

Annexure A

Parties' Draft Award — Associations of Independent Schools (27 April 2009)

Independent Schools Teachers Award 2010

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Part 1---Application and Operation

1. Title

This award is the *Independent Schools Teachers Award 2010*.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Workplace Relations Act 1996* (Cth).

Commission means the Australian Industrial Relations Commission or its successor.

employee means a person employed as a teacher in an independent school.

employer has the meaning in the Act.

enterprise award has the meaning in the Act.

four year trained means a teacher has completed a degree in education that requires four years of full time study in 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.

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

independent school means a non-government school registered and/or accredited under the relevant authority in each state or territory including all operations of the school.

NAPSA means a notional agreement preserving a state award and has the meaning in the Act.

NES means National Employment Standards.

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

principal means the employee appointed by the employer to the most senior leadership position in an independent school.

school year means the period twelve 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 rate applicable to Level One in clause 15, Minimum Salary.

teacher means a person employed by an independent school.

term weeks means the weeks in the school year that students are required to attend school as set out in the school calendar of each school.

three year trained means a teacher who has completed a degree in education that required three years of full time study at an Australian university or the equivalent as determined by the National Office of Overseas Skills Recognition, or the relevant State or Territory teacher registration authority.

3.2 Where this award refers to a condition of employment provided for in the NES the reference is to the condition as defined in the NES.

4. Coverage

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

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

4.3 The award does not cover an employer bound by an enterprise award or an enterprise NAPSA with respect to any employee who is covered by the enterprise award or NAPSA.

4.4 This award does not apply to:

- (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), or
- (b) a sports coach, assistant, or trainer; or
- (c) a person employed as a teacher/integration aide, helper, classroom assistant, or director/supervisor in or in connection with child care, pre-school, long day care centres, child minding centres or outside of school hours care services; or
- (d) a member of a recognised religious teaching order and/or Minister of Religion and 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 psychologist or school counsellor, or
- (f) a principal, headmaster, headmistress, deputy principal, or head of school (howsoever named).

4.5 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification that is most appropriate to the work

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performed by the employee and to the environment in which the employee normally performs the work.

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

5. Access to the award and the National Employment Standards

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

6. The National Employment Standards and this award

The NES and this award contain the minimum conditions of employment for employees covered by this award.

7. Award flexibility

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

- (a) arrangements for when work is performed; and
- (b) allowances; and
- (c) leave loading; and
- (d) salary sacrifice to superannuation.

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

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

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

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

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

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

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

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

7.8 The agreement may be terminated:

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

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

Part 2----Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employers to notify

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

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8.2 Employer to discuss change

- (a) The employer must discuss with the employees affected and their representatives if any, the introduction of the changes referred to in clause 8.1(a) of this award, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees. The employer will give prompt consideration to matters raised by the employees and/or their representatives in relation to the change.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1(a) of this award.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer must not be required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

9. Dispute resolution

- 9.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 9.2** If a dispute in relation to a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to this dispute may refer the dispute to the Commission.
- 9.3** The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5** An employer or an employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to the applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with the direction by the employer to perform other available work, whether at the same or another workplace that is safe and appropriate for the employee to perform.

Part 3----Types of Employment and Termination of Employment

10. Employment categories

10.1 Full-time employment

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

10.2 Part-time employment

(a) A part-time employee is an employee who is engaged to work an average of less than 38 ordinary hours per week. A part-time employee will be entitled to the benefits under this award on a pro-rata basis. The pro-rata basis will be calculated by dividing the number of face-to-face teaching hours prescribed for the part-time employee from time to time by the usual number of face-to-face teaching hours prescribed for a full-time employee in the school.

Provided that part-time employment means employment for 90% or less of the hours of a full time employee in the independent school. If the hours of a part-time employee rise above 90% the employee will be considered full-time.

(b) Where the employee (full-time or part-time) requests to work above 90% but less than full-time, the employee relinquishes their entitlement to be considered full-time and will be remunerated for the actual hours worked.

10.3 Casual employment

Casual employment means employment on a day-to-day basis for a period of not more than four consecutive term weeks in a particular role.

Provided that the casual engagement may be extended for up to a term (or the equivalent weeks) with the consent of the employee.

