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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T12940 of 2007)

Private Sector Awards

Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER T J ABEY

Wage Rates – State Wage Case 2007 – application amended - application to vary private and public sector awards – award wage rates to be increased by \$22.70 per week - wage related allowances to be increased by 3.8% – meal allowance increased to \$14.10 - State Minimum Wage rate determined at \$527.10 - s.35(1)(b) – operative date ffpp 1 August 2007

INDEPENDENT SCHOOLS (TEACHERS) TASMANIA AWARD

ORDER -

**No. 1 of 2007
(Consolidated)**

AMEND THE **INDEPENDENT SCHOOLS (TEACHERS) TASMANIA AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:

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PART I - APPLICATION AND OPERATION OF THE AWARD

1. TITLE

This award shall be known as the "Independent Schools (Teachers) Tasmania Award".

2. INDEX

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3. SCOPE

This award is established in respect to the whole of Tasmania to any person employed as a teacher pursuant to the *Education Act 1994* in fee charging schools in the private sector but shall not include persons employed subject to the Catholic Education Award, nor to persons who are in Holy Orders, or are members of a Recognised Teaching Order, or Minister of Religion, or Missionary Teachers of the Seventh Day Adventist Church.

4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2007.

5. AWARD INTEREST

- (a) The following employee organisations have an interest in this award pursuant to Section 63(10) of the *Industrial Relations Act 1984*:

The Tasmanian Independent Schools Teachers Association.

- (b) The following employer organisation has an interest in this award pursuant to Section 63(10) of the *Industrial Relations Act 1984*:

The Association of Independent Schools of Tasmania Incorporated.

- (c) The following organisation is deemed to have an interest in this award pursuant to Section 62(2) of the *Industrial Relations Act 1984*:

the Tasmanian Chamber of Commerce and Industry Limited.

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- (d) The following organisation is deemed to have an interest in this award pursuant to Section 62(3) of the *Industrial Relations Act 1984*:

the Tasmanian Trades and Labor Council.

6. SUPERSESSION

This award incorporates and supersedes the Independent Schools (Teachers) Tasmania Award No. 2 of 2006 (Consolidated).

7. GENERAL DEFINITIONS

For the purpose of the award, and unless the context otherwise provides, the following definitions shall apply:

'Association' means the Tasmanian Independent Schools Teachers Association being an organisation of teachers registered under the Act.

'Employee' means a teacher employed by an employer (as defined) covered by the award.

'Employer' means, in relation to the school, the person, board, council or committee with the authority to act on behalf of the school.

'School Year' means the twelve months commencing on the first day of January in a year to the thirty first day of December in the same year.

PART II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS

1. DEFINITIONS

'Contact Time' means the timetabled periods that a teacher spends with students and shall comprise:

- (a) non-teaching contact time with students on week days in normal school hours and includes attending to home/tutor group activities where such things as absenteeism is checked, school information distributed and student pastoral care is provided;
- (b) regularly timetabled periods of contact time where the teacher is responsible for students under their care and for the delivery of the formal curriculum.

'Full Time Equivalent' (FTE) means, for the purpose of calculating part-time and release time components for teachers, the full time equivalent proportion (expressed as a percentage correct to two decimal places) of that required of a full time teacher.

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'Qualified Teacher' means a teacher (as defined) who has completed and has had conferred upon them, a teaching qualification from recognised tertiary institute (as defined).

'Supervisory Duties' means the duties performed by a relief teacher who is not required to prepare lessons or mark students' work.

'Teachers Duties' means a teacher's normal duties and includes all the tasks related to the educational development of students, and tasks concerned with the maintenance of good order and behaviour, such as reasonable playground duties, sports duties, pastoral care, extra curricular activities and in relation to teachers appointed to residential positions, the usual residential duties. Teachers duties supporting the religious and/or philosophical ethos of the school shall be determined by reference to the contract of employment between the teacher and the employer.

'Time Release' means the time designated for administrative duties for those in positions of responsibility. The designated time release is subtracted from the contact time (as defined) of a teacher.

2. EMPLOYMENT CATEGORIES

'Full Time Teacher' means a teacher who is employed for a full week each week of the school year, in any one school.

'Part-time Teacher' means a teacher who is regularly employed, each week, by a school to work for less than a full week.

'Relief Teacher' means a teacher who comes into a school for a maximum of 10 consecutive school days to relieve in the absence of the regular teacher and is paid at a daily rate in accordance with Part III – Salaries and Related Matters, paragraph 3(f)(i) of this award.

'Replacement Teacher' means a teacher who is employed for a limited period not to exceed one year, in order to replace a teacher who is on leave, temporarily transferred or promoted.

'Residential Teacher' means a teacher who performs duties as both a teacher and house parent and shall be entitled to the benefits of this award in respect of all aspects of employment as a residential teacher.

'Senior Classroom Teacher' means a teacher who has accessed this classification by the procedures set out in Part II – Employment Relationship and Associated Matters, subclauses 3(f)(ii), (iii) and (iv) of this award. The main role will be that of classroom teaching but some educational management duties in connection with classroom excellence may be mutually agreed between teacher and employer.

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'Special Funding Teacher' means a teacher who is employed by the employer for the duration of the special funding for a particular project during which time the teacher shall receive the salary and conditions which apply to their classification within this award.

'Teacher Librarian' means a qualified teacher who holds librarian qualifications deemed appropriate by the employer and carries out the task of a librarian in a school.

