

The Exposure Draft was first published on 13 May 2016. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
6 January 2017	Incorporate changes resulting from <a href="#">PR580863</a>	Schedule D
	Incorporate changes resulting from <a href="#">[2016] FWCFB 3500</a> , <a href="#">PR579857</a>	18, Schedule C
	Incorporate changes resulting from <a href="#">PR584096</a>	A.4.2, Schedule E

## EXPOSURE DRAFT

### Educational Services (Teachers) Award 2016

This exposure draft has been prepared by staff of the Fair Work Commission based on the ***Educational Services (Teachers) Award 2010*** (the Teachers award) as at 13 May 2016 2016. This exposure draft does not seek to amend any entitlements under the Teachers award but has been prepared to address some of the structural issues identified in modern awards.

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/266](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

This draft does not represent the concluded view of the Commission in this matter.

No examples have been included in this exposure draft. Parties are asked to submit [examples](#) that clarify the operation of particular provisions.

### Table of Contents

	Page
<b>Part 1— Application and Operation of this award .....</b>	<b>4</b>
1. Title and commencement .....	4
2. Definitions .....	4
3. The National Employment Standards and this award .....	6
4. Coverage.....	6

5.	Effect of variations made by the Fair Work Commission .....	7
6.	Award flexibility for individual arrangements .....	8
7.	Facilitative provisions for flexible work practices .....	9
<b>Part 2— Types of Employment and Classifications .....</b>		<b>9</b>
8.	Types of employment .....	9
9.	Terms of engagement.....	10
10.	Full-time employment.....	10
11.	Part-time employment.....	10
12.	Casual employment.....	11
13.	Fixed term employment .....	11
14.	Classifications .....	12
<b>Part 3— Hours of Work .....</b>		<b>13</b>
15.	Ordinary hours of work.....	13
16.	Breaks .....	14
<b>Part 4— Wages and Allowances .....</b>		<b>15</b>
17.	Minimum wages .....	15
18.	Allowances.....	16
19.	Superannuation .....	19
<b>Part 5— Leave and Public Holidays .....</b>		<b>21</b>
20.	Annual leave .....	21
21.	Pro rata payment of salary inclusive of annual leave .....	21
22.	Annual leave loading .....	23
23.	Personal/carer’s leave and compassionate leave .....	23
24.	Parental leave and related entitlements.....	24
25.	Public holidays.....	24
26.	Community service leave.....	24
<b>Part 6— Consultation and Dispute Resolution .....</b>		<b>24</b>
27.	Consultation regarding major workplace change .....	24
28.	Consultation about changes to rosters or hours of work.....	25
29.	Dispute resolution .....	25
<b>Part 7— Termination of Employment and Redundancy .....</b>		<b>26</b>
30.	Termination of employment .....	26
31.	Redundancy .....	27

**Exposure Draft (September 2009): Educational Services (Teachers) Award 2010**

**Schedule A —Hours of Work and Related Matters—Teachers employed in early childhood services operating for at least 48 weeks per year..... 29**

**Schedule B —Summary of Rates of Pay..... 34**

**Schedule C —Summary of Monetary Allowances ..... 39**

**Schedule D —2016 Part-day Public Holidays..... 41**

**Schedule E —Agreement for time off instead of payment for overtime ..... 43**

DRAFT

## Part 1—Application and Operation of this award

### 1. Title and commencement

- 1.1 This award is the *Educational Services (Teachers) Award 2016*.
- 1.2 This modern award, as varied, commenced operation on 1 January 2010.
- 1.3 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

### 2. Definitions

In this award, unless the contrary intention appears:

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

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

**children’s services and early childhood education industry** means the industry of long day care, occasional care (including those occasional care services not licensed), nurseries, childcare centres, day care facilities, family based childcare, out-of-school hours care, vacation care, adjunct care, in-home care, kindergartens and preschools, mobile centres and early childhood intervention programs

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

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

**employee** means a person employed as a teacher in the school education industry or children’s services and early childhood education industry who is a national system employee within the meaning of the Act

**employer** means national system employer within the meaning of the Act

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

**five year trained teacher** means a teacher who has completed a degree in education or early childhood education that requires four years of full-time study at an Australian university and in addition has completed a postgraduate degree at an Australian university requiring at least one year of full-time study, or the equivalent as determined by the National Office of Overseas Skills Recognition, or the relevant

State or Territory teacher registration authority, or in the case of early childhood teachers the relevant licensing and accreditation authority

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

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

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

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

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

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

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

**school education industry** means the provision of education, including preschool or early childhood education, in a school registered and/or accredited under the relevant authority in each State or Territory or in an early childhood service operated by a school and includes all operations of the school. Where the provision of school education is directed, managed and/or controlled by a central or regional administration of a system of schools it may also include the persons involved in providing such services to schools.

