

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of award pursuant to Item 51 of Part 2 of Schedule 5 of the *Workplace Relations and Other Legislation Amendment Act 1997*

(Case No. 00174 of 1999)

BUSINESS COLLEGES (VICTORIA) AWARD 1995

(ODN C.No. 31660 OF 1994)

[Print M7143 [B0696]]

Various Employees

Educational Services

COMMISSIONER LEWIN

MELBOURNE, 9 AUGUST 1999

Award Simplification

ORDER

A. Further to the decision of the Commission issued on 9 August 1999 [Print R8035] the above award is varied as follows:

By deleting all clauses and schedules and inserting the following:

PART 1 - APPLICATION AND OPERATION OF AWARD

1. AWARD TITLE

This award is titled the Business Colleges (Victoria) Award 1999.

2. ARRANGEMENT

This award is arranged as follows:

Part 1 - Application and Operation of Award

1. Award Title
2. Arrangement
3. Commencement Date of Award and Period of Operation
4. Coverage of Award
5. Parties Bound
6. Anti-discrimination
7. Definitions

Part 2 - Award Flexibility

8. Enterprise Flexibility

Part 3 - Communication and Grievance Resolution

9. Grievance and Dispute Resolution Procedures

Part 4.- Termination and Redundancy

10. Redundancy
11. Termination

Part 5 - Classification, Remuneration, Hours of Work and Related Matters

12. Superannuation
13. Lunch Break

Part 6 - Leave of Absence and Public Holidays

14. Annual Leave and Leave Loading
15. Public Holidays
16. Personal Leave
17. Parental Leave
18. Examination and Qualification Conferral Leave

Schedule 1 - Respondents

3. COMMENCEMENT DATE OF AWARD AND PERIOD OF OPERATION

This award operates on and from 5 August 1999 and will remain in force for a period of six months.

4. COVERAGE OF AWARD

This award covers employees of Business Colleges, (however styled), in the State of Victoria.

5. PARTIES BOUND

5.1 Who is bound by this award

This award is binding upon:

5.1.1 the employers listed in Schedule 1 of this award, in respect of persons employed in Business Colleges who are eligible to be members of the Independent Education Union of Australia, whether or not those persons are members of the union, and

5.1.2 the Independent Education Union of Australia.

5.2 Transmission of Business

5.2.1 Where a business is before or after the date of this award, transmitted from an employer (in this subclause called **the transmittor**) to another employer (in this subclause called **the transmittee**) and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an

employee of the transmittee, then:

5.2.1(a) the continuity of the employment of the employee will be deemed not to have been broken by reason of such transmission; and

5.2.1(b) the period of employment which the employee has had with the transmitter or any prior transmitter will be deemed to be service of the employee with the transmittee.

5.2.2 In this subclause business includes trade, process, business or occupation and includes part of any such business and transmission includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning.

6. ANTI-DISCRIMINATION

6.1 It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibility, pregnancy, religion, political opinion, natural extraction or social origin.

6.2 Accordingly, in fulfilling their obligations under the dispute avoidance and settling clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.

6.3 Nothing in this clause is taken to affect:

6.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;

6.3.2 junior rates of pay, until 22 June 2000 or later date determined by the Commission in accordance with s.143 (1E) of the Act;

6.3.3 an employee, employer or registered organisation, pursuing matters of discrimination in any State of federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;

6.3.4 the exemption in s.170CK(3) and (4) of the Act.

7. DEFINITIONS

7.1 "Act" means the Workplace Relations Act 1996 as amended from time to time.

7.2 "Casual employee" means an employee engaged and paid as such.

7.3 "College" means a post-secondary non government education institution.

7.4 "Commission" means the Australian Industrial Relations Commission or its successor.

7.5 "Employee" means any person engaged by the employer to carry out duties as

specified by the employer but shall not include an employee not eligible to be a member of the union.