3. CONDITIONS OF EMPLOYMENT

(a) General Conditions

- (i) Teachers, upon appointment, shall be informed in writing of their conditions and terms of employment, the classification level to which they have been appointed, pay scale salary or total salary (as defined) as required.
- (ii) Where a teacher commences employment with a school under the provisions of this award, salary for the period 1 January to commencement of the first term shall be paid in, or before, the last pay of that year, unless the person is no longer employed.
- (iii) Any teacher who commences employment prior to the conclusion of the first week of term one, i.e. the first teaching week for teachers, shall be deemed to have commenced from 1 January and will be paid in accordance with paragraph (ii) hereof.
- (iv) With the exception of relief, replacement and special funding teachers (as defined), all beginning teachers shall be subject to the School's Induction procedures for beginning teachers (refer Part II – Employment Relationship and Associated Matters, Clause 4 - Induction of this award).
- (v) The contract of employment, except in the case of a replacement teacher or Special Funding Teacher employed for less than 10 weeks, may be terminated by either the employer or the teacher on the giving of 10 weeks' notice in writing. Such notice is to fall whenever possible wholly within a teaching term.
- (vi) If the employer fails to give 10 weeks notice, the employer shall pay an amount equivalent to the amount of wages for the period by which the notice falls short of 10 weeks, or in the case of a teacher who resigns without good reason, the employer may require forfeiture by the teacher of the same amount. The employer may deduct such forfeited amount from any monies accrued and owing to the teacher pursuant to the contract of employment.

PROVIDED that the employer may recover all or any part of the forfeited amount.

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- (vii) The employer shall be entitled to summarily dismiss a teacher for default that constitutes wilful misconduct or neglect of duty or actions which would justify instant dismissal. In such cases wages shall be paid up to the time of dismissal only.
- (viii) A teacher shall be entitled to receive, on request, a certificate of service on termination of employment. Such certificate of service shall contain at least the commencing and finishing dates of service and the duties performed whilst employed.
- (ix) On the day of termination, a teacher shall be entitled to receive any outstanding entitlements, except in the case of summary dismissal when the entitlements shall be paid on the next working day.

PROVIDED that where a teacher has received advance payment for any reason and for which they have an entitlement at the date of termination, the school may recover such monies from the final salary payment. If sufficient funds are not available in the final salary payment to cover the amount owing, the school may recover any, or all, of the amounts owing.

(b) Part-time Teachers

- (i) The employer may require a part-time teacher to undertake a proportionate number of other duties normally expected of full-time teachers upon the engagement of the teacher; and at any other time when a variation occurs.
- (ii) The employer will set out in writing the duties and number of hours required (including contact time) to be undertaken by a part-time teacher.
- (iii) An employer will pay a part-time teacher pro rata in accordance with the Salary Scale. A part-time teacher may opt to receive less pay in lieu of duties and/or extra-curricular activities. This will be negotiated on an individual basis using the consultative procedures in the school.
 - (1) The calculation of hours for part-time teachers for the purposes of hours of work and calculation of salary shall be based upon a proportion of a standard teaching load in each school.
 - (2) Annual leave and personal leave entitlements shall accrue in a pro rata proportion to that of a full time teacher.
 - (3) Holiday with Pay entitlements will be in accordance with Part V – Hours of Work, Clause 3 - Holidays with Pay.
 - (4) Part-time teachers employed at less than 0.2 FTE will be paid at a rate calculated in accordance with the provisions expressed in Part III – Salaries and Related Matters, Clause 4 - Part-time Teachers, subclause (b) and will not be entitled to annual leave, holiday leave, personal leave, public holiday leave, paternity leave, etc’.

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(iv) An employer may vary the timetable but not the current FTE hours of a part-time teacher unless:

(1) a teacher consents, or

(2) it can be demonstrated that such a variation is required and, where the variation required is in excess of 20% of the teacher's contact time as a result of a change in funding, enrolment or curriculum. In such case 10 weeks notice in writing shall be given by the employer to the part time teacher

PROVIDED that, in instances where sub paragraph (b) (iv) (2) is applied, in the absence of the required notice, and where the change involves a drop in the teachers salary, the teachers salary will be maintained at its former level for the required period of notice, or

(3) it can be demonstrated that such a variation is required and, where the variation required is equal to, or less than, 20% of the teacher's contact time as a result of a planned class not commencing or similar extenuating circumstances. In this case employers are not required to give notice or maintain the salary for any period of time.

PROVIDED that where subparagraph (2) hereof applies, a part-time teacher may exercise their right under Part II – Employment Relationship and Associated Matters, paragraph 7(b)(iii) of this award.

(c) Special Funding Teachers

(i) Subject to special funding, an employer may appoint a person as a Special Funding Teacher for the duration of the project OR for the duration of the funding.

(ii) Termination shall be in accordance with the terms under which the appointment is made.

(iii) Special Funding Teachers employed for a period in excess of 10 weeks shall be subject to all the provisions of this award.

(d) Replacement Teachers

(i) The employer may employ a replacement teacher on either a full-time or part-time basis.

(ii) The employer will pay a replacement teacher at a rate on the Salary Scale based on the replacement teacher's qualifications and number of years experience as a teacher.

