

AP780086CRV [Pre-Reform AIR Consolidation]

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AUSTRALIAN INDUSTRIAL REGISTRY LOOSE-LEAF CONSOLIDATION

ENGLISH COLLEGES AWARD 1998

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AP780086CRV [Pre-Reform AIR Consolidation]

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

ENGLISH COLLEGES AWARD 1992

(ODN C No. C25364 of 1989)

[Print K3519 [E0097]]

(C No. 00470 of 1998)

Teachers

Educational services

COMMISSIONER LEWIN
MELBOURNE, 14 DECEMBER 1998

Award simplification

ORDER

A. Further to the decision issued by the Commission on 14 December 1998 [Print Q9576] the above award is varied as follows:

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

1. TITLE

This award shall be known as the English Colleges Award 1998.

2. ARRANGEMENT

1. Title
2. Arrangement
3. Incidence and Parties Bound
4. Definitions
5. Rates of Pay
6. Qualifications Committee
7. Public holidays
8. Annual holidays
9. Long Service Leave
10. Lunch Period
11. Personal/Carer's Leave
12. Parental Leave
13. Examination and Study Leave
14. Jury Duty
15. Terms of Engagement and Information to be Provided to Teachers
16. Disputes Procedure

17. Redundancy
18. Superannuation
19. Enterprise Flexibility Provision
20. Anti-Discrimination

3. INCIDENCE AND PARTIES BOUND

3.1 This award shall be binding upon the Independent Education Union of Australia, its Federal and State Officers, and its members and the employers named in the schedule of respondents to this Award in respect of teachers (as defined) employed by them, whether or not such teachers are members of the Independent Education Union.

3.2 This award shall take effect from the beginning of the first full pay period to commence on or after 14 December 1998 and shall remain in force for a period of six months.

4. DEFINITIONS

For the purpose of this award:

4.1 Bachelors Degree means the degree of Bachelor conferred by a recognised university or college of advanced education.

4.2 Casual teacher means:

4.2.1 a short-term casual teacher who is a teacher engaged by the hour or the day as required by the college for less than four weeks; and

[4.2.1 renumbered as 4.2.2 by R9268 from 14Dec98]

4.2.2 an extended casual teacher who is a teacher engaged by the hour or the day as required by the college for not less than four weeks and not more than fifty two weeks.

4.3 College means a non-government college, the principal purpose of which is to teach English or which offers a course or courses (among others) of at least five hours instruction per week in English to adult students whose first language is other than English.

4.4 Commission means the Australian Industrial Relations Commission or its successor.

4.5 Diploma of Education means a Diploma of Education conferred by a recognised university or recognised college of advanced education or recognised teachers college.

4.6 Diploma of Teaching means a Diploma of Teaching conferred on completing a three year full-time course or equivalent course by a recognised university, college of advanced education or recognised teachers college.

4.7 Education Providers Industrial Association means the unincorporated association known as the Education Providers Industrial Association or any incorporated successor to that body.

4.8 Equivalent experience means experience which the college and the teacher agree is equivalent to experience prescribed by this award or is determined as being equivalent by the Qualifications Committee.

4.9 Equivalent qualification means a qualification obtained in Australia or overseas which the employer and teacher agree as being equivalent to a qualification prescribed by this award or is determined as being equivalent by the Qualifications Committee.

[4.10 substituted by PR956488 ppc 21Dec04]

4.10 Full-time teacher means a teacher with ongoing employment and a full-time teaching load.

4.11 Higher degree means a Doctorate or the degree of Master conferred by a recognised university or college of advanced education.

4.12 IEU means the Independent Education Union of Australia.

[4.13 substituted by PR956488 ppc 21Dec04]

4.13 Part-time teacher means a teacher, other than a casual teacher, who has ongoing employment, however, ordinarily has a lesser teaching load than a full-time teacher.

4.14 Proportional calculation means the teaching load allocated to a part-time teacher at an institution as a proportion of the teaching load usually allocated to a full-time teacher at the same institution.

4.15 Qualifications Committee means the Committee established under clause 6, Qualifications Committee, of this award.

4.16 Recognised college of advanced education means an Australian college of advanced education which is recognised as such by any law of a State, Territory or Commonwealth.

4.17 Recognised teachers college means a teachers education institution, whether or not incorporated as a college of advanced education or contained within a college of advanced education which is recognised as such by any law of a State, Territory or Commonwealth.

4.18 Recognised university means an Australian university which is recognised by any law of a State, Territory or Commonwealth.

4.19 Relevant institution means a college which is accredited by the relevant State or Federal authority to provide TESOL courses to adult students, a Technical and Further Education college, the Adult Migrant Education Service, a university or college of advanced education or any other institution conducting an equivalent course in TESOL or modern languages.

[4.20 substituted by PR956488 ppc 21Dec04]

4.20 Sessional teacher means a teacher employed to work full-time or part-time for a specified period or periods of time in accordance with the provisions of 5.6.3.

4.21 School means a school certified or registered as such under the provisions of the relevant legislation in any State or Territory.

4.22 Teach English means to teach English to adult students whose first language is other than English.

4.23 Teacher means a person employed as such to teach English or to perform other related academic duties but does not include the Principal or Director of Studies at a college.

4.24 TESOL means teaching English to speakers of other languages and includes TEFL (teaching English as a foreign language) and TESL (teaching English as a second language).

4.25 Teaching load means face to face teaching, supervision of self access classes and any other duties which may be allocated in substitution for face to face teaching.

5. RATES OF PAY

5.1 Calculation of annual salary

5.1.1 On appointment, a Teacher shall be placed on a salary level commensurate with the minimum salary for his or her qualifications and experience by reference to the points with which the teacher is entitled to be credited under this clause.

5.1.2 The salary scale for teachers shall be as set out in schedule D.

5.1.3 If an employer does not accept (fully or in part) the qualifications or experience of a teacher, the employer shall advise the teacher which qualifications or experience are not accepted (or the extent to which they are not accepted).

[5.1.4 substituted by PR906155 ppc 09Jul01]

5.1.4 Subject to the continuing satisfactory conduct, diligence and performance of a Teacher and the acquisition and utilisation of skills and knowledge through experience in the College, progression from one salary level to the next level shall be in accordance with the points with which that teacher is entitled to be credited pursuant to subclause 5.3.

[5.1.5 substituted by PR906155 ppc 09Jul01]

5.1.5 Where the College considers that the conduct, diligence or performance of a Teacher is not satisfactory or the teacher has not acquired and utilised increased skills and knowledge which could reasonably be expected to be acquired and utilised and for that reason considers that progression to the next level salary level is not warranted, a formal review shall be undertaken pursuant to Clause 16, Disputes Procedure.