- 7.6 "Full-time employee"** means any employee other than a casual or part-time employee.
- 7.7 "IEU"** means the Independent Education Union of Australia.
- 7.8 "Part-time employee"** means an employee other than a casual employee who is engaged to work regularly, but has a lesser work load than a full-time employee at the college and is engaged as such.
- 7.9 "Sessional employee"** means an employee employed to work full-time or part-time for a specified period or periods of not less than four weeks in one engagement and not more than 40 weeks in any year.
- 7.10 "Union"** means the Independent Education Union of Australia.

PART 2 - AWARD FLEXIBILITY

8. ENTERPRISE FLEXIBILITY

Where an employer or employee wish to pursue an agreement at the enterprise or workplace about how the award should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs the following process shall apply:

- 8.1** A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established.
- 8.2** For the purpose of the consultative process the employees may nominate the union or another to represent them.

Where agreement is reached an application shall be made to the Commission.

PART 3 - COMMUNICATION AND GRIEVANCE RESOLUTION

9. GRIEVANCE AND DISPUTE RESOLUTION PROCEDURES

9.1 Procedures relating to grievances in respect of individual employees

- 9.1.1** The employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
- 9.1.2** A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority. Reasonable time limits must be allowed for discussion at each level of authority.
- 9.1.3** At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not

implementing any proposed remedy.

9.1.4 While a procedure is being followed, normal work must continue.

9.1.5 The employee may be represented by an a representative of the IEU if desired by the employee.

9.1.6 Either party may at any time refer the matter to the AIRC for resolution.

9.2 Procedures relating to disputes etc. between employers and more than one employee

9.2.1 A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.

9.2.2 Reasonable time limits must be allowed for discussion at each level of authority.

9.2.3 While a procedure is being followed, normal work must continue.

9.2.4 The employer may be represented by an industrial organisation of employers and the employee may be represented by the IEU.

9.2.5 Either party may at any time refer the matter to the AIRC for resolution.

PART 4 - TERMINATION AND REDUNDANCY

10. REDUNDANCY

10.1 Definition

Redundancy occurs when an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.

10.2 Transfer to lower paid duties

10.2.1 Where an employee is transferred to lower paid duties by reason of redundancy, the employees rate of pay will be at the rate of the position from which the employee is transferred, for the period of notice to which the employee would have been entitled if the if the employment had been terminated by reason of redundancy.

10.3 Severance pay

10.3.1 In addition to the period of notice prescribed for ordinary termination in clause 11 - Termination, an employee whose employment is terminated by reason of redundancy must be paid, subject to further order of the Commission, the following amount of severance pay in respect of a period of continuous service:

Period of Continuous Service	Severance Pay
Less than I year	Nil
1 year and up to the completion of 2 years	4 weeks' pay

2 years and up to the completion of 3 years	6 weeks' pay
3 years and up to the completion of 4 years	7 weeks' pay
4 years and over	8 weeks' pay

10.3.2 For the purpose of this clause:

Week's pay means the ordinary rate of pay for the employee concerned.

Continuity of service includes all service for which paid leave was applicable. Paid leave may include personal leave (sick leave, infectious diseases leave, carer's leave and bereavement leave), school holidays, long service leave and leave during which accident make-up payments are being received by the employee. Periods of unpaid leave are not included, except at the discretion of the employer.

10.3.3 Provided that the severance payment will not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

10.4 Employee leaving during notice period

An employee whose employment is terminated by reason of redundancy may terminate his/her employment during the period of notice and if so will be entitled to the same benefits and payments under this clause had they remained with the employer until the expiry of such notice. However, in this circumstance, the employee is not entitled to payment in lieu of notice.

10.5 Alternative employment

An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

10.6 Time off during notice period

10.6.1 During the period of notice of termination given by the employer an employee will be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

10.6.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee will, at the request of the employer, be required to produce proof of attendance at an interview. An employee will not receive payment for the time absent where the Employee does not produce proof of attendance at an interview in accordance with the employer's request. For this purpose, a statutory declaration will be sufficient.

10.7 Employers exempted

Subject to an order of the Commission, in a particular redundancy case, this clause will not apply to employers who employ less than fifteen employees.

