

## **AP835765CRV - Victorian Independent Schools - Early Childhood Teachers - Award 2004**

This AIR consolidated award incorporates all amendments up to and including 15 March 2006 (variation [PR969846](#)).

Clauses affected by the most recent amendment(s) are:

- [2. Arrangement](#)
- [15. Emergency early childhood teachers](#)
- [25. Personal leave](#)
- [25A. Bereavement leave](#)
- [27. Parental leave](#)

### **About this Award:**

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

*Workplace Relations Act 1996*  
s.111(1)(b) application for consent award

**Independent Education Union of Australia**  
(C2004/3620)

s.99 notification of industrial dispute

Independent Education Union of Australia

and

St Augustine's School Whittington and others  
(C No. 21069 of 1993)

Adass Israel School Incorporated and others  
(C No. 38372 of 1999)

**VICTORIAN INDEPENDENT SCHOOLS – EARLY CHILDHOOD  
TEACHERS – AWARD 2004**

Educational services

SENIOR DEPUTY PRESIDENT WATSON

MELBOURNE, 19 JULY 2004

*Wages and conditions.*

**CONSENT AWARD**

## **PART 1 - APPLICATION AND OPERATION OF AWARD**

### **1. AWARD TITLE**

This award shall be known as the Victorian Independent Schools - Early Childhood Teachers - Award 2004.

## **2. ARRANGEMENT**

[2 amended by [PR969846](#)]

### **Part 1 – Application and operation of award**

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2. Arrangement [[PR969846](#)]
3. Commencement date of award and period of operation
4. Coverage of award
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**Part 7 – Award compliance**

30. Posting of award

31. Savings provision

**Appendix 1 Yarra Valley Grammar**

**Appendix 2 Victorian Lutheran Schools**

**Schedule 1 Respondents to the Victorian Independent Schools - Early Childhood Teachers - Award 2003**

### **3. COMMENCEMENT DATE OF AWARD AND PERIOD OF OPERATION**

The award operates on and from the first pay period commencing on or after 19 July 2004 and will remain in force for a period of six months.

#### **4. COVERAGE OF AWARD**

**4.1** This award will be binding on employers listed in Schedule 1 in respect of persons employed by schools, as defined in clause 6 of this award, as

**4.1.1** early childhood teachers; and

**4.1.2** directors (by whatever name called) of early childhood centres (by whatever name called), provided that clauses 13, 14, 15, 16, 17, 22 and 23 of this award do not apply to directors.

## **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 as early childhood teachers who are eligible to be members of the Independent Education Union of Australia, whether or not those early childhood teachers are members of the union; and
- 5.1.2** the Independent Education Union of Australia.

## 6. DEFINITIONS

[6 see also Common Rule Declaration [PR953699](#) appended to this award]

For the purposes of this award:

- 6.1 Commission** means the Australian Industrial Relations Commission.
- 6.2 Director** means an early childhood teacher who is employed by a school, inter alia, to manage the early childhood or pre-preparatory program. The director's duties may include teaching students enrolled in the early childhood or pre-preparatory programs of the school.
- 6.3 Early Childhood or Pre-Preparatory Program** means an educational program for three, four and/or five-year old children. An early childhood or pre-preparatory program does not include childcare services.
- 6.4 Early Childhood Teacher** means a teacher (other than a director of an early childhood centre, by whatever name called) who is employed by a school to teach in the school's early childhood or pre-preparatory program. An early childhood teacher:
- 6.4.1** has successfully completed a minimum of a post-secondary three-year early childhood teaching degree or diploma, or its equivalent, as approved by the Victorian Branch of the Australian Early Childhood Association; or
- 6.4.2** who has been continuously employed by the one school immediately before 1 June 1998, may possess a qualification prescribed in Schedule I to the *Children's Services Regulations* 1988 (Vic.), or a comparable qualification recognised under Regulation 30 of the *Children's Services Regulations* 1988 (Vic.).
- 6.5 Employer** means any person, persons or body with authority to act on behalf of the schools listed in Schedule 1 of this award.
- 6.6 Experience** means experience of teaching as an early childhood teacher or as a primary school teacher and will be deemed to have commenced at the date on which a "qualified" person first receives an early childhood or primary teaching appointment.
- 6.7 Registered Schools Board** means the Registered Schools Board established by the *Education Act 1958* (Victoria).
- 6.8 School** means a non-government school that has been granted "Approval for Opening" by the Registered Schools Board or is registered by the Registered Schools Board.
- 6.9 School Year** means the twelve months from the commencement of the first day of February in a year to the commencement of the first day of February of the following year.
- 6.10 Union** means the Independent Education Union of Australia.

## **7. LEGISLATIVE CHANGES**

Where an Act of Parliament or Regulation referred to in this award is or has been replaced by another Act of Parliament or Regulation, the reference to such an Act or Regulation in this award will be taken to refer to the successor Act or Regulation.

## **8. WORK ORGANISATION**

An employer may direct an early childhood teacher to perform such duties as are within the limits of the early childhood teacher's skill, competence and/or training.

## **PART 2 - COMMUNICATION AND GRIEVANCE RESOLUTION**

### **9. GRIEVANCE PROCEDURE**

#### **9.1 Step 1**

Every attempt will be made to resolve a grievance by discussions between the employer and the early childhood teacher(s) directly involved at the school or the employer and the union where the grievance is between the employer and the union. This does not preclude the right of either party to seek advice from outside the school, nor does it necessitate such an approach where this is impracticable.

#### **9.2 Step 2**

Where a grievance is not resolved by Step 1, the employer or the early childhood teacher(s) may seek the assistance of a union, employer association or other representatives in order that a further attempt may be made to resolve the matter.

#### **9.3 Step 3**

Where the employer and the early childhood teacher(s) are unable to resolve the matter, they may agree to refer it to a mutually acceptable mediator for resolution. Either party may seek the assistance of a representative.

#### **9.4 Step 4**

In the event that Steps 1, 2 and 3 fail to resolve the matter it may be referred by either party to the Commission. In normal circumstances, the matter should not be referred by either party to the Commission prior to the completion of Steps 1 and 2, and where agreed, Step 3.

## **PART 3 - TERMINATION AND REDUNDANCY**

### **10. REDUNDANCY**

[10 see also Common Rule Declaration [PR953699](#) appended to this award]

#### **10.1 Definitions**

**10.1.1 Business** includes trade, process, business or occupation and includes part of any such business.

**10.1.2 Redundancy** occurs where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by any one and that decision leads to the termination of employment of the early childhood teacher, except where this is due to the ordinary and customary turnover of labour.

**10.1.3 Small employer** means an employer who employs fewer than 15 employees.

**10.1.4 Transmission** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning.

**10.1.5 Week's pay** means the ordinary time rate of pay for the early childhood teacher concerned. Provided that such rate shall exclude:

- overtime;
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and
- any other ancillary payments of a like nature.

**10.1.6 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), annual leave and school holidays, long service leave and leave during which accident make-up payments are being received by the early childhood teacher. Periods of unpaid leave are not included, except at the discretion of the employer.

#### **10.2 Transfer to lower paid duties**

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

### 10.3 Severance pay

#### 10.3.1 Severance pay – other than employees of a small employer

An early childhood teacher, other than an early child teacher employed by a small employer as defined in 10.1, whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

<b>Period of continuous service</b>	<b>Severance pay</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

\***Weeks' pay** is defined in 10.1.

#### 10.3.2 Severance pay – employees of a small employer

An early childhood teacher employed by a small employer as defined in 10.1, whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

<b>Period of continuous service</b>	<b>Severance pay</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and over	8 weeks' pay

\***Week's pay** is defined in 10.1.

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

**10.3.4** Continuity of service is calculated in the manner prescribed by 10.1.6. Provided that service prior to the first pay period commencing on or after 19 July 2004 will not be taken into account in calculating an entitlement to severance pay for an early childhood teacher employed by a small employer pursuant to 10.3.2.

**10.3.5** Application may be made for variation for the severance pay provide for in this clause in a particular redundancy situation in accordance with the *Redundancy Case Decision* [[PR032004](#), 26 March 2004] and the *Redundancy Case Supplementary Decision* [[PR062004](#), 8 June 2004].

#### **10.4 Early childhood teacher leaving during notice period**

An early childhood teacher given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in clause 11 – Notice of termination. In this circumstance, the early childhood teacher will be entitled to receive the benefits and payments the early childhood teacher would have received under this clause had the early childhood teacher remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

#### **10.5 Alternative employment**

**10.5.1** 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 early childhood teacher.

**10.5.2** This provision does not apply in circumstances involving transmission of business as set in 10.7.

#### **10.6 Job search entitlement**

**10.6.1** During the period of notice of termination given by the employer in accordance with clause 11.1, an early childhood teacher 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 early childhood teacher has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the early childhood teacher will, at the request of the employer, be required to produce proof of attendance at an interview or he or she will not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

#### **10.7 Transmission of business**

**10.7.1** The provisions of this clause are not applicable 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) in any of the following circumstances:

**10.7.1(a)** where the early childhood teacher accepts employment with the transmittee which recognises the period of continuous service which the early childhood teacher had with the transmittor and any prior transmittor to be continuous service of the early childhood teacher with the transmittee; or

**10.7.1(b)** Where the early childhood teacher rejects an offer of employment with the transmittee:

- in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the early childhood teacher at the time of ceasing employment with the transmittor; and
- which recognises the period of continuous service which the early childhood teacher had with the transmittor and any prior transmittor to be continuous service of the early childhood teacher with the transmittee.