10.4 Fixed Term employment

(a) Fixed term employment means employment for a maximum period of at least four weeks but not more than 12 months on either a full-time or part-time basis:

(i) to undertake a specified project for which funding has been made available; or

(ii) to undertake a specified task which has a limited period of operation; or

(iii) to replace an employee who is on leave, performing other duties temporarily or whose employment has terminated after the commencement of the school year. Provided that where the replacement arrangement extends beyond 12 months, the fixed term employment may be extended for up to a further 12 months.

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10.5 Terms of engagement

- (a) On appointment, the employer will provide the employee [other than a casual employee] with a letter of appointment stating inter alia the classification and rate of salary applicable on commencement, the employee's teaching load and details of their extra curricular commitment.
- (b) In the case of a part-time employee the letter of appointment will include the employee's teaching load expressed as a percentage of a full-time load in the independent school and that their extra curricular commitment will generally be, on balance, in equal proportion to their teaching load.
- (c) Where the employer engages the employee on a fixed term basis the letter of appointment will inform the employee of the reason for the fixed term nature of the employment, the date of commencement and maximum period of employment.

11. Termination of employment

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

11.2 Notice of termination by an employer

Subject to clause 12.5:

- (a) The employment of any employee [other than a casual employee] will not be terminated without at least seven term weeks' notice, the payment of seven weeks' salary in lieu of notice or part notice, part payment in lieu provided that the total weeks' notice and weeks' payment in lieu equal seven.

11.3 Notice of termination by an employee

The notice of termination required by an employee is the same as that required of an employer except that:

- (a) in the final term of a school year, the employee must give their notice wholly within that term; and
- (b) there is no requirement on the employee to give additional notice based on the age of the employee concerned, as provided in the NES.

11.4 If an employee fails to give the required notice 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 clause 11.3, less any period of notice actually given by the employee.

11.5 Job search entitlement

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

11.6 Exclusions

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

12. Redundancy

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

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

12.3 Employee leaving during notice period

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

12.4 Job search entitlement

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

12.5 Interaction of this clause with Clause 11, Termination of Employment

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

- (a) notice of termination under clause 11.2; and
- (b) notice of termination under the NES and severance payment under the NES.

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12.6 Part-time employees

- (a) Where the employer reduces the hours of a part-time employee by 25% or less on an ongoing basis, the employee is not entitled to the benefits of this clause 12, including severance pay; and
- (b) where an employee and employer have reached a mutual agreement that the employee's hours will be reduced, the employee is not entitled to the benefits of this clause 12, including severance pay.

13. Duties of an employee

13.1 In addition to teaching, the duties of an employee may include activities associated with administration, review, development and delivery of educational programmes and co-curricular activities. The duties of an employee may include, but are not limited to, playground duties, sports duties, attending school camps, retreats, excursions, parent/teacher and staff meetings, administration and assembly duties, pastoral care duties, school designated professional development training and/or meetings.

13.2 A part-time employee will undertake any of the duties and/or activities described above in the same proportion, on balance, as their teaching hours. For example, an employee with teaching hours that are equivalent to 50% of the teaching hours of a full time employee in the independent school is required to perform 50% of the co-curricular activities and/or administrative duties that a full time employee is required to perform over the course of the school year.

13.3 Employee obligations

- (a) An employer may direct an employee to perform such duties as are within the limits of the employee's skill, competence or training.
- (b) Where an employee does not perform as directed in accordance with clause 13.3(a) above, the employee is not entitled to payment for that period.

Part 4----Minimum Salary and Related Matters

14. Classifications

14.1 Recognition of previous service

On appointment, an employee will be classified and placed on the appropriate level on the salary scale in clause 15, Minimum Salary according to their qualifications and full-time equivalent teaching experience after gaining the qualifications necessary for registration and/or accreditation as a teacher in Australia. For the purpose of this Award teaching experience does not include employment as a teacher in a TAFE setting or English Language College.

An employee:

- (a) who has no previous teaching experience as defined in this clause and who is deemed by the employer to be the equivalent of three or four year trained will commence on Level 1 of the salary scale in clause 15, Minimum Salary.
- (b) who has no previous teaching experience as defined in this clause and who is deemed by the employer to be the equivalent of five year trained will commence on Level 2 of the salary scale in clause 15, Minimum Salary.
- (c) who has previous teaching experience as defined in this clause will commence on the level of the salary scale in clause 15, Minimum Salary commensurate with their qualifications and full-time equivalent teaching experience.

