

E0512 [loose-leaf version]

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of awards pursuant to Item 51 of Part 2 of Schedule 5 of the
Workplace Relations and Other Legislation Amendment Act 1996
(C No. 00764 of 1998)

**EDUCATIONAL SERVICES - EARLY CHILDHOOD ASSISTANTS -
VICTORIA - AWARD 1997**
(ODN C No. 20079 of 1993)
[Print P2952 [E05121]]

Early childhood assistants

Educational services

COMMISSIONER LEWIN MELBOURNE, 10 MAY 1999

Award simplification

ORDER

A. Further to the decision issued by the Commission on 10 May 1999 [Print R39991 the above award is varied as follows:

By deleting all clauses, schedules, appendices and alphabetical index and inserting the following:

PART 1 - APPLICATION AND OPERATION OF AWARD

1. AWARD TITLE

This award shall be known as the Educational Services - Early Childhood Assistants -Victoria - Award 1999.

2. ARRANGEMENT

This award is arranged as follows:

Part 1 - Application and operation of award

1. Award title
2. Arrangement
3. Anti-discrimination
4. Definitions
5. Commencement date of award and period of operation

6. Coverage of award
7. Parties bound
8. Relationship with other awards
9. No reduction in wages or conditions

Part 2 - Award flexibility

10. Index of facultative provisions
11. Enterprise flexibility

Part 3 - Communication, consultation and dispute resolution

12. Procedures for the avoidance of industrial disputes

Part 4 - Employer and employees' duties, employment relationship and related arrangements

13. Employment categories
 - 13.1 Weekly employee
 - 13.2 Probationary employment
 - 13.3 Full-time employment
 - 13.4 Casual employment
 - 13.5 Regular Part-time employment
14. Redundancy
 - 14.1 Transfer to lower paid duties
 - 14.2 Severance pay
 - 14.3 Employee leaving during notice
 - 14.4 Alternative employment
 - 14.5 Time off during notice period
 - 14.6 Superannuation benefits
 - 14.7 Transmission of business
 - 14.8 Employees with less than one year's service
 - 14.9 Employees exempted
 - 14.10 Employers exempted
 - 14.11 Incapacity to pay
15. Termination of employment
 - 15.1 Notice of termination by employer
 - 15.2 Notice of termination by employee
 - 15.3 Time off during notice period
 - 15.4 Summary dismissal

Part 5 - Wages and related matters

16. Classifications and wage rates (incl variation 1 June 00)
 - 16.2 Wage rates - eighteen months after 8 April 1997
 - 16.3 Wage rates - two years after 8 April 1997
 - 16.4 Co-ordinator's wage levels
 - 16.5 Arbitrated safety net adjustments
 - 16.6 Annualisation of wages

- 16.7 Annual performance review
- 17. Payment of wages
- 18. Allowances
 - 18.1 Meal allowance
 - 18.2 Additional payments
- 19. Superannuation
 - 19.1 Preamble
 - 19.2 Definitions
 - 19.3 Employers to become a party to the fund
 - 19.4 Eligibility of employees
 - 19.5 Employer contribution on behalf of each employee

Part 6 - Hours of work, breaks, overtime, shift work, weekend work

- 20. Hours of work
 - 20.1 Spread of hours - general
 - 20.2 Time for support duties
 - 20.3 Additional period of leave (on call)
 - 20.4 Posting hours of work and duties
- 21. Breaks
 - 21.1 Meal breaks
- 22. Rest pauses
- 23. Overtime
- 24. Emergency replacement
- 25. Saturday, Sunday and holiday work
 - 25.1 Saturdays
 - 25.2 Sundays and holidays

Part 7 - Leave of absence and public holidays

- 26. Annual leave
 - 26.1 Annual leave entitlement - general
 - 26.2 Payment for annual leave
 - 26.3 Annual leave loading
 - 26.4 Time of taking annual leave
 - 26.5 Annual leave exclusive of public holidays
 - 26.6 Annual leave taken before due date
 - 26.7 Calculation of continuous service for annual leave
 - 26.8 Annual leave on termination
 - 26.9 Definitions
- 27. Parental leave
 - 27.1 Definitions
 - 27.2 Basic entitlement
 - 27.3 Maternity leave
 - 27.4 Paternity leave
 - 27.5 Adoption leave
 - 27.6 Variation to period of parental leave
 - 27.7 Parental leave and other entitlements
 - 27,8 Transfer to a safe job

- 27.9 Returning from work after a period of parental leave
- 27.10 Replacement employees
- 28. Personal/carer's leave
 - 28.1 Amount of paid personal/carer's leave
 - 28.2 Immediate family or household
 - 28.3 Personal sick leave
 - 28.4 Accumulation of sick leave
 - 28.5 Infectious diseases
 - 28.6 Bereavement/compassionate leave
 - 28.7 Carer's leave
 - 28.8 Unpaid carer's leave
 - 28.9 Annual leave
 - 28.10 Time off in lieu of payment
 - 28.11 Make up time
 - 28.12 Rostered days off (RDO)
- 29. Jury service
- 30. Public holidays

Part 8 - Transfers, travelling and working away from usual place of work

- 31. Travelling, transport and fares
 - 31.1 Reimbursement of expenses

Part 9 - Occupational health and safety matters, equipment, tools and amenities

- 32. Accident pay
 - 32.1 General
- 33. Clothing, equipment and tools
 - 33.1 Protective clothing
 - 33.2 Cleaning
- 34. Occupational health and safety
 - 34.1 First-aid

Schedule A - Respondents

Alphabetical index

3. ANTI-DISCRIMINATION

- 3.1 It is the intention of the respondents to this award to achieve the principal object in s.3 (j) of the *Workplace Relations Act 1996* (the Act) by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 3.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.

- 3.3 Nothing in this clause is to be taken to affect:
- 3.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
 - 3.3.2 until 22 June 2000, the payment of different wages for employees who have not reached a particular age;
 - 3.3.3 an employee, employer or registered organisation, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;
 - 3.3.4 the exemptions in ss. 170CK(3) and (4) of the Act.