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

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

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

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

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

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

### 3. The National Employment Standards and this award

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

### 4. Coverage

- 4.1 This industry award covers employers throughout Australia in the school education industry, children’s services and early childhood education industry and their employees as defined in clause 2 to the exclusion of any other modern award.
- 4.2 For the purposes of this award:
  - (a) **school education industry** means the provision of education, including preschool or early childhood education, in a school registered and/or accredited under the relevant authority in each State or Territory or in an early childhood service operated by a school and includes all operations of the school. Where the provision of school education is directed, managed and/or controlled by a central or regional administration of a system of schools it may also include the persons involved in providing such services to schools; and
  - (b) **children’s services and early childhood education industry** means the industry of long day care, occasional care (including those occasional care services not licensed), nurseries, childcare centres, day care facilities, family based childcare, out-of-school hours care, vacation care, adjunct care, in-home care, kindergartens and preschools, mobile centres and early childhood intervention programs.

**4.3** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 4.1 and 4.2 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.

**4.4** This award does not cover:

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

**4.5** The award does not cover:

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

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

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

## **5. Effect of variations made by the Fair Work Commission**

A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

## **6. Award flexibility for individual arrangements**

- 6.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of, are those concerning:
- (a) arrangements for when work is performed;
  - (b) overtime rates;
  - (c) penalty rates;
  - (d) allowances; and
  - (e) leave loading.
- 6.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.
- 6.3** The agreement between the employer and the individual employee must:
- (a) be confined to a variation in the application of one or more of the terms listed in clause 6.1; and
  - (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.
- 6.4** The agreement between the employer and the individual employee must also:
- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
  - (b) state each term of this award that the employer and the individual employee have agreed to vary;
  - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
  - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
  - (e) state the date the agreement commences to operate.
- 6.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 6.6** Except as provided in clause 6.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.



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

**6.8** The agreement may be terminated:

- (a) by the employer or the individual employee giving 13 weeks’ notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
- (b) at any time, by written agreement between the employer and the individual employee.

NOTE: If any of the requirements of [s.144\(4\)](#), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see [s.145](#) of the Act).

**6.9** The notice provisions in clause 6.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 6.8(a), subject to four weeks’ notice of termination.

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

**7. Facilitative provisions for flexible work practices**

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

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

Clause	Provision	Agreement between an employer and:
A.1.3	Ordinary hours of work—teachers employed in early childhood services	An individual

**Part 2—Types of Employment and Classifications**

**8. Types of employment**

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

- (a) full-time employment;
- (b) part-time employment;

- (c) casual employment; or
- (d) fixed term employment.

## **9. Terms of engagement**

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

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

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

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

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

## **10. Full-time employment**

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

## **11. Part-time employment**

Part-time employment provisions may be affected by [AM2014/196](#)

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

**11.2** If the hours of a part-time employee rise above 90% of the hours of a full-time employee (being an average of more than 34 hours and 12 minutes per week), the employee will be considered full-time.

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

**11.4** A part-time employee in the school, children's service or early childhood education service is entitled to the benefits under this award on a pro rata basis. The pro rata basis will be calculated by:

- (a) dividing the number of face-to-face teaching hours prescribed for the part-time employee from time to time;
- (b) by the usual number of face-to-face teaching hours prescribed for a full-time employee.

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

- (a) the employee consents; or
- (b) where a variation is required as a result of a change in funding, enrolment or curriculum, the employer may alter a part-time employee's teaching load or days of attendance without the employee's consent, provided the employer provides written notice and does not reduce the employee's wages for:
  - (i) in the case of a school teacher—7 weeks; or
  - (ii) in the case of an early childhood teacher—4 weeks.