**10.7.2** The Commission may vary 10.7.1(b) if it is satisfied that this provision would operate unfairly in a particular case.

### **10.8 Early childhood teachers exempted**

This clause does not apply to:

- early childhood teachers terminated as a consequence of serious misconduct that justifies dismissal without notice;
- probationary early childhood teachers;
- early childhood teachers engaged for a specific period of time or for a specified task or tasks; or
- emergency early childhood teachers.

### **10.9 Incapacity to pay**

The Commission may vary the severance pay prescription on the basis of an employer's incapacity to pay. An application for variation may be made by an employer or a group of early childhood teachers.

## **11. NOTICE OF TERMINATION**

### **11.1 Notice of termination by the employer**

**11.1.1** An employer must give an early childhood teacher a minimum of:

**11.1.1(a)** four (4) weeks' notice in writing, where the early childhood teacher has been employed for less than 12 months; or

**11.1.1(b)** seven (7) weeks' notice in writing, where the early childhood teacher has been employed for 12 months or more,

with such notice to be given wholly within the one school term or full payment in lieu.

**11.1.2** Payment in lieu of notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the early childhood teacher working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

**11.1.3** The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the early childhood teacher's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the early childhood teacher because of the employment continuing during that period. That total must be calculated on the basis of:

**11.1.3(a)** the early childhood teacher's ordinary hours of work (even if not standard hours); and

**11.1.3(b)** the amounts ordinarily payable to the early childhood teacher in respect of those hours, including (for example) allowances and loadings; and

**11.1.3(c)** any other amounts payable under the early childhood teacher's contract of employment.

**11.1.4** The period of notice in this clause will not apply:

**11.1.4(a)** in the case of dismissal for serious misconduct;

**11.1.4(b)** to early childhood teachers engaged for a specific period of time or for a specific task or tasks;

**11.1.4(c)** to emergency early childhood teachers.

**11.1.5** Continuous service is defined in 10.1.6.

## **11.2 Notice of termination by the early childhood teacher**

**11.2.1** An early childhood teacher must give the employer a minimum of:

**11.2.1(a)** four (4) weeks' notice in writing, where the early childhood teacher has been employed for less than 12 months, or

**11.2.1(b)** seven (7) weeks' notice in writing, where the early childhood teacher has been employed for 12 months or more,

with such notice to be given wholly within the one school term.

**11.2.2** If an early childhood teacher fails to give notice specified in 11.2.1, the employer has the right to withhold monies due to the early childhood teacher to a maximum amount equal to the amount the early childhood teacher would have received under 11.1.3.

## **11.3 Job search entitlement**

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

## **11.4 Transmission of business**

Where a business is transmitted from one employer to another, as set out in clause 10 – Redundancy, the period of continuous service that the early childhood teacher had with the transmitter or any prior transmitter is deemed to be service with the transferee and taken into account when calculating notice of termination. However, an early childhood teacher will not be entitled to notice of termination or payment in lieu of notice for any period of continuous service in respect of which notice has already been given or paid for.

## **11.5 Notice in Term 1, 2006**

[11.5 inserted by [PR967092](#) ppc 23Dec05]

For Term 1 in 2006, the period of notice in 11.1.1(b) and 11.2.1(b) is four (4) weeks' notice in writing, with such notice to be wholly within the one school term.

## **PART 4 - CLASSIFICATION, REMUNERATION AND RELATED MATTERS**

### **12. MODES OF EMPLOYMENT**

#### **12.1 Full-time early childhood teachers**

**12.1.1** A full-time early childhood teacher, with a minimum of a post-secondary three-year early childhood teaching qualification is entitled to be paid not less than the rate of pay specified in 13.1 in accordance with the early childhood teacher's qualifications and experience.

**12.1.2** Subject to 12.1.3, a full-time early childhood teacher, with a qualification recognised under Schedule I to, or Regulation 30 of, the *Children's Services Regulations* 1988 is entitled:

**12.1.2(a)** to be paid not less than the Level 5 rate of pay in 13.1 from the date of commencement of this award, provided the early childhood teacher has completed a minimum of four years' teaching experience, as defined by the award; and

**12.1.2(b)** to progress to Level 9 in annual increments in accordance with 13.2, with the first increment occurring not earlier than 12 months after the commencement of this award.

**12.1.3** Where 12.1.1 applies, and, at the commencement of this award, the early childhood teacher's rate of pay is greater than the Level 5 rate of pay, the early childhood teacher will be classified at the level that most closely approximates, but it not greater than, the early childhood teacher's rate of pay. Should this level be less than Level 9, the early childhood teacher is entitled to progress to Level 9 in annual increments, as specified by 12.1.2(b).

#### **12.2 Part-time early childhood teachers**

**12.2.1** A part-time early childhood teacher employed on a pro rata basis pursuant to 14.1 is entitled to be paid not less than the relevant pro rata rate of the rate of pay specified in 13.1 in accordance with the early childhood teacher's qualifications.

**12.2.2** A part-time early childhood teacher is entitled to the benefits of this award on the same proportionate basis upon which the part-time early childhood teacher's rate of pay is calculated.

#### **12.3 Emergency early childhood teachers**

An emergency early childhood teacher is entitled to be paid not less than the rate of pay specified in 15.3.

#### **12.4 Replacement early childhood teachers**

A replacement early childhood teacher is entitled to be paid not less than the rate of pay specified in clause 13 in accordance with the early childhood teacher's qualifications and experience.

#### **12.5 Specified term early childhood teachers**

A specified term early childhood teacher is entitled to be paid not less than the rate of pay specified in clause 13 in accordance with the early childhood teacher's qualifications and experience.

### 13. RATES OF PAY

[13 see also Common Rule Declaration [PR953699](#) appended to this award]

#### 13.1 Schedule of rates of pay

[13.1.1 substituted by [PR962316](#) ppc 20Aug05]

**13.1.1** Subject to 13.5 and 13.6, a full-time registered teacher will be paid not less than the following annual rate of pay.

Level	\$
1	37,725
2	39,421
3	41,013
4	42,709
5	44,405
6	46,101
7	47,796
8	49,493
9	51,188

**13.1.2** The weekly rate of pay is calculated by dividing the annual rate of pay by 52.18.

**13.1.3** The rates of pay in 13.1.1, as varied by safety net adjustments, may be phased in as follows over two years from the commencement date of this award:

**13.1.3(a)** first pay period commencing on after 19 July 2004 – not less than 80 per cent;

**13.1.3(b)** first pay period commencing on or after 1 February 2005 – not less than 85 per cent;

**13.1.3(c)** first pay period commencing on or after 1 August 2005 – not less than 90 per cent;

**13.1.3(d)** first pay period commencing on or after 1 February 2006 – not less than 95 per cent;

**13.1.3(e)** first pay period commencing on or after 1 August 2006 – not less than 100 per cent

of the rate of pay applicable to the early childhood teacher's qualifications and experience.

## **13.2 Incremental progression**

### **13.2.1 Four-year trained early childhood teachers**

An early childhood teacher with a four-year approved training course beyond secondary school and including early childhood teacher training will commence at Level 2 and subject to 13.2.3, 13.3 and 13.4, will progress to Level 9 in annual increments on the anniversary of the early childhood teacher's teaching appointment, or in the case of non-continuous service, after the completion of the equivalent of a school year.

### **13.2.2 Three-year trained early childhood teachers**

**13.2.2(a)** An early childhood teacher with a three-year approved training course beyond secondary school and including early childhood teacher training will commence at Level 1 and subject to 13.2.3, 13.3 and 13.4, will progress to Level 9 in annual increments on the anniversary of the early childhood teacher's teaching appointment, or in the case of non-continuous service, after the completion of the equivalent of a school year.

**13.2.2(b)** A three-year trained early childhood teacher, who satisfactorily completes an approved early childhood training course to become four-year trained and provides written evidence to the employer, will be credited with the equivalent of one year of experience and be classified one level higher on the salary scale in 13.1 from the commencement of the next pay period or from the next school year where the qualification is completed towards the end of the school year.

### **13.2.3 Part-time service**

An early childhood teacher employed for 40 per cent or less of a full teaching load will be required to complete 24 months' service before progressing to the next level.

## **13.3 Annual performance review for incremental progression**

**13.3.1** An employer may require an early childhood teacher to participate in an annual performance review (review), which:

**13.3.1(a)** for the purpose of this clause, but subject to 13.3.2, will not be conducted more frequently than once per school year;

**13.3.1(b)** if required by the employer, will be based on criteria developed in accordance with the guidelines in 13.4.

**13.3.2** If required to participate in a review:

**13.3.2(a)** the early childhood teacher will have the right to an interview or to provide written references or other supporting evidence; and

**13.3.2(b)** where the early childhood teacher satisfies the criteria, the early childhood teacher will progress to the next level on the anniversary of the early childhood teacher's teaching appointment, or, in the case of non-continuous service, after the completion of the equivalent of a school year;

**13.3.2(c)** where the early childhood teacher does not satisfy the criteria and is not approved for progression to the next level, the employer will, after discussion with the early childhood teacher, give the early childhood teacher a statement which advises how the specific criteria have not been met and proposes strategies which will assist the early childhood teacher to meet the criteria.