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- (iii) The provisions of this award apply to a replacement teacher, including pro rata personal leave, holiday leave and annual leave entitlements.
 - (iv) Before a replacement teacher is employed, the employer shall inform that person in writing:
 - (1) of the temporary nature of the employment;
 - (2) the benefits which are applicable under the award; and
 - (3) the rights under this award of any teacher who is being replaced.
 - (v) The termination of employment of a replacement teacher will be by the expiry of a period of employment in accordance with the provisions of subclause (a) hereof.
- (e) Teacher Librarians
- Teacher librarians shall be entitled to the same salary and conditions as apply to a teacher.
- (f) Senior Classroom Teacher.
- (i) A Senior Classroom Teacher will not be required to perform any additional duties beyond those set out in the definition of Teachers Duties in Part II – Employment Relationship and Associated Matters, Clause 1 - Definitions of this award unless mutually agreed by the teacher and the employer.
 - (ii) Teachers applying for appointments as Senior Class Teacher shall have been on Step 12 of the Salary Scale for at least 12 months and be classified as a four-year trained teacher as a minimum.
 - (iii) Applicants shall address the following criteria:
 - (1) contribution to the school beyond their immediate teaching responsibilities;
 - (2) teaching responsibilities;
 - (3) relationships with colleagues, parents and students;
 - (4) professional development activities.
 - (iv) The application procedure and commencement date shall be determined by the consultative mechanisms and procedures established at the school.

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4. INDUCTION

- (a) In the process of appointment, the employer shall provide all teachers with a statement of the ethical and professional expectations of the school.
- (b) First Year Teacher
 - (i) A teacher, in their first year of experience, shall participate in an induction process of one year's duration.

PROVIDED that in certain circumstances the teacher and the employer may agree that the teacher should participate in the induction process for a further year.
 - (ii) The induction process shall be determined using the consultative mechanisms and procedures established at the School.
 - (iii) The employer shall provide a written statement to the teacher at the end of each term outlining the teacher's progress and development. Such statements may form part of a teacher's portfolio.
- (c) A teacher returning to teaching after an absence of five or more years, or a teacher new to the school, may be offered support through an appropriately modified induction process.

5. TEACHER APPRAISAL

- (a) Teachers may request, or be requested by the employer, to participate in a system of performance appraisal. The regularity of such appraisal and the system used will be determined by each school/college.
- (b) The system of performance appraisal must:
 - (i) provide a source of direction towards professional development leading to increased skills and enhanced performance;
 - (ii) be supportive and constructive;
 - (iii) be developed in consultation with the staff of the school/college.

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6. PROFESSIONAL DEVELOPMENT AND TEACHER PORTFOLIOS

Teachers may be required to participate in school planning, professional development or other purposes as determined by the employer for up to 10 days, which occur immediately prior to, or after, normal teaching days and during which students are not required to attend school. These days shall not include those activities which a teacher voluntarily undertakes as an extension of the school's total educational programme during school holiday periods but may include Moderation Days as required by the Tasmanian Secondary Assessment Board.

7. REDUNDANCY

(a) Full Time Teachers

- (i) Where the employer can substantiate with written evidence that the volume of work in any section of the school has diminished, the employer may, by written determination under their hand, indicate that in 10 weeks' time the position occupied by the teacher will be declared redundant.
- (ii) Where the employer can substantiate with a detailed written statement that the volume of work in any section of the school has diminished to such an extent that a partial redundancy in working hours by a teacher is necessary, the teacher may agree to accept the partial redundancy or may, within one month, elect to declare the whole position redundant in which case all the redundancy provisions expressed in this clause shall apply. Where a partial redundancy is accepted, pro rata compensatory payment will be made in accordance with the provisions expressed in paragraph (v) hereof.
- (iii) Where the provisions of paragraph(i) hereof are invoked, during the 10 weeks specified the employer shall use all endeavour to provide for the continuing employment of the teacher by:
 - (1) consulting with other employing bodies to procure suitable alternative employment for the teacher being retrenched;
 - (2) granting reasonable paid leave of absence to a teacher being retrenched pursuant to this clause, to attend interviews for alternative employment;
 - (3) communicating with the Tasmanian Independent Schools Teachers Association to ensure that, in determining the teacher to be made redundant, the criteria used were based on such matters as length of service, efficiency, attendance and experience.
- (iv) If alternative employment cannot be provided for, or gained by, the teacher at the end of the 10 weeks specified in paragraph (i) hereof, the employer may terminate the services of the teacher at that time. Such notice of termination shall be in writing and shall be accompanied by copies of all written evidence of endeavours to locate alternative employment.

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(v) Depending on the duration of service, a teacher whose employment is terminated by reason of redundancy shall be entitled to a compensatory payment of:

one year's service or less	nil
more than one year's service but less than two years	4 weeks
two year's service but less than three years	6 weeks
three year's service but less than four years	8 weeks
four year's service but less than five years	10 weeks
five year's service but less than six years	12 weeks
six year's service but less than seven years	14 weeks
seven year's service but less than eight years	16 weeks
eight year's service but less than nine years	18 weeks
nine year's service but less than ten years	20 weeks
ten year's service but less than eleven years	22 weeks
eleven year's service and over	24 weeks

PROVIDED that the maximum payment under this clause shall be 24 weeks' pay unless the teacher has been employed for more than 11 years when the redundancy package can be subject to negotiation between the employer and the teacher depending on the circumstances in each particular redundancy.

PROVIDED FURTHER that such termination payment, added to annual leave, annual leave loading, long service leave payment and all other entitlements, is to be paid in a lump sum on the last day of employment.

(vi) The teacher shall be entitled to at least a certificate of service on the date of termination. Such certificate of service shall contain at least the commencing and finishing dates of service, the reason for termination of employment and the duties performed whilst employed.