## **12. Casual employment**

Casual employment provisions may be affected by [AM2014/197](#)

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

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

- (a) does not exceed one school term in the case of teachers in a school or preschool; or
- (b) a total of 10 weeks in any other case.

**12.3** The rates of pay for a casual employee are contained in clause 17.4.

## **13. Fixed term employment**

**13.1** An employee may be employed for a fixed period of time for a period of between four weeks and 12 months on either a full-time or part-time basis to:

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

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

## 14. Classifications

### 14.1 Duties of an employee

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

### 14.2 Recognition of previous service

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

### 14.3 Evidence of qualifications

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

accordingly and back paid from the date of completion of the experience or qualifications, provided the employee provided satisfactory evidence to the employer within three months of completion. In all other cases the employee will be classified and paid from the date satisfactory evidence is provided.

#### **14.4 Progression**

Parties are asked whether a definition of years of service, like that provided in clause 14.2(b), is necessary for the purposes of clause 14.4

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

### **Part 3—Hours of Work**

#### **15. Ordinary hours of work**

- 15.1** This clause of the award provides for industry specific detail and supplements the NES that deals with maximum weekly hours.
- 15.2** This clause does not apply to teachers, including a teacher appointed as a Director, employed in an early childhood service which operates for 48 or more weeks per year who are covered by the provisions of Schedule A.
- 15.3** Notwithstanding the NES, and due to the operational requirements of employers in the industry, the ordinary hours of an employee under this award may be averaged over a 12 month period.
- 15.4** The ordinary hours of work for an employee during term weeks are variable. In return, an employee is not generally required to attend for periods of time when the students are not present, subject to the needs of the employer with regard to professional development, student free days and other activities requiring the employee's attendance.
- 15.5** The maximum number of days that the employee will be required to attend during term weeks and non-term weeks is 205 in each school year.

- 15.6** The following circumstances are not included when calculating the 205 employee attendance days:
- (a) co-curricular activities that are conducted on a weekend;
  - (b) school related overseas and interstate trips, conferences and similar activities undertaken by mutual consent during non-term weeks;
  - (c) when the employee appointed to a leadership position is performing duties in non-term weeks that are directly associated with the leadership position;
  - (d) when the employee has boarding house responsibilities and the employee is performing those duties during term weeks and non-term weeks; and
  - (e) exceptional circumstances, such as the requirement to provide pastoral care to students in the event of a tragedy in the school community, in which an employee may be recalled to perform duties relating to their position.
- 15.7** The provision of clause 15.5 does not apply to employers that adhere to the calendar and school year of a foreign country.
- 15.8** The employer will provide written notice of the term weeks and days in non-term times on which the employees are required to attend, six months in advance of the requirement to attend.
- 15.9** The annual salary and any applicable allowances payable under this award are paid in full satisfaction of an employee's entitlements for the school year or a proportion of the school year. The employee's absence from school during non-term weeks is deemed to include their entitlement to annual leave.

## **16. Breaks**

### **16.1 Unpaid meal break**

- (a) An employee will be entitled to an unpaid meal break of 30 consecutive minutes no later than five hours after commencing work.
- (b) Clause 16.1(a) does not apply to teachers employed in early childhood services operating for at least 48 weeks per year who are covered by the provisions of Schedule A.

### **16.2 Paid meal break**

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

## Part 4—Wages and Allowances

### 17. Minimum wages

Rates updated as a result of AWR 2016

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

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

Classification	Minimum annual rate \$	Minimum hourly rate \$
Level 1	46,782	23.59
Level 2	47,747	24.08
Level 3	49,046	24.74
Level 4	50,815	25.63
Level 5	52,586	26.52
Level 6	54,233	27.35
Level 7	55,882	28.18
Level 8	57,651	29.08
Level 9	59,422	29.97
Level 10	61,192	30.86
Level 11	62,963	31.75
Level 12	64,732	32.65

See Schedule B for a summary of hourly rates of pay, including overtime and penalties.