**13.3.3** Upon request, an early childhood teacher who has not satisfied the criteria for progression to the next level is entitled to one further review during the school year preceding the next annual performance review. If the early childhood teacher satisfies the criteria, then the early childhood teacher will progress to the next level from the commencement of the next pay period. Progression under this paragraph will not alter the early childhood teacher's anniversary date.

**13.3.4** The annual performance review provided for by this clause will be used solely for the purpose of determining whether or not an early childhood teacher has achieved the requirements to qualify for progress through the scale in 13.1. The annual performance review will not be used for any other purpose including disciplinary action.

#### **13.4 Annual performance review guidelines**

Reviews for an early childhood teacher may include criteria developed in accordance with the following guidelines which are commensurate with the early childhood teacher's level of experience:

**13.4.1** knowledge of the curriculum, teaching methodology, teaching strategies, student learning process and current educational trends;

**13.4.2** practical teaching skills in, inter alia, planning activities and presenting curriculum content, the areas of student and classroom management, and the identification and management of individual learning needs;

**13.4.3** the application of appropriate assessment and reporting strategies to monitor and record student learning progress and the effective communication of this information to students, teachers, parents or guardians and others;

**13.4.4** the development of constructive relationships with students in a classroom environment that is safe and supportive to the needs of individual students; and

**13.4.5** the performance of all responsibilities in a professional manner which supports and implements the school's policies, goals and ethos.

### 13.5 Safety net adjustment

[13.5 substituted by [PR962316](#) ppc 20Aug05]

The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review—Wages June 2005* decision [[PR002005](#)]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

## **14. PART-TIME EARLY CHILDHOOD TEACHERS**

**14.1** A part-time early childhood teacher is entitled to be paid pro-rata of the rate that the early childhood teacher would be entitled to receive as a full-time early childhood teacher.

**14.2** The pro-rata annual salary is calculated using the following formula:

$$\frac{\text{Hours of student supervision}}{\text{Hours of student supervision of a full-time early childhood teacher}} \times \text{Annual salary}$$

**14.3** The employer determines the hours of student supervision undertaken by a full-time early childhood teacher in a school. Hours of student supervision exclude non-supervisory duties, including preparatory, administrative and associated responsibilities.

**14.4** For the purpose of the formula in 14.2, the maximum hours of student supervision for a full-time early childhood teacher are deemed to be 27.5 hours per week.

**14.5** A part-time early childhood teacher can be required to undertake a proportionate number of other duties expected of full-time early childhood teachers in the school.

## **15. EMERGENCY EARLY CHILDHOOD TEACHERS**

### **15.1 Period of employment**

An employer must not employ an emergency early childhood teacher in such a capacity for more than fifteen (15) consecutive school days. By mutual agreement, employment as an emergency early childhood teacher may be for up to one school term, where the days are consecutive.

### **15.2 Duties and responsibilities**

The employer may require an emergency early childhood teacher to undertake the full supervisory responsibilities and associated duties of the early childhood teacher who is being replaced.

### **15.3 Rate of pay**

[15.3 substituted by [PR962316](#) ppc 20Aug05]

The employer will pay an emergency early childhood teacher not less than \$179.90 per day or \$90.00 per half day.

### **15.4 Entitlements**

An emergency early childhood teacher is not entitled to:

- accident make-up pay;
- paid leave;
- unpaid leave;
- public holidays;
- leave loading.

### **15.5 Caring responsibilities**

[15.5 inserted by [PR969846](#) ppc 02Feb06]

**15.5.1** Subject to the evidentiary and notice requirements in 25.5 and 25.6, an emergency early childhood teacher, who has agreed to an employment arrangement for more than 15 consecutive days pursuant to 15.1, is entitled to not be available to attend work, or to leave work:

- if the emergency early childhood teacher needs to care for members of the emergency early childhood teacher's immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or
- upon the death in Australia of an immediate family or household member.

**15.5.2** The employer and the emergency early childhood teacher shall agree on the period for which the emergency early childhood teacher will be entitled to not be available to attend work. In the absence of agreement, the emergency early childhood teacher is entitled to not be available to attend work for up to two days per occasion. The emergency early childhood teacher is not entitled to any payment for the period of non-attendance.

**15.5.3** An employer must not fail to re-engage an emergency early childhood teacher because the emergency early childhood teacher accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage an emergency early childhood teacher are otherwise not affected.

## **16. REPLACEMENT EARLY CHILDHOOD TEACHERS**

### **16.1 Employment**

The employer may employ a replacement early childhood teacher on either a full-time or part-time basis.

### **16.2 Rate of pay**

The employer will pay a replacement early childhood teacher the rate specified in clause 13 based on the replacement early childhood teacher's qualifications and number of years experience as an early childhood/school teacher.

### **16.3 Entitlements**

The provisions of this award apply to early childhood teachers employed pursuant to this clause, including pro rata benefits.

### **16.4 Notification in writing**

Upon engagement, the employer must inform the replacement early childhood teacher in writing:

- 16.4.1** of the temporary nature of the employment;
- 16.4.2** the benefits which are applicable under the award; and
- 16.4.3** the rights under this award of any teacher(s) being replaced.

### **16.5 Termination of employment**

The termination of employment of a replacement early childhood teacher will be by the expiry of the period of employment or in accordance with the provisions of clause 11 - Notice of termination.

## **17. SPECIFIED TERM EARLY CHILDHOOD TEACHERS**

### **17.1 Employment**

An early childhood teacher may be employed for a specified period of time on either a full-time or part-time basis:

- 17.1.1** to undertake a specified project for which funding has been made available;
- 17.1.2** to undertake a specified task which has a limited period of operation;
- 17.1.3** to replace an early childhood teacher whose employment has terminated after the commencement of the school year. The period of the appointment must not exceed the end of that school year; or
- 17.1.4** to replace an early childhood teacher whose termination of employment, or where advice of termination of employment, takes place during or at the end of the final term of a school year. The period of appointment must not exceed the period of the following school year.

### **17.2 Notification in writing**

Upon engagement, the employer must inform the early childhood teacher in writing:

- 17.2.1** of the reason for the employment being for a specified term;
- 17.2.2** the date of commencement of employment; and
- 17.2.3** the date of cessation of employment.

### **17.3 Rate of pay**

The employer will pay an early childhood teacher employed for a specified period of time at the rate of pay specified in clause 13 for the early childhood teacher's qualifications and number of years experience as an early childhood/school teacher.

### **17.4 Entitlements**

The provisions of this award apply to an early childhood teacher employed pursuant to this clause, including pro rata benefits.

### **17.5 Termination of employment**

The termination of employment of an early childhood teacher employed for a specified time will be by the expiry of the period of employment or in accordance with clause 11 - Notice of termination.

## **18. PAYMENT OF MONIES**

### **18.1 Timing**

All monies payable will be paid:

- 18.1.1** once each fortnight; or
- 18.1.2** once every four weeks at the end of the first fortnight including payment for two weeks in arrears and two weeks in advance; or
- 18.1.3** once every month with payment being made as nearly as possible on the middle of each month including one half month in arrears and one half month in advance.

### **18.2 Form of payment**

The employer may elect to pay salaries and allowances by cash, cheque or direct transfer. Where monies are paid by direct transfer, the early childhood teacher has the right to nominate the financial institution and the account.

## **19. REMUNERATION PACKAGING**

### **19.1 Application**

This clause will apply to employers wishing to facilitate the provision of salary and benefit packages to early childhood teachers whose employment is covered by this award.

### **19.2 Definitions**

For the purpose of this clause:

- 19.2.1 Benefits** means the benefits nominated by the early childhood teacher from the benefits provided by the employer;
- 19.2.2 Benefit Value** means the amount specified by the employer as the cost to the employer of the Benefit provided including Fringe Benefits Tax, if any;
- 19.2.3 Fringe Benefits Tax** means tax imposed by the *Fringe Benefits Tax Act 1986* (Cth).

### **19.3 Conditions of employment**

Except as provided by this clause, an early childhood teacher must be employed at a salary based on a rate of pay, and otherwise on terms and conditions not less than those prescribed by this award.

### **19.4 Remuneration packaging**

The employer may offer to provide and the early childhood teacher may agree in writing to accept:

- 19.4.1** the Benefits nominated by the early childhood teacher; and
- 19.4.2** a salary equal to the difference between the Benefit Value and the salary which would have applied to the early childhood teacher under 19.3 in the absence of an agreement under this subclause.

### **19.5 Benefits**

The Benefits will be those made available by the employer.

### **19.6 Notification of Benefit Value**

The employer must advise the early childhood teacher in writing of the Benefit Value before the early childhood teacher and the employer enter into an agreement pursuant to 19.4.

## **19.7 Calculation of salary during leave**

During the currency of an agreement under 19.4:

- 19.7.1** an early childhood teacher who takes leave on full pay will receive the Benefits and salary referred to in 19.4 of this clause;
- 19.7.2** an early childhood teacher who takes leave without pay is not entitled to any Benefits during the period of leave;
- 19.7.3** an early childhood teacher who takes leave on less than full pay will receive:
- 19.7.4** the Benefits; and
- 19.7.5** an amount of salary calculated by applying the formula:

$$A = S \times P\% - [(100\% - P\%) \times B]$$

where:

S = the salary determined under 19.4

P = the percentage of salary payable during the leave

B = the Benefit Value

A = the amount of salary.

