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**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s23 application for award or variation of award

**Tasmanian Trades and Labor Council**

(T11548 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11564 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11566 of 2004)

Private and Public Sector Awards

**FULL BENCH:**

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

**Wage Rates – State Wage Case July 2004 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission in Print PR002004 – Safety Net Review – Award rates to be increased by \$19 per week – Wage related allowances increased by 3.5% - Meal allowances increased to \$12.70 – Supported Wage increased to \$61 per week – Operative date ffpp 1 August 2004 – State Minimum Wage determined at \$467.40 – s.35(1)(b)**

**INDEPENDENT SCHOOLS (TEACHERS) TASMANIA AWARD**

**No. 1 of 2004  
(Consolidated)**

PART I – CLAUSES 4 AND 6 ARE VARIED; PART III – CLAUSES 3 AND 7 ARE VARIED,  
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 2004.

## **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.

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- (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.

- (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. SUPERSESION**

This award incorporates and supersedes the Independent Schools (Teachers) Tasmania Award No. 2 of 2003 (Consolidated) and No. 3 of 2003.

## **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:

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- (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.

**'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 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.

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**'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 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.

**'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 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.

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- (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.

- (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.

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- (2) Annual leave and sick 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 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 Clause 4 Part-time Teachers sub-clause (b) and will not be entitled to annual leave, holiday leave, sick leave, public holiday leave, paternity leave, carers leave etc'.
- (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 - 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.



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(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.
- (iii) The provisions of this award apply to a replacement teacher, including pro rata sick 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 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;

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- (4) professional development activities.
- (iv) The application procedure and commencement date shall be determined by the consultative mechanisms and procedures established at the school.

#### **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	7384	31925
Step 2	25688	7384	33072
Step 3	26853	7384	34237
Step 4	28017	7384	35401
Step 5	29168	7384	36552
Step 6	30312	7384	37696
Step 7	31522	7384	38906

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Step 8	32741	7280	40021
Step 9	33946	7280	41226
Step 10	35015	7176	42191
Step 11	36575	7176	43751
Step 12	38950	7176	46126

(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% = \$47,971.04

(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:

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

#### **4. PAYMENT OF SALARIES**

(a) Salaries shall be paid during working hours, as agreed at each workplace, either on a fortnightly or monthly basis.

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- (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, sick 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.

## **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.

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- (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 teachers salary is adjusted in accordance with the provisions outlined in Part III 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 \$467.40 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.
- (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).

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(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 sick 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 2004 State Wage Case Decision (T.11548 of 2004) 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.

### **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.

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(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 Clause 3 - Conditions of Employment and provisions of the Part VII 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 subclause 2(a) of this award.

### **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.

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## **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.
- (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.

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## **2. BEREAVEMENT LEAVE**

Leave of absence up to three days on full pay may be granted to any teacher:

- (a) 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
- (b) In any other case where, in the opinion of the employer, special circumstances exist.
- (c) Any leave granted in excess of three days will be deducted from accrued sick 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.

## **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

- (i) For the purpose of this clause:

**'Continuous service'** means service under an unbroken contract of employment and includes:

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- (1) any period of leave taken in accordance with this clause;
- (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.

**'Employee'** includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

**'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;

**'Former position'** means the position held by a male or female employee immediately before proceeding on leave or part-time employment under this clause whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he/she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

**'Male employee'** means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes;

**'Maternity leave'** means leave of the type provided for in Subclause (b) - Maternity Leave (and includes special maternity leave).

**'Paternity leave'** means leave of the type provided for in Subclause (c) - Paternity Leave.

**'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.

**'Spouse'** includes a de facto or a former spouse.

- (ii) For the purposes of subclauses (b) and (c);

**'Child'** means a child of the employee under the age of one year.

- (iii) For the purposes of subclause (d)

**'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 stepchild of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more;



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**'Relative adoption'** occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

(b) Maternity Leave

(i) Nature of Leave

Maternity leave is unpaid leave.

(ii) Eligibility for Maternity Leave

- (1) An employee who becomes pregnant, upon production to her employer of the certificate required by paragraph (iii) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (2) Subject to paragraphs (v) and (viii) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (3) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(iii) Certificate

At the time specified in paragraph (iv) hereof the employee must produce to her employer:

- (1) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (2) 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.

(iv) Notice Requirements

- (1) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subparagraph (iii)(1).

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- (2) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in subparagraph (iii)(2).
- (3) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.
- (4) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subparagraph (2) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(v) Transfer to a Safe Job

Where 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 shall, 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.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of paragraphs (ix), (x), (xi) and (xii) hereof.