4. DEFINITIONS

- 4.1 **Additional Assistant (Special needs)** means an employee employed to either partly or wholly facilitate the inclusion of children with special needs into the program. These assistants will not be required to undertake support duties as provided for in 20.2 of this award nor receive this payment.
- 4.2 **Early Childhood Assistant** means an employee who performs general duties and duties with children, under the general direction of an Early Childhood qualified teacher in a kindergartn program and/or performs general duties and duties with children in a care based program
- 4.3 **Calendar preschool year** means the period commencing on the first day of the preschool year as set by the Education Department up to the day before the first day of the preschool year in the following year.
- 4.4 **Coordinator** means a suitably qualified or experienced employee appointed by the employer to be responsible for the planning and implementation of early childhood programs other than the funded kindergarten program.

For the purposes of this clause, **suitably qualified** means a qualification that satisfies the requirements for a qualified staff member under the Children's Services Regulations 1998.

- 4.5 **Employee** means an employee performing any of the duties of classifications defined above.

5. COMMENCEMENT DATE OF AWARD AND PERIOD OF OPERATION

This award shall come into force from the beginning of the first pay period commencing on or after 16 April 1999 and shall remain in force for six months.

6. COVERAGE OF AWARD

This award shall apply to the employment of persons whether members or not of the Australian Liquor, Hospitality and Miscellaneous Workers Union in the occupations listed in this award, who are engaged in the performance of all work in or in connection with or incidental to the industries and/or industrial pursuits of early childhood education.

6.2 This award shall apply to the State of Victoria.

7. PARTIES BOUND

This award shall be binding upon:

7.1 The Australian Liquor, Hospitality and Miscellaneous Workers Union, its officers and its members; and

7.2 All employers whose names are set out in the Schedule of Respondents of this award in respect of their employees whether members of the union or not.

8. RELATIONSHIP WITH OTHER AWARDS

This award shall supersede all previous awards or orders relating to the employment within its scope of all employees whether or not members of the Union, but no right, obligation or liability accrued or incurred under any such previous award or order shall be affected hereby.

9. NO REDUCTION IN WAGES OR CONDITIONS

No employee shall suffer any reduction in pay or of other conditions by virtue of the provisions contained in this award.

PART 2 - AWARD FLEXIBILITY

10. INDEX OF FACILITATIVE PROVISIONS

10.1 A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an individual employer and an employee, or the majority of employees, in the enterprise or part of the enterprise concerned.

10.2 Facilitative provisions in this award are contained in the following clauses:

Clause title	Clause number
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Annualisation of wages	16.6
Annual leave taken before the due date	26.6
Personal/carer's leave	28
Annual leave	28.9
Make-up time	28.11

Rostered days-off	28.12
Public holidays	30

11. ENTERPRISE FLEXIBILITY

(See s. 11 3A and 11313 of the Act)

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

11.2 A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established:

11.2.1 For the purposes of the consultative process the employees may nominate the Union or another to represent them.

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

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

12. PROCEDURES FOR THE AVOIDANCE OF INDUSTRIAL DISPUTES

Subject to the *Workplace Relations Act 1996* any grievance or dispute will be dealt with in the following manner:

12.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows:

12.2 In the first instance, the employee shall attempt to resolve the grievance with the immediate supervisor. A union representative shall be present if desired by either party.

12.3 If the employee still feels aggrieved then the matter shall be referred to the Committee of Management or employer. A union representative shall be present if desired by either party.

12.4 If the matter still remains unresolved, at such a meeting, the parties shall arrange for further discussion between the employee and his/her nominated representative and more senior levels of management.

12.5 If the matter is then unresolved, a discussion shall be held between representatives of the employer and the union or other employee representative.

12.6 If the matter cannot be resolved it may be referred to the Commission for assistance in resolving the matter.

12.7 While the parties attempt to resolve the matter, work will continue as normal unless an employee has a reasonable concern about an imminent risk to his/her health and safety.

12.8 Where the employer has made a decision which may give rise to an industrial dispute, the employer shall as soon as practicable after the decision is taken, notify the employees concerned of their decision in order to allow for consultation prior to the implementation of the change.

PART 4 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

13. EMPLOYMENT CATEGORIES

13.1 Weekly employee

For the purposes of this award, weekly employee means either a full-time or part-time employee.

13.2 Probationary employment

13.2.1 A weekly employee at the time of engagement shall be notified in writing of the duties to be performed and whether the employment is for a probationary period of up to eight weeks.

13.2.2 A weekly employee who upon engagement is notified that they are on probation for a period of up to eight weeks may be dismissed before the expiration of such eight weeks and, in such circumstances, shall be paid for time so worked the rates prescribed for casual employees.

13.2.3 During the probation period set by the employer (up to a maximum of the first eight weeks), the employment of people other than casuals, may be terminated by at least one day's notice in writing by either party or by the payment or forfeiture, as the case may be, of one day's wages in lieu of such notice.

13.3 Full-time employment

The ordinary hours of work shall not exceed 38 in any one week, to be worked in periods of not more than 8.5 hours Monday to Friday inclusive, within the spread of ordinary hours identified in 20.1 of this award. Provided that an employee may be rostered for nine hours work on any such day in which case the second rest pause on that day will be taken free of contact duties with children.

13.4 Casual employment

13.4.1 A casual employee is an employee engaged and paid as such but shall not include employees who are required to work a constant number of hours each week.

13.4.2 The weekly rate for a casual employee shall be 1/38th of the appropriate weekly rate prescribed for an employee on commencement in the industry plus a loading of 25% of such hourly rate in clause 16 - Classifications and wage rates, of this award.

13.4.3 Juniors employed on a casual basis shall be paid an hourly rate of 1/38th of the weekly rate for the relevant age plus a loading of 25% of such hourly rate in clause 16 of this award.

13.4.4 The employment of a casual employee shall be terminated by at least one hour's notice by either party.

14.3 Employee leaving during notice

An employee whose employment is terminated for reasons of redundancy may terminate the employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

14.4 Alternative employment

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

14.5 Time off during notice period

14.5.1 During the period of notice of termination given by the employer an employee shall 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.