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

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

### 17.4 Casual employee

(a) The minimum wage payable to a casual employee will be:

## Exposure draft – Educational Services (Teachers) Award 2016

- (i) where the employee is engaged for less than five consecutive days—no higher than the wage at Level 8 in clause 17.1; or
  - (ii) where the employee is engaged for five or more consecutive days—the appropriate minimum wage for the classification as specified in clause 14—Classifications.
- (b) The minimum wage for a casual employee will be calculated in accordance with the following table:

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

(c) **Minimum payments**

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

### 17.5 Payment of wages

Payment four weekly and/or monthly with provision for payment half in advance and half in arrears is being considered in matter [AM2016/8](#)

**All monies payable will be paid:**

- (i) once each fortnight;
  - (ii) once every four weeks at the end of the first fortnight which includes payment for two weeks in arrears and two weeks in advance; or
  - (iii) once every month with the payment being made as nearly as possible on the middle of each month which includes one half month in arrears and one half month in advance.
- (b) An employer may elect to pay wages and allowances by cash, cheque or direct transfer. Where monies are paid by direct transfer, the employee has the right to nominate the financial institution and the account.

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

## 18. Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016



**18.1** Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule C for a summary of monetary allowances and method of adjustment.

**18.2 Wage related allowances—director’s allowance**

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

Number of places	\$ per annum
Up to 39 places	5379.93
40–59 places	6666.44
60 or more places	8093.29

- (c) A part-time employee who is appointed as a Director will be paid, in addition to the amounts payable under clause 17—Minimum wages, an allowance in accordance with the table in clause 18.2(b), on a proportionate basis to the hours they work.
- (d) An employee required by the employer to act as a Director for at least 10 consecutive working days will be paid at the rate applicable to that position for the time they are in the position.

**18.3 Wage related allowances—leadership allowance**

**(a) Eligibility**

- (i) This clause applies only to a teacher in a school.
- (ii) A leadership allowance will be paid to an employee where the employer requires the performance of administrative, pastoral care and/or educational leadership duties additional to those usually required of teachers by the employer.
- (iii) An allowance is linked to a position of leadership rather than tied to an individual employee.
- (iv) The principal of the school determines who holds a position that is eligible for a leadership allowance.

**(b) Notification**

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

**(c) Structure of leadership allowances**

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

**(i) School size**

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

**(ii) Level of responsibility**

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

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

Parties are asked that, given Level 2 and 3 responsibilities attract different allowances, should each level be uniquely defined?

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

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

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

Category	\$ per annum		
	A	B	C
Level 1	3742.56	3274.74	2947.27

Level 2	2573.01	2222.15	1871.28
Level 3	1286.51	1099.38	748.51

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

#### 18.4 Expense related allowances—vehicle allowance

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

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

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

See Schedule C for a summary of monetary allowances.

### 19. Superannuation

#### 19.1 Superannuation legislation

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

#### 19.2 Employer contributions

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

#### 19.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 19.2.

- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 19.1(a) and (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.1(a) or (b) was made.

#### **19.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 19.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.1(a) and (b) to one of the following superannuation funds or its successor:

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

## Part 5—Leave and Public Holidays

### 20. Annual leave

This annual leave provision may be affected by [AM2014/47](#) – see [draft determination](#)

- 20.1** Annual leave is provided for in the NES. This clause of the award provides industry specific details and supplements the NES which deals with annual leave.

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

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

### 21. Pro rata payment of salary inclusive of annual leave

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

- 21.2** This clause does not apply to teachers employed in early childhood services operating for at least 48 weeks per year covered by Schedule A. For the purpose of this clause:

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

- 21.3** The provisions of this clause will apply:

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

#### 21.4 Calculation of payments

The calculation is as follows:

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

P is the payment due

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

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

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

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

**21.5** The formula in clause 21.4 is intended to be used to calculate the pro rata salary inclusive of annual leave owing to an employee in respect of the school/preschool year in which the formula is applied.

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

(a) An employee who commences employment after the usual date of commencement at a school or preschool in any school/preschool year, will be paid from the date the employee commences.

(b) At the end of the last school/preschool term or final semester in that year, the employee must be paid an amount calculated pursuant to clause 21.4 and will receive no salary or other payment other than payment under this clause until:

(i) the school or preschool service date or the resumption of Term 1; or

(ii) first semester in the following school/preschool year.