## **19.8 Other payments**

Any other payment under this award, calculated by reference to the early childhood teacher's salary, however described, and payable:

- 19.8.1** during employment; or
- 19.8.2** on termination of employment in respect of untaken paid leave; or
- 19.8.3** on death,

will be at the rate of pay which would have applied to the early childhood teacher under 17.3 of this clause, in the absence of an agreement under 19.4 of this clause.

## **20. MEAL ALLOWANCE**

### **20.1 Application**

The employer will supply an early childhood teacher with a meal should the employer require the early childhood teacher to remain at school continuously until after 7.00 p.m. on any day.

### **20.2 Exception**

An exception to this is that the employer need not provide a meal if an early childhood teacher can reasonably return home for meals.

## **21. 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.

## **PART 5 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS**

### **22. ANNUAL LEAVE AND SCHOOL HOLIDAYS**

#### **22.1 Application**

- 22.1.1** This clause applies to early childhood teachers employed either full-time or part-time on a pro rata basis.
- 22.1.2** This clause does not apply to emergency early childhood teachers.

#### **22.2 Entitlement**

- 22.2.1** An early childhood teacher other than in the circumstances prescribed in 22.2.2 is entitled to school holidays without deduction of pay. School holidays are deemed to include annual leave.
- 22.2.2** An employer may reduce an early childhood teacher's entitlement to school holidays where an early childhood teacher has taken unpaid leave in excess of ten working days in any school year.
- 22.2.3** An early childhood teacher's entitlement to school holidays which has been reduced at the employer's discretion under 22.2.2 will be calculated as follows:

$$\frac{\text{Early childhood teacher's working weeks} \\ \text{(excluding unpaid leave in excess of 10 days)}}{\text{Number of working weeks in school year}} - \text{Paid holidays already received}$$

- 22.2.4** Where an early childhood teacher's entitlement to paid school holidays has been reduced pursuant to 22.2.2, the period which but for that reduction would have been paid school holidays will be unpaid leave and will be counted as service for all purposes of the award.

#### **22.3 Part-time early childhood teacher's entitlement**

A part-time early childhood teacher is entitled to school holidays on the same proportionate basis as the early childhood teacher's annual salary is calculated.

#### **22.4 Employment for less than a school year**

An early childhood teacher who is employed for part only of a school year will be paid a pro rata school holiday entitlement calculated as follows:

$$\frac{\text{Early childhood teacher's working weeks} \\ \text{(excluding unpaid leave in excess of 10 days)}}{\text{Number of working weeks in school year}} - \text{Paid holidays already received}$$

at the rate of pay applicable at the time of school holidays or at the time that employment is terminated.

## **23. LEAVE LOADING**

### **23.1 Application**

**23.1.1** This clause applies to early childhood teachers employed either full-time or part-time on a pro rata basis.

**23.1.2** This clause does not apply to emergency early childhood teachers.

### **23.2 Entitlement**

**23.2.1** An early childhood teacher who has given service for which salary has been received throughout the school year is entitled to a leave loading of 17.5% on a maximum of four weeks' leave.

**23.2.2** Subject to 23.2.3 and 23.3.1, an early childhood teacher who is employed for part only of a school year is entitled to be paid a leave loading as follows:

$$\frac{17.5\% \text{ of number of early childhood teacher's working weeks (excluding paid holiday periods and unpaid leave in excess of 10 days)}}{\text{Number of working weeks in school year}} \times 4 \times \frac{\text{Annual rate of pay}}{52.18}$$

where the Annual Rate of Pay will be the rate of pay applicable as at 1 December of that year or at the time of termination should employment be terminated prior to 1 December.

**23.2.3** An early childhood teacher who ceases employment with an employer prior to the commencement of third term is not entitled to leave loading from that employer.

### **23.3 Payment of leave loading**

**23.3.1** The employer may pay leave loading

**23.3.1(a)** to the early childhood teacher with the first salary payment in December of that year at the rate of pay applicable on 1 December; or

**23.3.1(b)** to the early childhood teacher with each salary payment throughout the school year by increasing the annual rate of pay as at 1 February of that year, or as subsequently varied, by 1.346%.

**23.3.2** Where an employer elects to pay leave loading with each salary payment throughout the school year, the employer will advise the early childhood teacher in writing.

## **24. PUBLIC HOLIDAYS**

### **24.1 Standard days**

**24.1.1** An early childhood teacher is entitled to holidays on the following days:

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

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

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

**24.1.2** An exception to this is that public holidays occurring during leave in accordance with clause 22 - Annual leave and school holidays, do not create additional entitlement.

### **24.2 Holidays in lieu**

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

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

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

### **24.3 Additional days**

Where in Victoria, public holidays are declared or prescribed on days other than those set out in 24.1 and 24.2 above, those days will constitute additional days for the purpose of this award.

### **24.4 Substitute days**

**24.4.1** By agreement between the employer and the majority of early childhood teachers, an alternative day may be taken as the public holiday in lieu of any of the prescribed days.

**24.4.2** An employer and an early childhood teacher may agree to the early childhood teacher taking another day as the public holiday in lieu of the day which is being observed pursuant to:

**24.4.2(a)** 24.1, 24.2 and 24.3; or

**24.4.2(b)** 24.4.1.

- 24.4.3** An agreement made pursuant to 24.4.1 must be recorded in writing. The agreement must be made available to every affected early childhood teacher.
- 24.4.4** Any agreement reached pursuant to 24.4.1 or 24.4.2 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.
- 24.4.5** If an early childhood teacher is a member of the union bound by the award, then the early childhood teacher may be represented by the union in meeting and conferring with the employer about the substitute day or days.
- 24.4.6** 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.

## 25. PERSONAL LEAVE

[25 substituted by [PR969846](#) ppc 02Feb06]

The provisions of this clause apply to full-time and regular part-time early childhood teachers (on a pro-rata basis) but do not apply to emergency early childhood teachers. The entitlements of emergency early childhood teachers are set out in 15.5.

### 25.1 Definitions

The term **immediate family** includes:

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

### 25.2 Amount of paid personal leave

- 25.2.1** Paid personal leave will be available to an early childhood teacher, when the early childhood teacher is absent:
- due to personal illness or injury; or
  - for the purposes of caring for an immediate family or household member who is sick and requires the early childhood teacher's care and support or who requires the early childhood teacher's care due to an unexpected emergency.
- 25.2.2** A full-time early childhood teacher is entitled to 15 days of paid personal leave in each year of service.
- 25.2.3** Unused personal leave accrues from year to year.
- 25.2.4** Personal leave may be taken for part of a single day.

### 25.3 Personal leave for personal injury and sickness

- 25.3.1** **Personal leave for personal injury and sickness** is leave to which an early childhood teacher is entitled without loss of pay because the early childhood teacher is unable to perform the early childhood teacher's duties by reason of personal illness or injury.

## **25.3.2 Entitlement**

**25.3.2(a)** The amount of personal leave an early childhood teacher may take as sick leave depends on how long the early childhood teacher has worked for the employer and accrues as follows:

**25.3.2(a)(i)** in the first year of service, six days during the first term worked and thereafter, an additional three days at the commencement of each subsequent school term; and

**25.3.2(a)(ii)** in the second and each subsequent year of service, 15 days at the commencement of that year.

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

## **25.3.3 Evidence supporting claim**

An early childhood teacher is entitled to sick leave provided that:

**25.3.3(a)** the early childhood teacher produces a medical certificate or other evidence satisfactory to the employer for any absence of more than two consecutive days;

**25.3.3(b)** if so required by the employer, the early childhood teacher provides a medical certificate or other evidence satisfactory to the employer for any absence continuous with a holiday to which the early childhood teacher is entitled and which would not otherwise require the production of a certificate;

**25.3.3(c)** the early childhood teacher produces a medical certificate or other evidence satisfactory to the employer where the number of days of paid sick leave already taken without the production of a medical certificate or other evidence satisfactory to the employer exceed five days in the one year.

## **25.3.4 Sick leave whilst on long service leave**

An employer may require an early childhood teacher who claims sick leave whilst on long service leave to be examined by a legally qualified medical practitioner who is reasonably accessible to the early childhood teacher.

## **25.3.5 Infectious diseases leave**

**25.3.5(a)** Subject to 25.3.5(b), an early childhood teacher who is suffering from one of the infectious diseases known as:

- German measles;
- Chickenpox;
- Mumps;
- Measles;
- Scarlet fever;
- Whooping cough;
- Rheumatic fever; or
- Hepatitis,

and the Principal is satisfied on medical evidence that the early childhood teacher has contracted the disease through a contact at the school and the disease is evident in the school, the early childhood teacher will be granted special leave without deduction of pay.

**25.3.5(b)** The early childhood teacher must produce a medical certificate which specifically names the disease.

#### **25.4 Personal leave to care for an immediate family or household member**

**25.4.1** Subject to 25.4.2 and 25.4.3 an early childhood teacher is entitled to use the early childhood teacher's personal leave to care for members of the early childhood teacher's immediate family or household who are sick and require care and support or who require care due to an unexpected emergency.