(vii) A teacher to whom, notice of termination due to redundancy has been given in accordance with paragraph (iv) hereof, will be released by the employer in order to commence alternative employment if written evidence is given of an absolute requirement to start the new employment prior to the expiration of 10 weeks notice provided in paragraph (iv) hereof.

If a teacher is released in accordance with this paragraph, the employer shall not be required to make compensatory termination payment described in paragraph (v) hereof.

(b) Part Time Teachers.

(i) Notwithstanding the conditions outlined in subclause (a) hereof, part-time teachers will be subject to the following additional conditions in regard to redundancy.

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- (ii) Redundancy conditions will not apply to a part-time teacher working less than or equal to .20 FTE or in cases where the reduction in contact time is less than or equal to 20%.
- (iii) Where the employer can substantiate with a detailed written statement that the volume of work in any section of the school has diminished to such an extent that a partial redundancy in excess of 20% of the teacher's contact time is necessary, the teacher may agree to accept the partial redundancy or may, within one month, elect to declare the whole position redundant in which case all the redundancy provisions expressed in this clause shall apply. Where a partial redundancy is accepted, pro rata compensatory payment will be made in accordance with the provisions expressed in paragraph (a)(v) hereof.
- (iv) A record shall be kept of the contract of employment worked by part time teachers, so that, in the event of redundancy, an average of the hours of their contract can be used to calculate their entitlement to a redundancy benefit. Notwithstanding that any periods of service where the FTE equivalent is .20 or less shall not be taken into consideration when calculating the redundancy entitlement.

PART III - SALARIES AND RELATED MATTERS

1. DEFINITIONS

'Experience' means, for the purpose of assessing progression, cumulative period(s) of employment as a teacher from the date first employed as a teacher.

PROVIDED that, the cumulative period(s) of employment as a teacher gained prior to the conferment of a teaching qualification from a recognised tertiary institute (as defined) shall be credited toward progression at the rate of 50% (eg. Two years unqualified service equals one year's progression)

'Graduate' means a teacher with a minimum of a Bachelor degree or equivalent who is a graduate of a recognised university or other recognised tertiary institute.

'Recognised Tertiary Institute' means an Australian College of Advanced Education, Australian Teachers' College, Australian Institute of Education, University and/or other training institute recognised by the Tertiary Education Commission.

'Total Salary' means the Teacher's Annual Salary plus any Administrative Allowance paid to the teacher.

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2. CLASSIFICATION DESCRIPTORS

(a) Qualifications

(i) 'Two-year Trained Teacher' means a teacher who:

- (1) has satisfactorily completed at least a two year course of teacher training at an approved teachers' college, university, college of advanced education or institute; or
- (2) holds qualifications deemed by the employer to be at least equivalent thereto.

(ii) 'Three-year trained teacher' means a teacher who:

- (1) has satisfactorily completed at least a three year course of teacher training at an approved teachers' college, university, college of advanced education or institute; or
- (2) is a graduate of an approved university, or
- (3) possesses the qualifications required for a two-year trained teacher and in addition has completed further subjects at an approved institution which are deemed by the employer to qualify such teacher for three year status; or
- (4) possesses qualifications deemed by the employer to be at least equivalent to either one of the above.

(iii) '**Four-year trained teacher**' means a teacher who:

- (1) has satisfactorily completed a four year course at an approved teacher training institution; or
- (2) is a graduate of an approved university, and in addition holds an approved Diploma of Education; or
- (3) possesses the qualifications deemed by the employer to be at least equivalent to either one of the above and shall include an honours graduate of an approved university.

(iv) '**Five-year trained teacher**' means a teacher who:

- (1) has completed a degree course and other post-graduate qualifications at approved institutions which together are the equivalent of five years of full time training; or
- (2) possesses qualifications deemed by the employer to be at least equivalent to those in subparagraph (1) hereof.

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(b) Entry Levels

Entry Levels are in accordance with the following:

- (i) An unqualified teacher, who has no formal teaching qualification, commences at Step 1 of the salary scale and, until qualified, will not advance beyond Step 3 of the salary scale, unless at the discretion of the school.
- (ii) A two year trained teacher's level will be determined by years of experience but will not advance beyond Step 8 of the salary scale until qualified at a higher level of teacher training.
- (iii) A three year trained teacher commences at Step 2 of the salary scale (non-graduate) or Step 3 of the salary scale (graduate) and will not advance beyond Step 10 of the salary scale until qualified at a higher level of teacher training.
- (iv) A four year trained teacher commences at Step 5 of the salary scale.
- (v) A five year trained teacher commences at Step 7 of the salary scale.

PROVIDED that, where a teacher enhances their qualification level, they shall have their salary adjusted to take into account the new entry level appropriate to the qualification (as defined) and their current duration of experience. Progression, as a result of new qualifications, shall be from the first pay period on or after the qualification has been completed.