14.5.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient,

14.6 Superannuation benefits

14.6.1 Subject to further order of the Commission where an employee who is terminated receives a benefit from a superannuation scheme, the employee shall only receive under 14.2 hereof the difference between the severance pay specified in that subclause and the amount of the superannuation benefit the employee receives which is attributable to employer contributions only.

14.6.2 If this superannuation benefit is greater than the amount due under 14.2 hereof then the employee shall receive no payment under that clause.

14.7 Transmission of business

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

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

14.7.1(b) The period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

13.5 Regular part-time employment

13.5.1 A regular part-time employee shall work a constant number of hours of less than 38 per week.

13.5.2 The hourly rate for a regular part-time employee shall be equal to 1/38th of the weekly rate prescribed in this award for a full-time adult or junior performing like duties.

13.5.3 A regular part-time employee shall receive pro rata payment for annual leave and for any public holiday which shall fall upon a day when such employee would normally work.

13.5.4 A regular part-time employee employed outside the ordinary spread of hours shall have the hourly rate increased by the appropriate overtime penalty.

14. REDUNDANCY

14.1 Transfer to lower paid duties

Where an employee is transferred to lower paid duties for reasons of redundancy the employee shall be entitled to the same period of notice of transfer as the employee 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 time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

14.2 Severance pay

14.2.1 In addition to the period of notice prescribed for ordinary termination in clause 15 - Termination of employment of this award, and subject to further order of the Commission, an employee whose employment is terminated for reasons of redundancy shall be entitled to the following amount of severance pay in

respect of a continuous period of service:

Period of continuous service	Severance pay
1 year or less	nil
1 year and up to the completion of 2 years	4 weeks' pay
2 years and up to the completion of 3 years	6 weeks' pay
3 years and up to the completion of 4 years	7 weeks' pay
4 years and over	8 weeks' pay

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

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

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

14.8 Employees with less than one year's service

This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

14.9 Employees exempted

This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specified task or tasks.

14.10 Employers exempted

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

14.11 Incapacity to pay

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

15. TERMINATION OF EMPLOYMENT

15.1 Notice of termination by employer

15.1.1 In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of continuous service	Period of notice
1 year or less	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

15.1.2 In addition to the notice in 15.1.1 hereof, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.

15.1.3 Payment in lieu of the notice prescribed in 15.1.1 and/or 15.1.2 hereof shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

15.1.4 In calculating any payment in lieu of notice the wages an employee would have received in respect of the ordinary time the employee would have worked during the period of notice had the employment not been terminated shall be used.

15.1.5 The period of notice in this clause shall not apply in the case of dismissal for conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specific task or tasks.

15.1.6 For the purposes of this clause, continuity of service shall be calculated in the manner prescribed by the calculation of continuous service provision of this award.

15.2 Notice of termination by employee

15.2.1 The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned.

15.2.2 If an employee fails to give notice the employer shall have the right to withhold moneys due to the employee with a maximum amount equal to the ordinary time rate of pay for the period of notice.

15.3 Time off during notice period

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

15.4 Summary dismissal

Notwithstanding the provisions of 15.1.1 an employee dismissed for conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty may be dismissed without notice and in such cases the wages shall be paid up to the time of dismissal only.

PART 5 - WAGES AND RELATED MATTERS

16. CLASSIFICATIONS AND WAGE RATES

[Pt 5:16 substituted by V001 ppc 01Jun00]

16.1 Adults

Classification	Award Rate Per Week \$
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Adults

On Commencement	454.60
After 1 year	459.60
After 2 years	464.60
After 3 years	469.30
After 4 years	473.70
After 5 years	478.60

Juniors

Percentage of wage for the classification

Adult - On Commencement

Age	%	\$
16 years of age or under	50	227.30
17 years of age	60	272.76
18 years of age	70	318.22
19 years of age	80	363.68
20 years of age	90	409.14

16.2 Co-ordinator's Wage

Length of Service

Wage rate per hour

\$

On commencement	12.89
After one year	13.14
After two years	13.39

16.3 Arbitrated Safety Net Adjustments

Absorption Clause

16.3.1 The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review - Wages May 2000* decision [Print S5000]. 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.

16.3.2 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.

16.4 Additional Payments

16.4.1 Where a Kindergarten or Play Care Assistant works a complete session without a qualified teacher being present, that Assistant is entitled to an additional payment of \$16.37 for that session being 3.6% of the full time weekly wage applicable for an employee on commencement in the industry.

16.4.2 An employee required in accordance with 13.2.1 of this award to do general cleaning work as part of their regular daily routine in cleaning toilets, closets or lavatories shall be paid \$1.14 extra per day.

17. PAYMENT OF WAGES

17.1 Subject to the provisions of the Act, wages may be paid weekly or fortnightly no later than Thursday in each pay week:

By cash where an employee is being paid as such as at the date of commencement of this award, and such arrangements shall continue unless agreement is reached between the employer and the employee.

17.1.2 By cheque.

17.1.3 By electronic funds transfer.

17.1.3(a) Where an employer and an employee agree, the employee may be paid the wages by direct transfer into the employee's bank (or other recognised financial institution) account.

17.1.3(b) Notwithstanding this provision if the employer and the majority of the employees agree, all employees may be paid their wages by direct transfer into the employee's bank (or other recognised financial institution) account.

17.2 Where a public holiday falls on the normal pay day or the day following the normal pay day, the wages shall be paid on the ordinary working day preceding the normal pay day.

17.3 When an employee is paid the employee shall be given a statement which shows the ordinary wages, other payments, overtime, deductions and net payment.

18. ALLOWANCES

18.1 Meal allowance

An employee required to work in excess of nine continuous hours on any day, or after 6.00 p.m. shall either be paid \$7.10 or supplied with a meal of equivalent value.

18.2 Additional payments

18.2.1 Where a Kindergarten or Play Centre Assistant works a complete session without a qualified teacher being present, that Assistant is entitled to an additional payment of \$14.39 for that session being 3.6% of the full-time weekly wage applicable for an employee on commencement in the industry as noted in 16.2 hereof

18.2.2 An employee required in accordance with 13.2.1 of this award to do general cleaning work as part of their regular daily routine in cleaning toilets, closets or lavatories shall be paid \$ 1. 10 per day extra.