#### 21.7 Employees who take approved leave without pay

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

(a) if the leave without pay commences and concludes in the same school/preschool year, the payment will be calculated and made at the conclusion of the last school/preschool term or final semester in that year; and

(b) if the leave without pay is to conclude in a school/preschool year following the school/preschool year in which the leave commenced:

- (i) at the commencement of the leave, a payment will be calculated and made in respect of the school/preschool year in which the leave commences; or
  - (ii) at the end of the last school/preschool term or final semester in that year in which the leave concludes, a payment will be calculated and made in respect of that school/preschool year.
- (c) If the employee returns early from leave any payment under clause 21.7(b)(i) will be taken into account in calculating the amount owed to the employee at the end of the last school/preschool term or final semester in that year.

## 22. Annual leave loading

22.1 This clause of the award provides for industry specific detail and supplements the NES which deals with annual leave.

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

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

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

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

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

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

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

22.4 Clause 22.3 does not apply to teachers covered by Schedule A—Hours of Work and Related Matters—Teachers employed in early childhood services operating for at least 48 weeks per year.

22.5 Despite clauses 22.2 and 22.3, an employer may pay annual leave loading to the employee with each wage payment throughout the school year by increasing the annual rate of pay as at the commencement of the school year, or as subsequently varied, by **1.342%**.

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

## 23. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the NES.

## **24. Parental leave and related entitlements**

Parental leave and related entitlements are provided for in the NES.

## **25. Public holidays**

**25.1** Public holiday entitlements are provided for in the NES.

### **25.2 Substitution of public holidays**

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

### **25.3 Part-day public holidays**

For provisions in relation to part-day public holidays see Schedule D—2016 Part-day Public Holidays.

## **26. Community service leave**

Community service leave is provided for in the NES.

## **Part 6—Consultation and Dispute Resolution**

## **27. Consultation regarding major workplace change**

### **(a) Employers to notify**

(i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.

(ii) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

### **(b) Employers to discuss change**

(i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 27(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.



- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 27(a).
- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

## **28. Consultation about changes to rosters or hours of work**

- 28.1** Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- 28.2** The employer must:
- (a) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
  - (b) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
  - (c) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- 28.3** The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- 28.4** These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

## **29. Dispute resolution**

- 29.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 29.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 29.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

- 29.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 29.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 29.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 29.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

## **Part 7—Termination of Employment and Redundancy**

### **30. Termination of employment**

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

#### **30.2 Termination of employment**

An employee will be entitled on termination of employment to a payment calculated in accordance with clause 21.4.

#### **30.3 Notice of termination by an employer—schools**

Subject to clause 31.5, the employment of an employee (other than a casual employee) will not be terminated without at least seven term weeks' notice (inclusive of the notice required under the NES), the payment of seven weeks' salary instead of notice or part notice and part payment instead of notice provided that the total weeks' notice and weeks' payment instead equal seven.

#### **30.4 Notice of termination by an employer—other than schools**

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

#### **30.5 Notice of termination by an employee**

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

**30.6** If an employee fails to give the notice specified in clauses 30.3 or 30.4 the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been

paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

**30.7 Job search entitlement**

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

**30.8 Exclusions**

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

**30.9 Statement of service**

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

**30.10 Termination of casual employment—early childhood teachers**

On termination of casual employment, the employer will indicate on the employee's service card the length of service with the employer. Upon request a casual employee will also be given a statement setting out the number of days of duty worked by the employee during the period of the engagement.

**31. Redundancy**

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

**31.2 Transfer to lower paid duties**

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to under the NES if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

**31.3 Employee leaving during notice period**

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

**31.4 Job search entitlement**

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of NES notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the NES notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 30.7.

**31.5 Interaction of this clause with clause 30—Termination of employment**

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

- (a) notice of termination under clause 30.3 or 30.4; or
- (b) notice of termination and severance payments under the NES.

**31.6 Part-time employees**

If a part-time employee's hours are reduced, without their consent, by more than 25% they will be entitled to the provisions of this clause 31.

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

**A.1 Ordinary hours of work**

- A.1.1** A full-time employee's ordinary hours of work will be 38 per week which may be averaged over a period of four weeks.
- A.1.2** The ordinary hours of work will be worked between 6.00 am and 6.30 pm, on any five days between Monday and Friday, and will not exceed eight hours on any day.
- A.1.3** Subject to the provisions of clause 6—Award flexibility, by agreement between an employer and an employee, an employee may be rostered to work up to a maximum of 10 hours in any one day.
- A.1.4 Breaks between periods of duty**
- (a) An employee will be entitled to a minimum break of 10 consecutive hours between the end of one period of duty and the beginning of the next. This applies in relation to both ordinary hours and where overtime is worked.
  - (b) Where an employer requires an employee to continue or resume work without having a 10 hour break off duty, the employee is entitled to be absent from duty without loss of pay until a 10 hour break has been taken, or be paid at **200%** of the minimum hourly rate of pay until released from duty.