10.8 Incapacity to pay

An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

10.9 Superannuation benefits

10.9.1 Subject to further order of the Commission where an employee who is terminated received a benefit from a superannuation scheme, the employee will only receive under 10.3 hereof the difference between the severance pay specified in that clause and the amount of the superannuation benefit the employee receives which is attributable to employer contributions only.

10.9.2 If this superannuation benefit is greater than the amount due under 10.3 hereof then the employee will receive no payment under that clause.

10.10 Employees exempted

The clause does not apply:

- to employees engaged as casual employees; or
- where employment is terminated as a consequence of conduct that justifies summary dismissal; or
- to employees engaged for a specified period of time or to complete a specific task or tasks.

11. TERMINATION

11.1 Termination of Employment

11.1.1 In order to terminate the employment of an employee the employer shall give to the employee and the employee, other than a casual or sessional employee, to the employer no less than the notice as prescribed in the following table.

Employee's period of continuous service with the employer	Period of notice
1 year or less	At least 1 week
Over 1 year and up to the completion of 3 years	At least 2 weeks
Over 3 years and up to the completion of 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

11.1.2 In addition to the notice above, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.

11.1.3 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

11.2 Notice for technological change

11.2.1 Where changes in technology introduced by the employer at the workplace result in

the termination of employees the employer shall give to the employee three months notice of termination.

11.2.2 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

11.2.3 The period of notice required by this paragraph to be given shall be deemed to be service with the employer for the purposes of appropriate legislation.

11.3 Where a course which was previously scheduled to be held by a college has had to be cancelled because of the failure of students to attend or signifying they will fail to attend or the college is otherwise made aware the course will be undersubscribed and therefore have to be cancelled, and such advice was given or information received less than four weeks before the course was due to be held and an employee was engaged specifically to teach that course, a period of not less than two weeks notice of termination of employment of an employee shall be given.

PART 5 - CLASSIFICATION, REMUNERATION, HOURS OF WORK AND RELATED MATTERS

12. SUPERANNUATION

12.1 Definitions

For the purposes of this clause:

12.1.1 "Basic earnings" means the total minimum salary rate and the amount of any allowance ordinarily paid to the employee.

12.1.2 "Fund" means:

12.1.2(a) the INVEST Fund; or

12.1.2(b) any established fund that complies with the provisions of the *Occupational Superannuation Standards Act and Regulations* which fund is receiving employer contributions as at the date a college becomes respondent to this award provided the IEU is advised of its existence prior to the relevant college being bound by the award; or

12.1.2(c) any other fund which complies with the above Act and Regulations agreed by IEU and the employer.

12.1.3 "Qualified employee" means:

12.1.3(a) an employee (other than a casual employee) employed by the employer who has completed twenty days of service with that employer either in that financial year or in their current period of continuous service.

12.1.3(b) a casual employee employed by the employer who has completed twenty days of service with that employer in that financial year.

12.2 Benefits

12.2.1 Except as provided in 12.2.3 and 12.2.4 each college in respect of each qualified employee employed by it, shall pay contributions to the appropriate fund at the rate of 5 per cent of the employee's basic earnings, or as prescribed from time to time by relevant legislation, provided nothing herein shall be construed as requiring a college to make contributions to more than one fund.

12.2.2 Contributions shall be paid at intervals and in accordance with the procedures and subject to the requirements of the relevant fund and the relevant federal legislation.

12.2.3 A college shall not be required to make contributions pursuant to this clause in respect of an employee in respect of a period when that employee is absent from his or her employment without pay.

12.2.4 Contributions shall be calculated for a qualified employee from the beginning of the first full pay period after the date of engagement of the employee with that employer or from the beginning of the first full pay period after the application of this award to the employer, whichever is the later, provided that a casual employee shall only be entitled to payment in respect of days worked in that financial year.

Contributions shall be paid as soon as reasonably possible thereafter; provided that where the college has informed an employee of the employee's rights and obligations under this clause and the employee is or becomes a qualified employee and fails to join the relevant fund within six weeks of becoming a qualified employee, the college will only be obliged to make contributions calculated from the first pay period commencing after the employee advised the college in accordance with paragraph (v) of this subclause provided the college informs or has informed the employee in writing of its intention not to calculate the payment as provided in this paragraph.