5.2 Qualifications

5.2.1 The points for qualifications are:

Qualification	Points
---------------	--------

Table 1

Higher degree in Applied Linguistics or TESOL	10
Higher degree in Education or Modern Languages	7
Diploma of Teaching	6
Bachelor's Degree or higher degree in subjects other than those set out above	5

Provided that a teacher with a Diploma of Teaching who subsequently obtains a Bachelor's Degree or higher degree in subjects other than those set out above shall be credited with 8 points.

Table 2

Graduate Diploma in a TESOL course set out in

schedule A to this award
10
Diploma in a TESOL course set out in

schedule B to this award
10
Certificate in a TESOL course set out in

schedule C to this award
6

Table 3

Diploma of Education
3

(Where a teacher also holds a Diploma of Teaching
the points in Table 3 shall not be credited).

5.2.2 Points are credited for the qualification attracting the highest number of points within a table. The points within a table are not cumulative.

5.2.3 The academic qualifications referred to in this clause shall include equivalent qualifications.

5.2.4 A teacher who is a graduate in education (four-year course) shall be entitled to be credited with 8 points provided the teacher shall not be entitled to accumulate further points from Table 1 or Table 3. If the teacher subsequently obtains a higher degree, the teacher shall be entitled to the points for that degree and a further 3 points.

5.3 Experience

5.3.1 The points for teaching experience are:-

Teaching in schools or relevant institutions other than as set out in other columns

Teaching ESL to primary students in schools

Teaching Modern Languages to secondary students in schools

Teaching ESL to secondary students in schools

Teaching EFL/ESL to adults in a relevant institution

On completion of:

6 months

-

-

-

-

5

1 year
1
2
4
6
10
2 years
3
4
6
9
15
3 years
4
6
8
12
20
4 years
5
8
10
15
25
5 years
5
8
10
15
30
6 years
5
8
10
15
35
7 years
5
8
10
15
40

5.3.2 Teaching experience means full-time teaching in a school or other relevant institution in Australia to classes of not less than five students. Where a teacher has taught the relevant subject for less than the number of hours normally required to be taught by a full-time teacher at the same institution points shall be credited by applying the proportional calculation.

5.3.3 Where a full-time or part-time teacher has worked for less than the number of weeks normally required to be worked by a full-time teacher at the same institution over a 12-month period, that teacher shall be credited with points for experience in the proportion that the weeks worked by that teacher bears to the number of weeks normally required to be worked by a full-time teacher at the same institution.

5.3.4 For the purpose only of calculating the service of a casual teacher and no other the following shall apply:

5.3.4(a) for service at a school or relevant institution (other than a college) the teacher shall accrue points based on the number of full days or

equivalent thereof the teacher has taught compared to the number of days normally required to be worked by a full-time teacher at the same institution in a year;

5.3.4(b) for service at a college the teacher shall accrue points as follows:

5.3.4(b) (i) Each daily engagement shall be calculated as one day;

5.3.4(b) (ii) Where a casual teacher is engaged by the hour, every 5 hours shall be deemed to constitute one day; and

5.3.4(b) (iii) Every 110 days on which a casual teacher has been engaged for a day or deemed day shall be deemed to constitute 6 months service.

5.3.5 The maximum number of points that may be awarded for experience is 40. The maximum number of points that may be awarded for teaching experience other than adult EFL or ESL is 15.

5.3.6 The experience referred to in this clause shall include equivalent experience.

[5.3.6(a) deleted by PR956488 ppc 21Dec04]

[5.3.6(a) deleted by PR956488 ppc 21Dec04]

5.3.7 Upon a teacher achieving further experience or qualifications which entitle that teacher to an increase in salary such increase shall be calculated on and from the first pay period after the date the results of the course are announced or the relevant experience was obtained.

5.4 Part-time teachers

5.4.1 A part-time teacher shall be paid at the same rate as a full-time teacher with the corresponding classification calculated in accordance with the proportional calculation and shall be entitled to all conditions on a pro-rata basis.

5.5 Casual teachers

5.5.1 A casual teacher shall be paid by reference to a daily rate except where the college and the teacher agree to an hourly rate.

[5.5.2 substituted by PR956488 ppc 21Dec04]

5.5.2 A casual teacher shall be paid in accordance with the table in Schedule D.

[5.5.3 substituted by PR961532 ppc 03Aug05]

5.5.3 The calculation of daily rates for casual teachers is as follows:

Applicable Salary

Pay
=

+

25 per cent

261

5.5.4 The above rates include the pro-rata payment in respect of annual holidays and sick leave.

5.5.5 A casual teacher engaged by the hour shall be paid in respect of each hour of attendance at the college other than for timetabled tea and lunch breaks, provided not more than 15 minutes per day shall be deducted for tea breaks and shall be paid for a minimum of two hours for each engagement.

5.5.6 For the purpose only of determining the adjustment of hourly rates where the Commission in National Wage Cases increases rates by a flat amount, the flat amount awarded shall be divided by 25 and added to the hourly rate then existing.

5.5.7 If a short-term casual teacher is employed as a casual teacher by a college for a continuous period of service of 4 weeks or more that teacher shall be classified as an extended casual teacher and must be paid as such from the commencement of the continuous period of service as a casual teacher.

5.5.8 If a sessional teacher remains in continuous service with a college after that teacher's sessional appointment expires, in the absence of evidence of agreement to the contrary, that teacher shall be classified as an extended casual teacher from the date the sessional appointment expires.

[5.5.9 substituted by PR956488 ppc 21Dec04]

5.5.9 Casual Teachers - conversion to ongoing employment

5.5.9(a) Where a casual employee has been employed on a regular and systematic basis for a period in excess of twelve months following 21 December, 2004, that employee will have the right to elect to have their contract of employment converted to a continuing contract which is either full time or part time.

5.5.9(b) The employer will give such an employee notice in writing of the employee's right to elect to convert their contract of employment within four weeks of the attainment of the twelve month period.

5.5.9(c) The employee will respond, in writing, to the employer's notice within four weeks of receipt of that notice. Where an employee does not respond in that time frame, the employee will be deemed to have elected to remain a casual employee.

5.5.9(d) At any time after the twelve month period identified in 5.5.9(a) an employee may, provided they have remained employed on a regular and systematic basis, give the employer six weeks notice that the employee wishes to convert to a continuing contract of employment.