**A.2 Rostered days off**

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

- A.2.1** The employee will work 152 hours over 19 days in each four week period with one rostered day off on full pay in each period.
- A.2.2** An employee will accrue 24 minutes for each eight hour day worked to give the employee an entitlement to take rostered days off.
- A.2.3** Each day of paid leave taken by an employee (but not including long service leave, or any period of stand-down, any public holiday or any period of absence for which workers compensation payments apply occurring during any cycle of four weeks) will be regarded as a day worked for the purpose of accruing an entitlement under clause A.2.2.
- A.2.4** Rostered days off will not be regarded as part of the employee's annual leave for any purpose.
- A.2.5** An employee will not be entitled to personal leave in respect of illness whilst on a rostered day off. In the event of a rostered day off falling on a public holiday, the employer and the employee will agree on a substitute day.

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

Parties are asked whether a system of RDOs may apply to employees in services operating for less than 48 weeks per year. If so, should clause A.2.12 be moved to clause 15?

### **A.3 Breaks**

#### **A.3.1 Meal break**

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

#### **A.3.2 Non-contact time**

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

## A.4 Overtime

A.4 amended in accordance with [PR584096](#) (A.4.2 renamed and substituted)

### A.4.1 Overtime rates

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

### A.4.2 Time off instead of overtime payment

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

Note: An example of the type of agreement required by this clause is set out at Schedule E. There is no requirement to use the form of agreement set out at Schedule E. An agreement under clause A.4.2 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

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

- (e) Time off must be taken:

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

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

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

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

### **A.4.3 Make-up time**

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

## **A.5 Shiftwork**

### **A.5.1** For the purposes only of calculating the loadings provided for this clause:

- (a) a weekly rate of pay is calculated by dividing the employee's annual salary, including applicable allowances, by 52.18;



**Exposure draft – Educational Services (Teachers) Award 2016**

- (b) a daily rate of pay is calculated by dividing the weekly rate as provided for in clause A.5.1(a) by 5; and
- (c) the rate of pay for a casual is first calculated in accordance with the provisions of clause 17.4.

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

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

DRAFT

## Schedule B—Summary of Rates of Pay

Rates updated as a result of AWR 2016

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

### B.1 Full-time and part-time employees

#### B.1.1 Full-time and part-time employees, other than teachers employed in early childhood services operating for at least 48 weeks per year—ordinary rates

	Award weekly rate	Award hourly rate
	(annual rate divided by 52.18)	(weekly rate divided by 38)
	\$	\$
Level 1	896.55	23.59
Level 2	915.04	24.08
Level 3	939.94	24.74
Level 4	973.84	25.63
Level 5	1,007.78	26.52
Level 6	1,039.34	27.35
Level 7	1,070.95	28.18
Level 8	1,104.85	29.08
Level 9	1,138.79	29.97
Level 10	1,172.71	30.86
Level 11	1,206.65	31.75
Level 12	1,240.55	32.65

#### B.1.2 Full-time and part-time teachers employed in early childhood services operating for at least 48 weeks per year—ordinary and overtime rates

	Base daily rate <sup>1</sup>	Base hourly rate <sup>2</sup>	Overtime	
			First 3 hours	After 3 hours
	% of base hourly rate			
	100%	100%	150%	200%
	\$	\$	\$	\$
Level 1	186.48	24.54	36.81	49.08
Level 2	190.33	25.04	37.56	50.08

**Exposure draft – Educational Services (Teachers) Award 2016**

	Base daily rate <sup>1</sup>	Base hourly rate <sup>2</sup>	Overtime	
			First 3 hours	After 3 hours
	% of base hourly rate			
	100%	100%	150%	200%
	\$	\$	\$	\$
Level 3	195.51	25.72	38.58	51.44
Level 4	202.56	26.65	39.98	53.30
Level 5	209.62	27.58	41.37	55.16
Level 6	216.18	28.45	42.68	56.90
Level 7	222.76	29.31	43.97	58.62
Level 8	229.81	30.24	45.36	60.48
Level 9	236.87	31.17	46.76	62.34
Level 10	243.92	32.10	48.15	64.20
Level 11	250.98	33.02	49.53	66.04
Level 12	258.03	33.95	50.93	67.90