19. SUPERANNUATION

19.1 Preamble

19.1.1 Superannuation legislation

19.1.1(a) The subject of superannuation contributions 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*. The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

19.1.1(b) Notwithstanding 19.1.1(a) hereof, the following provisions shall also apply.

19.2 Definitions

19.2.1 The fund for the purpose of this clause means the:

19.2.1(a) Australian Retirement Fund established by Trust Deed Articles on 11 July 1996 which complies with the *Superannuation Industry (Supervision) Act 1993* as amended from time to time, and any scheme which may be made in succession thereto; or

19.2.1(b) Any other such fund which complies with the *Superannuation Industry (Supervision) Act 1993* as amended and as may be agreed upon between the parties.

19.2.2 Ordinary time earnings for the purpose of this clause, shall mean and include the remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay including over-award payments, weekend penalties, shift allowances, and other allowances paid for all purposes of the award for working ordinary hours.

19.3 Employers to become a party to the fund

19.3.1 An employer shall make application to the fund to become a participating employer in the fund and shall become a participating employer upon acceptance by the Trustee of the fund.

19.3.2 Where an employer has not made application to become a participating employer in the fund but an employee of the employer has completed an application form and that form has been received by the fund, the employer

shall become a participating employer in the fund upon the Trustee of the fund deeming the employer to be a participating employer. In such a case, the employer shall assume and be required to comply with all the obligations and duties of a participating employer in the fund.

19.3.3 An employer shall provide each employee who is not a member of the fund with a membership application form upon commencement of employment. Each employee shall be required to complete the application and the completed application shall be forwarded to the fund by the employer on or before the last day of the calendar month subsequent to the employee commencing employment.

19.4 Eligibility of employees

19.4.1 Each employee who earns \$450 or more in a calendar month shall be eligible to join the fund upon commencement of employment.

19.4.2 Each employee who earns less than \$450 per calendar month shall be eligible to join the fund at the completion of three months employment.

19.4.3 Each employee shall be eligible to receive contributions from the date of eligibility notwithstanding the date the membership application prescribed in 19.3.3 was forwarded to the fund.

19.5 Employer contribution on behalf of each employee

19.5.1 An employer shall contribute to the fund in respect of each eligible employee such contributions as are required to comply with the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee Charge Act 1992* as amended from time to time, as follows:

19.5.1(a) 6% of ordinary time earnings as defined on behalf of each eligible employee, other than employers with a payroll not exceeding \$1m as defined in accordance with the *Superannuation Guarantee (Administration) Act 1992* who shall contribute *M*.

19.5.1(b) thereafter all employers regardless of size of payroll:

Year of contribution % of contribution

1996/97	6%
1997/98	6%
1998/99	7%
1999/2000	7%
2000/01	8%
2001/02	8%
2002/03	9%

The amount of contributions to the fund shall be calculated to the nearest 10 cents, any fraction below 5 cents shall be disregarded.

19.5.2 The fund and the amount of contributions paid in accordance with this clause and

19.5.6 hereof shall be included in pay advice notices provided by the employer to the employee.

19.5.3 Contributions shall continue to be paid in accordance with this subclause during any period in respect of which an employee is entitled to receive accident pay in accordance with clause 32 - Accident pay of this award (if accident pay applies).

19.5.4 Unpaid absences

An employer shall not be required to make contributions in respect of periods of unpaid absences. Where an unpaid absence occurs in a pay period, the employer shall make contributions proportionately to the wage received by the employee in that particular pay period. For the purposes of this clause, each pay period will stand alone. Accordingly, unpaid absences in one pay period will not carry over to another pay period.

19.5.5 Cessation of contributions

An employer's obligation to make contributions on behalf of the employee ceases on the last day of employment of the employee with the employer. Contributions shall not be paid in respect of accrued annual leave paid on termination.

19.5.6 Employee contributions

19.5.6(a) An employee may make contributions to the fund in addition to those made by the employer under this clause.

19.5.6(b) An employee who wishes to make additional contributions must authorise the employer in writing to pay into the fund, from the employee's wages, amounts specified by the worker in accordance with the fund Trust Deed and Rules.

19.5.6(c) An employer who receives written authorisation from an employee, must commence making deductions from the employee's wages within fourteen days of receiving the authorisation. Contributions so deducted shall be paid to the fund by the end of the calendar month subsequent to the month in which the deduction from the employee's wages was made.

19.5.6(d) An employee may vary the additional contributions by a written authorisation and the employer must alter the additional contributions within fourteen days of receiving the authorisation.

19.5.6(e) An employee shall have the right to adjust the level of contribution

made on the employee's own behalf on the first of July each year provided that by agreement with the employer or in extenuating circumstances the employee may vary the additional contribution at other times.

19.5.7 Exemptions

19.5.7(a) Employers of an employee who is eligible for membership of a public sector statutory scheme as prescribed under the *Superannuation Benefits Act 1977 (Vic)* as amended, or in succession thereto, shall be exempted from the provisions of this clause.

19.5.7(b) Employers of an employee who is eligible for membership of the Local Authorities Superannuation Fund as provided under the *Local Authorities Superannuation Act 1988 (Vic)*, as amended, or in succession thereto, shall be exempted from this clause.

PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK

20. HOURS OF WORK

20.1 Spread of hours - general

20.1.1 The spread of ordinary hours will be between 7.00 a.m. and 6.00 p.m. on any day Monday to Friday inclusive.

20.1.2 The employer shall, by legible notice displayed at some place accessible to all employees, notify the hours of commencing and ceasing work and the times of meal breaks. Such hours, once notified, shall not be changed except by seven days' clear notice to the employee or by mutual agreement between the employer and employee.

20.2 Time for support duties

Subject to 20.2.1, an employee performing the duties of an Early Childhood Assistant under the general direction of an Early Childhood qualified Teacher in a kindergarten program, is entitled, in addition to the period children attend the kindergarten program, to 45 minutes to undertake support duties (e.g. preparation, pack up or other duties relating to their work with children.)

20.2.1 An employee performing the duties of an Early Childhood Assistant in a care based program, or as an Additional Assistant (Special Needs), is not entitled to any additional time to undertake support duties.