For example, an employee who is four year trained with 5 years of full-time equivalent teaching experience is entitled to be classified on Level 6 of the salary scale in clause 15, Minimum Salary on appointment. Upon completion of one year of full-time equivalent teaching experience, the employee is entitled to progress to Level 7 of the salary scale in clause 15, Minimum Salary.

14.2 Evidence of Qualifications

- (a) On engagement, the employer may require that the employee provide documentary evidence of qualifications and teaching experience. If an employer considers that the employee has not provided satisfactory evidence and advises the employee in writing to this effect, then the employer may decline to recognise the relevant qualification or experience until such evidence is provided.

Provided that, the employer shall not unreasonably refuse to recognise the qualifications or teaching experience of an employee.

- (b) Where an employee has completed further teaching experience with another employer (for example during unpaid leave) or additional qualifications after commencement of employment the employee will be entitled to be classified accordingly and back paid from the date of completion of the experience or qualifications, provided the employee provides satisfactory evidence to the employer within three months of completion; in all other cases the employee shall be classified and paid from the date he or she has provided satisfactory evidence.

14.3 Incremental progression

- (a) An employee who is three or four year trained will commence on Level 1 of the salary scale in clause 15, Minimum Salary and progress according to normal years of service to Level 11 of the scale.
- (b) An employee who is five year trained will commence on Level 2 of the salary scale in clause 15, Minimum Salary and progress according to normal years of service to Level 11 of the scale.
- (c) An employee who is other than three year trained will commence on a salary equivalent to 90% Level 1 on the salary scale in clause 15, Minimum Salary. **Provided that** the employee is not entitled to progress on the salary scale according to normal years of service until they have obtained the appropriate qualifications to allow them to teach in their respective state or territory.

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- (d) A casual employee will be placed on the appropriate level in the salary scale in clause 15, Minimum Salary in accordance with clause 14.1 **provided that** the maximum level of payment on the salary scale will be Level 8.
- (e) 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.

15. Minimum salary

- 15.1** The minimum salary per annum payable to a full-time employee will be determined in accordance with the following table. The following table applies in accordance with clause 14, Classifications.

Level	\$ per annum
Other than three year trained	34,897
One	38,774
Two	39,815
Three	41,270
Four	42,677
Five	43,603
Six	44,691
Seven	45,904
Eight	47,165
Nine	48,310
Ten	49,587
Eleven	50,817

- 15.2** The weekly rate of pay for an employee will be determined by dividing the annual rate by 52.14 and the fortnightly rate by dividing the annual rate by 26.07.

15.3 Part-time employee

A part-time employee will be paid at the same rate as a full-time employee with the corresponding classification but in the proportion that their teaching hours bears to the teaching hours that a full-time employee at the school is normally required to work or as provided in clause 10.2(a).

15.4 Casual employee

The salary payable to a casual employee will be the appropriate salary as specified in clause 14, Classifications calculated in accordance with the table below:

Full Day	Weekly rate calculated in accordance with clause 14.2 divided by 5 plus 25%
Half Day	Weekly rate calculated in accordance with clause 14.2 divided by 10 plus 25%

Provided that

- (a) a casual employee will be paid for a minimum of half a day. A half day will be defined by the employer; and
- (b) the salary level used to calculate the full day or half day rate for a casual employee will be a maximum of level eight in the salary scale in clause 15, Minimum Salary.

16. Leadership and District allowances

16.1 Eligibility

- (a) 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 the employee's usual teaching duties as defined in clause 13, Duties of an employee.
- (b) An allowance is linked to a position of leadership rather than tied to an individual employee.
- (c) The principal determines who is eligible for a leadership allowance.

16.2 Notification

- (a) 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
- (b) The principal will advise the employee of the level to which the position equates in accordance with clause 16.1.

16.3 Structure of leadership allowances

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

(a) School size

Category A	Independent school with more than 600 students
Category B	Independent school with between 300-600 students
Category C	Independent school with between 100-299 students

(b) 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 One	Positions of leadership such as responsibility for the management of a major department or a pastoral care or educational leadership position of equivalent status
Level Two and Three	Allowances to be applied to positions of leadership which are appropriate to the structure of the independent school

16.4 The assignment of a position to a particular level in clause 16.3(b) will reflect the graduation of responsibilities exercised in each independent school, whether, administrative, pastoral care or educational leadership, with Level One being the most significant level of responsibility.

