



FAIR WORK  
AUSTRALIA

## DECISION

*Fair Work Act 2009*

s.185 - Application for approval of a single-enterprise agreement

### **Oakleigh Greek Orthodox College**

(AG2010/24902)

### **OAKLEIGH GREEK ORTHODOX COLLEGE ENTERPRISE AGREEMENT 2010**

Educational services

COMMISSIONER SMITH

MELBOURNE, 17 JANUARY 2011

*Application for approval of the Oakleigh Greek Orthodox College Enterprise Agreement 2010.*

[1] An application has been made for approval of an enterprise agreement known as the *Oakleigh Greek Orthodox College Enterprise Agreement 2010* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by the Oakleigh Greek Orthodox College. The agreement is a single-enterprise agreement.

[2] I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as are relevant to this application for approval have been met.

[3] The employer has provided undertakings pursuant to s.190 of the Act. These undertakings deal with issues I raised with respect to clause 16.9 - Cashing out Long Service Leave, and with regard to future adjustment to rates of pay. Clause 16.9 will not apply.

[4] I am satisfied that the undertakings meet my concerns. The undertakings are attached to this Decision at Attachment A, and are taken to form part of the Agreement.

[5] The Independent Education Union of Australia (IEU) being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) of the Act I note that the Agreement covers the IEU.

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 24 January 2011. The nominal expiry date of the Agreement is 31 December 2013.



Printed by authority of the Commonwealth Government Printer

<Price code G, AE883533 PR505950>

Attachment A:

**ΕΛΛΗΝΙΚΗ ΟΡΘΟΔΟΞΗ ΚΟΙΝΟΤΗΤΑ  
ΩΚΛΕΪ & ΠΕΡΙΧΩΡΩΝ**  
**ΕΛΛΗΝΟΡΘΟΔΟΞΟ ΚΟΛΛΕΓΙΟ  
«ΟΙ ΑΓΙΟΙ ΑΝΑΡΓΥΡΟΙ»**



**GREEK ORTHODOX COMMUNITY OF  
OAKLEIGH & DISTRICT INC.**

**OAKLEIGH GREEK ORTHODOX  
COLLEGE "STS. ANARGIRI"**

Infrastructure:  
Church of "Sts Anargiri"  
Early Learning Centre K3 & K4  
Primary School, Years P - 6  
Secondary School, Years 7 - 12  
Saturday Language & Activity Centre  
Elderly People's Home  
Community Centre

11 January 2010

Commissioner Smith  
Fair Work Australia  
GPO Box 1994  
Melbourne, 3001

Dear Commissioner Smith,

**AG2010/24902 – Oakleigh Greek Orthodox Enterprise Agreement 2010**

Pursuant to your correspondence dated 6 January 2010 the Oakleigh Greek Orthodox College gratefully accepts the opportunity to provide additional comments and undertakings in support of approval of the *Oakleigh Greek Orthodox Enterprise Agreement 2010*. In your correspondence the Commissioner raised two particular issues for which you sought comments; the first, pertaining to cashing out of long service leave as provided for by clause 16.9 of the Agreement in view of the recent decision of the Full Bench in *Armaceil Australia Pty Ltd* ([2010] FWAFB 9985); and the second, pertaining to the adjustment of rates of pay for general staff in receipt of award rates of pay given that the agreement purports to operate to December 2013. Set out below are the College's comments in respect of these matters:

**1. Cashing out of Long Service Leave**

1.1. Based on the College's understanding of the recent Full Bench decision we believe the following implications arise in respect clause 16.9 of the Agreement in so far as General Staff Employees; *'to the extent a term of an enterprise agreement purports to permit cashing out of long service leave in circumstances where it would not be permitted under the relevant State legislation, the term is of no effect'*<sup>1</sup>. Thus, in respect of General Staff proposed to be covered by the enterprise agreement clause 16.9 has no legal effect and is unenforceable. To apply this term would be in contravention of the *Long Service Leave Act 1992* (Vic). Based on the Full Bench's decision the College understands no undertaking may be provided in respect of employees whose long service leave entitlement would otherwise have been subject to State legislation however this need not preclude certification of the agreement<sup>2</sup>.

1.2. In respect of Teachers, Early Childhood teachers and Nurses whose entitlement to long service leave is derived from Federal Awards which applied up until 31 December 2009 and whose provisions in respect of long service leave continue to apply as a result of s113 of the *Fair Work Act 2009* (Cth) (the FW Act) the College acknowledges that these awards did not contain cashing out provisions and as such pursuant to section 190 of the FW Act is willing to provide an undertaking not to apply clause 16.9 of the Agreement in respect of teachers including early childhood teachers and nurses whilst Cth legislation does permit the operation of such terms.

**2. Adjustment of minimum rates of pay for General Staff**

Whilst the agreement in so far as General Staff only provides for minimum rates of pay as provided for under the *Educational Services (Schools) General Staff Award 2010* (the General Staff Award) the College's intention financial circumstances permitting over the course of the agreement is to increase General Staff salaries by the same percentage increases received by teachers. The College is aware of its obligations pursuant to section 206 of the FW Act to pay no less than the base rates of pay provided for under the applicable modern award and is willing to provide an undertaking that rates of pay for General Staff employed pursuant to the enterprise agreement will be at least equal to those provided for by the General Staff Award and as amended by Fair Work Australia (FWA) annually at all times.

<sup>1</sup> *Armaceil Australia Pty Ltd* ([2010] FWAFB 9985 Para 30

<sup>2</sup> *Armaceil Australia Pty Ltd* ([2010] FWAFB 9985 Para 33

**3. General Comments pertaining to whether General Staff would be better off overall as a result of this Agreement**

The College respectfully submits that in the event this agreement is approved General Staff would be better off overall in a number of respects when compared to the minimum entitlements which would otherwise apply under the National Employment Standards and the General Staff Award. The Agreement offers General Staff a number of improvements in conditions of employment without seeking to reduce the minimum entitlements in any way.