**25.4.2** The entitlement in 25.4.1 is subject to the early childhood teacher being responsible for the care and support of the person concerned. In normal circumstances an early childhood teacher is not entitled to take leave for this purpose where another person has taken leave to care for the same person.

**25.4.3** Except as provided for in 25.4.4 not more than ten days of personal leave can be used in a year by an early childhood teacher for the purposes set out in 25.4.1. This limit applies to the early childhood teacher's total accrued personal leave which includes any untaken personal leave from the current year's entitlement and any untaken personal leave which has accumulated from previous years.

**25.4.4** By agreement between an employer and an individual early childhood teacher, the early childhood teacher may access an additional amount of the early childhood teacher's accrued personal leave for the purposes set out in 25.4.1, beyond the relevant limit set out in 25.4.3. In such circumstances, the employer and the early childhood teacher shall agree upon the additional amount that may be accessed.

#### **25.5 Notice required for personal leave to care for an immediate family or household member**

**25.5.1** The early childhood teacher must, where practicable, give the employer notice prior to the absence of the intention to take leave.

**25.5.2** The notice must include:

- the name of the person requiring care and support and the person's relationship to the early childhood teacher;
- the reasons for taking such leave; and
- the estimated length of absence.

**25.5.3** If it is not practicable for the early childhood teacher to give prior notice of absence, the early childhood teacher must notify the employer by telephone of such absence at the first opportunity on the day of absence.

**25.6 Evidence supporting claim for personal leave to care for an immediate family or household member**

**25.6.1** The early childhood teacher must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness is such as to require care by another.

**25.6.2** When taking leave to care for members of the early childhood teacher's immediate family or household who require care due to an unexpected emergency, the early childhood teacher must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the early childhood teacher.

**25.7 Unpaid leave**

Where an early childhood teacher has exhausted all paid personal leave entitlements, the early childhood teacher is entitled to take unpaid personal leave to care for members of the early childhood teacher's immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the early childhood teacher shall agree on the period. In the absence of agreement, the early childhood teacher is entitled to take up to two days of unpaid leave per occasion, provided that notice and evidentiary requirements of 25.5 and 25.6 are met.

## **25A. BEREAVEMENT LEAVE**

[25A inserted by [PR969846](#) ppc 02Feb06]

### **25A.1 Paid leave entitlement**

**25A.1.1** The provisions of this clause apply to full-time and part-time early childhood teachers (on a pro rata basis) but do not apply to emergency early childhood teachers. The entitlements of emergency early childhood teachers are set out in 15.5

**25A.1.2** A full-time early childhood teacher is entitled to up to three days bereavement leave on each occasion on which a member of the early childhood teacher's immediate family or household in Australia dies.

### **25A.2 Unpaid leave entitlement**

Where an early childhood teacher has exhausted all bereavement leave entitlements, including accumulated leave entitlements, the early childhood teacher is entitled to take unpaid bereavement leave. The employer and the early childhood teacher should agree on the period of unpaid leave. In the absence of agreement, the early childhood teacher is entitled to take up to three days of unpaid leave.

### **25A.3 Evidence supporting claim**

The employer may require the early childhood teacher to provide satisfactory evidence of the death of a member of the early childhood teacher's immediate family or household.

## **26. LONG SERVICE LEAVE**

### **26.1 Preamble**

[26.1 see also Common Rule Declaration [PR953699](#) appended to this award]

An early childhood teacher is entitled to long service leave on ordinary pay in respect of continuous employment with one and the same employer or the employer's successor.

### **26.2 Entitlement**

**26.2.1** An early childhood teacher who has completed ten years' continuous employment with the employer is entitled to 13 weeks' long service leave.

**26.2.2** An early childhood teacher is entitled to an additional 6-1/2 weeks' (i.e. 45 calendar days) long service leave for each additional five years of continuous employment with the employer.

### **26.3 Termination of employment**

**26.3.1** An early childhood teacher who has completed more than ten years' continuous employment with the employer and whose employment is terminated otherwise than by the death of the early childhood teacher is entitled to an amount of long service leave equal to 1/40th of the period of the early childhood teacher's continuous employment since the last accrual of entitlement to long service leave under 26.2.1 and 26.2.2.

**26.3.2** An early childhood teacher who has completed at least seven but less than ten years of continuous employment with the employer and whose employment is terminated for any cause other than by the employer for serious misconduct, is entitled to such amount of long service leave as equals 1/40th of the period of the early childhood teacher's continuous employment.

### **26.4 Illness on long service leave**

**26.4.1** Subject to the production of a supporting medical certificate, an early childhood teacher who becomes ill whilst on long service leave is entitled to have the period of illness treated as sick leave but only to the extent that the early childhood teacher is entitled to sick leave.

**26.4.2** Subject to 26.4.1, the early childhood teacher's long service leave will be extended by the period of illness.

**26.4.3** An exception to 26.4.1 is that an employer and an early childhood teacher may agree that the early childhood teacher will return from long service leave as planned with the period of illness increasing the early childhood teacher's accrued long service leave entitlement.

## **26.5 Mode of employment and payment**

**26.5.1** An early childhood teacher whose service has been:

- all full-time; or
- all at the same part-time fraction

is paid during long service leave at the early childhood teacher's normal salary.

**26.5.2** Where an early childhood teacher's time fraction has varied, salary when proceeding on long service leave will be paid at a proportionate rate during long service leave. The rate is determined by calculating an average of the early childhood teacher's time fractions over the period of eligible service.

## 27. PARENTAL LEAVE

[27 substituted by [PR969846](#) ppc 02Feb06]

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

The provisions of this clause apply to full-time and part-time early childhood teachers, but do not apply to emergency early childhood teachers.

For the purposes of this clause, **continuous service** is work for an employer on a regular and systematic basis (including any period of authorised leave or absence).

### 27.1 Definitions

- 27.1.1** For the purposes of this clause **child** means a child of the early childhood teacher under school age except for adoption of a child where ‘child’ means a person under school age who is placed with the early childhood teacher for the purposes of adoption, other than a child or step-child of the early childhood teacher or of the spouse of the early childhood teacher or a child who has previously lived continuously with the early childhood teacher for a period of six months or more.
- 27.1.2** Subject to 27.1.3 in this clause, **spouse** includes a de facto or former spouse.
- 27.1.3** In relation to 27.7 spouse includes a de facto spouse but does not include a former spouse.
- 27.1.4** **Primary care-giver** means a person who assumes the principal role of providing care and attention to a child.

### 27.2 Basic entitlement

- 27.2.1** After 12 months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- 27.2.2** Subject to 27.5.6 parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
- 27.2.2(a)** for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
  - 27.2.2(b)** for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

**27.2.3** Parental leave, other than leave taken pursuant to 27.2.2, 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 an early childhood teacher 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 early childhood teacher.

### **27.3 Variation of parental leave**

Where an early childhood teacher takes leave under 27.2.1 or 27.4.1(b), unless otherwise agreed between the employer and early childhood teacher, an early childhood teacher may apply to the early childhood teacher's employer to change the period of parental leave on one occasion. Any such change to be notified as soon as possible but no less than seven weeks prior to the commencement of the changed arrangements. Nothing in this clause detracts from the basic entitlement in 27.2 or the right to request in 27.4.

### **27.4 Right to request**

**27.4.1** An early childhood teacher entitled to parental leave pursuant to the provisions of 27.2 may request the employer to allow the early childhood teacher:

- 27.4.1(a)** to extend the period of simultaneous unpaid parental leave provided for in 27.2.2(a) and 27.2.2(b) up to a maximum of eight weeks;
- 27.4.1(b)** to extend the period of unpaid parental leave provided for in 27.2.1 by a further continuous period of leave not exceeding 12 months;
- 27.4.1(c)** to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the early childhood teacher in reconciling work and parental responsibilities.

#### **27.4.2 Request to be considered**

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

#### **27.4.3 Early childhood teacher's request and employer's decision to be in writing**

The early childhood teacher's request and the employer's decision made under 27.4.1(b) and 27.4.1(c) must be recorded in writing.

#### **27.4.4 Request to return to work part-time**

Where an early childhood teacher wishes to make a request under 27.4.1(c), such a request must be made as soon as possible but no less than ten weeks prior to the date upon which the early childhood teacher is due to return to work from parental leave.

#### **27.5 Maternity leave**

**27.5.1** An early childhood teacher must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

**27.5.1(a)** of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the early childhood teacher is pregnant) – at least ten weeks;

**27.5.1(b)** of the date on which the early childhood teacher proposes to commence maternity leave and the period of leave to be taken – at least seven weeks.

**27.5.2** When the early childhood teacher gives notice under 27.5.1(a) the early childhood teacher must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

**27.5.3** An early childhood teacher will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.

**27.5.4** Subject to 27.2.1 and unless agreed otherwise between the employer and early childhood teacher, an early childhood teacher may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

**27.5.5** Where an early childhood teacher continues to work within the six week period immediately prior to the expected date of birth, or where the early childhood teacher elects to return to work within six weeks after the birth of the child, an employer may require the early childhood teacher to provide a medical certificate stating that she is fit to work on her normal duties.