16.5 Positions of leadership will be available in both primary and secondary independent schools.

16.6 An independent school with less than 100 students will determine positions of responsibility and allowances which are appropriate to its structure.

16.7 Allowances

(a) The allowance for Category A, Level One is based on eight per cent of the standard rate as defined in clause 3, Definitions.

(b) All other categories and levels of allowances are based on a percentage of 100% for Category A, Level One.

16.8 The following allowances apply:

Category	A	B	C
Level One	\$3102	\$2791	\$2482
Percentage	100%	90%	80%
Level Two	\$2171	\$1861	\$1551
Percentage	70%	60%	50%
Level Three	\$1086	\$931	\$620
Percentage	35%	30%	20%

16.9 Where the position of leadership is shared, the payments may also be shared.

16.10 District allowances

(a) Northern Territory

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

(i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Act had applied to the employee; and

(ii) that would have entitled the employee to payment of a district allowance.

(b) Western Australia

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

(i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the NAPSA or the Act had applied to the employee; and

(ii) that would have entitled the employee to payment of a district allowance.

(c) This clause ceases to operate on 31 December 2014.

17. Payment of salary

17.1 All monies payable will be paid:

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

17.2 An employer may elect to pay wages and allowances by cash, cheque or direct transfer. Where the monies are paid by direct transfer, the employee has the right to nominate the financial institution and the account.

18. Superannuation

18.1 Superannuation legislation

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

18.2 Employer contributions

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

18.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation salary of the employee into the same superannuation fund as the employer makes superannuation contributions provided for in clause 18.2.

- (b) An employee may adjust the amount they have authorised the employer to pay from their salary from the first of the month following the giving of three months' written notice to the employer.
- (c) The employer must pay the amount authorised under clauses 18.3(a) or (b) no later than 28 days after the end of the month on which the deduction authorised under clauses 18.3(a) or (b) was made.

18.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 18.2 and pay the amount authorised under clauses 18.3(a) or (b) to one of the following superannuation funds:

- (a) Non-Government Schools Superannuation Fund,
- (b) Catholic Superannuation and Retirement Fund CSRFB);
- (c) National Catholic Superannuation Fund (NCSFB);
- (d) Catholic Superannuation Fund (CSFB);
- (e) Combined Fund;
- (f) The Victorian Independent Schools Superannuation Trust (VISSFB);
- (g) Health Employees Superannuation Trust of Australia (HESTAB);
- (h) Australian Superannuation Savings Employment Trust (ASSETB);
- (i) Australian Retirement Fund (ARFB);
- (j) Tasplan Fund;
- (k) Sunsuper;
- (l) Queensland Independent Education and Care Superannuation Trust;
- (m) AMP Occupational Superannuation Fund;
- (n) Concept One;
- (o) Westscheme;
- (p) Lutheran Church of Australia Staff Superannuation Fund;
- (q) Australasian Conference Association Superannuation Fund; and
- (r) Christian Super; or
- (s) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 1 January 2010, provided the superannuation fund is an eligible choice fund..

Part 5----Hours of Work and Related Matters

19. Ordinary hours of work

19.1 This clause of the award provides for industry specific detail and supplements the NES that deals with weekly hours.

19.2 The ordinary hours of work for an employee during term weeks are variable and atypical. In return, an employee is not generally required to attend for periods of time when the students are not present, subject to the needs of the employer with regard to professional development, student free days and other activities requiring the employee's attendance.

19.3 The nature of the teaching profession requires an employee to fulfil the duties outlined in clause 13, Duties of an employee during term weeks and non-term weeks as required by the employer to ensure the fulfilment of the independent school's educational programme.

Provided that the maximum number of days that the employee will be required to attend during term weeks and non-term weeks will be 205 in each school year.