20.2.2 An employee performing the duties of Coordinator is entitled to:

20.2.2(a) 30 minutes preparation time in addition to each period of contact time with children; and

20.2.2(b) an average of 15 minutes per week allocated for planning.

20.3 Additional period of leave (on call)

20.3.1 In addition to the period of 42 weeks of the year during which children may attend preschool or play centre, and to the four weeks of annual leave prescribed in this clause:

20.11(a) Employees are required to work up to 4.25 hours per week additional during term time, thereby reducing or removing an obligation to be on call for a period of six weeks. Duties may include working with children, preparation of materials, administration and non-industrial cleaning. The number of weekly additional hours shall be determined by multiplying the ordinary weekly hours of work by 11.5% and rounding to the nearest fifteen minutes;
or

20.11(b) Employees who will not be on call during the six weeks of school holidays will receive no payments for the period. However, pay can be annualised and paid over 52 weeks if requested by the employee; or

20.11(c) Employees can be required to work their normal hours during the school holidays at their centre or, subject to the agreement of the employee, possibly at a nearby centre or in another program such as a school holiday program, and shall be entitled to four weeks annual leave; or

20.11(d) Any other option which may be developed between an employer and an employee must be by mutual agreement between the parties and recorded in writing. A copy must be provided to the employee and placed on his/her personnel file.

20.3.2 For the purposes of this clause, when the employment of an employee is terminated, other than employees noted in 20.3.1(b) hereof, each employee shall only have a pro rata entitlement to payments made with respect to this additional period of on call leave. Where the sum paid by the employer to the employee during the term school holidays, with respect to the additional period of on call leave or part so taken, exceeds the sum which the employer is required to pay to the employee under this clause, then the employer shall not be liable to make any payment to the employee in respect to this clause and shall be entitled to deduct the amount of such excess from any remuneration payable to the employee upon the termination of the employment. Where the sum paid by the employer to the employee during the term school holidays, with respect to the additional period of on call leave or part so taken, is less than the sum which the employer is required to pay to the employee under this clause, then the employer shall pay to the employee upon termination the portion of the pro rata entitlement for which payment has not already been made.

20.4 Posting hours of work and duties

Each employer shall apply a noticeboard upon which an employee's hours of work, and other work-related information shall be posted.

21. BREAKS

21.1 Meal breaks

An assistant will not normally be required to work more than five hours without a break for a meal totally free from any duties, of not less than 30 minutes between the conclusion of the morning program time and the beginning of the afternoon program time. However:

21.1.1 where an assistant may be required to supervise children during a meal break, such a meal break shall be of 45 minutes duration and shall be counted as time worked and paid at ordinary rates.

21.1.2 where an assistant works 5.5 hours without a meal break, such a meal break must be of a minimum of 30 minutes and totally free from any duties.

22. REST PAUSES

All employees shall be allowed a morning rest period of ten minutes daily between the second and third hour from starting time, and, if the day's work exceeds seven hours from starting time, the employee shall be allowed an afternoon rest pause of ten minutes to be taken during ordinary working hours at a time mutually convenient to the employer and the employee in the establishment concerned. Such rest pauses shall be counted as time worked provided that employees responsible for supervising children may be required to continue such supervision during the said rest pauses.

23. OVERTIME

23.1 Except as otherwise provided in this award, for all work done outside the ordinary spread of hours, the rate shall be time and a half for the first two hours and double time thereafter. In computing overtime, each day's work shall stand alone.

23.2 Where overtime or extra shifts are required to be worked in accordance with the requirements of the Early Childhood Teacher's program, the employer shall give preference for such work to Early Childhood Assistants covered by the terms of this award where it is reasonably practicable to do so.

24. EMERGENCY REPLACEMENT

24.1 Notwithstanding clause 23 - Overtime of this award, where an employee's additional hours in an emergency replacement situation within the ordinary spread of hours the rate of pay shall be the ordinary rate plus a loading of 25%

for each additional hour.

25. SATURDAY, SUNDAY AND HOLIDAY WORK

Work performed on Saturdays, Sundays and holidays shall be paid for as follows:

25.1 Saturdays

Work performed on a Saturday shall be paid for at the rate of time and a half for the first two hours and double time thereafter, with a minimum payment of not less than three and one-quarter hours at such rate.

25.2 Sundays and holidays

Work performed on Sundays shall be paid for at the rate of double time and work performed on a holiday shall be paid for at the rate of double time and a half, with a minimum payment of not less than three and one-quarter hours at such rate.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26. ANNUAL LEAVE

26.1 Annual leave entitlement - general

26.1.1 A full-time employee shall be entitled to twenty days' (being 152 hours) of annual leave exclusive of public holidays and a pro rata calculation shall apply for regular part-time employees, calculated by reference to the number of hours worked in a calendar pre-school year.

26.1.2 The employer shall give each employee at least seven days' notice of the date from which the annual leave shall be taken.

26.2 Payment for annual leave

An employer may pay each employee, either in advance before the commencement of the employee's annual leave or on the normal fortnightly pay days falling during the period of leave of the employee's pay for the leave period.

26.3 Annual leave loading

During a period of annual leave, an employee shall receive a loading of 17.5%, calculated upon the Assistant's ordinary pay for the period of such leave. The loading shall be paid on the normal pay day during December of each year and not later than the pay day prior to the commencement of annual leave.

26.4 Time of taking annual leave

26.4.1 Annual leave shall be given by an employer and shall be taken by an employee as determined by the employer, provided that all accrued leave due

must be taken within twelve months of accrual except with the agreement of the employer. Provided further that all employees with accrued entitlements will be deemed to have taken twenty days, being 152 hours or pro rata for part-time employees, leave during each Christmas shutdown.

26.4.2 Annual leave shall be given and taken in four consecutive weeks or, if the employer and the employee so agree, in two separate periods and not otherwise.

26.5 Annual leave exclusive of public holidays

If public holidays fall within an employee's period of annual leave, one day shall be added for each such public holiday if the employee would normally have worked on that day.