3. SALARIES

(a) Teachers (Full time)

The minimum salaries payable for the performance of teaching duties shall be:

Salary Scale	Base Rate	Safety Net Adjustment	Annual Salary
	\$	\$	\$
Step 1	24541	10488	35029
Step 2	25688	10488	36176
Step 3	26853	10488	37341
Step 4	28017	10488	38505
Step 5	29168	10488	39656
Step 6	30312	10488	40800

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Step 7	31522	10488	42010
Step 8	32741	10384	43125
Step 9	33946	10384	44330
Step 10	35015	10280	45295
Step 11	36575	10280	46855
Step 12	38950	10280	49230

(b) Senior Classroom Teacher

The minimum annual salary payable for the performance of work under this classification shall be:

Annual Salary for Step 12 of the salary scale + 4% = \$51,199.00

(c) Administrative Allowance

Where documented administrative responsibilities beyond the normal teacher duties (as defined) are assigned to a teacher or Senior Classroom Teacher in the areas of pastoral care or curriculum or sport or extra curricular activities, for a period exceeding 10 consecutive working days, they shall receive an allowance in addition to their salary which shall be not less than two percent of Annual Salary Level 12 of the salary scale.

(d) Teachers (Part-time)

- (i) A part-time teacher including temporary part-time teachers, shall be paid at the rate applicable to a full time teacher with the corresponding classification, but in the proportion to which the number of hours of 'contact time' worked relate to a full-time teaching load.
- (ii) The duties to be performed and lessons to be taken by a part-time teacher shall be set out in writing by the employer upon the engagement of the teacher and at the beginning of each teaching year or at any other time when a variation occurs.
- (iii) A part-time teacher shall not be required to attend school on any day on which they are not required for teaching, preparation/marking or to attend professional development activities and similar, except to attend occasional school activities as reasonably required. These requirements shall be included as part of a part time teacher's proportionate non-contact duties.
- (iv) A part-time teacher shall receive a minimum payment of two hours each time they attend at their place of employment unless negotiated otherwise by mutual agreement between the employer and the teacher.

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(e) Progression

Advancement to the next step shall take place on the anniversary of the teacher's first teaching appointment, or in the case of non-continuous service, after the completion of the equivalent of a school year.

PROVIDED that the teacher's duties have been carried out satisfactorily.

(f) Relief Teachers

- (i) A relief teacher shall be paid at a daily rate for days actually worked in accordance with the following formula:

$$\text{Daily rate} = \text{pay scale salary rate} / 200$$

where the appropriate salary is determined in accordance with experience and qualifications as for full time teachers.

- (ii) Supervisory Duties (Relief Teachers only)

- (1) When employed to supervise classes, which require no preparation or marking, relief teachers shall be paid at 82.5% of the rate specified in paragraph (i) hereof.
- (2) Relief teachers may be required to undertake duties such as playground duty if it is part of the normal duties of the teacher being replaced.
- (3) When calculating the daily rate for supervisory duty, the salary level used shall not exceed that of Senior Classroom Teacher.

PROVIDED that a relief teacher shall for each engagement be employed for a minimum of one half-day (1/400 pay scale salary rate in paragraph (i) hereof).

(g) Daily Rate

With the exception of Relief Teachers, and only where appropriate, the daily rate of pay for a teacher shall be:

$$\frac{\text{Teacher's Annual Salary Rate}}{260}$$

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4. PAYMENT OF SALARIES

- (a) Salaries shall be paid during working hours, as agreed at each workplace, either on a fortnightly or monthly basis.
- (b) Where payment is made fortnightly, payment shall be made by, or on, the last day of the fortnightly pay period.
- (c) Where payment is made monthly, payment shall be made no later than the 25th day of each calendar month.
- (d) Payment of salary shall be by direct bank deposit to the institution and account of the teacher's choice or some other method agreed between the employer and the teachers by the normal consultative mechanism that applies within the school.
- (e) The employer shall provide each teacher particulars in writing setting out details of the salary to which the teacher is entitled. The statement shall include at least the following information:
- Date of payment.
 - Period covered by payment.
 - Total amount of salary.
 - Any amount paid as an allowance.
 - Any amount paid as annual leave, personal leave, workers' compensation, back pay or any other payment not usually included in the teacher's salary, which shall contain sufficient detail so as to allow each teacher to be able to determine how each amount has been determined.
 - Teacher's classification level.
 - The amount deducted for taxation purposes.
 - The amount of any other deduction listed individually with sufficient detail to allow the teacher to identify the deductions separately.
 - The net amount of salary.
 - Or any other information determined by consultation between the employer and teachers.
- (f) The employer may deduct from monies due to a teacher such amount as is authorised by the teacher in writing for the lawful purposes specified in the authority.

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5. PART-TIME TEACHERS

- (a) A part-time teacher is entitled to be paid pro-rata of the rate that the teacher would be entitled to receive as a full-time teacher.
- (b) Where a part-time teacher is employed at less than 0.2 FTE the pro-rata annual salary is calculated using the following formula:

$$\frac{\text{Hours of contact time this day}}{\text{Hours of F/T teacher's daily contact time}} * \frac{\text{Annual Salary Level}}{200}$$

This amount must be calculated for each day worked in the pay period and, further, the individual daily amounts are to be tallied at the completion of the pay period to determine the teachers gross pay for the period.

PROVIDED that the teacher's salary is adjusted in accordance with the provisions outlined in Part III – Salaries and Related Matters, Clause 3 Salaries (d)(iv) where applicable.

6. SUPERANNUATION

The subject of superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties in this award.

7. MINIMUM WAGE

- (a) Minimum Wage
 - No employee shall be paid less than the minimum wage.
- (b) Amount of Adult Minimum Wage
 - (i) The minimum wage for full-time adult employees is \$527.10 per week.
 - (ii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. **PROVIDED** that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.
- (c) How the Minimum Wage Applies to Juniors
 - (i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.

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- (ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i).