12.2.5 An employee shall advise the employer in writing of the employee's application to join a fund pursuant to this award.

12.2.6 When a employee commences in employment the college shall advise the employee in writing of the employee's entitlements under this award, within four weeks of the date of commencement of employment and also of the relevant provisions of 12.2.4.

12.2.7 Subject to 12.2.4 of this subclause a college shall make contributions in respect of all days worked at the college by a qualified employee including the qualifying period of twenty days required to be worked under this clause.

12.2.8 Nothing in this clause shall require a college to make more than one contribution in respect of any single day worked at the college by a qualified employee.

13. LUNCH BREAK

A full-time employee shall be entitled to a minimum of 30 consecutive minutes per working day as an unpaid lunch break during which time the employee shall not be required to hold meetings, supervise students or undertake any other activity. Such a break to be provided between the hours of 11.30 a.m. and 2.30 p.m.

PART 6 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

14. ANNUAL LEAVE AND LEAVE LOADING

14.1 Entitlement

An employee (other than a casual employee) shall be entitled after the completion of each period of twelve months continuous service to paid annual leave of twenty working days, exclusive of public holidays such period to be taken in a block of not less than twenty days except by agreement with the employer.

14.2 Taking of Leave

Annual leave shall be taken at a time determined by agreement between the employer and the employee within a period not exceeding six months from the date when the right to annual leave accrued, or in the absence of agreement by 28 days notice of the requirement to take leave from the employer to the employee, provided that such annual leave may be deferred by agreement in writing between the employer and the employee.

14.3 Pro-rata Entitlement

Should an employee (other than a casual employee) not complete any period of twelve months service the employee shall, on the termination of employment, be entitled to pay in lieu of annual leave on a pro rata basis.

14.4 Method of Payment

The employer shall pay the employee in advance before commencement of the annual leave at the employee's ordinary time rate of pay.

14.5 Payment and Payment of Loading

In no case shall payment by an employer to an employee be less than the sum of the following amounts:

14.5.1 The employee's ordinary time rate of salary for the period of annual leave.

14.5.2 A further amount calculated at the rate of 17.5% of the amount referred to in 14.5.1 for the period of annual leave.

15. PUBLIC HOLIDAYS

15.1 Standard days

15.1.1 An employee is entitled to holidays on the following days:

15.1.1(a) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and

15.1.1(b) the following days as prescribed in Victoria: Australia Day, Anzac Day, Queen's Birthday and Labour Day; and

15.1.1(c) Melbourne Cup Day or any other day substituted by an Act of Parliament or Proclamation.

15.1.2 An exception to this is that public holidays occurring during annual leave in accordance with clause 14 - Annual leave and leave loading do not create additional entitlement.

15.2 Holidays in lieu

15.2.1 When Christmas Day is a Saturday or Sunday, a holiday in lieu will be observed on 27 December.

15.2.2 When Boxing Day is a Saturday or Sunday, a holiday in lieu will be observed on 28 December.

15.2.3 When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu will be observed on the next Monday.

15.3 Additional days

Where in Victoria, public holidays are declared or prescribed on days other than those set out in 15.1 and 15.2 above, those days will constitute additional days for the purpose of this award.

15.4 Substitute days

15.4.1 By agreement between the employer and the majority of employees, an alternative day may be taken as the public holiday in lieu of any of the prescribed days.

15.4.2 An employer and an employee may agree to the employee taking another day as the public holiday in lieu of the day which is being observed pursuant to:

15.4.2(a) 15.1, 15.2 and 15.3; or

15.4.2(b) 15.4.1.

15.4.3 An agreement made pursuant to 15.4.1 must be recorded in writing. The agreement must be made available to every affected employee.

15.4.4 Any agreement reached pursuant to 15.4.1 or 15.4.2 must be recorded in the time and wages records kept by the employer in accordance with Division 1 of Part 9A of the *Workplace Relations Regulations*.

15.4.5 If an employee is a member of the union bound by the award, then the employee may be represented by the union in meeting and conferring with the employer about the substitute day or days.