5.5.9(e) An employer will, within four weeks of receipt of notice provided in 5.5.9(c) or 5.5.9(d), agree to or refuse the conversion. The employer will not unreasonably refuse the conversion. For the purpose of this clause, reasonable refusal shall be defined to include:

5.5.9(e) (i) a demonstrable decline in student enrolments

5.5.9(e) (ii) demonstrated unsatisfactory work performance

5.5.9(f) Where an employee has converted to ongoing employment in accordance with this clause, the employee can only revert to casual employment with the agreement of the employer.

5.5.9(g) Any dispute in relation to this provision will be dealt with in accordance with clause 16 - Disputes Procedure.

5.5.9(h) An employee must not be engaged and/or re-engaged to avoid any obligation under this Award.

5.5.9(i) Should there be substantive change to external regulation, the IEU and the employer agree that they shall hold discussions regarding the effect such change may have on the operation of this clause. If no agreement is reached between the IEU and the employer then the provisions of this clause will continue to operate.

5.6 Sessional teachers

[5.6 substituted by PR956488 ppc 21Dec04]

5.6.1 A sessional teacher shall be paid at the same rate as that prescribed for a full-time teacher or part-time teacher, as the case may be, with corresponding qualifications, experience and teaching load.

5.6.2 A sessional teacher shall be entitled to the same conditions as a full-time or part-time teacher, whichever is applicable.

5.6.3 Employment of a sessional teacher will only occur in the following circumstances:

5.6.3(a) Where the position to which a teacher is appointed is to undertake a specific project which is for a specified period or periods of time, and it is not an ongoing project or course of instruction offered by the college. Provided that each such engagement is for a minimum period of 4 weeks or

5.6.3(b) Where a teacher is employed for not less than 8 weeks and not more than 52 weeks or

5.6.3(c) Where a teacher is employed for a specified period or periods of time to replace an employee who is absent on approved leave. Provided that each such engagement is for a minimum period of 4 weeks.

5.6.4 The employer shall provide in the letter of appointment for a sessional teacher the reason for the employment being of fixed term duration and the date of commencement and the date of cessation of employment.

5.6.5 On termination of a sessional engagement, a sessional teacher may elect to:

5.6.5(a) be paid out accrued annual leave entitlements; or

5.6.5(b) have the employer preserve the accrued annual leave entitlements for use during a subsequent sessional engagement provided that such leave is taken within 12 months of it accruing, otherwise the entitlement shall be paid out.

5.6.6 Where the same or a commensurate position will exist at the expiry of a sessional teacher's period of engagement, the employer shall offer a further engagement to a sessional teacher. Wherever practicable, notice of re-engagement shall be at least two weeks prior to the expiry of the current engagement.

5.6.7 The requirement of an employer to offer a further sessional position to a teacher in accordance with 5.6.6 is subject to the teacher's ongoing satisfactory conduct and performance.

5.6.8 Where an employer offers a further position to a teacher in accordance with 5.6.6 above, and the teacher accepts that offer, the teacher shall, wherever practicable, give one week's notice of the teacher's acceptance to the employer.

5.7 Continuous service

[5.7 substituted by PR956488 ppc 21Dec04]

5.7.1 One or more engagements of a casual or sessional teacher with a college shall be deemed to be continuous unless more than eight weeks elapse between those engagements.

5.7.2 Service shall be deemed to be continuous notwithstanding that the service has been broken by an interruption or determination made by the employer with the intention of avoiding an obligation under this award, other industrial instrument or legislation.

5.7.3 The period between engagements will not count towards calculating continuous service under this Award.

5.8 Positions of special responsibility

The following positions of special responsibility shall apply in NSW.

5.8.1 Head Teacher - a teacher who acts as a deputy to the Director of Studies who has responsibility for the supervision and the administration of course programmes for at least 150 students at one location shall be paid an additional allowance in accordance with schedule D in addition to the teacher's normal salary.

5.8.2 Senior Teacher - a teacher who has responsibility for the supervision, co-ordination and administration of a course or programme as defined by the director or the principal shall be paid an allowance in accordance with schedule D in addition to the teacher's normal salary.

[5.9 substituted by S6944 PR905628 PR919785 PR934464 PR947759; PR960590 ppc 09Jul05 (ppc 01Aug05 for Victorian employers bound to apply the terms of this award by PR953697)]

5.9 The rates of pay in this award include the federal minimum wage payable under the Safety Net Review-Wages June 2005 decision [PR002005]. Any increase arising from the insertion of the federal minimum wage clause 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 over award 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 the federal minimum wage.

5.10 Payment of wages

[5.10 inserted by PR956488 ppc 21Dec04]

The salary payable to any teacher shall be paid weekly or fortnightly. Salary may be paid by Electronic Funds Transfer into an account nominated by the employee.

6. QUALIFICATIONS COMMITTEE

6.1 A committee known as the Qualifications Committee (the committee) shall be established.

6.1.1 The committee shall consist of two members who are widely experienced in the teaching of English, one of whom is appointed by the IEU and one of whom is appointed by the Committee of the Education Providers Industrial Association and/or the Committee's nominee and such Qualifications Committee members shall be referred to as the standing members.

6.1.2 Where a matter is referred to Committee, the employing college may appoint to the Committee a second person who is widely experienced in the teaching of English. Where this occurs the IEU may also appoint to the Committee a second person who is widely experienced in the teaching of English. Such persons shall be known as Temporary Members and they shall only sit on the Committee to hear the particular referral.

6.1.3 In the event the members of the committee cannot reach a decision they jointly shall appoint another person widely experienced in the teaching of English to determine the issue. In the event the committee cannot agree on the appointment of the additional person the matter shall be referred to the Commission with a request that the Commission appoint the additional person.

6.2 Where a teacher considers the qualifications held by that teacher are equivalent to other qualifications specified in the award or that experience obtained overseas is equivalent to other experience specified in the award but the college disagrees, the college or the teacher may refer the matter to the committee.

6.3 The committee may make a limited or a general determination in relation to a matter before it. A limited determination shall only be binding on the employer with whose classification the teacher has disagreed, whereas a general determination shall be binding on all employers covered by this award in relation only to that teacher.

The teacher shall indicate at the time (or soon thereafter) of the matter being referred to the committee whether he or she is seeking a limited or general determination.

6.4 Subject to paragraph 6.5 of this clause, any decision of the committee shall operate from the date of reference of the matter to the committee or from the date 6 weeks prior to its decision whichever is the later and no claim for retrospective payments before this date shall arise by reason of a college being found to have failed to classify a teacher as subsequently determined by the committee;

6.5 Provided that where the claim relates to the appropriate classification of a teacher employed by the college at the date of commencement of this Award or at the date of application of the award to a particular employer and where the matter is referred to the committee within three months of the classification of a teacher by the college, the teacher shall be entitled to payment in accordance with the decision of the committee from the date of operation of the award or from the date of application of the award to that employer whichever is the later.