26.6 Annual leave taken before due date

If an employer and an employee so agree, the annual leave or either of such separate periods, may be taken wholly or partly in advance before the employee has become entitled to the annual leave. Provided that where annual leave or any part thereof has been taken before the right to the annual leave has accrued, the right to a further annual leave shall not commence to accrue until after the expiration of an equivalent period of employment in respect to which the annual leave or part has been so taken.

26.7 Calculation of continuous service for annual leave

26.7.1 For the purposes of this award a year of employment shall be deemed to be unbroken notwithstanding:

- 26.7.1(a)** any annual leave or long service leave taken therein;
- 26.7.1(b)** any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave.;
- 26.7.1(c)** any absence from work of not more than fourteen days in the year of employment on account of sickness or accident;
- 26.7.1(d)** any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by their employer;
- 26.7.1(e)** any absence on any other account not involving termination of employment.

26.7.2 In calculating a year of employment any absence of a kind mentioned in 26.7.1 (a), (b) or (c) hereof shall be counted as part of the year of employment but in respect of absences of a kind mentioned in 26.7.1 (d) and (e) hereof it will be necessary for the employee as part of the qualification for annual leave to serve such additional period as equals the period of such absences.

26.8 Annual leave on termination

26.8.1 After each month's continuous service in any qualifying twelve monthly period an employee whose employment terminates, shall be paid 1/12th of the ordinary pay for that period of service less any payment already made to the employee for annual leave during this period. Where the annual leave, or any part thereof, has been taken in advance by an employee or the employment of the employee is terminated before the employee has completed the year of employment in respect of which such annual holiday or part was taken and the sum paid by the employer to the employee as ordinary pay for the annual holiday or part so taken exceeds the sum which the employer is required to pay to the employee under this clause, then the employer shall not be liable to make any payment to the employee in respect of this clause and shall be entitled to deduct the amount of such excess from any remuneration payable to the employee upon the termination of the employment.

26.8.2 Where the employment of a weekly employee who has become entitled to one or more annual holidays provided by this award is terminated, the employer shall be deemed to have given the holiday or holidays (except so much, if any, as has already been taken) to the employee as from the date of the termination of the employment, and shall forthwith pay to the employee, in addition to all other amounts due to the employee, the employee's ordinary pay for the period of the holiday or holidays.

26.9 Definitions

For the purposes of this clause:

26.9.1 Ordinary pay in relation to an employee means remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay. Where no ordinary time rate of pay is fixed for an employee's work under the terms of employment the ordinary time rate of pay shall be deemed to be the average weekly rate earned by the employee during the period in respect of which the right to the annual holiday accrues. Where no normal weekly number of hours is fixed for an employee under the terms of employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by the employee during the period in respect of which the right to the annual holiday accrues.

26.9.2 Week in relation to an employee means the employee's ordinary working week.

26.9.3 Employee means a weekly employee engaged by an employer to do any work for hire or reward.

27. PARENTAL LEAVE

The provisions of this clause apply to full-time and regular part-time employees, but

do not apply to casual employees.

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

27.1 Definitions

27.1.1 For the purpose of this clause **child** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the *age of five* years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee 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 27.5.2(b), spouse includes a de facto, spouse but does not include a former spouse.

27.2 Basic entitlement

27.2.1 After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For 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 27.3.6 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.

27.3 Maternity leave

27.3.1 An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

27.11(a) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least ten weeks;

27.11(b) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.

- 27.3.2** When the employee gives notice under 27.3. 1 (a) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- 27.3.3** An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
- 27.3.4** Subject to 27.2.1 and unless agreed otherwise between the employer and employee, and employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.
- 27.3.5** Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties,

27.3.6 Special maternity leave

- 27.16(a)** Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
- 27.16(b)** Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
- 27.16(c)** Where an employee 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.
- 27.3.7** Where leave is granted under 27.3.4 during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

27.4 Paternity leave

- 27.4.1** An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:

- 27.4.1(a)** a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected dated of confinement, or states the date on which the birth took place; and
- 27.4.1(b)** written notification of the dates on which he proposes to start and finish the period of paternity leave; and
- 27.4.1(c)** a statutory declaration stating:
- 27.4.1(c)(i)** he will take that period of paternity leave to become the primary care-giver of a child;
- 27.4.1(c)(ii)** particulars of any period of maternity leave sought or taken by his spouse; and
- 27.4.1(c)(iii)** that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.
- 27.4.2** The employee will not be in breach of 27.4.1 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.

27.5 Adoption leave

- 27.5.1** The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- 27.5.2** Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
- 27.5.2(a)** the employee is seeking adoption leave to become the primary care-giver of the child;
- 27.5.2(b)** particulars of any period of adoption leave sought or taken by the employee's spouse; and
- 27.5.2(c)** that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- 27.5.3** An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- 27.5.4** Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of

notification for the employee's return to work.

27.5.5 An employee 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.

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

27.6 Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least four weeks prior to the commencement of the changed arrangements.

27.7 Parental leave and other entitlements

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

27.8 Transfer to a safe job

27.8.1 Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

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

27.9 Returning to work after a period of parental leave

27.9.1 An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

27.9.2 An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to 27.8, the employee will be entitled to return to the

position they held immediately before such transfer.

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

27.10 Replacement employees

- 27.10.1** A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.
- 27.10.2** Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

28. PERSONAL/CARER'S LEAVE

28.1 Amount of paid personal/carer's leave

An employee, other than a casual employee, is entitled to the following amount of paid personal/carer's leave:

- 28.1.1** For full-time employees, ten days of sick leave and two days of bereavement leave on each occasion in the first and subsequent years of service;
- 28.1.2** For part-time employees, for each year of service a total of twice the number of hours normally worked by the part-time employee in a week and two days of bereavement leave on each occasion in the first and subsequent years of service.

28.2 Immediate family or household

28.2.1 The entitlement to use bereavement leave and carer's leave in accordance with this clause is subject to:

- 28.2.1(a)** the person being either:
- 28.2.1(b)** a member of the employee's immediate family; or
- 28.2.1(c)** a member of the employee's household.

28.2.2 the term **immediate family** includes;

- 28.2.2(a)** a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or

wife of that person on a bona fide domestic basis although not legally married to that person; and

- 28.2.2(b)** a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, parent in law, grandparent, grandchild or sibling of the employee or spouse of the employee.