The following table provides a summary of the improved conditions which would apply in respect of General Staff in the event that Agreement was approved:

Award Clause/NES	Agreement Clause	Improvement for Employees
29 – General Staff Award	Clause 14 – Personal/Carers Leave Clause 15 – Compassionate leave	15 days paid personal/carers leave as compared to 10 days under the NES 3 days paid compassionate leave for each permissible occasion as compared to 2 days under the NES
Long Service Leave	Clause 16 – Long Service Leave	All employees accrue long service leave at 1.3 weeks for each year of continuous employment as opposed to .8667 weeks as per the <i>Long Service Act 1992 (Vic)</i> . Employees are able to access long service leave after seven years of continuous employment with the employer not 10 years.
Parental leave	Clause 17- Paid Parental Leave	Agreement provides 6 weeks paid parental leave for employee who has primary responsibility for care of the child and is eligible for unpaid parental leave under the NES. No equivalent entitlement under the NES or General Staff Award Agreement provides for 2 weeks paid parental leave at the time of the birth of the child for an employee accessing unpaid concurrent parental leave in accordance with the NES. No equivalent entitlement under the NES or General Staff Award
Leave	Clause 18 – Leave without pay Clause 19 - Infectious Diseases leave Clause 21 - Examination leave Clause 22 – Qualification Conferral Leave	Agreement provides for a range of additional leave benefits not otherwise available to employees under the General Staff Award or National Employment Standards

The College submits that these represent real and tangible improvements to the employment conditions of General Staff and provide a meaningful basis upon which to commence bargaining in the future.

The Oakleigh Greek Orthodox College is happy to provide any further information the Commissioner requires in support of its application for approval of the *Oakleigh Greek Orthodox Enterprise Agreement 2010*.

Yours faithfully,

Peter Andrinopoulos  
Operations Manager

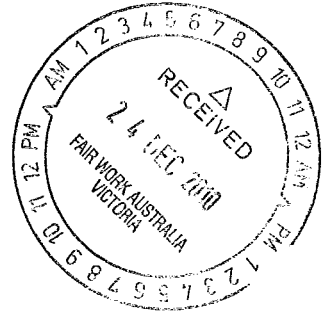
77 - 81 Willesden Rd OAKLEIGH VIC 3166  
Tel: 9569-6128; Fax: 9568-6558  
Web Address: [www.ogoc.vic.edu.au](http://www.ogoc.vic.edu.au)

ABN: 32 337 676 694  
Administration: Email: [administration@ogoc.vic.edu.au](mailto:administration@ogoc.vic.edu.au)

All correspondence to be addressed to:  
P.O. Box 2120 OAKLEIGH VIC 3166  
Education: E-mail: [principal@ogoc.vic.edu.au](mailto:principal@ogoc.vic.edu.au)

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of this agreement.

OGOC Enterprise Agreement 2010 – Final Version 061210



OAKLEIGH GREEK

ORTHODOX

COLLEGE

ENTERPRISE

AGREEMENT 2010

**OAKLEIGH GREEK ORTHODOX COLLEGE**

**ENTERPRISE AGREEMENT 2010**

**PART 1 APPLICATION AND OPERATION OF AGREEMENT**

**1 TITLE**

This Agreement is to be known as the Oakleigh Greek Orthodox College Enterprise Agreement 2010 (the 'Agreement') and is a Single Enterprise Agreement made pursuant to section 172(2) of the *Fair Work Act 2009* (Cth.).

**2 ARRANGEMENT**

<u>Part Title</u>	<u>Part Number</u>	<u>Clause Numbers</u>
Application and Operation of Agreement	1	1 - 8
Mandatory Terms	2	9 - 10
Conditions of Employment for all Employees	3	11 - 23
Conditions of Employment for Teachers	4	24 -25
Conditions of Employment for General Staff	5	26 - 27

<u>Clause Title</u>	<u>Part Number</u>	<u>Clause Number</u>
Accident Pay	3	23
Agreement Flexibility	2	9
Arrangement	1	2
Application and Coverage	1	4
Breakage and Loss	3	20
Commencement Date and Period of Operation	1	3
Compassionate Leave	3	15
Consultation Regarding Major Workplace Change	2	10
Definitions	1	7
Dispute Resolution Procedure	1	8
Examination leave	3	21
Hours of Work – Teachers	4	26
Infectious Diseases Leave	3	19
Leave without Pay	3	18
Long Service Leave	3	16
Minimum Employment Period	3	13
National Employment Standards	1	6
Paid Parental Leave	3	17
Personal Leave	3	14
Public Holidays	3	24
Qualification Conferral Leave	3	22
Relationship to Awards	1	5
Remuneration Packaging	3	11
Salaries – General Staff	5	28
Salaries - Teachers	4	27
School Policies	3	12
Title	1	1

OGOC Enterprise Agreement 2010 – Final Version 061210

Work Organisation 4 25

**Schedule Title**

**Schedule Number**

**Teachers**

Salaries (Teachers) A

Position of Responsibility Allowances (Teachers) B

**General Staff**

Salaries (General Staff) C

Salaries for Existing Classroom Support and Curriculum/Resources Services Employees D

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

- 3.1 This Agreement will operate from seven (7) days after the date of approval by Fair Work Australia.
- 3.2 The nominal expiry date of the Agreement is 31 December 2013.

### **4 APPLICATION AND COVERAGE**

- 4.1 This Agreement covers:
- (a) the Employer;
  - (b) Teachers, including Permission to Teach Teachers; and;
  - (c) General Staff
- 4.2 This Agreement does not apply to:
- (a) the Principal;
  - (b) a Deputy Principal however named;
  - (c) a Bursar or Business Manager, however named, being the most senior administrative employee employed with the delegated authority to act for the employer; and
  - (d) Instructional Services Employees

### **5 RELATIONSHIP TO AWARDS**

- 5.1 This Agreement incorporates the terms of the *Educational Services (Teachers) Award 2010*, and the *Educational Services (Schools) General Staff Award 2010*, as in force from time to time.
- 5.2 To the extent that a term of this Agreement deals with or provides for a term or condition contained in either of these awards this Agreement will override the award term or condition.
- 5.3 Where this Agreement is silent on a particular matter the terms of the relevant award shall apply.

### **6 NATIONAL EMPLOYMENT STANDARDS**

- 6.1 The National Employment Standards (NES) as contained in Part 2-2 of the *Fair Work Act 2009* (Cth) (the Act) are the minimum entitlements applying to an Employee covered by this Agreement. This Agreement may provide ancillary or supplementary terms in respect of the NES.

6.2 This Agreement, the *Educational Services (Teachers) Award 2010* or the *Educational Services (Schools) General Staff Award 2010* will provide industry or enterprise specific detail where it deals with a matter provided for in the NES.