#### **27.5.6 Special maternity leave**

**27.5.6(a)** Where the pregnancy of an early childhood teacher not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the early childhood teacher may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.

**27.5.6(b)** Where an early childhood teacher is suffering from an illness not related to the direct consequences of the confinement, an early childhood teacher may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.

**27.5.6(c)** Where an early childhood teacher not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.

**27.5.7** Where leave is granted under 27.5.4, during the period of leave an early childhood teacher may return to work at any time, as agreed between the employer and the early childhood teacher provided that time does not exceed seven weeks from the recommencement date desired by the early childhood teacher.

## **27.6 Paternity leave**

**27.6.1** An early childhood teacher will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:

**27.6.1(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

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

**27.6.1(c)** except in relation to leave taken simultaneously with the child's mother under 27.2.2(a), 27.2.2(b) and 27.4.1(a), a statutory declaration stating:

**27.6.1(c)(i)** he will take that period of paternity leave to become the primary care-giver of a child;

**27.6.1(c)(ii)** particulars of any period of maternity leave sought or taken by his spouse; and

**27.6.1(c)(iii)** that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

**27.6.2** The early childhood teacher will not be in breach of 27.6.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

## **27.7 Adoption leave**

**27.7.1** The early childhood teacher will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An early childhood teacher may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the early childhood teacher, the adoption of a child takes place earlier.

- 27.7.2** Before commencing adoption leave, an early childhood teacher will provide the employer with a statutory declaration stating:
- 27.7.2(a)** the early childhood teacher is seeking adoption leave to become the primary care-giver of the child;
  - 27.7.2(b)** particulars of any period of adoption leave sought or taken by the early childhood teacher's spouse; and
  - 27.7.2(c)** that for the period of adoption leave the early childhood teacher will not engage in any conduct inconsistent with the early childhood teacher's contract of employment.

**27.7.3** An employer may require an early childhood teacher to provide confirmation from the appropriate government authority of the placement.

**27.7.4** Where the placement of a child for adoption with an early childhood teacher does not proceed or continue, the early childhood teacher will notify the employer immediately and the employer will nominate a time not exceeding seven weeks from receipt of notification for the early childhood teacher's return to work.

**27.7.5** An early childhood teacher will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

**27.7.6** An early childhood teacher seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The early childhood teacher and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the early childhood teacher is entitled to take up to two days unpaid leave. Where paid leave is available to the early childhood teacher, the employer may require the early childhood teacher to take such leave instead.

## **27.8 Parental leave and other entitlements**

An early childhood teacher may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which the early childhood teacher has accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under 27.4.

## **27.9 Transfer to a safe job**

**27.9.1** Where an early childhood teacher 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 early childhood teacher make it inadvisable for the early childhood teacher to continue at her present work, the early childhood teacher 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.

**27.9.2** If the transfer to a safe job is not practicable, the early childhood teacher may elect, or the employer may require the early childhood teacher to commence parental leave for such period as is certified necessary by a registered medical practitioner.

### **27.10 Returning to work after a period of parental leave**

**27.10.1** An early childhood teacher will notify of the early childhood teacher's intention to return to work after a period of parental leave at least seven weeks prior to the expiration of the leave.

**27.10.2** An early childhood teacher will be entitled to the position which the early childhood teacher held immediately before proceeding on parental leave. In the case of an early childhood teacher transferred to a safe job pursuant to 27.9, the early childhood teacher will be entitled to return to the position the early childhood teacher held immediately before such transfer. A part-time early childhood teacher will be entitled to the same time fraction.

**27.10.3** Where such position no longer exists but there are other positions available which the early childhood teacher is qualified for and is capable of performing, the early childhood teacher will be entitled to a position as nearly comparable in status and pay to that of the early childhood teacher's former position.

### **27.11 Replacement early childhood teachers**

**27.11.1** A replacement early childhood teacher is an early childhood teacher specifically engaged or temporarily promoted or transferred, as a result of an early childhood teacher proceeding on parental leave.

**27.11.2** Before an employer engages a replacement early childhood teacher the employer must inform that person of the temporary nature of the employment and of the rights of the early childhood teacher who is being replaced.

### **27.12 Communication during parental leave**

**27.12.1** Where an early childhood teacher is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

**27.12.1(a)** make information available in relation to any significant effect the change will have on the status or responsibility level of the position the early childhood teacher held before commencing parental leave; and

**27.12.1(b)** provide an opportunity for the early childhood teacher to discuss any significant effect the change will have on the status or responsibility level of the position the early childhood teacher held before commencing parental leave.

- 27.12.2** The early childhood teacher shall take reasonable steps to inform the employer about any significant matter that will affect the early childhood teacher's decision regarding the duration of parental leave to be taken, whether the early childhood teacher intends to return to work and whether the early childhood teacher intends to request to return to work on a part-time basis.
- 27.12.3** The early childhood teacher shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with 27.12.1.

## **PART 6 - OTHER EMPLOYMENT MATTERS**

### **28. ACCIDENT MAKE-UP PAY**

#### **28.1 Definitions**

For the purposes of this clause:

**28.1.1 Relevant Act** means, in respect of an injury occurring prior to 4.00 p.m. on 31 August 1985, the *Workers' Compensation Act 1958* or, in any other case, the *Accident Compensation Act 1985* as amended from time to time;

**28.1.2 Injury** has the same meaning as applies under the Relevant Act;

**28.1.3 Incapacity** has the same meaning as applies under the Relevant Act.

#### **28.2 Entitlement to accident make-up pay**

**28.2.1** Subject to 28.3, 28.4 and 28.5, the employer will pay an early childhood teacher accident make-up pay if the early childhood teacher suffers an injury compensated under the Relevant Act.

**28.2.2** Accident make-up pay will be calculated as follows:

**28.2.2(a)** for each day that the early childhood teacher is or is deemed to be totally incapacitated, the early childhood teacher will be paid an amount representing the difference between the early childhood teacher's remuneration, including the total weekly award rate and any weekly overaward payments, at the date of the injury together with any variation in award rates, and the amount of compensation payable under the Relevant Act for the day in question;

**28.2.2(b)** for each day that the early childhood teacher is partially incapacitated, the early childhood teacher will be paid an amount representing the difference between the early childhood teacher's remuneration, including the total weekly award rate and any weekly overaward payments, at the date of the injury together with any variation in award rates, and the amount of compensation payable under the Relevant Act for the day in question together with the amount the early childhood teacher is earning or is able to earn in some suitable employment (as defined by the Relevant Act or as agreed between the parties).

#### **28.3 Eligibility for accident make-up pay**

In order for an early childhood teacher to be eligible for accident make-up pay in accordance with 28.2:

**28.3.1** the early childhood teacher, or a representative of the early childhood teacher, must give notice in writing of the injury to the employer as soon as reasonably practicable;

- 28.3.2 the early childhood teacher must furnish evidence of the injury from time to time as required by the employer during the period of payment;
- 28.3.3 the early childhood teacher must advise the employer of any civil action or claim for damages the early childhood teacher may make;
- 28.3.4 the early childhood teacher must attend medical examinations by a legally qualified medical practitioner, provided and paid for by the employer, as required by the employer in accordance with the Relevant Act; and
- 28.3.5 the early childhood teacher must authorise the employer to obtain any information concerning the injury or compensation payable with respect to the injury from the insurance company that is liable to pay such compensation.

#### **28.4 When entitlement ceases**

An early childhood teacher will cease to be entitled to accident make-up pay if any of the following occur:

- 28.4.1 the early childhood teacher ceases to be compensated under the Relevant Act;
- 28.4.2 the early childhood teacher obtains a judgment or settlement for damages in respect of the injury from a third party;
- 28.4.3 there is redemption of weekly compensation payments by the payment of a lump sum benefit under the Relevant Act;
- 28.4.4 the partially incapacitated early childhood teacher fails to take reasonable steps to find alternative employment;
- 28.4.5 accident make-up pay has been paid for 39 weeks in respect of the same injury;
- 28.4.6 the early childhood teacher dies.

#### **28.5 Effect of termination of employment**

Termination of the employment of an early childhood teacher otherwise entitled to accident make-up pay does not affect the early childhood teacher's entitlement except where:

- 28.5.1 the termination is due to serious misconduct by the early childhood teacher; or
- 28.5.2 a partially incapacitated early childhood teacher voluntarily terminates the early childhood teacher's employment in circumstances where the employer is able and willing to offer the early childhood teacher suitable employment.

#### **28.6 Accident make-up pay not payable**

Accident make-up pay will not be payable:

- 28.6.1** during the first ten (10) working days of incapacity;
- 28.6.2** during the first two (2) weeks of employment;
- 28.6.3** where the incapacity arises from an industrial disease contracted by a gradual process and, at the time of the incapacity, the early childhood teacher has been employed for less than four (4) weeks; or
- 28.6.4** if the early childhood teacher is on paid leave.

## **29. PROTECTIVE CLOTHING**

Where protective clothing is deemed necessary by the employer for the performance of duties, the employer will either provide such clothing or reimburse the early childhood teacher for cleaning costs incurred.

## **PART 7 - AWARD COMPLIANCE**

### **30. POSTING OF AWARD**

A copy of this award will be conspicuously displayed.