<sup>1</sup>The **base daily rate** was obtained by dividing the annual rate by 52.18, dividing the resulting figure by 5 and adding 4%

<sup>2</sup>The **base hourly rate** was obtained by dividing the annual rate by 52.18, dividing the resulting figure by 38 and adding 4%

**B.1.3 Full-time and part-time teachers employed in early childhood services operating for at least 48 weeks per year—shiftwork rates**

	Base daily rate <sup>1</sup>	Early morning shift <sup>2</sup>	Afternoon shift <sup>3</sup>	Night shift (rotating) <sup>4</sup>	Night shift (non-rotating) <sup>5</sup>	Saturday
	% of base daily rate					
	100%	110%	115%	117.5%	130%	125%
	\$	\$	\$	\$	\$	\$
Level 1	186.48	205.13	214.45	219.11	242.42	233.10
Level 2	190.33	209.36	218.88	223.64	247.43	237.91
Level 3	195.51	215.06	224.84	229.72	254.16	244.39
Level 4	202.56	222.82	232.94	238.01	263.33	253.20
Level 5	209.62	230.58	241.06	246.30	272.51	262.03
Level 6	216.18	237.80	248.61	254.01	281.03	270.23

**Exposure draft – Educational Services (Teachers) Award 2016**

	<b>Base daily rate<sup>1</sup></b>	<b>Early morning shift<sup>2</sup></b>	<b>Afternoon shift<sup>3</sup></b>	<b>Night shift (rotating)<sup>4</sup></b>	<b>Night shift (non-rotating)<sup>5</sup></b>	<b>Saturday</b>
	<b>% of base daily rate</b>					
	<b>100%</b>	<b>110%</b>	<b>115%</b>	<b>117.5%</b>	<b>130%</b>	<b>125%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 7	222.76	245.04	256.17	261.74	289.59	278.45
Level 8	229.81	252.79	264.28	270.03	298.75	287.26
Level 9	236.87	260.56	272.40	278.32	307.93	296.09
Level 10	243.92	268.31	280.51	286.61	317.10	304.90
Level 11	250.98	276.08	288.63	294.90	326.27	313.73
Level 12	258.03	283.83	296.73	303.19	335.44	322.54

<sup>1</sup>The **base daily rate** was obtained by dividing the annual rate by 52.18, dividing the resulting figure by 5 and adding 4%

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

<sup>3</sup> **Afternoon shift** means a shift finishing after 6.30 pm and at or before midnight

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

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

## **B.2 Casual employees**

### **B.2.1 Casual employees—full day rates**

	<b>All employees</b>	<b>Teachers employed in early childhood services operating for at least 48 weeks per year</b>				
	<b>Full day rate</b>	<b>Early morning shift<sup>2</sup></b>	<b>Afternoon shift<sup>3</sup></b>	<b>Night shift (rotating)<sup>4</sup></b>	<b>Night (non-rotating)<sup>5</sup></b>	<b>Saturday</b>
	<b>% of casual full day rate</b>					
	<b>100%</b>	<b>110%</b>	<b>115%</b>	<b>117.5%</b>	<b>130%</b>	<b>125%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 1	224.14	246.55	257.76	263.36	291.38	280.18
Level 2	228.76	251.64	263.07	268.79	297.39	285.95
Level 3	234.99	258.49	270.24	276.11	305.49	293.74
Level 4	243.46	267.81	279.98	286.07	316.50	304.33
Level 5	251.95	277.15	289.74	296.04	327.54	314.94
Level 6	259.84	285.82	298.82	305.31	337.79	324.80