## 7 DEFINITIONS

Awards	means the <i>Educational Services (Teachers Award) 2010</i> and the <i>Educational Services (Schools) General Staff Award 2010</i> , unless separately specified
Early Childhood Program	means the core curriculum provided to children under school age (three, four and five year old children)
Early Childhood Teacher	means an employee, including an employee employed as a director or coordinator of an Early Childhood Program, who is employed to teach children enrolled in the Early Childhood Program
Employee	means a person covered by this Agreement
Employer	means Oakleigh Greek Orthodox College 32 337 676 694
FW Act	means the <i>Fair Work Act 2009</i> (Cth)
FWA	means Fair Work Australia
General Staff Award	means the <i>Educational Services (Schools) General Staff Award 2010</i>
General Staff	<p>Means the following:</p> <ul style="list-style-type: none"> <li>• <b>classroom support services</b>—being an employee whose principal duties are to provide support to teachers and students in a primary or secondary classroom or to individual students or groups of students</li> <li>• <b>curriculum/resources services</b>—being an employee whose principal duties are to support the operation of curriculum-related services, such as those provided by a library, laboratory or a technology centre;</li> <li>• <b>nursing services</b>—being an employee who is registered nurse in the relevant State/Territory and is employed as such;</li> <li>• <b>preschool/childcare services</b>—being an employee whose principal duties are to work with children in a preschool, early learning centre or kindergarten operated by a school for pre-primary aged children, a childcare centre or an outside school hours care program (other than a qualified preschool/early childhood teacher);</li> <li>• <b>school administration services</b>—being an</li> </ul>

	<p>employee whose principal duties are in the functional areas of a school's business operations, including but not limited to clerical, administration, finance, marketing, fundraising, public relations, information technology, human resources administration and information management</p> <ul style="list-style-type: none"> <li>• <b>school operational services</b>—being an employee whose principal duties are to support the other services of a school, including but not limited to:             <ul style="list-style-type: none"> <li>(i) construction, plumbing, carpentry, painting and other trades;</li> <li>(ii) cleaning, maintenance, school facility management;</li> <li>(iii) security, caretaking;</li> <li>(iv) gardening, turf management, farming;</li> <li>(v) retailing—canteens, uniform shops, book shops;</li> <li>(vi) cooking/catering, housekeeping, laundry; and</li> <li>(vii) bus driving and vehicle maintenance.</li> </ul> </li> <li>• <b>wellbeing services</b>—being an employee whose principal duties are to support the health and wellbeing of students, and employees, where appropriate. This may include home/school liaison, counsellors and therapists.</li> </ul>
<p>Immediate family</p>	<p>means</p> <ul style="list-style-type: none"> <li>• spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the Employee. A de facto spouse means a person who, although not legally married to the Employee, lives with the Employee in a relationship as a couple on a genuine domestic basis (whether the Employee and the person are of the same sex or difference sexes); and</li> <li>• child or an adult child (including an adopted child, a step child or an ex-nuptial child), a parent, a grandparent, grandchild or sibling of the Employee or spouse of the Employee</li> </ul>

LSL Act	means the <i>Long Service Leave Act 1992 (Vic.)</i>
NES	means the National Employment Standards as contained in Part 2-2 of the <i>Fair Work Act 2009 (Cth)</i>
Non - term weeks	Non term weeks is defined as periods of time during the School year when students are not present and will be no less than the gazetted school holidays in Victorian Government schools.
Permission to Teach Teacher	means a person who is granted Permission to Teach by the Victorian Institute of Teaching pursuant to Division 3 of Part 2.6 of Chapter 2 of the <i>Education and Training Reform Act 2006 (Vic.)</i> and the person <ul style="list-style-type: none"> <li>i. holds an academic degree which does not include an approved course of teacher education and the person is enrolled in an approved course of teacher education, or</li> <li>ii. holds single subject registration, excluding the subjects of instrumental music, choral music, voice production, sports coaching and religion, or</li> <li>iii. is employed in one of the following programs: school/tertiary institution exchange, an inter-governmental agreement, interschool exchange, VET in schools and professional experience, or</li> <li>iv. has at least a three-year tertiary qualification including teacher education and is classified as Permission to Teach (Casual Relief Teacher) by the Victorian Institute of Teaching (1 July 2007 <i>Permission to Teach Policy</i>)</li> </ul>
Principal	means the Principal of Oakleigh Greek Orthodox College or his or her nominee
Registered Health Practitioner	means a person registered under the <i>Health Professions Registration Act 2005 (Vic.)</i> .
Registered Medical Practitioner	means a person who is licensed as a medical practitioner to practise medicine in Australia and who is registered with the Medical Practitioners Board of Victoria.
Shut down period	means any period of time where the Employer shuts down or closes the whole or part of their operations. A shut down period may be designated during non term weeks where students are not in attendance at the School
School Teacher	means a person who holds Full or Provisional Registration granted by the Victorian Institute of Teaching pursuant to Division 3 of Part 2.6 of Chapter 2 of the <i>Education and Training Reform Act 2006 (Vic.)</i> and is employed to teach. This definition includes a qualified teacher librarian, but does not include a person employed as a Principal or a Deputy Principal, by whatever name called
Teachers Award	means the <i>Educational Services (Teachers) Award 2010</i>

Teacher	means a School Teacher including a Teacher who holds Permission to Teach Registration with VIT and an Early Childhood Teacher, unless separately specified
Term weeks	means the weeks in the school year that students are required to attend school as set out in the school calendar of each school
Victorian Institute of Teaching	means the statutory authority for the registration of teachers established pursuant to the <i>Education and Training Reform Act 2006</i> (Vic.)

## 8 DISPUTE RESOLUTION PROCEDURE

8.1 If a dispute relates to:

- (a) a matter arising under the Agreement, except a matter relating to the actual termination of employment of an Employee that could more properly be characterised as a unfair dismissal matter that should be dealt with in accordance with Part 3-2 of the FW Act, or
- (b) the NES,

this clause sets out procedures to settle the dispute.

8.2 An Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this clause.

8.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the Employee or Employees and relevant supervisors and/or management.

8.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to FWA.

8.5 FWA may deal with the dispute in two stages:

- (a) FWA will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
- (b) if FWA is unable to resolve the dispute at the first stage, FWA may then:
  - (i) arbitrate the dispute; and
  - (ii) make a determination that is binding on the parties.

*Note* If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

- 8.6 While the parties are trying to resolve the dispute using the procedures in this clause:
- (a) an Employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
  - (b) an Employee must comply with a direction given by the Employer to perform other available work at the same workplace, or at another workplace, unless:
    - (i) the work is not safe; or
    - (ii) the *Occupational Health and Safety Act 2004* (Vic.) would not permit the work to be performed; or
    - (iii) the work is not appropriate for the Employee to perform; or
    - (iv) there are other reasonable grounds for the Employee to refuse to comply with the direction.
- 8.7 The parties to the dispute agree to be bound by a decision made by FWA in accordance with this clause.

## **PART 2 – MANDATORY TERMS**

### **9 AGREEMENT FLEXIBILITY**

- 9.1 An Employer and Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
- (a) the Agreement deals with one or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the Employer and Employee in relation to one or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the Employer and Employee.