6.6 In determining equivalent experience, the Qualifications Committee:

6.6.1 shall not have regard to any TESOL experience at institutions which are not accredited by any Government or by any professional body of TESOL institutions where such accreditation is available.

6.6.2 shall have regard to the standard of education of the TESOL institution at the relevant time and in this regard the committee may consider:

- (a) the qualifications of teachers at the institution;
- (b) the range and level of courses offered at the institution;
- (c) the compliance of that institution with any relevant professional standards, guidelines, regulations or codes applicable to TESOL institutions generally in that location.

6.6.3 shall have due regard to the need to establish and maintain proper professional standards of teaching at colleges in Australia.

6.7 The committee shall determine its own procedures but shall be bound to act in accordance with equity and good conscience.

7. PUBLIC HOLIDAYS

7.1 A teacher shall be entitled to holidays on the following days:

7.1.1 New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day, and

7.1.2 the following days as prescribed in the relevant States, Territories and localities: Australia Day, Anzac Day, Queen's Birthday and Eight Hours' Day or Labour Day, and

7.1.3 in NSW, the first Monday in August; in Victoria, Melbourne Cup Day; in South Australia, Adelaide Cup Day; in Queensland, Show Day as gazetted for each locality.

7.2 A teacher shall be entitled to holidays in lieu in the following circumstances:

7.2.1 When Christmas Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on 27 December.

7.2.2 When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.

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

7.3 Where in a State, Territory or locality, public holidays are declared or prescribed on days other than this set out in (a) and (b) above, those days shall constitute additional holidays for the purpose of this award.

7.4 An employer, with the agreement of the union, may substitute another day for any prescribed in this clause.

7.4.1 An employer and teachers may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of teachers affected shall constitute agreement.

7.4.2 An agreement pursuant to 7.4.1 shall be recorded in writing and be available to every affected teacher

7.4.3 The union shall be informed of an agreement pursuant to 7.4.1 and may within seven days refuse to accept it. The union will not unreasonably refuse to accept the agreement.

7.4.4 If the union, pursuant to 7.4.3, refuses to accept an agreement, the parties will seek to resolve their differences to the satisfaction of the employer, the teachers and the union.

7.4.5 If no resolution is achieved pursuant to 7.4.4 the employer may apply to the Commission for approval of the agreement reached with his or her teachers. Such an application must be made fourteen or more days before the prescribed holiday. After giving the employer and union an opportunity to be heard, the Commission will determine the application.

7.5 No deduction shall be made from the wages of full-time, part-time or sessional teachers for the days on which public holidays fall. A part-time teacher shall only be paid in respect of those public holidays on which that teacher ordinarily would have been required to work.

8. ANNUAL HOLIDAYS

8.1 A teacher (other than a casual teacher) shall be entitled after the completion of each period of twelve months continuous service to paid annual leave of 20 working days, exclusive of public holidays.

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

8.3 Should a teacher not complete any period of twelve months' service the teacher shall, on the termination of employment, be entitled to pay in lieu of annual leave on a pro rata basis.

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

8.5 Where a college or part of it is temporarily closed down for the purpose of vacations, teachers maybe required to take accrued or pro rata annual leave to which they are entitled under the provisions of this clause during the period

of close-down. A teacher who does not have an entitlement to annual leave for part of the close-down may be stood down without pay, but such period shall not break the continuity of service of the teacher.

8.6 Subject to the provision of subclause 8.7, in no case shall the payment by an employer to a teacher be less than the sum of the following amounts:

8.6.1 The teacher's ordinary rate of salary as prescribed by the Award for the period of annual leave.

8.6.2 A further amount calculated at the rate of 17.5% of the amount referred to in 8.6.1.

8.7 The provisions of sub-clause 8.6.2 shall not apply in the following circumstances.

8.7.1 To any teacher who is already receiving an annual holiday bonus, loading or other annual leave payment which is not less favourable to the teacher.

8.7.2 On termination of a teacher's employment except when the employment of a teacher is terminated by his or her employer for a cause other than misconduct and at the time of termination the teacher has not been given and has not taken the whole of annual holiday to which the teacher was entitled under this Award.

9. LONG SERVICE LEAVE

Teachers covered by this Award shall be entitled to Long Service Leave in accordance with the provisions of the relevant state legislation.

10. LUNCH PERIOD

A full-time teacher shall be entitled to a minimum of thirty consecutive minutes per working day as a lunch break during which time the teacher shall not be required to hold meetings, supervise students or undertake any other activity.

11. PERSONAL/CARER'S LEAVE

11.1 Amount of Paid Personal Leave

11.1.1 Paid personal leave will be available to a teacher when they are absent due to:

* personal illness or injury (sick leave); or

* for the purposes of caring for an immediate family or household member who is sick and requires the teacher's care and support (carers leave); or

* bereavement leave on the death of an immediate family or household member (bereavement leave).

11.1.2(a) teachers are entitled to twelve days of personal leave in each year of service.

(b) In any year unused personal leave accrues at the rate of the lesser of:

(i) ten days less the amount of sick leave taken from the current year's personal leave entitlement in that year; or

(ii) the balance of that year's unused personal leave.

(c) Personal leave may accumulate for up to two years to a maximum of twenty days. Personal leave which accrues to a teacher at the commencement of a year of service shall be taken prior to leave which a teacher has accumulated.

(d) A sessional teacher shall be entitled to paid personal leave in proportion to the total period his or her appointment (excluding any holidays) bears to the number of weeks usually worked by a teacher at the college.

11.2 Immediate family or household

11.2.1 The entitlement to use personal leave for the purposes of carer's or bereavement leave is subject to the person being either:

- (a) a member of the teacher's immediate family; or
- (b) a member of the teacher's household.

11.2.2 The term immediate family includes:

(a) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the teacher. A de facto spouse means a person of the opposite sex to the teacher who lives with the teacher as his or her husband or wife on a bona fide domestic basis; and

(b) child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the teacher or a spouse of the teacher.

11.3 Sick leave

11.3.1 A teacher is entitled to use up to ten days of the current year's personal leave entitlement as sick leave in each year of service.

11.3.2 A teacher is entitled to use accumulated personal leave for the purposes of sick leave when the current year's sick leave entitlement has been exhausted.

11.3.3 Other than in respect of the first two days sick leave in any year, a teacher shall, upon request provide a medical certificate, or other evidence satisfactory to the College setting out the nature of the illness and its duration.