28.3 Personal sick leave

An employee, other than a casual employee, is entitled to the following amount of paid leave for absence due to personal illness or injury:

28.3.1 Full-time employees

- 28.11(a)** When an employee, other than a part-time or casual assistant, who having had at least three months service with the same employer, is unable because of personal illness or injury, including a dental disability, excluding admitted Workers' Compensation liability, to perform the duties the employee shall be entitled to be absent from work for 76 hours in each year of service without deduction of pay.
- 28.11(b)** For each period of sick leave exceeding three consecutive working days, a satisfactory certificate by a duly qualified medical practitioner or dentist shall be required, stating the nature of the illness or injury or, at the discretion of the medical practitioner or dentist, the cause of the absence and the probable duration.

28.3.2 Regular part-time employees

- 28.12(a)** When a part-time employee who having had at least three months service with the same employer is unable because of personal illness or injury, including a dental disability, but excluding admitted Workers' Compensation liability to perform the duties, the employee shall be entitled, for each year of service, to be absent from work without deduction of pay for a total of twice the number of hours normally worked by the part-time employee in a week.
- 28.12(b)** For each period of sick leave exceeding two consecutive working days, a satisfactory certificate by a duly qualified medical practitioner or dentist shall be required, stating the nature of the illness or injury or, at the discretion of the medical practitioner or dentist, the cause of the absence and the probable duration.

28.3.4 An employee shall not be eligible for payment of sick leave or part thereof, unless where the employee is in a position to do so, the employee takes all reasonable steps to advise the employer of the absence from duty as near as practicable to the normal commencement time.

28.3.5 Such advice shall, as far as is practicable, state the nature of the injury or

illness, and the estimated duration of the absence.

- 28.3.6** Provided that, if it is not practicable to inform the employer before the normal commencement time, the employee shall inform the employer as soon as practicable thereafter.
- 28.3.7** Payment of sick leave shall not be withheld by the employer until all reasonable steps have been taken to investigate the employee's lack of advice regarding the absence from duty. Such an investigation must provide the employee with the opportunity to give reasons as to why notification was not given.
- 28.3.8** The employer must provide and inform the employee of the procedure for the notification by the employee of the employee's inability to attend work due to sickness or injury. All such notifications shall be registered, detailing the time and name of the employee.
- 28.3.9** Provided further that for any absence, either the working day before or the working day after a public holiday, an employee shall be required to provide a certificate of a duly qualified medical practitioner or dentist to be eligible for payment.

28.4 Accumulation of sick leave

If the full period of sick leave as prescribed is not taken in any one year, such portion as is not taken shall be fully cumulative.

28.5 Infectious diseases

- 28.5.1** An employee who contracts, or believe they have contracted, one of the infectious diseases listed in this clause must as soon as possible notify the employer of contracting the infectious disease.
- 28.5.2** An employee who contracts an infectious disease through a contact in the area of employment shall be entitled to infectious diseases leave in accordance with the following scale:

Disease	Leave
Chicken Pox (Varicella)	5 working days
German Measles (Rubella)	5 working days
Hepatitis	as decided by medical practitioner
Influenza	5 working days
Measles (Morbilli)	10 working days
Mumps	10 working days
Rheumatic Fever	as decided by medical practitioner
Scarlet Fever	10 working days
Whooping Cough	10 working days

- 28.5.3** Provided that a duly signed certificate by a qualified medical practitioner

accompanies any application for leave with pay under the provisions of this clause.

- 28.5.4** Provided further that the provisions of 28.3.4, 28.3.5 and 28.3.6 hereof are complied with.
- 28.5.5** Leave taken by an employee under 28.5.2 hereof is deducted from the amount of personal/carer's leave under 28.1 hereof.
- 28.5.6** An employee is entitled to use accumulated sick leave for personal sickness if the employee has already used:

28.5.6(a) the current year's sick leave component of the personal/carer's leave entitlement as personal sick leave or;

28.5.6(b) the current year's aggregated personal/carer's leave entitlement.

28.5.7 Sick leave entitlements which are untaken at the completion of each year shall accumulate.

28.6 Bereavement/compassionate leave

28.6.1 An employee, other than a casual employee, is entitled to two ordinary days paid leave on each occasion if a member of the employee's immediate family or household in Australia dies.

28.6.2 Each day or part of a day used under 28.6.1 hereof is deducted from the amount of personal/carer's leave under 28.1 hereof.

28.6.3 An employee is entitled to use accumulated sick leave as paid bereavement leave up to and including the day of the funeral of up to two ordinary days on each occasion when a member of the employee's immediate family or household in Australia dies and the employee has already used the current year's personal/carer's leave entitlement under 28.1 hereof

28.6.4 An employee is entitled to use unpaid leave up to and including the day of the funeral of up to two days on each occasion when a member of the employee's immediate family or household in Australia dies if the employee has already used the current years personal/carer's leave entitlement under 28.1 hereof and no accumulated sick leave is available.

28.6.5 Proof of death must be provided to the satisfaction of the employer if requested.

28.7 Carer's leave

28.7.1 An employee, other than a casual employee, with responsibilities in relation to either members of their immediate family or household who need their care and support is entitled to use up to five days per annum of their

personal/carer's leave entitlement to provide care and support for such persons when they are ill. Leave may be taken for part of a single day.

- 28.7.2** The entitlement to use personal/carer's leave is subject to the employee being responsible for the care of the person concerned.
- 28.7.3** The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.
- 28.7.4** In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.
- 28.7.5** The employee must where practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone of such absence at the first opportunity on the day of absence.
- 28.7.6** Each day or part of a day of carer's leave taken in accordance with 28.7.1 hereof is to be deducted from the amount of personal/carer's leave provided in 28.1 hereof up to a maximum of five days per annum.
- 28.7.7** An employee is entitled to use accumulated sick leave as paid carer's leave if the employee has used the current year's personal/carer's leave entitlement. An exception to this is where an employee has already taken five days carer's leave in the current year.