- 9.2 The Employee may appoint a representative to assist in discussions regarding an Individual flexibility Agreement.
- 9.3 The Employer must ensure that the terms of the individual flexibility arrangement:
- (a) are about permitted matters under section 172 of the FW Act; and
  - (b) are not unlawful terms under section 194 of the FW Act; and
  - (c) result in the Employee being better off overall than the Employee would be if no arrangement was made.
- 9.4 The Employer must ensure that the individual flexibility arrangement:
- (a) is in writing; and
  - (b) includes the name of the Employer and Employee; and
  - (c) is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
  - (d) includes details of:
    - (i) the terms of the Agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (iii) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
    - (iv) states the day on which the arrangement commences.
- 9.5 The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 9.6 The Employer or Employee may terminate the individual flexibility arrangement:
- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the Employer and Employee agree in writing - at anytime.

## **10 CONSULTATION REGARDING MAJOR WORKPLACE CHANGE**

- 10.1 The provisions of this clause apply where:
- (a) the Employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
  - (b) the change is likely to have a significant effect on Employees of the enterprise.
- 10.2 The Employer must notify the relevant Employees of the decision to introduce the major change.
- 10.3 The relevant Employees may appoint a representative for the purposes of the procedures in this clause.
- 10.4 If:

- (a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation, and
- (b) the Employee or Employees advise the Employer of the identity of the representative,  
the Employer must recognise the representative.

10.5 As soon as practicable after making its decision, the Employer must:

- (a) discuss with the relevant Employees:
  - (i) the introduction of the change; and
  - (ii) the effect the change is likely to have on the Employees; and
  - (iii) measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
- (b) for the purposes of the discussion - provide, in writing, to the relevant Employees:
  - (i) all relevant information about the change including the nature of the change proposed; and
  - (ii) information about the expected effects of the change on the Employees; and
  - (iii) any other matters likely to affect the Employees.

10.6 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

10.7 The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.

10.8 If a clause in the Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Employer, the requirements set out in subclauses 10.2, 10.3 and 10.5 are taken not to apply.

10.9 In this clause, a major change is likely to have a significant effect on Employees if it results in:

- (a) the termination of the employment of Employees; or
- (b) major change to the composition, operation or size of the Employer's workforce or to the skills required of Employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain Employees; or
- (f) the need to relocate Employees to another workplace; or
- (g) the restructuring of jobs;

10.10 In this clause, **relevant employees** means the employees who may be affected by the major change.

## **PART 3 – CONDITIONS OF EMPLOYMENT FOR ALL EMPLOYEES**

### **11 REMUNERATION PACKAGING**

- 11.1 Upon receiving a written election for a remuneration packaging arrangement from the Employee and provided there is no additional cost to the Employer, the Employer is prepared to offer the Employee the opportunity to receive part of the Employee's remuneration in the form of non-cash benefits in line with legislation and Australian Taxation Office rulings until otherwise advised.
- 11.2 Any arrangement between the Employer and the Employee in relation to remuneration packaging will be entered into by way of a subsidiary agreement varying the Employee's conditions of employment.

### **12 SCHOOL POLICIES**

- 12.1 The Employer commits to developing the following workplace policies during the life of this agreement:
- i. Performance Management Policy;
  - ii. Workloads Policy; and;
  - iii. POR's Policy.

12.2 School policies do not form part of and are not incorporated into this agreement.

### **13 MINIMUM EMPLOYMENT PERIOD**

- 13.1 An Employee's employment is contingent upon the satisfactory completion of a six month minimum employment period.
- 13.2 If the Employer is to terminate the employment of an Employee during the first six months of the Employee's employment, the Employer does not need to comply with any due process, performance or conduct management policies or procedures in place, from time to time.
- 13.3 If the Employer is to terminate the employment of an Employee within the first six months of the Employee's employment commencing, the Employee is entitled to notice prescribed by the relevant Award or payment in lieu of notice, as follows.

Employee	Period of Notice
<b>Teacher</b>	7 term weeks
<b>General Staff</b>	1 week

- 13.4 If the Employee is to resign within the first six months of the Employee's employment commencing, then the Employee is required to give the same notice required of the Employer in 12.3 above

#### **14 PERSONAL/CARER'S LEAVE**

- 14.1 Personal/carer's leave is as provided for in the NES except where this Agreement provides ancillary or supplementary terms.
- 14.2 An Employee other than a casual Employee is entitled to a paid personal leave entitlement, which includes both sick and carer's leave.
- 14.3 For a full-time Employee the personal leave entitlement equates to 15 days per year of service. A part-time Employee is entitled to paid personal leave on a pro rata basis based on their rostered hours of work.
- 14.4 For all employees other than Teachers, Curriculum/Resources Support Services, Classroom Support Services and Nursing Services Employees, the entitlement to 15 days personal leave per year of service for all full-time employees and part-time employees on a pro rata basis, will commence upon approval of this agreement by FWA.
- 14.5 Where a full-time Employee has a need for personal or carer's leave that exceeds the Employee's accrued entitlement at the time that leave is needed, the Employee is entitled to be paid sick leave in advance of accrual as follows:
- (a) six (6) days during the first term worked, and thereafter, an additional three (3) days during at the commencement of each subsequent school term, if in the first year of service with the Employer, or
  - (b) up to the annual entitlement of 15 days, if in the second or subsequent year of service,
- provided that the notice and evidentiary requirements are met.
- 14.6 Paid sick leave is taken by the Employee because of a personal illness or injury.
- 14.7 Paid carer's leave is taken by the Employee to provide care or support to a member of the Employee's Immediate Family or a member of the Employee's household, who requires care or support because of a personal illness, injury, or an unexpected emergency affecting the member.
- 14.8 Where the Employee has exhausted the paid personal leave entitlement, the Employee may take up to two days' unpaid carer's leave per permissible occasion. Unpaid carer's leave may be taken as a single, unbroken period of up to two days, or any separate period as agreed by the Employer and the Employee.
- 14.9 A casual Employee may take up to two days' unpaid carer's leave per

permissible occasion. Unpaid carer's leave may be taken as a single, unbroken period of up to two days, or any separate period as agreed by the Employer and the Employee.

#### **14.10 Notice and Evidentiary Requirements**

14.10.1 An Employee must notify the Employer of the Employee's absence as soon as reasonably practicable. The notice must be to the effect that the Employee requires the leave because of a personal illness or injury or to provide care or support to a member of the Employee's Immediate Family or household as the member is suffering either a personal illness or injury or an unexpected emergency.