11.3.4 A sessional teacher shall be entitled to paid sick leave in proportion to the total period his or her appointment (excluding any holidays) bears to the number of weeks usually worked by a teacher at the college.

11.3.5 (a) Subject to paragraph (b) of this subclause, a teacher shall not be entitled to sick leave for any period in respect of which such teacher is entitled to workers' compensation.

(b) Where the amount payable by way of workers' compensation is less than the salary which would otherwise be payable to the teacher the college shall make up the shortfall in salary out of sick leave due to that teacher, if any, and debit sick leave owing to the teacher by that amount, provided that this paragraph (b) shall not apply if to do so would give rise to any penalty or other detriment being imposed upon the relevant college under the relevant state or territory legislation.

(c) Nothing in this clause shall reduce a teacher's entitlement to workers compensation pursuant to the legislation of a state or territory.

11.4 Bereavement leave

11.4.1 Anteacher is entitled to use up to two days personal leave as bereavement leave on each occasion.

11.4.2 Where an teacher has exhausted all personal leave entitlements, including accumulated entitlements, they will be entitled to one days unpaid bereavement leave.

11.4.3 Upon request by the College, a teacher shall provide the College with satisfactory evidence of such death and the relationship of the deceased to the teacher.

11.5 Carer's leave

11.5.1 A teacher is entitled to use up to five days personal leave each year as carer's leave.

11.5.2 An teacher shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

11.5.3 The teacher shall, wherever 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 teacher, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the teacher to give prior notice of absence, the teacher shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

11.5.4 A teacher may, with the consent of the employer, take unpaid carer's leave.

12. PARENTAL LEAVE

[12 varied by PR911554 from 15Nov01

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.

The provisions of this clause apply to full time, part time and eligible casual employees, but do not apply to other casual employees.

An eligible casual employee means a casual employee:

- a) employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and
- b) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.

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).

An employer must not fail to re-engage a casual employee because:

- (a) the employee or employee's spouse is pregnant; or

(b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

An eligible casual employee employed by their current employer, on or prior to 1 January 1998, shall be entitled to parental leave under the term of the award as of 15 November 2001.

An eligible casual employee employed on or after 15 November 2001 shall be entitled to parental leave under the term of the award as of 15 November 2002.

12.1 Definitions

12.1.1 For the purpose of this clause child means a child of the teacher 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 teacher for the purposes of adoption, other than a child or step-child of the teacher or of the spouse of the teacher or a child who has previously lived continuously with the teacher for a period of six months or more.

12.1.2 Subject to clause 12.1.3, in this clause, spouse includes a de facto or former spouse.

12.1.3 In relation to clause 12.5, spouse includes a de facto spouse but does not include a former spouse.

12.2 Basic entitlement

12.2.1 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.

12.2.2 Subject to 12.3.6 parental leave is to be available only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

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

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

12.3 Maternity leave

12.3.1 A teacher must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

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

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

12.3.2 When the teacher gives notice under 12.3.1(a) the 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.

12.3.3 A 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.

12.3.4 Subject to clause 12.2.1 and unless agreed otherwise between the employer and teacher, a teacher may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

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

12.3.6 Special Maternity Leave

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

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

(c) Where a teacher not then on maternity leave suffers an 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.

12.3.7 Where leave is granted under clause 12.3.4, during the period of leave a teacher may return to work at any time, as agreed between the employer and the teacher provided that time does not exceed four weeks from the recommencement date desired by the teacher.

12.4 Paternity leave

12.4.1 A teacher will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:

(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

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

(c) a statutory declaration stating:

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

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

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

12.4.2 The teacher will not be in breach of clause 12.4.1 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.

12.5 Adoption leave

12.5.1 The 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 teacher may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the teacher, the adoption of a child takes place earlier.

12.5.2 Before commencing adoption leave, a teacher will provide the employer with a statutory declaration stating:

(a) the teacher is seeking adoption leave to become the primary care-giver of the child;

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

(c) that for the period of adoption leave the teacher will not engage in any conduct inconsistent with their contract of employment.

12.5.3 An employer may require a teacher to provide confirmation from the appropriate government authority of the placement.

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

12.5.5 An 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.

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

12.6 Variation of period of parental leave

Unless agreed otherwise between the employer and teacher, an teacher 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.

12.7 Parental leave and other entitlements

A teacher 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.

12.8 Transfer to a safe job

12.8.1 Where a 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 teacher make it inadvisable for the teacher to continue at her present work, the 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.

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

12.9 Returning to work after a period of parental leave

12.9.1 A teacher 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.

12.9.2 A teacher will be entitled to the position which they held immediately before proceeding on parental leave. In the case of a teacher transferred to a safe job pursuant to clause 12.8, the teacher will be entitled to return to the position they held immediately before such transfer.

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

12.10 Replacement teachers

12.10.1 A replacement teacher is a teacher specifically engaged or temporarily promoted or transferred, as a result of a teacher proceeding on parental leave.

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

13. EXAMINATION AND STUDY LEAVE

13.1 Any teacher, who for the purposes of furthering his or her teacher training, enrolls in any course approved by the college shall be granted leave:

13.1.1 with pay on the day of any examination required in the course,

13.1.2 without pay for the purpose of attending any compulsory residential school which is a part of such course.

13.2 Upon request, the college may entertain requests from teachers for time off with or without pay for attendances at off-premises courses, seminars or meetings; and payment of fees for programmes which will greatly benefit the college.

14. JURY DUTY

A teacher required to attend for jury service for any period up to a maximum of twenty working days shall be reimbursed by the college an amount equal to the difference between the amount paid in respect of his or her attendance for such service, and the wage he or she would have received if he or she had not been on jury service.

15. TERMS OF ENGAGEMENT AND INFORMATION TO BE PROVIDED TO TEACHERS

15.1 A college shall provide a teacher other than a short-term casual teacher on appointment with a letter stating, inter alia, the teacher's classification and rate of salary as at appointment, the normal teaching load that will be required, the age of retirement for teachers at the college and entitlements to superannuation (and related obligations of the teacher) pursuant to clause 18 - Superannuation.

In the case of a sessional teacher and an extended casual teacher, the letter shall also state the length of engagement.

15.1.1 The letter of appointment shall state that if a teacher considers his or her classification is incorrect on the basis of the credit being given for qualifications or experience, the teacher may have the matter referred to the Qualifications Committee.

15.1.2 Without prejudice to the college or to the teacher's entitlement pursuant to clause 6, Qualifications Committee, a college may make a provisional classification.

15.2 Subject to subclauses 15.4 and 15.5 of this clause, the employment of a teacher, other than a casual teacher, shall not be terminated without at least four weeks' notice on either side or the payment of or forfeiture of four weeks' salary in lieu of notice.