(vi) Variation of Period of Maternity Leave

- (1) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under paragraph (ii) hereof:
  - (A) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;
  - (B) the period may be further lengthened by agreement between the employer and the employee.
- (2) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

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(vii) Cancellation of Maternity Leave

- (1) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (2) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(viii) Special Maternity Leave and Sick 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:
  - (A) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
  - (B) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (2) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under paragraph (ii) hereof.
- (3) For the purposes of paragraphs (ix), (xi) and (xii) hereof, maternity leave shall include special maternity leave.
- (4) An employee returning to work after the completion of a period of leave taken pursuant to this paragraph shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (v) hereof, to the position she held immediately before such transfer.

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

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(ix) Maternity Leave and Other Leave Entitlements

- (1) Provided the aggregate of any leave including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (ii) hereof, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.
- (2) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(x) Effect of Maternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(xi) Termination of Employment

- (1) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (2) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(xii) Return to Work After Maternity Leave

- (1) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (2) An employee, upon returning to work after maternity leave or the expiration of the notice required by subparagraph (1) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (v) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(xiii) Replacement Employees

- (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (2) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (4) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(c) Paternity Leave

(i) Nature of Leave

Paternity leave is unpaid leave.

(ii) Eligibility for Paternity Leave

A male employee, upon production to his employer of the certificate required by paragraph (iii) - Certification shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (1) an unbroken period of up to one week at the time of confinement of his spouse;
- (2) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

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(iii) Certification

At the time specified in paragraph (iv) the employee must produce to his employer:

- (1) 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 of which the birth took place;
- (2) in relation to any period to be taken under subparagraph (ii)(2) hereof, a statutory declaration stating:
  - (A) he will take that period of paternity leave to become the primary care-giver of the child;
  - (B) particulars of any period of maternity leave sought or taken by his spouse; and
  - (C) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(iv) Notice Requirements

- (1) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in paragraph (iii) hereof.
- (2) The employee shall not be in breach of this paragraph as a consequence of failure to give the notice required in subparagraph (1) hereof if such failure is due to:
  - (A) the birth occurring earlier than the expected date; or
  - (B) the death of the mother or the child; or
  - (C) other compelling circumstances.
- (3) The employee shall immediately notify his employer of any change in the information provided pursuant to paragraph (iii) hereof.

(v) Variation of Period of Paternity Leave

- (1) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under paragraph (ii) hereof:

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- (A) the period of paternity leave provided by subparagraph (ii)(2) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
- (B) the period may be further lengthened by agreement between the employer and the employee.

- (2) The period of paternity leave taken under subparagraph (ii)(2) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(vi) Cancellation of Paternity Leave

Paternity leave, applied for under subparagraph (ii)(2) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(vii) Paternity Leave and Other Leave Entitlements

- (1) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (ii) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.
- (2) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

(viii) Effect of Paternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(ix) Termination of Employment

- (1) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.
- (2) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

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(x) Return to Work after Paternity Leave

- (1) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subparagraph (ii)(2) hereof.
- (2) An employee, upon returning to work after paternity leave or the expiration of the notice required by subparagraph (1) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this subclause to the position he held immediately before commencing such part-time work.

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

(xi) Replacement Employees

- (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (2) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (4) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

(d) Adoption Leave

(i) Nature of Leave

Adoption leave is unpaid leave.

(ii) Eligibility

An employee, upon production to the employer of the documentation required by paragraph (iii) hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:



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- (1) an unbroken period of up to three weeks at the time of the placement of the child;
- (2) an unbroken period of up to 52 weeks from the time of the child's placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:
  - (A) any period of leave taken pursuant to subparagraph (1) hereof; and
  - (B) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he/she proceeds upon such leave in either case.

(iii) Certification

Before taking adoption leave the employee must produce to the employer:

- (1)
  - (A) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
  - (B) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (2) In relation to any period to be taken under subparagraph (ii)(2) hereof, a statutory declaration stating:
  - (A) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (B) particulars of any period of adoption leave sought or taken by the employee's spouse; and
  - (C) for the period of adoption leave the employee will not engage in any conduct inconsistent with his/her contract of employment.