14.10.2 An Employee is entitled to sick leave provided that:

- the Employee produces a medical certificate from a Registered Health Practitioner or statutory declaration to the Employer for any absence of more than two consecutive days;
- the Employee provides a medical certificate from a Registered Health Practitioner or statutory declaration to the Employer for any absence continuous with a public holiday to which the Employee is entitled or a non-term week and which would not otherwise require the production of a certificate; and
- the Employee produces a medical certificate from a Registered Health Practitioner or a statutory declaration to the Employer where the number of days of paid sick leave already taken without the production of a medical certificate or a statutory declaration exceeds five days in the one year.

14.10.3 An Employee is entitled to carer's leave provided that the Employee produces, if required by the Employer, a medical certificate from a Registered Health Practitioner or statutory declaration to the Employer stating the person concerned was affected by an illness, injury or unexpected emergency and that the illness, injury or unexpected emergency is such as to require care by another. In the case of an unexpected emergency, sufficient information must be provided to verify the unexpected emergency.

### **15 COMPASSIONATE LEAVE**

15.1 Compassionate leave is as provided for in the NES except where this Agreement provides ancillary or supplementary terms.

15.2 An Employee other than a casual employee may take three (3) days' paid leave per permissible occasion when a member of the Employee's Immediate Family or household dies or when the Employee's Immediate Family or household member contracts or develops a personal injury or illness that poses a serious threat to life.

- 15.3 This leave may be taken in a single unbroken period or in separate periods of one day each or as agreed by the Employer and the Employee.
- 15.4 The Employee is entitled to compassionate leave only if the Employee gives the Employer any evidence that the Employer reasonably requires of the illness, injury or death.

## **16 LONG SERVICE LEAVE**

- 16.1 An Employee is entitled to long service leave. The *Long Service Leave Act 1992* (Vic.) (the LSL Act), as amended from time to time, specifies the entitlement. This Agreement will prevail over the LSL Act in the event of any inconsistency.
- 16.2 An Employee is entitled to thirteen weeks upon the completion of ten years of continuous employment. An Employee is entitled to an additional six and a half weeks' long service leave for each additional five years of continuous employment with the Employer.
- 16.3 For all employees other than Teachers and Nursing Services Employees the entitlement to accrue long service leave at 1.3 weeks for each year of continuous employment will commence upon approval of this agreement by FWA.
- 16.4 Accrued long service leave will be paid in lieu where an Employee's employment is terminated after seven years of continuous employment for any reason other than for serious misconduct. This provision has the express effect of overriding Section 58 of the LSL Act.
- 16.5 An Employee, whose service has been all full-time or all at the same part-time fraction, is paid during long service leave at the Employee's normal salary.
- 16.6 An Employee, whose time fraction has varied during service, is paid at a proportionate rate during long service leave. The rate is determined by calculating an average of the Employee's time fractions over the period of eligible service.

### **16.7 Illness on Long Service Leave**

- 16.7.1 Subject to the requirements of 16.7.2, an Employee, who becomes ill or suffers an injury during long service leave and has an entitlement to sick leave, is entitled to have the period of illness or injury treated as sick leave, with long service leave recredited to the Employee. The College Principal may require the Employee to be examined by a Registered Medical Practitioner of the Employer's choice, provided the practitioner is reasonably accessible to the Employee.
- 16.7.2 The Employee's application under 15.7.1:
- i. must be received by the Employer during the period of illness or injury;
  - ii. must be accompanied by a medical certificate from a Registered Medical Practitioner or a statutory declaration attesting to the illness or injury and the duration of that illness or injury; and

- iii. must indicate whether the Employee wishes to extend the long service leave by the period of the illness or injury or whether the Employee will return from long service leave as planned with the period of illness or injury increasing the Employee's accrued long service leave entitlement.

#### **16.8 Timing and Taking of Long Service Leave**

- 16.8.1 The timing of taking of long service leave will be negotiated between the Principal and the Employee for mutual advantage but will ordinarily be taken within twenty four months of the entitlement falling due following ten years of employment.
- 16.8.2 Notwithstanding 16.8.1 an Employee may apply to access a period of long service leave after a period of seven years continuous employment with the Employer.
- 16.8.3 In consultation about the timing of such leave, the Employer agrees to take into account the individual Employee's needs, in so far as they are compatible with the Employer's operational needs.
- 16.8.4 The period of long service leave will usually not be for less than a full term. In special circumstances, an application for a shorter period of long service leave will be considered by the Employer.
- 16.8.5 Where an Employee has not accrued sufficient leave to cover a full term, the Employer may grant a period of leave without pay in conjunction with the period of long service leave. The granting of leave without pay in these circumstances will be at the discretion of the Employer.

#### **16.9 Cashing out Long Service Leave**

Where the Employer and the Employee agree, an Employee who is entitled to long service leave may request in writing the cashing out of accrued long service leave entitlements to an amount negotiated with the Employer. This provision has the express effect of overriding section 74 of the LSL Act.

#### **16.10 Long Service Leave at half pay**

- 16.10.1 An Employee who is eligible to access a period of long service leave after seven years of continuous employment may request to access the period of leave at half pay, thereby, extending the period of long service leave over a greater period. The Employer will grant the request unless it would be unreasonable to do so taking into account the needs of the Employer and operational requirements of the Employer.

### **17 PAID PARENTAL LEAVE**

- 17.1 Where an Employee other than a casual Employee is granted unpaid parental leave in accordance with the NES and where the Employee will have the primary responsibility for the care of a child, the Employee is entitled to be paid a parental allowance:

- 17.1.1 equivalent to six (6) weeks' salary at the Employee's ordinary rate of pay, provided that the Employee takes a minimum of six weeks' unpaid parental leave commencing at or around the time of the birth of the child; or
- 17.1.2 equivalent to six (6) weeks' salary at the Employee's ordinary rate of pay, provided that the Employee takes a minimum of six weeks' unpaid adoption leave at or around the time of the placement of the child with the Employee.
- 17.2 During the period of time that the Employee is in receipt of the parental allowance under 17.1, the Employee is entitled to accrue annual leave, as defined by the NES, and personal/carer's leave, in accordance with this Agreement. The Employee is not entitled to accrue long service leave in accordance with the LSL Act.
- 17.3 Where an Employee takes a period of concurrent parental leave at the time of the birth or placement of a child in accordance with the NES, the Employee is entitled to a parental allowance at the Employee's ordinary rate of pay for up to two weeks of the period of concurrent parental leave.
- 17.4 An Employee must have a minimum of 12 months' continuous service, if returning from parental leave, before being eligible for the payment of a further allowance pursuant to 17.1 or 17.3.
- 17.5 Where the Employer employs both parents of the child, only one parent will be entitled to receive payment pursuant to 17.1.

## **18 LEAVE WITHOUT PAY**

An Employee may apply for leave without pay which may be granted at the discretion of the College Principal. An Employee agrees that entitlements under this Agreement do not accrue during any period of leave without pay. An Employee may not be in receipt of any paid entitlements under this Agreement while on a period of leave without pay. This provision expressly overrides section 62 of the LSL Act.