15.3 Subject to subclause 15.4 of this clause, the employment of any extended casual teacher shall not be terminated without:

15.3.1 in the case of continuous service of not less than four weeks and up to eight weeks, at least one weeks' notice on either side or the payment of or forfeiture of one weeks' salary in lieu of notice; and

15.3.2 in the case of continuous service of more than eight weeks, at least two weeks' notice on either side or the payment of or forfeiture of two weeks' salary in lieu of notice.

Provided that for the purpose of this clause continuous service shall only include casual engagements.

15.4 The foregoing shall not affect the right of the college to dismiss summarily any teacher for incompetence, misrepresentation, neglect of duty or other misconduct.

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

15.6 Job search entitlement

[15.6 substituted by PR956486 ppc 21Dec04]

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.

15.7 Transmission of business

[15.7 inserted by PR956486 ppc 21Dec04]

Where a business is transmitted from one employer to another, as set out in clause 17 - Redundancy, the period of continuous service that the employee had with the transmittor or any prior transmittor is deemed to be service with the transmittor and taken into account when calculating notice of termination. However, an employee shall 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.

[15.8 inserted by PR956486 ppc 21Dec04]

15.8 For the purpose of allowing future employers to appropriately grade teachers under the classification system set out in clause 5 - Rates of Pay, upon the termination of the service of a teacher other than a short-term casual teacher, the college shall provide a general statement of service setting out the length of service and range of subjects taught, any position of special responsibility held and any special duties performed by the teacher. For the same purpose, upon request, a short-term casual shall be provided with a statement of the hours or days, as the case may be, that the teacher has been engaged provided that where a short-term casual teacher is being engaged regularly by the same college, such request only shall be made at reasonable intervals.

[15.9 inserted by PR956488 ppc 21Dec04]

15.9 An employer shall not cease to engage a casual teacher or sessional teacher for reason only of the employee progressing to a higher classification in this Award.

16. DISPUTES PROCEDURE

For the purposes of this clause, a union representative shall mean a representative of the union employed as a teacher by the employer.

16.1 Any grievance or dispute which arises shall where possible be settled by discussion at the workplace level between the teacher or teachers (as the case may be) and the employer.

16.2 If no agreement is reached between the teacher (or teachers) and the employer, and the teacher requests the union to discuss the dispute with the employer or nominated representative of the employer the following steps shall apply:

16.3 The union representative shall be permitted in working hours (other than timetabled teaching time) to interview a representative of the college nominated for that purpose by the college in relation to a grievance or dispute. Such interview shall take place at a time and place convenient to both parties.

16.4 Meetings of union members who are employed at the college in relation to a grievance or dispute may be held on college premises at reasonable times outside timetabled teaching hours and at places reasonably convenient to both union members and the college.

16.5 The college shall permit the union representative in the workplace to post union notices relating to the holding of such meetings on a noticeboard nominated by the college and reasonably accessible to teachers employed by the college.

16.6 Nothing in this clause shall remove the right of a teacher or employer to refer a dispute to the Australian Industrial Relations Commission. Wherever possible, such notification should not occur until the procedures set out at 1 and 2 above have been exhausted.

17. REDUNDANCY

[17 substituted by PR956486 ppc 21Dec04]

17.1 Definitions

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

17.1.2 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 anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.

17.1.3 Small employer means an employer who employs fewer than 15 employees.

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

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

17.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given 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 rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

17.3 Severance pay

17.3.1 Severance pay - other than employees of a small employer

An employee, other than an employee of a small employer as defined in 17.1, 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:

Period of continuous service
Severance pay

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

* Week's pay is defined in 17.1.

17.3.2 Severance pay - employees of a small employer

An employee of a small employer as defined in 17.1 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:

Period of continuous service
Severance pay

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 17.1.

17.3.3 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.

17.3.4 Sessional teachers engaged in accordance with 5.6.3(b) who are deemed to have continuous service in accordance with 5.7 will receive severance payments in accordance with 17.3.1 or 17.3.2. Provided that service prior to 21 December, 2004 shall not be taken into account in calculating an entitlement to severance pay for an employee of a small employer pursuant to 17.3.2.

17.3.5 Application may be made for variation of the severance pay provided 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].

17.4 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in 15.2 and 15.3. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

17.5 Alternative employment

17.5.1 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 employee.

17.5.2 This provision does not apply in circumstances involving transmission of business as set in 17.7.

17.6 Job search entitlement

17.6.1 During the period of notice of termination given by the employer in accordance with 15.2 and 15.3, 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.

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

17.6.3 The job search entitlements under this subclause apply in lieu of the provisions of 15.6.

17.7 Transmission of business

17.7.1 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:

17.7.1(a) Where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the

transmitter and any prior transmitter to be continuous service of the employee with the transmittee; or

17.7.1(b) Where the employee 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 employee at the time of ceasing employment with the transmitter; and

* which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.

17.7.2 The Commission may vary 17.7.1(b) if it is satisfied that this provision would operate unfairly in a particular case.

17.8 Employees exempted

This clause does not apply to:

- * employees terminated as a consequence of serious misconduct that justifies dismissal without notice;
- * probationary employees;
- * apprentices;
- * trainees;
- * employees engaged for a specific period of time or for a specified task or tasks; or
- * casual employees.

17.9 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 employers.

18. SUPERANNUATION

18.1 Superannuation legislation

(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.

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

18.2 Definitions

For the purposes of this clause:

18.2.1 Basic earnings means the total minimum salary rate and the amount of any allowance prescribed from time to time in clause 5, Rates of pay, of this award;

18.2.2 Fund means:

(a) NGS Super; or

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

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

18.2.3 Qualified teacher means:

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

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

18.3 Contributions

Except as provided in paragraphs 18.5 and 18.6 of this subclause, each college in respect of each qualified teacher employed by it, shall pay contributions to the appropriate fund as required to comply with the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992 as amended from time to time, provided nothing herein shall be construed as requiring a college to make contributions to more than one fund.

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

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

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

Contributions shall be paid as soon as reasonably possible thereafter; PROVIDED that where the college has informed a teacher of the teacher's rights and obligations under this clause and the teacher is or becomes a qualified teacher and fails to join the relevant fund within six weeks of becoming a qualified teacher, the college will only be obliged to make contributions calculated from the first pay period commencing after the teacher advised the college in accordance with paragraph 18.7 of this subclause provided the college informs or has informed the teacher in writing of its intention not to calculate the payment as provided in this paragraph.

