment in lieu of notice.

4.5 Statement of Employment

The employer shall, upon receipt of a request from a teacher whose employment has been terminated, provide to the teacher a written statement specifying the period of the teachers employment and the classification of or the type of work performed by the teacher.

4.6 Notice to Centrelink

Where a decision has been made to terminate teachers, 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.

4.7 Department of Social Security Employment Separation Certificate

The employer shall, upon receipt of a request from a teacher whose employment has been terminated, provide to the teacher an 'Employment Separation Certificate' in the form required by the Department of Social Security.

4.8 Transfer to Lower Paid Duties

Where a teacher is transferred to lower paid duties for reasons set out in Clause 2 of this part, the teacher shall be entitled to the same period of notice of transfer as the teacher would have been entitled to if the teachers 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 rate for the number of weeks of notice still owing.

5. SEVERANCE PAY

Where a teacher is to be terminated pursuant to Clause 4 of this part, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the following severance pay in respect of a continuous period of service:

5.1.1 If a teacher 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

5.1.2 Where a teacher is 45 years old or over, the entitlement shall be in accordance with the following scale:

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

5.1.3 'Weeks Pay'¹ means the all purpose rate of pay for the teacher concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances provided for in the relevant award.

5.1.4 Where a teacher is subject to a reduction of working hours of 6 or more hours per fortnight, the reduction will be treated as a partial redundancy. A pro rata payment will be made in accordance with the severance payments set out in paragraphs 5.1.1 and 5.1.2 above.

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 5.1.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause 5.1 above will have on the employer.

5.3 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 5.1 if the employer obtains acceptable alternative employment for a teacher.

ATTACHMENT A**CASUAL TEACHERS/DIRECTORS RECORD OF CASUAL EMPLOYMENT
TO BE MAINTAINED BY TEACHER**

1. Name:
2. Number of years of training:
3. Name of qualification:
4. Year of attainment of this qualification:

Period of Engagement (From Date to Date)	No. of Days/Hours Worked in Total, Classification, Years Trained And Step	Name, Address and Telephone Number of Centre	Signed by Centre Director (Signature, Date and Name)