## **19 INFECTIOUS DISEASES LEAVE**

An Employee who is suffering from one of the infectious diseases will be granted special leave without deduction of pay provided the Employer is satisfied on medical advice that the Employee has contracted the disease through a contact at the School and the disease is evident in the School:

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

- Hepatitis.

## **20 BREAKAGE AND LOSS**

An Employee who takes reasonable care will not suffer loss of income for any accidental breakages or loss of property which occurs in the normal course of the Employee's duties.

## **21 EXAMINATION LEAVE**

An Employee will be granted leave with pay to attend compulsory examinations in an approved relevant course of study.

## **22 QUALIFICATION CONFERRAL LEAVE**

An Employee will be granted leave with pay for up to one day for the purpose of having a degree/diploma or other qualification conferred in an approved relevant course of study.

## **23 ACCIDENT PAY**

23.1 Where an Employee is incapacitated for work by reason of a work-related injury or illness and becomes entitled to receive weekly payments under the *Accident Compensation Act 1985 (Vic)* (the AC Act), the Employer must pay to the Employee the difference between such weekly payments and the normal remuneration of the Employee for a period or periods in the aggregate of up to 39 weeks for a Teacher, Nurse, Preschool/Childcare Services or Curriculum/Resources Support Services/ Classroom Support Services Employee in respect of each such injury or illness but only for so much of that period as the Employee remains employed by the Employer. For all other Employees the Employer will pay accident make-up for a period or periods in the aggregate of up to 26 weeks in respect of each such injury or illness but only for so much of that period as the Employee remains employed by the Employer.

23.2 If an Employee is absent from work because of a personal illness or injury, for which the Employee is receiving compensation payments pursuant to the AC Act then:

- (a) the Employee does not accrue any of the following entitlements under this Agreement or under the FW Act (where relevant) for the duration of any such absence:
  - i. annual leave; or
  - ii. paid personal/carer's leave.

23.3 In the event that an Employee, who is in receipt of weekly compensation payments pursuant to the AC Act, has an entitlement to annual leave during a shut down period, the workers' compensation payments will cease and the

Employee will take the accrued annual leave entitlement.

23.4 For the purposes of 22.3, the period of annual leave will not reduce the Employee's entitlement to such compensation payments or to accident make-up pay, if applicable.

23.5 Where an Employee returns to work in a partial capacity and is entitled to partial weekly compensation payments in accordance with the AC Act and where the Employee is entitled to annual leave at the part-time rate of pay, the Employee will remain entitled to be paid the weekly compensation payments in accordance with the AC Act.

## **24 PUBLIC HOLIDAYS**

24.1 An Employee is entitled to public holidays as specified in the *Public Holidays Act 1993 (Vic)* and as gazetted by the Victorian Government from time to time. These include the following:

- New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and
- the following days, as prescribed in Victoria: Australia Day, Anzac Day, Queen's Birthday and Labour Day; and
- Melbourne Cup Day or any other day substituted by an Act of Parliament or Proclamation.

24.2 By agreement between the Employer and the majority of Employees, an alternative day may be taken as the public holiday in lieu of any of the specified days.

24.3 The Employer and an Employee may agree to the Employee taking another day as the public holiday in lieu of the specified day.

24.4 An agreement made in accordance with 23.2 or 23.3 must be recorded in writing and made available to every affected Employee. Any such agreement must be recorded in the time and wages records kept by the Employer.

## **PART 4 – CONDITIONS OF EMPLOYMENT FOR TEACHERS**

### **25 WORK ORGANISATION**

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

## **26 HOURS OF WORK**

- 26.1 This clause of the agreement provides for industry specific detail and supplements the NES that deals with maximum weekly hours.
- 26.2 Notwithstanding the NES, and due to the operational requirements of the Employer, the ordinary hours of a Teacher under this agreement may be averaged over a 12 month period.
- 26.3 The ordinary hours of work for a Teacher during term weeks are variable. In return, a Teacher is not required to attend for periods of time when the students are not present, subject to the needs of the employer with regard to professional development, student free days and other activities requiring the Teacher's attendance.
- 26.4 A Teacher will not be required to attend professional development, student free days or other activities during the non term weeks between terms 1 and 2, 2 and 3, and 3 and 4 of the School Year.
- 26.5 Notwithstanding the provisions of 26.4 above, nothing shall prevent the Employer and/or Employee/s reaching mutual agreement about professional development, student free days or any other activities being undertaken during the non term weeks occurring between terms 1 and 2, 2 and 3 and 3 and 4, either at the request of the Teacher/s or the Employer.
- 26.6 The provisions of this clause do not apply to requests to undertake professional development by a Teacher which is not required by the Employer.
- 26.7 The maximum number of days that a Teacher will be required to attend during term weeks and non-term weeks will be 201 in each school year. This number will be reduced by the number of public holidays occurring during term weeks, save for any agreement reached between parties pursuant to clause 24 of this agreement.
- 26.8 The following circumstances are not included when calculating the 201 employee attendance days:
- (a) co-curricular activities that are conducted on a weekend;
  - (b) school related overseas and interstate trips, conferences and similar activities undertaken by mutual consent during non-term weeks;
  - (c) when the employee appointed to a leadership position is performing duties in non-term weeks that are directly associated with the leadership position;
  - (d) exceptional circumstances, such as the requirement to provide pastoral care to students in the event of a tragedy in the school community, in which an employee may be recalled to perform duties relating to their position.

26.9 The Employer will provide written notice of the term weeks and days in non-term times on which a Teacher is required to attend including professional development days, student free days and other activities requiring a Teachers attendance six months in advance of the requirement to attend.

26.10 Where the parties reach mutual agreement to conduct professional development and other activities requiring a Teacher's attendance during non term weeks occurring between terms 1 and 2, 2 and 3 and 3 and 4, the provisions of subclause 26.9 do not apply.

26.11 The annual salary and any applicable allowances payable under this agreement are paid in full satisfaction of an employee's entitlements for the school year or a proportion of the school year. The Teacher's absence from school during non-term weeks is deemed to include their entitlement to annual leave.

## **27 SALARIES**

27.1 Instead of the salaries provided for in the Teachers Award the salaries contained in Schedule A to this Agreement will apply to Teachers employed by the Employer.