### **31. SAVINGS PROVISION**

Nothing in this award will in itself operate to reduce the conditions of employment of an employee which were in existence immediately prior to or at the commencement of this award in respect of allowable matters.

## APPENDIX 1 – YARRA VALLEY GRAMMAR

AGREEMENT between Yarra Valley Anglican School (the employer) and the early childhood teachers employed pursuant to the Victorian Independent Schools – Early Childhood Teachers - Award 2004 (the award) in relation to variation of the operation of the following clauses of the Award:

Clause 6 (Definitions)  
Clause 25 (Personal leave).

- A. This Agreement applies to the employer and to all early childhood teachers covered by the Victorian Independent Schools – Early Childhood Teachers - Award 2004 pursuant to the arrangements set out below.
- B. The following definition of “School Year” replaces the definition in clause 6 (Definitions) of the award for all purposes of the award:

**School Year** shall be the 12 months from the commencement of the first day of January in a year to the commencement of the first day of January of the following year.

- C. From the first pay period commencing on or after 19 July 2004, an early childhood teacher is entitled to sick leave in accordance with clause 25 of the award.

Full-time early childhood teachers employed by the employer prior to the first pay period commencing on or after 19 July 2004 will be provided with an entitlement to accumulated sick leave on the basis of ten (10) days per year of completed service to a maximum of 100 days. Part-time early childhood teachers will be provided with a pro-rata entitlement. Where an early childhood teacher’s service includes a period of less than 12 months, the teacher will be entitled to a proportionate amount of the ten (10) days.

Where an early childhood teacher has used the early childhood teacher’s accumulated sick leave entitlement, the early childhood teacher may make application to the Principal for a further period of paid sick leave. The granting of such leave is at the discretion of the Principal.

- D. With the exception of clauses A, B, C and D of this Agreement, nothing in the award or in this Agreement (as an Appendix to the award) will operate so as to reduce the existing terms and conditions of employment of any early childhood teacher subject to the award.

## APPENDIX 2 – VICTORIAN LUTHERAN SCHOOLS

This appendix applies to the Lutheran Church of Australia Victorian District in respect of the Victorian Lutheran schools providing an early childhood education program and employees employed pursuant to the Victorian Independent Schools – Early Childhood Teachers - Award 2004 (the award).

### 1. Definition of school year

The following definition of “School Year” replaces the definition in clause 6 (Definitions) of the award for all purposes of the Award:

**School Year** will be the twelve months from the commencement of the first day of January in a year to the commencement of the first day of January of the following year.

### 2. Long service leave

An early childhood teacher’s entitlement to long service leave is outlined in clause 26 of this award. The following subclause replaces clause 26.1 of the award.

An early childhood teacher is entitled to long service leave on ordinary pay in respect of continuous employment with the Lutheran Church of Australia Victorian District under this award and preceding awards in one or more of the schools listed at the commencement of this Appendix.

### 3. Redundancy

The following clause operates in conjunction with clause 10 of the award.

Where suitable alternative employment is found by the employer which results in the transfer of the early childhood teacher’s accrued entitlements to the new school and continuity of employment is preserved, a severance payment will not apply.

### 4. Superannuation

The following clause replaces clause 21 of the Award.

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.

An early childhood teacher will have the employer’s contribution paid to a complying fund of the teacher’s choice which includes the LCA Staff Superannuation Fund and the Independent Schools Superannuation Trust.

5. Removal leave

Where an employer requires and the early childhood teacher agrees to work at a different location which requires the early childhood teacher to move the early childhood teacher's place of residence the early childhood teacher will not be required to attend for duty on the moving day.

## **SCHEDULE 1**

### **RESPONDENTS TO THE VICTORIAN INDEPENDENT SCHOOLS – EARLY CHILDHOOD TEACHERS – AWARD 2003**

Adass Israel School - 10 King Street ELSTERNWICK VIC 3185  
Alphington Grammar - Old Heidelberg Road ALPHINGTON VIC 3078

Ballarat & Clarendon College - 1425 Sturt Street BALLARAT VIC 3350  
Ballarat Grammar School - 201 Forest Street WENDOUREE VIC 3355  
Beth Rivkah Ladies' College - 14-20 Balaclava Road ST KILDA EAST VIC 3183  
Brighton Montessori School - 741 Hawthorn Road BRIGHTON EAST VIC 3187

Camberwell Girls' Grammar School - 2 Torrington Street CANTERBURY VIC 3126  
Carey Baptist Grammar School - 349 Barkers Road KEW VIC 3101  
Castlemaine Steiner School & Kindergarten - PO Box 473 CASTLEMAINE VIC 3450  
Caulfield Montessori School - 6 Roselea Street CAULFIELD SOUTH VIC 3162  
Chairo Christian School - PO Box 93 DROUIN VIC 3818  
Christ Church Grammar School - 677 Punt Road SOUTH YARRA VIC 3141  
Christian College Geelong - PO Box 146 BELMONT VIC 3216  
Covenant College - Creamery Road Mail Centre GEELONG VIC 3221

Dandenong Ranges Steiner School - PO Box 546 BELGRAVE VIC 3160

Eltham College of Education - PO Box 40 ELTHAM VIC 3095  
Fintona Girls' School - 79 Balwyn Road BALWYN VIC 3103  
Firbank Grammar School - 51 Outer Crescent BRIGHTON VIC 3186

Ghilgai School - 295 Liverpool Road KILSYTH SOUTH VIC 3137  
Gippsland Grammar - PO Box 465 SALE VIC 3850

The Hamilton & Alexandra College - PO Box 286 HAMILTON VIC 3300  
Huntingtower - PO Box 192 MOUNT WAVERLEY VIC 3149

The Islamic Schools of Victoria - PO Box 1103 Werribee Plaza HOPPERS CROSSING VIC 3029  
Ivanhoe Girls' Grammar School - 123 Marshall Street IVANHOE VIC 3079

Kilvington Girls' Grammar - PO Box 144 ORMOND VIC 3204  
The King David School - PO Box 286 MALVERN VIC 3144  
King's College Warrnambool - PO Box 681 WARRNAMBOOL VIC 3280  
Kingswood College - PO Box 166 BOX HILL VIC 3128  
The Knox School - 220 Burwood Highway WANTIRNA SOUTH VIC 3152  
Korowa Anglican Girls' School - Ranfurlie Crescent GLEN IRIS VIC 3146

Lauriston Girls' School - PO Box 110 ARMADALE VIC 3143  
Learning Co-operative Primary School - Lacey's Road HURSTBRIDGE VIC 3099  
Leibler Yavneh College - PO Box 164 CAULFIELD SOUTH VIC 3162  
Lighthouse Christian College - PO Box 305 SPRINGVALE VIC 3171  
Little Yarra Steiner School - PO Box 19 YARRA JUNCTION VIC 3797  
Lowther Hall Anglican Grammar School - PO Box 178 ESSENDON VIC 3040  
Lutheran Church of Australia – Victorian District – P O Box 642 BOX HILL VIC 3128

Mansfield Rudolf Steiner School and Kindergarten - PO Box 679 MANSFIELD VIC 3722  
Melbourne Girls Grammar - 86 Anderson Street SOUTH YARRA VIC 3141  
Mentone Girls' Grammar - 11 Mentone Parade MENTONE VIC 3194  
Methodist Ladies' College - 207 Barkers Road KEW VIC 3101  
Minaret College - PO Box 264 SPRINGVALE VIC 3171  
Mount Scopus Memorial College – 245 Burwood Highway BURWOOD VIC 3125

Oakleigh Greek Orthodox College - PO Box 2120 OAKLEIGH VIC 3166  
Olivet Christian College - 89 Main Road CAMPBELLS CREEK VIC 3451  
Oxley College - PO Box 553 LILYDALE VIC 3140

Penbank School - Tyabb Road MOOROODUC VIC 3933  
The Peninsula School - Wooralla Drive MOUNT ELIZA VIC 3930  
Penleigh & Essendon Grammar School - PO Box 417 NIDDRIE VIC 3042  
Plenty Valley Montessori School - 315 Aqueduct Road DIAMOND CREEK VIC 3089  
Presbyterian Ladies' College - 141 Burwood Highway BURWOOD VIC 3125  
Preshil - 395 Barkers Road KEW VIC 3101

Ruyton Girls' School - 12 Selbourne Road KEW VIC 3101

Shelford Girls' Grammar - 3 Hood Crescent CAULFIELD VIC 3161  
Sophia Mundi Rudolf Steiner School - 73-95 Nicholson Street ABBOTSFORD VIC 3067  
St Catherine's School – 17 Heyington Place TOORAK VIC 3142  
St Leonard's College - 163 South Road BRIGHTON EAST VIC 3187  
St Margaret's School - PO Box 138 BERWICK VIC 3806  
St Michael's Grammar School - 25 Chapel Street ST KILDA VIC 3182  
St Paul's Anglican Grammar School – 150 Bowen Street WARRAGUL VIC 3820  
Strathcona Baptist Girls Grammar School - PO Box 46 CANTERBURY VIC 3126

Tintern Schools - 90 Alexandra Road RINGWOOD EAST VIC 3135  
Toorak College - PO Private Bag 150 MOUNT ELIZA VIC 3930