Exposure draft – Educational Services (Teachers) Award 2016

	All employees	Teachers employed in early childhood services operating for at least 48 weeks per year				
	Full day rate	Early morning shift <sup>2</sup>	Afternoon shift <sup>3</sup>	Night shift (rotating) <sup>4</sup>	Night (non-rotating) <sup>5</sup>	Saturday
	% of casual full day rate					
	100%	110%	115%	117.5%	130%	125%
Level 7	267.74	294.51	307.90	314.59	348.06	334.68
Level 8 <sup>1</sup>	276.21	303.83	317.64	324.55	359.07	345.26
Level 9	284.70	313.17	327.41	334.52	370.11	355.88
Level 10	293.18	322.50	337.16	344.49	381.13	366.48
Level 11	301.66	331.83	346.91	354.45	392.16	377.08
Level 12	310.14	341.15	356.66	364.41	403.18	387.68

<sup>1</sup> Where an employee is engaged for less than five consecutive days, the minimum wage payable to a casual employee will be no higher than the wage at Level 8.

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

<sup>3</sup> **Afternoon shift** means a shift finishing after 6.30 pm and at or before midnight

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

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

**B.2.2 Casual employees—half day and quarter day rates**

All employees	Half day rate	Quarter day rate
	% of casual rate	
	100%	100%
	\$	\$
Level 1	112.07	56.03
Level 2	114.38	57.19
Level 3	117.49	58.75
Level 4	121.73	60.87
Level 5	125.97	62.99
Level 6	129.92	64.96
Level 7	133.87	66.93
Level 8 <sup>1</sup>	138.11	69.05
Level 9	142.35	71.17
Level 10	146.59	73.29
Level 11	150.83	75.42
Level 12	155.07	77.53

**Exposure draft – Educational Services (Teachers) Award 2016**

<b>All employees</b>	<b>Half day rate</b>	<b>Quarter day rate</b>
	<b>% of casual rate</b>	
	<b>100%</b>	<b>100%</b>

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

**DRAFT**

## Schedule C—Summary of Monetary Allowances

Monetary amounts in this clause adjusted as a result of AWR 2016

See clause 18—Allowances for full details of allowances payable under this award.

### C.1 Wage-related allowances

The following wage-related allowances are based on the standard rate as defined in clause 2 as the minimum annual rate applicable to Level 1 in clause 17.1—Minimum wages = **\$46,782**

Allowance	Clause	% of standard rate	\$ per annum
Director's allowance:	18.2		
Level 1		11.50	5379.93
Level 2		14.25	6666.44
Level 3		17.30	8093.29
Leadership allowance:	18.3		
Level 1A		8.00	3742.56
Level 1B		7.00	3274.74
Level 1C		6.30	2947.27
Level 2A		5.50	2573.01
Level 2B		4.75	2222.15
Level 2C		4.00	1871.28
Level 3A		2.75	1286.51
Level 3B		2.35	1099.38
Level 3C		1.60	748.51

#### C.1.1 Adjustment of wage-related allowances

Wage related allowances are adjusted in accordance with increases to wages and are based on percentage of the standard rate as specified.

### C.2 Expense related allowances

The following expense related allowances will be payable to employees in accordance with clause 18.4:

Allowance	Clause	\$
Vehicle allowance—use of own vehicle:	18.4	
Motor car		0.78 per km
Motorcycle		0.26 per km

#### C.2.1 Adjustment of expense related allowances

- (a) At the time of any adjustment to the [standard rate](#), each expense-related allowance will be increased by the relevant adjustment factor. The relevant

**Exposure draft – Educational Services (Teachers) Award 2016**

adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

- (b) The applicable index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
Vehicle allowance	Private motoring sub-group

DRAFT



## Schedule D—2016 Part-day Public Holidays

The part-day public holidays schedule may be affected by [AM2014/301](#)

Schedule D amended in accordance with [PR580863](#)

This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

**D.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2016) or New Year's Eve (31 December 2016) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
- (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
- (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
- (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
- (e) Excluding annualised salaried employees to whom clause D.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
- (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
- (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause D.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

This schedule is not intended to detract from or supplement the NES.

This schedule is an interim provision and subject to further review.

DRAFT

**Schedule E—Agreement for time off instead of payment for overtime**

Schedule E— Agreement for time off instead of payment for overtime inserted in accordance with [PR584096](#)

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

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

Date and time overtime started: \_\_\_/\_\_\_/20\_\_\_ am/pm

Date and time overtime ended: \_\_\_/\_\_\_/20\_\_\_ am/pm

Amount of overtime worked: \_\_\_\_\_ hours and \_\_\_\_\_ minutes

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

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_