Where the employer proposes to substitute a day other than a public holiday prescribed by the award, the employer will give no less than five (5) working days' notice of the intention to reach agreement to this effect.

16. PERSONAL LEAVE

16.1 Amount of paid personal leave

16.1.1 Paid personal leave is available to an employee when the employee is absent due to:

- personal illness or injury (sick leave); or
- for the purposes of caring for an immediate family or household member that is sick and requires the employee's care and support (carer's leave); or
- bereavement on the death of an immediate family or household member (bereavement leave).

16.1.2 A full-time employee is entitled to eighteen days of paid personal leave in each year of service.

16.1.3 In any year, unused personal leave accrues by the lesser of.

16.1.3(a) ten days less the total amount of sick leave and carer's leave taken during the year; or

16.1.3(b) the balance of the year's unused personal leave.

16.1.4 Personal leave may be taken for part of a single day.

16.1.5 Personal leave may accumulate to a maximum of twenty days.

16.2 Immediate family or household

16.2.1 The entitlement to carer's leave or bereavement leave is subject to the person in respect of whom the leave is taken being either:

16.2.1(a) a member of the employee's immediate family; or

16.2.1(b) a member of the employee's household.

16.2.2 The term immediate family includes:

16.2.2(a) 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 the husband or wife of that person on a bona fide domestic basis; and

16.2.2(b) 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.

16.3 Sick leave

16.3.1 Definition

Sick leave is leave to which an employee, other than a relief or replacement employee is entitled without loss of pay because the employee is unable to perform the employee's duties by reason of personal illness or injury.

16.3.2 Entitlement

16.3.2(a) The amount of personal leave an employee may take as sick leave depends on how long the employee has worked for the employer and accrues as follows:

- in the first year of service, 10 days is available, it accrues during this year on the basis of one day for each completed month up to the 10 day maximum
- in the second and each subsequent year of service, 10 days at the commencement of that year, cumulative to a maximum of 20 days.

16.3.2(b) Accumulated personal leave may be used for sick leave if the current sick leave entitlement is exhausted.

16.3.2(c) Sessional and part-time employees are entitled to pro-rata sick leave. In respect of sessional employees sick leave is available in proportion to the total period his or her appointment (excluding any holidays) bears to the number of weeks usually worked by a full-time employee.

16.3.3 Evidence supporting claim

An employee is entitled to sick leave provided that the employee produces a medical certificate or statutory declaration to the employer for any absence in excess of the first 2 days in any year.

16.4 Bereavement leave

16.4.1 Paid leave entitlement

An employee, other than an relief employee, is entitled to use up to three days' personal leave on each occasion on which a member of the employee 's immediate family or household in Australia dies.

16.4.2 Unpaid leave entitlement

Where an employee has exhausted all personal leave entitlements, including accumulated leave entitlements, the employee is entitled to take unpaid bereavement leave. The employer and employee should agree on the period of the unpaid leave. In the absence of agreement, the employee is entitled to take up to five days' unpaid leave.

16.4.3 Evidence supporting claim

The employer may require the employee to provide satisfactory evidence of the death of the member of the employee 's immediate family or household.

16.5 Carer's leave

16.5.1 Paid leave entitlement

- (a) An employee, other than an relief employee, is entitled to use up to five days' personal leave during each year of service to care for members of the employee's immediate family or household who are sick and require the employee's care and support.
- (b) In normal circumstances, an employee is not entitled to take carer's leave where another person has taken leave to care for the same person.

16.5.2 Notice required

- (a) The employee must, where practicable, give the employer notice prior to the absence of the intention to take leave.
- (b) The notice must include:
 - the name of the person requiring care and support and the person's relationship to the employee;
 - the reasons for taking such leave; and
 - the estimated length of absence.
- (c) If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone of such absence at the first opportunity on the day of absence.

16.5.3 Evidence supporting claim

The employee must, if required by the employer, establish 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.

16.5.4 Unpaid leave

Where an employee has exhausted all personal leave entitlements, including accumulated leave entitlements, the employee is entitled to take unpaid carer's leave. The employer and the employee should agree on the period of unpaid leave. In the absence of agreement, the employee is entitled to take up to three days' unpaid leave.