Victory Christian College, 2 Marne Road BENDIGO VIC 3550

Waverley Christian College - PO Box 395 VERMONT VIC 3133  
Wesley College Melbourne - 620 High Street Road GLEN WAVERLEY VIC 3150  
Westbourne Grammar School - PO Box 37 WERRIBEE VIC 3030  
Woodleigh School - Golf Links Road BAXTER VIC 3911

Yarra Valley Grammar - Kalinda Road WARRANWOOD VIC 3134  
Yeshivah College - 92 Hotham Street ST KILDA EAST VIC 3183

## DECLARATION - VICTORIA

[Common rule declared by [PR953699](#) from 01Jan05]

Further to the decision issued by the Commission on 2 December 2004 [[PR953695](#)] and pursuant to ss.141 and 493A of the *Workplace Relations Act 1996* (the Act), the Commission makes the following declaration for a common rule award:

1. In this Declaration:
  - 1.1 **the award** means the Victorian Independent Schools - Early Childhood Teachers - Award 2004, as varied from time to time;
  - 1.2 **employees** means employees in the industry who perform work of a kind that is covered by the award;
  - 1.3 **employers** means employers who employ employees;
  - 1.4 **the industry** means the industry of education with respect to non-government schools that have been granted 'approval for opening', or registration, by the Registered Schools Board under the *Education Act 1958* (Vic.), as varied from time to time, but excludes non-government Catholic schools.
2. That save for and subject to the matters referred to in clauses 4 to 8 below, the whole of the terms of the award, as varied from time to time, except those specified in clause 3 below, shall be:
  - 2.1 a common rule for the industry in Victoria and known as the Victorian Independent Schools - Early Childhood Teachers - Common Rule Declaration 2005;
  - 2.2 binding on all employers in respect of the employment by them of employees;
  - 2.3 binding on all employees; and
  - 2.4 binding on the Independent Education Union of Australia.
3. The following clauses of the award are not included in the Victorian Independent Schools - Early Childhood Teachers - Common Rule Declaration 2005:
  - 3.1 clause 3 - Commencement date of award and period of operation;
  - 3.2 clause 4 - Coverage of award, provided that clauses 13, 14, 15, 16, 17, 22 and 23 of the award do not apply to directors (by whatever name called) of early childhood centres;
  - 3.3 clause 5 - Parties bound, insofar as it refers to employers parties bound by the award;
  - 3.4 clause 6 - Definitions, insofar as it refers to the definition of School Year. The definition of School Year, for the purposes of this declaration, is as follows:

**3.4.1** **School Year** means the twelve months from the commencement of the first day of February in a year to the commencement of the first day of February of the following year unless:

**3.4.1(a)** prior to the commencement of this declaration, an employer defined the School Year to be a calendar year. In which case, the employer may define the School Year as the calendar year for employees employed prior to, and first employed on or after, the commencement of this declaration; or

**3.4.1(b)** prior to the commencement of this declaration, an employer defined the School Year to be a calendar year. In which case, the employer may define the School Year as the calendar year for employees employed prior to the commencement of this declaration and apply the School Year definition of this provision to all employees employed on or after the commencement of this declaration; or

**3.4.1(c)** the employer changed the School Year from a calendar year from a date earlier than the commencement of this declaration. In which case, the School Year for all employees employed prior to that date will be the calendar year and for all employees employed on or after that date, the School Year will be from the first day of February in a year to the commencement of the first day of February of the following year.

**3.5** clause 13 - Rates of pay in respect of 13.1.3, in that not less than 80 per cent of the rates of pay in 13.1.1 must be paid from 1 January 2005 with the rates of pay phased in accordance with the scheme outlined in 13.1.3;

**3.6** Appendix 1 - Yarra Valley Grammar; and

**3.7** Appendix 2 - Victorian Lutheran Schools.

**4.** The Victorian Independent Schools - Early Childhood Teachers - Common Rule Declaration 2005 shall not apply to:

**4.1** the Seventh-day Adventist Schools (Victoria) Limited system in respect of:

**4.1.1** clause 26.1 of the award, which is replaced by:

An early childhood teacher is entitled to long service leave on ordinary pay in respect of continuous employment with one or more schools in the Seventh-day Adventist school systems in Australia.

**4.1.2** clause 10 of the award, which operates in conjunction with the following clause:

Where acceptable alternative employment is found by the employer that results in the transfer of an early childhood teacher's accrued entitlements to the new school of a Seventh-day Adventist school system in Australia and continuity of employment is preserved, a severance payment will not apply.

5. Subject to 5.1 to 5.5 below, all provisions in the Victorian Independent Schools - Early Childhood Teachers - Common Rule Declaration 2005 are to operate from 1 January 2005.
- 5.1 With respect to annual leave, only periods of annual leave commencing on or after 31 January 2005 attract leave loading.
- 5.2 With respect to redundancy payments for employees of employers who have fewer than 15 employees, only service on or after 1 January 2005 is to be taken into account for the purpose of calculating **service**.
- 5.3 With respect to redundancy payments for employees of employers who have 15 employees or more, only service on or after 1 January 2004 is to be taken into account for the purpose of calculating **service**. [Note: the agreement in respect of this issue is without prejudice to the position a party may put in roping-in proceedings.]
- 5.4 Any accident make-up pay clause is to apply in relation to any injury on or after 3 August 2004.
- 5.5 The wages clauses (including all allowances) are to commence operation from the first pay period on or after Monday, 3 January 2005 provided that in all cases the wages clauses commence operation no later than 5 January 2005.
6. The Victorian Independent Schools - Early Childhood Teachers - Common Rule Declaration 2005 shall not apply to employers respondent by any means to any other award of the Commission in respect of the employment by them of employees covered by that award.
7. This declaration shall not apply to a person with a disability who is eligible for a Disability Support Pension and who is employed by a supported employment service that receives funding under the *Disability Services Act 1986* (Cth) to provide support for that person. [See Note 1 below.]
8. An employer who is making superannuation contributions into a complying superannuation fund, within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth), on behalf of an employee covered by this declaration, prior to the date of effect of this declaration is exempt from any provision in the award which specifies the fund or funds into which superannuation contributions are to be paid. [See Note 2 below.]
9. In the event of a dispute about the entitlement of an employer to set-off entitlements and benefits provided under a contract of employment made prior to the date of this declaration against entitlements and benefits required to be provided under the Victorian Independent Schools - Early Childhood Teachers - Common Rule Declaration 2005, the matter may be referred to a Board of Reference, consisting of a Member of the Commission, which shall determine whether or not such a set-off should be permitted having regard to what is fair and equitable in all the circumstances of the case, without regard to technicalities and legal forms.
- 9.1 An appeal lies from a decision of a Board of Reference to a Full Bench of the Commission.

**9.2** This clause shall apply for a period of twelve months from the commencement date of the Victorian Independent Schools - Early Childhood Teachers - Common Rule Declaration 2005.

**9.3** Any registered organisation bound by the terms of the Victorian Independent Schools - Early Childhood Teachers - Common Rule Declaration 2005 shall be notified of the time and date of hearing in relation to any application made pursuant to this provision.

**10.** Nothing in this declaration reduces or in any way detracts from any accrued rights to any forms of leave including sick leave, annual leave, long service leave or parental leave to which employees or any of them have become entitled by accrual or otherwise prior to the commencement date in clause 11 below.

**11.** This declaration shall be an award of the Commission, shall come into force on 1 January 2005 and shall remain in force for a period of three months and thereafter in accordance with the Act. [See Note 3 below.]

#### Note 1

1. Disability Support Pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided for under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme.

2. The intention of this provision is limited to preventing the award from applying to sheltered workshops (i.e. supported employment services) - it does not prevent the award from applying to employees with disabilities in open employment.

3. Leave is reserved for any party to have this issue reconsidered in the light of any developments in the national process which is currently considering workplace relations issues for sheltered workshops. This national process includes the Disability Sector National Industry Consultative Council and any related applications that seek award coverage for sheltered workshops.

#### Note 2

1. The purpose of the exception above is to maintain the status quo in respect of employers who, as at the date of effect of the common rule declaration, are making superannuation contributions into a complying superannuation fund. These employers will not be required to change their existing arrangements. Nor will there be any requirement for the existing arrangements to be the subject of an agreement between the employer and employees. For the avoidance of doubt, the exception continues to apply to employers who are making superannuation contributions to complying superannuation funds which are successor funds (as defined in Regulation 1.03 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth), or as amended or replaced by other legislation) into which benefits are transferred, after the date of effect of the common rule declaration, in accordance with the *Superannuation Industry (Supervision) Act 1993* (Cth) and the Regulations thereunder. Further, "existing arrangements" includes the making of contributions to such funds.

2. The exception is in respect of current and future employees of the employers who are entitled to the benefit of the exemption.
3. The exception does not apply to new businesses which are established after the date on which the award is declared to have effect as a common rule.
4. The exception only applies to employers who are required to apply the terms of the award by virtue of the Common Rule declaration. It does not apply to employers who are named respondents to the award or who are parties bound by virtue of their membership of an employer organisation.
5. The exception applies subject to any Commonwealth legislation to the contrary.

Note 3

Subject to s.113 of the *Workplace Relations Act 1996* and any order of the Commission, an award dealing with particular matters continues in force until a new award is made dealing with the same matters (see s.148 of the *Workplace Relations Act 1996*).

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