(d) Application of Minimum Wage to Certain Employees

Due to existing applicable award wage rates being greater than the relevant proportionate minimum wage, this clause will not apply to employees falling within the scope of the National Training Wage (Tasmanian Private Sector) Award and Trainees undertaking an apprenticeship.

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during personal leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2007 State Wage Case Decision (T.12940 of 2007) and all previous safety net and state wage case adjustments.

PART IV- ALLOWANCES

1. PROTECTIVE CLOTHING

Where protective clothing is deemed necessary by the employer for the performance of duties, such clothing shall be either provided by the employer or cleaning costs incurred by the teacher shall be reimbursed.

PART V - HOURS OF WORK

1. DEFINITIONS

'**Show Day**' means the local show day on a teacher's ordinary working day, other than Saturday or Sunday, in the city, town or district in which the teacher is employed or such other day which, in the absence of such a local show day, is agreed on by the teacher and employer.

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2. HOURS OF WORK

(a) Spread of Hours

The spread of hours shall be between 8am and 4pm each school day for contact time. Teachers shall be in attendance for 35 hours each week excluding the lunch-break.

(b) Contact Time

A full time primary school teacher shall have a minimum of two clear hours per fortnight free for preparation and marking. Any full time teacher teaching post primary classes shall not be time tabled for contact time (as defined), in the course of a fortnight, for more than 40 hours of the normal time tabled lesson time, unless mutually agreed between the employer and teacher.

(c) Hours of Contact Time

Each school will determine the hours of full-time contact time using the award Conditions of Employment Part II – Employment Relationship and Associated Matters, Clause 3 - Conditions of Employment and provisions of the Part VII - Consultation and Dispute Resolution, Clause 1 - Enterprise Flexibility.

3. HOLIDAYS WITH PAY

(a) No teacher, except those with boarding house duties, will be required to attend school or perform any school duties whatsoever on a holiday with pay.

(b) All teachers, other than relief teachers (as defined) and residential teachers (as defined) shall be entitled to the following, holidays with pay without deduction from their wages: New Year's Day, Australia Day, Hobart Regatta Day (South of Oatlands) Labour Day, Good Friday, Easter Monday, ANZAC Day, Queen's Birthday, Show Day (as defined). Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

(c) Where teachers are appointed to a position for an agreed period which is less than a full year, payment of holidays with pay is subject to the holiday with pay falling within the agreed period of employment and on a day on which, if it were not for such holiday, the teacher would have been at work.

(d) In the absence of a mutually agreed provision in the contract of employment, a teacher required to do Boarding House duties on a holiday with pay shall be paid an additional allowance calculated as a pro rata of the Daily Rate as specified in Part III – Salaries and Related Matters, subclause 2(a) of this award.

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4. EXTRA-CURRICULAR ACTIVITIES

The arrangement whereby teachers are available for extra-curricular activities and/or co-curricular activities of the school but outside normal school hours will continue without the Association introducing in any claims for additional remuneration or conditions. In return the employers will not extend such requirements beyond the present practices unless mutually agreed through the consultative procedures established in the school. This latter process will also determine the initial practice for a newly established school. This will be interpreted by both parties as applying to the incidence of such activities across the whole of a school and not in respect of individual teachers.

PART VI - LEAVE AND HOLIDAYS WITH PAY

1. ANNUAL LEAVE AND SCHOOL HOLIDAY LEAVE

- (a) A teacher who completes a full year's service with one employer in any one calendar year shall be entitled to paid school holidays to coincide with the school holiday periods prescribed at the school. Teachers are entitled to at least 57 working days school holiday leave which are deemed to include annual leave (i.e. 20 working days per annum for a full-time teacher.)
- (b) Notwithstanding subclauses (c) and (d) hereof, teachers who are entitled to school holiday leave, and who complete less than a full year's service with one employer in a calendar year, shall be entitled to pro-rata paid school holiday leave calculated at the rate of 1.5 days for each completed week of teaching (i.e. cumulative term days divided by five) during the period of employment. For the purposes of this subclause the calculation of cumulative term days shall include any required professional development days but exclude holidays with pay during the period of term time in question. The teacher shall be entitled to pro rata annual leave.
- (c) An employer may reduce a teacher's school holiday leave entitlement where a teacher has taken unpaid leave in excess of five working days in a calendar year. The school holiday leave entitlement shall be reduced at the rate of 1.5 days for each cumulative week of leave without pay (e.g. five working days).
- (d) Notwithstanding subclauses (a) and (b) hereof an employer is entitled to recover any monies owing to the employing authority as a result of prepayment of school holiday leave where the school holiday entitlement at the time of cessation of employment is not sufficient to cover these amounts.
- (e) This clause does not apply to relief teachers OR part-time teachers working less than 0.2 FTE.

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- (f) Leave loading entitlement shall be in accordance with:
- (i) A teacher shall be entitled to leave loading when they have completed one full year's service or any subsequent full year of service.
 - (ii) The leave loading shall be paid to the teacher in the last pay of the year.
 - (iii) The leave loading shall be an amount equal to 17.5% of the salary received by the teacher for a four-week period.
 - (iv) Notwithstanding paragraph (iii) hereof, the maximum amount paid to the teacher as annual leave loading shall not exceed 17.5% of the salary received by the teacher employed on the Salary Scale Step 12 for a four-week period. The Salary Scale Step 12 salary is determined by reference to Part III – Salaries and Related Matters, Clause 3 – Salaries, subclause (a)(i) of this award.