18.7 A teacher shall advise the employer in writing of the teacher's application to join a fund pursuant to this award.

18.8 When a teacher commences in employment the college shall advise the teacher in writing of the teacher's entitlements under this award, within two weeks of the date of commencement of employment and also of the relevant provisions of paragraph 18.6 of this subclause.

18.9 Subject to paragraph 18.6 of this subclause a college shall make contributions in respect of all days worked at the college by a qualified teacher including the qualifying period of twenty days required to be worked under this clause.

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

19. ENTERPRISE FLEXIBILITY PROVISION

(See ss.113A and 113B of the Act)

Where an employer or teacher 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:

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

19.2 For the purpose of the consultative process teachers may nominate the Union or another to represent them.

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

20. ANTI-DISCRIMINATION

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

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

20.3 Nothing in this clause is taken to affect:

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

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

20.3.3 a teacher, 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;

20.3.4 the exemptions in s.170CK(3) and (4) of the Act.

SCHEDULE A

Graduate Diploma in TESOL course -

Graduate Diploma in TESOL
Institute of Technical & Teacher
(Adult Strand)
Education, Sydney CAE

The above are of the relevant academic and educational standard and are postgraduate qualifications in TESOL of one year full-time or equivalent which include components of supervised teaching practice and class observation.

SCHEDULE B

Diploma in TEFL or TESL course -

RSA Diploma in TEFLA
Australian College of English Institute of Technical & Teacher Education, Sydney
CAE

ACL Diploma in Adult TESOL

Australian Centre for Languages
RSA Diploma in TESL(FACE scheme)

Brisbane Immigrant Education Centre Western Australian CAE

SCHEDULE C

Certificate in a TESL, TEFL or TESOL course -

ACL Certificate in Adult TESOL

Australian Centre for Languages
RSA Certificate in TEFLA
Australian College of English International College of English Milner
International College of English

Australian Certificate in TEFLA
Institute of Languages, University of New South Wales

Postgraduate Certificate in TESOL

Australian College of English
Teaching English to Adult Speakers of Other Languages (TEASOL)
Sydney Technical College

The above qualifications are qualifications which:

? are of the relevant academic and educational standard;

? are designed for native or equivalent to native speakers of English who may not have previous adult TESOL experience; and

? include at least 60 hours of content related to language learning, analysis of language, teaching methodology and materials developments; and

? include for each candidate at least 8 hours of observation of live classes and at least 6 hours of supervised teaching practice on classes of adult foreign learners.

SCHEDULE D

[Sched D:1 substituted by S6944 PR905628 PR919785 PR934464 PR947759; PR960590 ppc 09Jul05 (ppc 01Aug05 for Victorian employers bound to apply the terms of this award by PR953697)]

1. The annual salary of teachers shall be from the first pay period on or after 9 July 2005, as set out below:

Step
Points
Total minimum salary per annum

\$
0
0
34471
1
5
34991
2
10
36034
3
15
37102
4
20
38762
5
25
39868
6
30
40871
7
35
41978
8
40
43092
9
45
44525
10
50
45859
11
55
47037

[Sched D:2 substituted by R7230 S6944 PR905628 PR919785 PR934464 PR947759 PR960590; PR961532 ppc 03Aug05]

2. The salary scale for casual teachers shall be set out below from the first pay period on or after 3 August 2005.

Step	Points	Daily Rate	\$	Hourly rate	\$
	0	165.09			
	1	30.15			
	5	167.58			
	2	31.30			
	10	172.58			
	3	32.45			
	15	177.69			
	4	33.60			
	20	185.64			
	5	34.76			
	25	190.94			
	6	35.92			
	30	195.74			
	7	36.99			
	35	201.05			
	8	38.15			
	40	206.38			
	9	39.21			
	45	213.24			
	10	40.36			
	50	219.63			
	11	41.52			
	55	225.28			
		42.73			

3. Allowances

The following allowances shall be payable in accordance with subclause 5.8:

Head Teacher
\$3,263 per annum
Senior Teacher
\$1,631 per annum

SCHEDULE E

[Sched E inserted by PR956486 ppc 21Dec04]

1. Until further determination and order of the Commission, the following clauses of the award as varied by the Commission on 21 December 2004, do not apply to Wollongong University College (Illawarra Technology Corporation Ltd):

Clause 5.5.9, 5.6, 5.7 and the first sentence of 17.3.4.

The following clauses of the award as it stood on 20 December 2004 shall apply to the College pending final determination and order by the Commission.

Clause 5.6 and 5.7.

2. Until further determination and order of the Commission the following clause of the award as varied by the Commission on 21 December 2004, does not apply to Holmes College:

Clause 5.10 Payment of Wages

SCHEDULE E-TRANSITIONAL WAGE RATES FOR VICTORIA-APPLICATION OF COMMON RULE AWARD

[Sched E inserted by PR960590 ppc 09Jul05; corrected by PR963008 ppc 09Jul05]

1. This clause contains the transitional rates of pay and allowances for employers in the state of Victoria who were previously not bound by this award, but are now subject to the award by virtue of the award having been declared a common rule under s.141 of the Workplace Relations Act 1996.

2. These transitional rates of pay and allowances shall not apply after the beginning of the first pay period commencing on or after 1 August 2005.

3. The annual salary of teachers shall be as set out below:

Step
Points
Total minimum salary per annum

\$
0
0
33584
1
5
34104
2
10
35147

3
15
36215
4
20
37875
5
25
38981
6
30
39984
7
35
41091
8
40
42205
9
45
43638
10
50
44972
11
55
46150

4. The salary scale for casual teachers shall be as set out below:

Step
Points
Daily Rate
\$
Hourly rate
\$

0
0
154.41
28.26
1
5
156.80
29.37
2
10
161.59
30.47
3
15
166.50
31.58
4
20
174.14
32.69
5

25
179.22
33.80
6
30
183.84
34.83
7
35
188.93
35.94
8
40
194.05
36.96
9
45
200.64
38.07
10
50
206.77
39.18
11
55
212.19
40.34

SCHEDULE OF RESPONDENTS

Holmes English Language Centre, 1/F, 267 Collins Street, Melbourne, Victoria.

International College of English Pty Ltd, trading as International College of English, 185 Spring Street, Melbourne, Victoria.

Melbourne Learning Centre Pty Ltd, trading as Melbourne Learning Centre, 252 Lygon Street, Carlton, Victoria.

Stotts College of English, Nicholas Building, 37 Swanston Street, Melbourne, Victoria.

Victoria International College Pty Ltd, 3 Oliver Lane, Melbourne, Victoria.

Rainshine Pty Ltd, trading as ABC College of English, PO Box 10, Flinders Lane Post Office, Melbourne, Victoria.