### **27.2 Part time Teacher**

27.2.1 A Part-Time Teacher will be paid pro rata of the rate that the Teacher would be entitled to receive as a Full Time Teacher and is entitled to all entitlements on a pro rata basis. The Employer will determine the hours of full-time face to face teaching. The pro rata annual salary is calculated using the following formula. For the purpose of this formula only, a Full-Time Teacher's face-to-face teaching hours are deemed to be 18 hours secondary and 23 hours primary.

$$\frac{\text{hours of face-to-face teaching}}{\text{hours of Full-Time Teacher's face-to-face teaching}} \times \text{annual salary}$$

27.2.1 A Part-Time Teacher will undertake a proportionate number of other duties normally expected of a Full Time Teacher.

## **PART 5 – CONDITIONS OF EMPLOYMENT FOR GENERAL STAFF**

### **28 SALARIES**

28.1 Instead of the salaries provided for in the General Staff Award the salaries

contained in Schedule B to this Agreement will apply to General Staff employed by the Employer.

## **SCHEDULE A – SALARIES FOR TEACHERS**

**A1.1** An Employer will pay a full-time Teacher not less than the annual rate of pay for the Teacher’s classification as specified below.

<b>Level</b>	<b>Date 2010</b>
	<b>\$</b>
1	47,045
2	48,386
3	49,764
4	51,182
5	52,641
6	54,142
7	55,685
8	57,273
9	58,904
10	60,583
11	62,310
12	64,086

### **A1.2 Salary Review**

A1.2.1 The Employer will review Teacher Salaries on annual basis taking into consideration salaries applicable elsewhere in the Victorian education sector. Subject to budgetary constraints the Employer may determine an appropriate salary increase. Salary increases where applicable will be effective from the first pay period on or after 1 February of each year.

### **A1.3 Part time Progression**

A1.3.1 A Teacher employed for 40 per cent or less of a full time teaching load will be required to complete 24 months’ service before progressing to the next level.

### **A1.4 Incremental Progression**

A1.4.1 A Teacher who is three year trained will commence on Level 1 of the Teacher salary scale in Schedule A1.1 and progress according to normal years of service to Level 12 of the scale.

A1.4.2 A Teacher who is four year trained will commence on Level 1 of the Teacher salary scale in Schedule A1.1 and progress according to normal years of service to Level 12.

A1.4.3 All other Teachers including Permission to Teachers will commence on Level 1 of the Teacher salary scale in A1.1 and progress according to normal years of service to a maximum of Level 5.

**SCHEDULE B – POSITION OF RESPONSIBILITY ALLOWANCES FOR TEACHERS**

**B1.1**

<b>Level</b>	<b>Amount</b>
Level 1	\$8,000 p/a
Level 2	\$5,000 p/a
Level 3	\$4,000 p/a

**B1.2** The amounts provided for in B1.1 are the minimum amounts which a Teacher holding a position of responsibility will be paid for the level attached to the position of responsibility for the duration of this agreement.

**B1.3** The amounts provided for in Schedule B apply instead of, and are not additional to the provisions of Clause 15.3 of the Teachers Award – Leadership allowance.

**SCHEDULE C – SALARIES FOR GENERAL STAFF**

**C1.1** An Employer will pay a full-time Adult Employee not less than the annual rate of pay specified for the Employee's classification as specified below:

Classification	2010	
	Annual	Weekly
level	\$	\$
1.1	30 604	586.50
1.2	31 778	609.00
1.3	32 926	631.00
2.1	33 186	636.00
2.2	34 230	656.00
3.1	34 648	664.00
3.2	35 274	676.00
4.1	36 578	701.00
4.2	38 404	736.00
5.1	39 657	760.00
5.2	41 556	796.40
6.1	43 049	825.00
6.2	45 971	881.00
7.1	47 327	907.00
7.2	48 840	936.00
7.3	50 354	965.00
8.1	54 841	1051.00

**C1.2 Salary Review**

**C1.2.1** Where the Employer determines a salary increase for teachers in accordance with A.1.2 the Employer will increase the salaries of General Staff by the same percentage increase. Salary increases where applicable will be effective from the first pay period on or after 1 February of each year.

**SCHEDULE D - SALARIES FOR EXISTING CURRICULUM/RESOURCES SERVICES AND CLASSROOM SUPPORT SERVICES IN RECEIPT OF PAID SCHOOL HOLIDAYS**

**D1.1** The salaries enclosed below only apply to Curriculum/Resources Services and Classroom Support Services Employees engaged prior to the approval of this agreement on the basis of paid school holidays. Such positions would include but are not limited to:

- Classroom Assistants
- Integration Aides
- Library Technicians
- Laboratory Technicians
- Senior Technicians

Classification	2010	
	Annual 48/52	Weekly 48/52
level	\$	\$
1.1	28,249.85	541.38
1.2	29,333.54	562.15
1.3	30,393.23	582.46
2.1	30,633.23	587.08
2.2	31,596.92	605.54
3.1	31,982.77	612.92
3.2	32,560.62	624.00
4.1	33,764.31	647.08
4.2	35,449.85	679.38
5.1	36,606.46	701.54
5.2	38,359.38	735.14


**D1.2** The rates of pay in Schedule D1.1 are calculated on the basis of 48/52 of the rates of pay for an Employee who is required to work the full year and is in receipt of four (4) weeks' annual leave.

**D1.3** An Employee who is employed for part only of a School Year will be paid a pro rata entitlement calculated on the basis of one third of the number of weeks the Employee has worked (excluding non-term weeks) at the rate of pay applicable at the time leave is taken or employment is terminated.

**D1.4** Where the Employer varies the rates of pay in Schedule C1.1 those salaries will be adjusted by 48/52 formula in order to determine salaries for Employees employed pursuant to Schedule D.

**EXECUTED as an agreement this 15<sup>th</sup> December 2010**

**EMPLOYER REPRESENTATIVE**

Signed: 

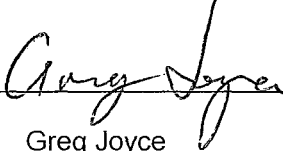
Date: 15 December 2010

Name in full (printed): Peter Andrinopoulos

Position title: Operations Manager

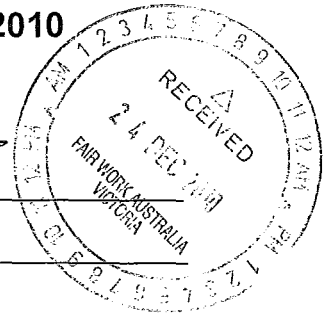
Authority to sign explained: Employer (OGOC) Representative

Address: 77 – 81 Willesden Road  
Oakleigh, Vic, 3166

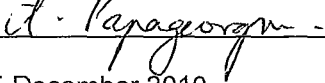
Witnessed by: 

Witness name in full: Greg Joyce

Witness address: 77 – 81 Willesden Road  
Oakleigh, Vic, 3166



**EMPLOYEE REPRESENTATIVE**

Signed: 