2. BEREAVEMENT LEAVE

- (a) Leave of absence up to three days on full pay may be granted to any teacher:
- (i) On account of the death or serious illness of their spouse, child, step-child, father, mother, brother, sister, grandfather or grandmother, or their spouse's child, father, mother, sister, brother, grandfather or grandmother, or
 - (ii) In any other case where, in the opinion of the employer, special circumstances exist.
 - (iii) Any leave granted in excess of three days will be deducted from accrued personal leave.

PROVIDED that proof of death in the form of a death notice or other written evidence, and in the case of illness of written evidence, shall be furnished by the teacher to the satisfaction of the employer.

PROVIDED FURTHER that this clause shall not apply when the period of entitlement to leave under it coincides with any other period of entitlement to leave.

- (b) Unpaid Bereavement Leave

An employee may take unpaid bereavement leave by agreement with the employer.

- (c) Casual Employees

- (i) Subject to the evidentiary requirements in subclause (a), casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.

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

3. EXAMINATION LEAVE

The employer will grant at least one half day's leave with pay per examination to any teacher undertaking an examination related to an employer approved course of study.

4. LEAVE WITHOUT PAY

- (a) While a teacher has the right to apply for leave without pay, the granting of such leave is at the discretion of the employer.
- (b) If a teacher is granted leave without pay, they shall be entitled to a position commensurate with qualifications and experience on their return.

5. PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

- (a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
 - (1) any period of leave taken in accordance with this clause;

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- (2) any period of part-time employment worked in accordance with this clause; or
 - (3) any period of leave or absence authorised by the employer or by the award.
 - (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.
 - (iv) **'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
 - (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
 - (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
 - (vii) **'Spouse'** includes a de facto or a former spouse.
- (b) Entitlement
- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
 - (ii) Subject to subclause (c)(vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
 - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
 - (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.
- (c) Maternity Leave
- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

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- (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
 - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
- (ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
- (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
- (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (vi) Special Maternity Leave
- (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
 - (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.
 - (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternity leave as a registered medical, practitioner certifies as necessary before her return to work. The aggregate of paid personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

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(vii) Transfer to a safe job

- (1) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

(d) Paternity Leave

- (i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:
 - (1) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and
 - (2) written notification of the proposed dates on which the period of paternity leave will start and finish and
 - (3) a statutory declaration stating:
 - (A) that period of paternity leave will be taken to become the primary care-giver of a child;
 - (B) particulars of any period of maternity leave sought or taken by the mother, and
 - (C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
 - (4) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

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(e) Adoption leave

- (i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and
 - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- (v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.
- (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental Leave and Other Entitlements

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks.

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(g) Part time work

(i) Entitlement

With the agreement of the employer:

- (1) An employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (2) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(ii) Effect of Part-time Employment on Continuous Service

Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.

(iii) Pro Rata Entitlements

Subject to the provisions of this subclause and the matters agreed to in accordance with this subclause, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

(iv) Transitional Arrangements - Annual Leave

- (1) An employee working part-time under this subclause shall be entitled to any leave accrued in respect of a period of full-time employment, as if the employee was still working full-time, in the position held prior to taking leave.
- (2) (A) A full-time employee shall be entitled to annual leave accrued in respect of a period of part-time employment under this subclause, as if the employee was working part-time in the position held, immediately before resuming full-time work.

(B) **PROVIDED** that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

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(v) Transitional Arrangements - Personal Leave

An employee working part-time under this subclause shall have personal leave entitlements which have accrued under this award (including any entitlements accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

(vi) Part-time Work Agreement

- (1) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:
 - (A) that the employee may work part-time;
 - (B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (C) upon the classification applying to the work to be performed; and
 - (D) upon the period of part-time employment.
- (2) The terms of this agreement may be varied by consent.
- (3) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (4) The terms of this agreement shall apply to the part-time employment.

(vii) Termination of Employment

- (1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

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(viii) Extension of Hours of Work

An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with paragraph (vi).

(ix) Nature of Part-time Work

The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

(x) Inconsistent Award Provisions

An employee may work part-time under this clause notwithstanding any other provisions of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- (1) limiting the number of employees who may work part-time;
- (2) establishing quotas as to the ratio of part-time to full-time employees;
- (3) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (4) requiring consultation with, consent of or monitoring by a union;

and such provisions do not apply to part-time work under this clause.

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service.

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(v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(i) Return to Former Position after a Period of Parental Leave or Part Time Work

Unless otherwise agreed between employee and employer, and consistent with the provisions of this clause

(i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.

(ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c)(vii) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.

(iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, **PROVIDED** that the employer may require notice of not more than four weeks.

(iv) An employee shall be entitled to extend the period of parental leave on one occasion, **PROVIDED** that the employer may require notice of not more than four weeks.

By mutual agreement between the employee and the employer, the period of leave may be further extended.

(j) Redundancy

(i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.

(ii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(k) Right To Request Variation To Parental Leave Provision

(i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:

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- (1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;
- (2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
- (3) to return from a period of parental leave on a part-time basis until the child reaches school age,

to assist the employee in reconciling work and parental responsibilities.

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

(l) **Communication During Parental Leave**

- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
 - (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (l)(i).

6. PERSONAL LEAVE

The provisions of this clause apply to full-time and regular part-time teachers (on a pro rata basis) but do not apply to relief or casual teachers. The entitlements of relief or casual teacher are set out in subclause (h) – Relief or Casual Teachers – Caring Responsibilities.