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(iv) Notice Requirements

- (1) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (2) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he/she proceeds upon such leave.
- (3) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under subparagraph (ii)(1) hereof.
- (4) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subparagraph (ii)(2) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (5) An employee shall not be in breach of this subclause as a consequence of failure to give the stipulated period of notice in accordance with subparagraphs (3) and (4) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(v) Variation of Period of Adoption Leave

- (1) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subparagraph (ii) hereof:
  - (A) the period of leave taken under subparagraph (ii)(2) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
  - (B) the period may be further lengthened by agreement between the employer and employee.

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- (2) The period of adoption leave taken under subparagraph (ii)(2) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(vi) Cancellation of Adoption Leave

- (1) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (2) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(vii) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(viii) Adoption Leave and Other Entitlements

- (1) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (ii) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he/she is entitled.
- (2) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(ix) Effect of Adoption Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(x) Termination of Employment

- (1) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.

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- (2) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(xi) Return to Work After Adoption Leave

- (1) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subparagraph (ii)(2) hereof.
- (2) An employee, upon returning to work after adoption leave, shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this subclause the position held immediately before commencing such part-time work.

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 shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

(xii) Replacement Employees

- (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (2) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (4) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

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(e) Part time work

(i) Entitlement

With the agreement of the employer:

- (1) A male 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.
- (3) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- (4) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(ii) Return to Former Position

- (1) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his/her former position.
- (2) Nothing in subparagraph (1) hereof shall prevent the employer from permitting the employee to return to his/her former position after a second or subsequent period of part-time employment.

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

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

(iv) Pro Rata Entitlements

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

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(v) Transitional Arrangements - Annual Leave

- (1) An employee working part-time under this subclause shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this subclause.
- (2) (A) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this subclause, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee 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.

(vi) Transitional Arrangements - Sick Leave

An employee working part-time under this subclause shall have sick 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.

(vii) 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.

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(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.

(viii) Termination of Employment

(1) The employment of a part-time employee under this subclause, 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 subclause.

(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.

(ix) 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 (vii).

(x) Nature of Part-time Work

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

(xi) Inconsistent Award Provisions

An employee may work part-time under this subclause 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

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- (4) requiring consultation with, consent of or monitoring by a union;
- and such provisions do not apply to part-time work under this subclause.

(xii) Replacement Employees

- (1) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this subclause.
- (2) A replacement employee may be employed part-time. Subject to this paragraph, paragraphs (iv), (v), (vi), (vii), (viii) and (x) of this subclause apply to the part-time employment of replacement employees.
- (3) 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.
- (4) Unbroken service as a replacement employee shall be treated as continuous service as defined in subclause (a)(i).
- (5) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

## **6. SICK LEAVE**

- (a) A teacher, other than one engaged as a relief teacher, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
  - (i) they shall not be entitled to such leave of absence for any periods in respect of which they are entitled to workers' compensation;
  - (ii) they 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;
  - (iii) they 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 sick leave is claimed;
  - (iv) in the first year of employment with an employer, they shall be entitled to 20 school days sick leave and in every year thereafter they shall be entitled to 10 school days sick leave.



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- (b) Up to 10 school days sick leave shall accumulate from year to year so that any balance of the period specified in paragraph (a)(iv) hereof, which has in any year not been allowed to a teacher by an employer as paid sick leave shall be allowed to a teacher by an employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick 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.
- (d) 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.
- (e) A part-time teacher, except a part-time teacher teaching less than 0.2 FTE, shall be entitled to sick leave credits in the same proportion to the number of sick days to which a full-time teacher is entitled.

## **7. CARER'S LEAVE**

### (a) Paid Carer's Leave

- (i) In accordance with this paragraph a teacher is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for in this subclause for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

The minimum deduction for carer's leave will be one full day.

- (ii) If required the teacher shall establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:
  - (1) a member of the teacher's immediate family, or
  - (2) a member of the teacher's household, where

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(3) the term **'immediate family'** includes:

spouse (including a former spouse, or defacto spouse and a former de facto spouse) of the teacher. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and

(4) child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the teacher or spouse of the teacher.

(iv) Where practicable the teacher shall give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the teacher, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the teacher shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(v) In normal circumstances a teacher shall not take carer's leave under this clause where another person has taken leave to care for the same person.

(b) Unpaid Carer's Leave

A teacher may elect, with the consent of the employer, to take unpaid leave (to a maximum of five days per annum) for the purpose of providing care to an immediate family or household member who is ill.

(c) Dispute Settling Procedure

Part VII - Clause 3 - Dispute Settling Procedure applies to a dispute about the effect or operation of this clause.

## **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.

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- (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:
  - (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.

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### **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.

(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.

Tim Abey  
**COMMISSIONER**

30 August 2004