17. PARENTAL LEAVE

17.1 Definitions

For the purposes of this clause.

- 17.1.1 **Child** means a child of the school assistant 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 school assistant for the purpose of adoption, other than a child or step-child of the school assistant or of the spouse of the school assistant or a child who has previously lived continuously with the school assistant for a period of six months or more;
- 17.1.2 **Continuous service** for the purpose of this clause means service under an unbroken contract of employment and includes:
 - any period of leave taken in accordance with this clause
 - any period of part-time employment worked in accordance with this clause, or

- any period of leave or absence authorised by the employer or by the award.

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

17.2 Basic entitlement

17.2.1 After twelve months of 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 females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

Provided that such leave will not extend beyond the child's first birthday in the case of maternity and paternity leave or the first anniversary of placement in the case of adoption leave and will only apply to a male school assistant in the case where the school assistant will be the primary care-giver of the child.

Parental leave, other than leave taken pursuant to 17.2.2 should preferably commence on the day following the last day of a school term and conclude on the day preceding the first day of a school term. In order to facilitate such arrangements, the employer, where necessary, will extend the period of parental leave beyond the maximum prescribed entitlement should a school assistant agree to return from parental leave on the commencement of the school term immediately following the maximum period of parental leave otherwise required to be afforded to the school assistant.

17.2.2 Parental leave is to be available to only one parent at a time, except both parents may simultaneously access the leave in the following circumstances:

17.2.2(a) for maternity and paternity leave, an unbroken period of one week at the time of the birth of the child;

17.2.2(b) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

17.2.3 Subject to 17.3.5 and 17.3.8, maternity leave will be unbroken leave.

17.2.4 Any period of paternity leave or adoption leave taken, in addition to any leave taken in accordance with 17.2.2, will be unbroken.

17.2.5 Parental leave is not available to a casual school assistant.

17.3 Maternity leave

17.3.1 In this clause, **spouse** includes a de facto spouse or a former spouse.

17.3.2 A school assistant will provide to the employer at least ten weeks in advance of the expected date of commencement of parental leave:

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

17.3.2(b) written notification of the date on which she proposes to commence maternity

leave, and the period of leave to be taken; and

- 17.3.2(c)** a statutory declaration stating the 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.
- 17.3.3** Subject to 17.2.1 and unless agreed otherwise between the employer and the school assistant, a school assistant may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.
- 17.3.4** Where a school assistant continues to work within the six-week period immediately prior to the expected date of birth, or where the school assistant elects to return to work within six weeks after the birth of the child, an employer may require the school assistant to provide a medical certificate stating that she is fit to work on her normal duties.
- 17.3.5** Where the pregnancy of a school assistant terminates after 28 weeks and the school assistant has not commenced maternity leave, the school assistant may take unpaid special maternity leave of such period as a registered medical practitioner certifies as necessary, except that where a school assistant is suffering from an illness not related to the direct consequences of the birth, a school assistant may be entitled to paid sick leave in lieu of, or in addition to, special maternity leave.
- 17.3.6** Where leave is granted under 17.3.5, during the period of leave a school assistant may return to work at any time, as agreed between the employer and the school assistant provided that time does not exceed four weeks from the recommencement date desired by the school assistant.
- 17.3.7** A school assistant will not be in breach of this clause if the school assistant fails to give the required notice because the birth occurred earlier than expected.

17.3.8 Transfer to a safe job

- 17.3.8(a)** Where a school assistant 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 school assistant make it inadvisable for the school assistant to continue at her present work, the school assistant 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.
- 17.3.8(b)** If the transfer to a safe job is not practicable, the school assistant may elect, or the employer may require the school assistant, to take leave for such period as is certified necessary by a registered medical practitioner. Such leave will be treated as maternity leave for the purposes of 17.7, 17.8 and 17.9

17.4 Paternity leave

- 17.4.1** In this clause, **spouse** includes a de facto spouse or a former spouse.
- 17.4.2** A school assistant will provide to the employer at least ten weeks prior to each proposed period of paternity leave:

17.4.2(a) 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

17.4.2(b) written notification of the dates on which he proposes to start and finish the period or periods of paternity leave; and

17.4.2(c) a statutory declaration stating:

- he will take that period of paternity leave to become the primary caregiver of a child;
- particulars of any period of maternity leave sought or taken by his spouse; and
- that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

17.4.3 A school assistant will not be in breach of this clause if the school assistant fails to give the required notice because the birth occurred earlier than expected or because of other compelling circumstances.