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(a) Definitions

The term '**immediate family**' includes:

- (i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- (ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(b) Amount of Paid Personal Leave

- (i) Paid personal leave is available to an employee, when they are absent:
 - (1) due to personal illness or injury; or
 - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.
- (ii) they shall not be entitled to such leave of absence for any periods in respect of which they are entitled to workers' compensation;
- (iii) in the first year of employment with an employer, they shall be entitled to 20 school days personal leave and in every year thereafter they shall be entitled to 10 school days personal leave.
- (iv) Up to 10 school days personal leave shall accumulate from year to year so that any balance of the period specified in paragraph (b)(iii) hereof, which has in any year not been allowed to a teacher by an employer as paid personal leave shall be allowed to a teacher by an employer in a subsequent year without diminution of the personal leave prescribed in respect of that year.
- (v) An employer shall not be required to make any payment in respect of accumulated personal leave credits to a teacher who is discharged or leaves their employment or for any time a teacher is absent from work without producing satisfactory evidence of personal illness.
- (vi) In cases where the leave of a teacher has been exhausted and the employer considers that extenuating circumstances exist, it may, in its discretion, grant further unpaid or paid leave.
- (vii) A part-time teacher, except a part-time teacher teaching less than 0.2 FTE, shall be entitled to personal leave credits in the same proportion to the number of personal leave days to which a full-time teacher is entitled.

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(c) Personal Leave for Personal Injury or Sickness

An employee is entitled to use the full amount of their personal leave entitlement including accrued leave for the purposes of personal illness or injury, subject to the conditions set out in this clause.

(d) Personal Leave to Care for an Immediate Family or Household Member

- (i) An employee is entitled to use up to 10 days personal leave, including accrued leave, each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

Leave may be taken for part of a single day.

- (ii) By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in paragraph (d)(i), beyond the limit set out in paragraph (d)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

(e) Employee Must Give Notice

An employee shall, prior to the commencement of such absence, inform the employer of their inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence.

(f) Evidence Supporting Claim

- (i) An employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that they were unable, on account of such illness or injury, to attend for work on the day or days for which the personal leave is claimed.
- (ii) When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

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(g) Unpaid Personal Leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of subclauses (e) and (f) are met.

(h) Relief or Casual Teachers – Caring Responsibilities

Subject to the evidentiary and notice requirements in subclauses (e) and (f) casual employees are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

PART VII - CONSULTATION AND DISPUTE RESOLUTION

1. ENTERPRISE FLEXIBILITY

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an enterprise agreement may be entered into between the employer and the teacher(s) engaged by that employer.
- (b) An agreement shall be subject to the following requirements:
- (i) The majority of teachers affected by the change shall genuinely agree to the change.
 - (ii) The agreement taken as a whole shall not confer a lesser benefit to any teacher than is available under the award.
- (c) An enterprise agreement shall be signed by the parties, being the employer and the teacher(s) (or their delegate), and contain the following:

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- (i) The terms of the agreement.
 - (ii) The parties covered by the agreement.
 - (iii) The classes of teachers covered by the agreement.
 - (iv) The means by which a party may retire from the agreement.
 - (v) The means by which the agreement may be varied.
 - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

2. STRUCTURAL EFFICIENCY

- (a) The parties to this award are committed to co-operating positively to increase the efficiency and productivity of the industry covered by this award and to enhance the career opportunities and job security of teachers subject to the award.
- (b) Consistent with the objectives of subclause (c) hereof, employer(s) (or their delegates), and teacher(s) (or their delegates), shall establish, at each workplace, consultative mechanisms and procedures appropriate to the size, structure and needs of the workplace.

Measures raised by the employer and/or teacher(s) for consideration shall be processed through the consultative mechanism and procedures.

- (c) Without limiting the rights of either an employer and/or teacher(s) to arbitration, any other measure designed to increase flexibility at the workplace and sought by any party shall be subject to the following requirements:
- (i) the majority of teachers affected by the change shall genuinely agree to the change.
 - (ii) the agreement taken as a whole shall not confer a lesser benefit to any teacher than is available under the award.

3. DISPUTE SETTLING PROCEDURE

- (a) The employers and teachers party to this award undertake to take all reasonable steps to ensure that the representatives of the employers and teachers follow the procedure as set out herein, with the intention that all disputes shall be promptly resolved by conciliation in good faith.

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(b) Matters Likely to Become Industrial Issues

The employer and the Association shall respectively notify each other as soon as possible of any industrial matter which, in the opinion of the party notifying, might give rise to an industrial dispute.

(c) Disputes in an Individual School

In the event of a dispute arising in an individual school, the parties shall immediately confer.

(d) Lack of Agreement

If no agreement is reached at the school, an official of the Association shall discuss the matter in dispute with a representative of the employer.

(e) Final Reference

Should the foregoing steps fail to resolve the issue within a reasonable time, the matter(s) in dispute shall be referred by either party to the Tasmanian Industrial Commission for arbitration, the decision of which will bind all parties.

(f) Continuation of Work

Without prejudice to either party and except where a bona fide safety issue is involved, until the grievance is determined, work shall continue in accordance with the award and custom and practice while matters in dispute between them are being processed in accordance with this clause.

4. DUE PROCESS

Where the employer is dissatisfied with the performance/conduct of an employee, the employee shall be entitled to procedural fairness and the employer shall comply with the International Labour Conference, Convention 158, Convention Concerning Termination of Employment at the Initiative of the Employer.

James P McAlpine
COMMISSIONER

30 July 2007