19.4 The following circumstances are not included when calculating the 205 employee attendance days:

- (a) co-curricular activities that are conducted on a weekend, and
- (b) school related overseas and interstate trips, conferences and similar activities undertaken by mutual consent during non-term weeks, and
- (c) when the employee appointed to a leadership position is performing duties in non-term weeks that are directly associated with the leadership position, and
- (d) when the employee has boarding house responsibilities and the employee is performing those duties during term weeks and non-term weeks.

19.5 The provisions of clause 19.3 do not apply to employers that adhere to the calendar and school year of a foreign country.

19.6 The employer will provide written notice of the number of days on which the employees are required to attend, six months in advance of the requirement to attend.

19.7 The employer may recall the employee to attend during non-term weeks in exceptional circumstances relating to their position. For example, to provide pastoral care to the students in the event of a tragedy in the school community. Days on which the employee is recalled due to exceptional circumstances are not included in the calculation of the 205 maximum attendance days.

19.8 It is recognised that the individual employee and the employer may reach agreement for the employee to attend for additional days beyond the maximum of 205 in accordance with the Award Flexibility provisions in clause 7.

19.9 Notwithstanding the NES, and due to the operational requirements of employers in the industry as outlined in clauses 19.2 and 19.3, the ordinary hours of:

(a) a full-time employee are 38 per week; and

(b) a part-time employee,

are averaged over each school year excluding public holidays and periods of annual leave.

19.10 The annual salary and any applicable allowances are paid in full satisfaction of an employee's entitlements for the school year or a proportion of the school year.

20. Breaks

An employee will be entitled to an unpaid meal break of 30 consecutive minutes no later than five hours after commencing work, unless otherwise agreed between the employee and the employer.

Part 6----Pro Rata Payment, Leave and Public Holidays

21. Annual leave

21.1 Annual leave is provided for in the NES.

21.2 Annual leave must be taken during non-term weeks, at the discretion of the employer and must generally be taken, in the case of an employee whose employment with the employer is continuing into the next school year, in the four-week period immediately following the final term week of the current school year, unless otherwise directed by the employer.

22. Pro rata payment of salary inclusive of annual leave

22.1 This clause of the award provides industry specific detail.

22.2 The provisions of this clause will apply:

a) in lieu of the NES; and

b) notwithstanding any other provisions in this award.

22.3 The provisions of this clause will apply:

a) in the calculation of payment in regard to pro rata salary where an employee's employment ceases, or

b) in the calculation of payment in regard to pro rata salary if:

(i) an employee commenced employment after the School Service Date; or

(ii) an employee has taken leave without pay of more than one week since the School Service Date; or

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- (iii) the hours which an employee has worked at school have varied since the School Service Date.

22.4 Calculation of payments

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

P is the payment due

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

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

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

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

22.5 For the purpose of this clause:

a) **School Service Date** means the date from which employees are paid at the commencement of the school year in their first year of service with the employer.

b) **Employee** means other than a casual employee.

22.6 The formula in clause 22.4 is intended to be used to calculate the pro rata salary inclusive of annual leave owing to an employee in respect of the school year in which the formula is applied.

23. Annual leave loading

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

23.2 This clause does not apply to a casual employee.

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

(a) at the time that the employee is paid annual leave or pro rata annual leave, or

(b) on the termination of employment by either party.

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

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

Total term weeks in that school year

For example, in the case of an employee with a weekly salary of \$1,000 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:

$$\$1,000 \times 4 \times 17.5\% = \$700$$

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

23.5 Notwithstanding clauses 23.3 and 23.4, an employer may pay annual leave loading to the employee with each salary payment throughout the school year by increasing the annual rate of pay as at the commencement of the school year, or as subsequently varied, by 1.346%. Where an employer elects to pay leave loading with each salary payment throughout the school year, the employer will advise the employee in writing.

24. Personal/carer's leave and compassionate leave

24.1 Personal/carer's leave and compassionate leave are provided for in the NES. This clause of the award provides industry specific detail that supplements the NES and deals with evidence required to be provided by an employee when taking personal/carer's leave.

24.2 An employee may take annual leave re-credited in accordance with the NES during non-term weeks as directed by the employer.

25. Community service leave

25.1 Community service leave is provided for in the NES.

25.2 An employee may take community service leave re-credited in accordance with the NES during non-term weeks as directed by the employer.

26. Public holidays

26.1 Public Holidays are provided for in the NES.

26.2 Substitution of public holidays

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