28.8 Unpaid carer's leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

28.9 Annual leave

- 28.9.1** Notwithstanding provisions elsewhere in the award the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences, provided that:
 - 28.9.1(a)** An employee may elect with the consent of the employer to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.
 - 28.9.1(b)** Access to annual leave, as prescribed in 28.9.1 (a) hereof, shall be exclusive of any shutdown period provided for elsewhere under this award.

- 28.9.1(c)** An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- 28.9.1(d)** Subclause 28.9.1 hereof is subject to the employer informing the union, which is both party to the award and which has members employed at the particular enterprise, of its intention to introduce an enterprise system of annual leave flexibility, and providing a reasonable opportunity for the union to participate in negotiations.
- 28.9.1(e)** Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this clause, its terms must be set out in the time and wages record kept pursuant to regulations 13 1 A - 13 1 R of the Workplace Relations Regulations,

28.10 Time off in lieu of payment

- 28.10.1** Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish system of time off in lieu of overtime provided that:
- 28.10.1(a)** An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
- 28.10.1(b)** Overtime taken as time off during ordinary time hours shall be taken at this ordinary time rate, that is an hour for each hour worked.
- 28.10.1(c)** An employer shall if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in clause 23 - Overtime of this award, for any overtime worked under this clause where such time has not been taken within four weeks of accrual.
- 28.12.3** An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at time mutually agreed by the employer, or subject to reasonable notice by the employee or the employer.
- 28.12.4** **Subclause 28.12** hereof is subject to the employer informing the union, which is both party to the award and which has members employed at the particular enterprise, of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union to participate in negotiations.
- 28.12.5** Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to regulations 131A - 131R of the Workplace Relations Regulations.

29. JURY SERVICE

- 29.1** Full-time and part-time employees required to attend for jury service during ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of the attendance for such jury service and the amount of pay the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on jury service.
- 29.2** An employee shall notify the employer as soon as possible of the date upon which the employee is required to attend for jury service. The employee must give the employer proof of attendance, the duration of such attendance and the amount received in respect of such jury service.

30. PUBLIC HOLIDAYS

- 30.1** An employee, other than a casual employee, shall be entitled without deduction of pay to the following:
- 30.1.1** The holidays observed as New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day, Boxing Day and one other day to be specified according to State, Territory or locality or on some other basis when such holidays fall upon a day when the employee would normally work.
- 30.1.2** Where Christmas Day or Boxing Day falls on a Saturday or Sunday a holiday in lieu thereof shall be observed on the 27 December and 28 December respectively.
- 30.1.3** Where New Year's Day or Australia Day is a Saturday or a Sunday a holiday in lieu thereof shall be observed on the next Monday.
- 30.2** Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in 30.1.1 hereof, those days shall constitute additional holidays for the purpose of this award.
- 30.2.1** An employer and the employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of effected employees shall constitute agreement.
- 30.2.2** An agreement pursuant to 30.2.1 hereof shall be recorded in writing and be available to every effected employee.
- 30.3** The above holidays shall be paid for if such holiday falls during an annual leave period and the employee would normally have been rostered to work on that day.
- 30.4** Where a full-time or part-time employee who usually works on a day of the week on which a public holiday falls in the relevant area is not required to

work on that day such employee shall be paid at the ordinary hourly rate for the hours the employee would have normally worked on that day.

- 30.5** When a full-time or part-time employee is absent from employment on the employee's normal working day immediately before or after a public holiday in the relevant area without reasonable excuse, the employee shall not be paid for such holiday.

PART 8 - TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

31. TRAVELLING, TRANSPORT AND FARES

31.1 Reimbursement of expenses

Where an employee is directed by the employer, or the employer's representative, to use the employee's own motor vehicle on the employer's business, the employee shall be paid an allowance of 24.5 cents per kilometre.

PART 9 - OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT & TOOLS AND AMENITIES

32. ACCIDENT PAY

32.1 General

Where an employee becomes entitled to weekly compensation payments pursuant to the *Accident Compensation Act 1985* (the Act), the employer will pay to the employee an amount equivalent to the difference between:

- 32.1.1** the level of weekly compensation and any weekly wages earned or able to be earned if partially incapacitated; and
- 32.1.2** the amount that would have been payable under this award for the classification of work if the employee had been performing their normal duties, provided that such rate shall exclude additional remuneration by way of shift premiums overtime payments special rates or other similar payments.
- 32.2** Accident pay shall not apply in respect of any injury during the first five normal working days of incapacity.
- 32.3** Accident pay shall not apply to any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks.
- 32.4** Industrial diseases contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration shall not be subject to the accident pay unless the employee has been employed with the employer at the time of the incapacity for a minimum period of one month.

32.5 The maximum period or aggregate of periods of accident pay to be made by an employer shall be a total of 39 weeks for any one injury.

32.6 Where an employee receives a weekly payment under this Section and subsequently such payment is reduced pursuant to the Act, such reduction will not increase the liability of the employer to increase the amount of accident pay in respect of that injury.

33. CLOTHING, EQUIPMENT AND TOOLS

33.1 Protective clothing

33.1.1 Where an early education centre requires an employee to wear a specific uniform and no uniform or protective clothing is supplied by the employer an allowance of 68 cents per day shall be paid to the employee in lieu of providing a uniform or protective clothing and the maintenance and cleaning of such clothing. The protective clothing worn by the employee shall be satisfactory to the employer.

33.1.2 Where an employee is required to clean toilets or to use acid or other injurious substances or detergents, the employer must reimburse the employee for the cost of purchasing rubber gloves and for the cost of replacing such rubber gloves when they become unserviceable. The provisions of this sub clause do not apply where such rubber gloves are supplied to the employee at the employer's expense. Where such rubber gloves are supplied without cost to the employee, they will remain the property of the employer.

33.2 Cleaning duties do not include general cleaning work outside or any cleaning where the work cannot be performed from the ground or floor level.

33.3 If an employee is required by the employer to supply materials and equipment, an allowance equal to the costs incurred by the employee shall be paid.

34. OCCUPATIONAL HEALTH AND SAFETY

34.1 First-aid

An employee qualified to a St John Ambulance Certificate standard or equivalent, appointed by the employer to be responsible for first-aid, shall be paid an additional amount of \$1.10 cents per session worked with children.