Eynesbury College, 69 Belair Road, Kingswood, South Australia.

Australian College of English Pty Ltd, trading as Australian College of English, 20/F, Plaza Tower, 500 Oxford Street, Bondi Junction, New South Wales.

Cyneast Pty Ltd, trading as Specialty Language Centre, 6/F, 104 Bathurst Street, Sydney, New South Wales.

Education Australia Pty Ltd, trading as Wessex College, New South Wales.

Kylstyle Pty Ltd, trading as Universal English College, 269 Sussex Street, Sydney, New South Wales.

National English Academy, 6/F, 1 Newland Street, Bondi Junction, New South Wales.

SELC Australia Pty Ltd, trading as Sydney English Language Centre, 1/F, 35 Spring Street, Bondi Junction, New South Wales.

Sydney College of English, 1/F, 35-39 Mountain Street, Broadway, New South Wales.

The Australian Centre for Languages Pty Ltd, trading as the Australian Centre for Languages, 420 Liverpool Road, South Strathfield, New South Wales.

Intensive English Centre, 61-69 Macquarie Street, Sydney, New South Wales.

International College of English, Sydney, 580 George Street, Sydney, New South Wales.

Metropolitan Business College, 74 Wentworth Avenue, Sydney, New South Wales.

Milton Language Centre, 84 Christie Street, St Leonards, New South Wales.

Careers Business College, PO Box 126, Darlinghurst, New South Wales.

Oceana English College, 436-438 Burwood Road, Belmore, New South Wales.

Austalk International Language School, 26 Ridge Street, North Sydney, New South Wales.

Lazer Education Centre Pty Ltd, trading as Lazer Education Centre, 114-115 Foveaux Street, Surry Hills, New South Wales.

Elias English College, 11-13 Aird Street, Parramatta, New South Wales.

Geos English Academy - Sydney, 32 Walker Street, New South Wales.

Insearch Language Centre, 3/F Prince Centre, 8 Quay Street, Sydney, New South Wales.

Waratah English Language Centre, 22 Darley Road, Manly, New South Wales.

Wollongong English Language Centre, University of Wollongong, PO Box 1144, Wollongong, New South Wales.

Australia World College, The Renaissance Centre, Great Western Highway, Katoomba, New South Wales.

The Lemaire English College of Australia Pty Ltd, Box 1A, 55 Grafton Street, Woollahra, New South Wales.

Magill English Language College, 166 The Entrance Road, Erina, New South Wales.

Cambridge English Language Centres, 4/F, 10 King Street, Rockdale, New South Wales and 2 Rose Street, Hurstville, New South Wales.

Roping-in No. 1 Award of 1992

Forward Australia International College

New Australia International English College

Australian College of Travel and Hospitality

English and Business Management Centre of Australia trading as The Office Business Academy

Roping-in No. 2 Award of 1992
Alpha Beta English College of Australia

Roping-in No. 3 Award of 1992
Cairns Language Centre

Roping-in No. 4 Award of 1992
Japanese Language College

Roping-in No. 1 Award of 1993
EF International Language Schools
SIS International College

Roping-in No. 1 Award of 1994
Willcox English College
Tokyo language and Culture Centre
Hales College
Acacia College

Roping-in No. 1 Award of 1995
Kent College
Australian Pacific College
Trans-Asia P/L
S.A. Adelaide Language Centre

Roping-in No. 1 Award of 1996
Billy Blue English School
Bridge Business College
Premier Language College

Roping-in No. 2 Award of 1996
Anutech Pty Ltd

Roping-in No. 3 Award of 1996
AG Mate Academy SYDNEY NSW
NSW English College SYDNEY NSW
Maewill English College DEE WHY NSW

[Roping-in Award No. 1 of 2001 inserted by PR910639 from 23Oct01]

1. TITLE

This award shall be known as the English Colleges (Roping-in No. 1) Award 2001.

2. PARTIES BOUND

This award shall be binding upon:

- (a) The Independent Education Union of Australia; and
- (b) Avalon College, VICTORIA
- (c) Buckingham College of English, ADELAIDE, SA
- (d) Cambridge International College, MELBOURNE, VIC
- (e) City Institute of Technology, MELBOURNE, VIC
- (f) English College of Adelaide, ADELAIDE, SA
- (g) GEOS Melbourne College of English, MELBOURNE, VIC
- (h) Intensive English Language Centre, ADELAIDE, SA
- (i) Victoria College, MELBOURNE, VIC

3. APPLICATION

Subject to that which is otherwise provided in this award, the provisions of the English Colleges Award 1998 shall apply.

4. OPERATION

This Award shall come into force on and from 23 October 2001 and shall remain in force for a period of three months.

AW780086CRV PR953697

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996
ss.141 and 493A application for common rule declaration

Independent Education Union of Australia
(C2004/5166)

ENGLISH COLLEGES AWARD 1998
(ODN C No. 25364 of 1989)
[AW780086 Print Q9541]

Educational services

SENIOR DEPUTY PRESIDENT WATSON
MELBOURNE, 2 DECEMBER 2004

Award declared common rule.

DECLARATION

[Common rule declared by PR953697 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 English Colleges Award 1998, 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 colleges, the principal purpose of which is to teach English or which offers a course or courses (among others) of at least five hours instruction per week in English to adult students whose first language is other than English.

2. That save for and subject to the matters referred to in clauses 4 to 7 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 English Colleges Victorian 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 English Colleges Victorian Common Rule Declaration 2005:

3.1 clause 3 - Incidence and Parties Bound, insofar as it refers to employers bound by the award and at 3.2 to the commencement date and period of operation of the award.

4. Subject to 4.1 to 4.5 below, all provisions in the English Colleges Victorian Common Rule Declaration 2005 are to operate from 1 January 2005.

4.1 With respect to annual leave, only periods of annual leave commencing on or after 31 January 2005 attract leave loading.

4.2 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.

4.3 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.]

4.4 Any accident make-up pay clause is to apply in relation to any injury on or after 3 August 2004.

4.5 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.

5. The English Colleges Victorian 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.

6. 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.]

7. 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.]

8. 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 English Colleges Victorian 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.

8.1 An appeal lies from a decision of a Board of Reference to a Full Bench of the Commission.

8.2 This clause shall apply for a period of twelve months from the commencement date of the English Colleges Victorian Common Rule Declaration 2005.

8.3 Any registered organisation bound by the terms of the English Colleges Victorian Common Rule Declaration 2005 shall be notified of the time and date of hearing in relation to any application made pursuant to this provision.

9. 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 10 below.

10. 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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