17.5 Adoption leave

17.5.1 For the purpose of this clause, **spouse** includes a de facto spouse.

17.5.2 The school assistant will notify the employer in writing at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. A school assistant may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the school assistant, the adoption of a child takes place earlier.

17.5.3 Before commencing adoption leave, a school assistant will provide the employer with a statutory declaration stating:

17.5.3(a) the school assistant is seeking adoption leave to become the primary caregiver of a child;

17.5.3(b) particulars of any period of adoption leave sought or taken by the school assistant's spouse; and

17.5.3(c) that for the period of adoption leave the school assistant will not engage in any conduct inconsistent with the school assistant's contract of employment.

17.5.4 An employer may require a school assistant to provide confirmation from the appropriate government authority of the placement.

17.5.5 Where the placement of a child for adoption with a school assistant does not proceed or continue, the school assistant will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the school assistant's return to work.

17.6 Variation of period of parental leave

Unless agreed otherwise between the employer and the school assistant, a school assistant may apply to the employer to change the period of parental leave on one occasion. Any such change is to be notified at least four weeks prior to the commencement of the changed arrangements. Provided that the maximum period of parental leave does not exceed 52 weeks.

17.7 Parental leave and other entitlements

A school assistant may in lieu of or in conjunction with parental leave, access other paid accrued leave entitlements, such as annual leave or long service leave, subject to the total amount of leave not exceeding 52 weeks.

17.8 Effect of parental leave on employment

Despite any provision to the contrary, absence on parental leave will not break the continuity of service of a school assistant but will not be taken into account in calculating the period of service for any purpose of this award.

17.9 Returning to work after a period of parental leave

17.9.1 A school assistant will notify the employer of the school assistant's intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

17.9.2 A school assistant will be entitled to the position which the school assistant held immediately before proceeding on parental leave. In the case of a school assistant transferred to a safe job pursuant to 17.3.8, the school assistant will be entitled to return to the position the school assistant held immediately before such transfer.

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

17.10 Replacement school assistants

17.10.1 A replacement school assistant is a school assistant specifically engaged or temporarily promoted or transferred, as a result of a school assistant proceeding on parental leave.

17.10.2 Prior to engagement, a replacement school assistant will be informed of the temporary nature of the employment and of the rights of the school assistant who is being replaced.

18. EXAMINATION AND QUALIFICATION CONFERRAL LEAVE

- (a) Where an employer classifies an employee having regard to the skills and knowledge acquired through formal training and an employee who for the purposes of furthering his or her training enrolls in a course relevant to his or her employment and approved by the employer then that employee shall be granted leave:

- (i) with pay on the day of any examination required in the course;
- (ii) without pay for the purpose of having the degree, diploma or qualification conferred at the completion of such course.

SCHEDULE 1 - RESPONDENTS

LIST OF EMPLOYER RESPONDENTS

Australian Academy of Business Studies, Melbourne, Vic.

Chalmers Business College, Melbourne, Vic.

Computer Power Training Institute, Melbourne, Vic.

Computer Training Institute, Melbourne, Vic.

Dandenong Business Colleges Ltd, Dandenong, Vic.

Emerson Office Training Pty Ltd, Melbourne, Vic.

Hales Commercial College Ltd, Melbourne, Vic.

Holmes Commercial Colleges Pty Ltd, Melbourne, Vic.

Melbourne Learning Centre, Carlton, Vic.

Melbourne Administrative Staff College, Melbourne, Vic.

Stotts Commercial College, Melbourne, Vic.

Stotts Correspondence Colleges, Melbourne, Vic.

Victoria College, Melbourne, Vic.

Victorian Business College, Melbourne, Vic.

Youngs Business College, Melbourne, Vic.