Date: 15 December 2010

Name in full (printed): Alexandra Papageorgiou

Position title: Staff Bargaining Representative

Authority to sign explained: VIEU OGOC Sub Branch Representative

Address: 77 – 81 Willesden Road  
Oakleigh, Vic, 3166

Witnessed by: 

Witness name in full: Joan Murphy

Witness address: 77 – 81 Willesden Road  
Oakleigh, Vic, 3166

ΕΛΛΗΝΙΚΗ ΟΡΘΟΔΟΞΗ ΚΟΙΝΟΤΗΤΑ  
ΩΚΛΕΪ & ΠΕΡΙΧΩΡΩΝ

ΕΛΛΗΝΟΡΘΟΔΟΞΟ ΚΟΛΛΕΓΙΟ  
«ΟΙ ΑΓΙΟΙ ΑΝΑΡΓΥΡΟΙ»



GREEK ORTHODOX COMMUNITY OF  
OAKLEIGH & DISTRICT INC.

OAKLEIGH GREEK ORTHODOX  
COLLEGE "STS. ANARGIRI"

Infrastructure:  
Church of "Sts Anargiri"  
Early Learning Centre K3 & K4  
Primary School, Years P - 6  
Secondary School, Years 7 - 12  
Saturday Language & Activity Centre  
Elderly People's Home  
Community Centre

11 January 2010

Commissioner Smith  
Fair Work Australia  
GPO Box 1994  
Melbourne, 3001

Dear Commissioner Smith,

### AG2010/24902 – Oakleigh Greek Orthodox Enterprise Agreement 2010

Pursuant to your correspondence dated 6 January 2010 the Oakleigh Greek Orthodox College gratefully accepts the opportunity to provide additional comments and undertakings in support of approval of the *Oakleigh Greek Orthodox Enterprise Agreement 2010*. In your correspondence the Commissioner raised two particular issues for which you sought comments; the first, pertaining to cashing out of long service leave as provided for by clause 16.9 of the Agreement in view of the recent decision of the Full Bench in *Armacell Australia Pty Ltd* ([2010] FWAFB 9985); and the second, pertaining to the adjustment of rates of pay for general staff in receipt of award rates of pay given that the agreement purports to operate to December 2013. Set out below are the College's comments in respect of these matters:

#### 1. Cashing out of Long Service Leave

1.1. Based on the College's understanding of the recent Full Bench decision we believe the following implications arise in respect clause 16.9 of the Agreement in so far as General Staff Employees; *'to the extent a term of an enterprise agreement purports to permit cashing out of long service leave in circumstances where it would not be permitted under the relevant State legislation, the term is of no effect'*<sup>1</sup>. Thus, in respect of General Staff proposed to be covered by the enterprise agreement clause 16.9 has no legal effect and is unenforceable. To apply this term would be in contravention of the *Long Service Leave Act 1992* (Vic). Based on the Full Bench's decision the College understands no undertaking may be provided in respect of employees whose long service leave entitlement would otherwise have been subject to State legislation however this need not preclude certification of the agreement<sup>2</sup>.

1.2. In respect of Teachers, Early Childhood teachers and Nurses whose entitlement to long service leave is derived from Federal Awards which applied up until 31 December 2009 and whose provisions in respect of long service leave continue to apply as a result of s113 of the *Fair Work Act 2009* (Cth) (the FW Act) the College acknowledges that these awards did not contain cashing out provisions and as such pursuant to section 190 of the FW Act is willing to provide an undertaking not to apply clause 16.9 of the Agreement in respect of teachers including early childhood teachers and nurses whilst Cth legislation does permit the operation of such terms.

#### 2. Adjustment of minimum rates of pay for General Staff

Whilst the agreement in so far as General Staff only provides for minimum rates of pay as provided for under the *Educational Services (Schools) General Staff Award 2010* (the General Staff Award) the College's intention financial circumstances permitting over the course of the agreement is to increase General Staff salaries by the same percentage increases received by teachers. The College is aware of its obligations pursuant to section 206 of the FW Act to pay no less than the base rates of pay provided for under the applicable modern award and is willing to provide an undertaking that rates of pay for General Staff employed pursuant to the enterprise agreement will be at least equal to those provided for by the General Staff Award and as amended by Fair Work Australia (FWA) annually at all times.

<sup>1</sup> *Armacell Australia Pty Ltd* ([2010] FWAFB 9985 Para 30

<sup>2</sup> *Armacell Australia Pty Ltd* ([2010] FWAFB 9985 Para 33

### 3. General Comments pertaining to whether General Staff would be better off overall as a result of this Agreement

The College respectfully submits that in the event this agreement is approved General Staff would be better off overall in a number of respects when compared to the minimum entitlements which would otherwise apply under the National Employment Standards and the General Staff Award. The Agreement offers General Staff a number of improvements in conditions of employment without seeking to reduce the minimum entitlements in any way.

The following table provides a summary of the improved conditions which would apply in respect of General Staff in the event that Agreement was approved:

Award Clause/NES	Agreement Clause	Improvement for Employees
29 – General Staff Award	Clause 14 – Personal/Carers Leave Clause 15 – Compassionate leave	15 days paid personal/carers leave as compared to 10 days under the NES 3 days paid compassionate leave for each permissible occasion as compared to 2 days under the NES
Long Service Leave	Clause 16 – Long Service Leave	All employees accrue long service leave at 1.3 weeks for each year of continuous employment as opposed to .8667 weeks as per the <i>Long Service Act 1992 (Vic)</i> . Employees are able to access long service leave after seven years of continuous employment with the employer not 10 years.
Parental leave	Clause 17- Paid Parental Leave	Agreement provides 6 weeks paid parental leave for employee who has primary responsibility for care of the child and is eligible for unpaid parental leave under the NES. No equivalent entitlement under the NES or General Staff Award Agreement provides for 2 weeks paid parental leave at the time of the birth of the child for an employee accessing unpaid concurrent parental leave in accordance with the NES. No equivalent entitlement under the NES or General Staff Award
Leave	Clause 18 – Leave without pay Clause 19 - Infectious Diseases leave Clause 21 - Examination leave Clause 22 – Qualification Conferral Leave	Agreement provides for a range of additional leave benefits not otherwise available to employees under the General Staff Award or National Employment Standards

The College submits that these represent real and tangible improvements to the employment conditions of General Staff and provide a meaningful basis upon which to commence bargaining in the future.

The Oakleigh Greek Orthodox College is happy to provide any further information the Commissioner requires in support of its application for approval of the *Oakleigh Greek Orthodox Enterprise Agreement 2010*.

Yours faithfully,

Peter Andrinopoulos  
Operations Manager