

CITATION: *Early Childhood Education Award - State 2012*
Repeal and New Award (A/2010/109)
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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 130 - award review

EARLY CHILDHOOD EDUCATION AWARD - STATE 2003

(Matter A/2010/109)

DEPUTY PRESIDENT SWAN
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER THOMPSON

18 September 2012

AWARD REVIEW

After reviewing the above Award as required by s. 130 of the *Industrial Relations Act 1999*, this Commission orders that the Award be repealed and the following Award be made as from 31 August 2012.

EARLY CHILDHOOD EDUCATION AWARD - STATE 2012

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Early Childhood Education Award - State 2012.

1.2 Arrangement

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No provisions inserted in this Award relevant to this Part.

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No provisions inserted in this Award relevant to this Part.

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1.3 Award coverage

1.3.1 This Award shall apply to employers and their respective employees employed at:

- (a) Kindergartens and Preschools and other like establishments, however named, which offer an educational programme as defined by the Board of Teacher Registration but which are not Child Care Centres.

1.3.2 This Award shall not apply to persons covered by the *Children's Services Award - State 2012*; to any person eligible for membership with the United Voice, Industrial Union of Employees, Queensland; employees of the Queensland Public Service; or persons in holy orders or a recognised teaching order.

1.4 Date of operation

This Award takes effect from 31 August 2012.

1.5 Definitions

1.5.1 The "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.

1.5.2 "Commission" means the Queensland Industrial Relations Commission.

1.5.3 "Director" means a Teacher In-Charge (Director) who is a Teacher defined by this Award and is required to organise and conduct the programmes and direct staff within the kindergarten or centre and is in-charge of the kindergarten or centre. The Director may be required to perform such administrative work that is peripheral and incidental to performing these duties.

- 1.5.4 "Exempted Teacher" means an employee who does not hold qualifications accepted by the Board of Teacher Registration for registration as a Teacher in Queensland, however, that person is in charge of a programme in a kindergarten or preschool centre.
- 1.5.5 "Kindergarten/Preschool Assistants" means employees who are engaged in assisting in programmes at the centre and are under the direction of either a Teacher, or Exempted Teacher.
- 1.5.6 "Teacher" means a person who holds a qualification accepted by the Board of Teacher Registration to teach in Queensland, or a person who is qualified to teach in the Early Childhood Education field.
- 1.5.7 "Union" means the Queensland Independent Education Union of Employees.
- 1.5.8 "Working Year" means the period commencing on 1 January and finishing on 31 December of the same year and shall be the basis for the calculation of all service increments and leave entitlements.

1.6 Leave reserved

1.6.1 Teachers

- (a) Directors Allowance
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1.6.2 Assistants and Others

- (a) Definitions
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- (a) Definitions
- (b) Salary Scales

1.6.4 Assistant Teachers

- (a) Definitions (Teachers unqualified)
- (b) Salary Scales

PART 2 - FLEXIBILITY

2.1 Enterprise flexibility

- 2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place at each enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.
- 2.1.2 The consultative processes established in an enterprise in accordance with clause 2.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.1.1. Union delegates at the place of work may be involved in such discussions.
- 2.1.3 Any proposed genuine agreement reached between an employer and employee/s in an enterprise is contingent upon the agreement being submitted to the Commission in accordance with Chapter 6 of the Act and is to have no force or effect until approval is given.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Consultation

- 3.1.1 The parties to this Award are committed to ongoing and positive cooperation to increase the efficiency and productivity of the industry covered by this Award and to enhance the career opportunities and job security of employees in the industry.
- 3.1.2 At each centre the employer, the employees and the Union commit themselves to establishing a consultative mechanism and procedures, where such do not exist, appropriate to the size, structure and needs of the centre. Measures raised by the parties for consideration consistent with the objectives of clause 3.1.1 shall be processed through that consultative mechanism and procedures.

3.2 Grievance and dispute settling procedure

The matters to be dealt with in this procedure shall include all grievances or disputes between an employee and an employer in respect to any industrial matter and all other matters that the parties agree on and are specified herein. Such procedures shall apply to a single employee or to any number of employees.

- 3.2.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.2.2 If the grievance or dispute is not resolved under clause 3.2.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.
- 3.2.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.2.5.
- 3.2.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.2.2, the matter shall, in the case of a member of the Union, be reported to the relevant officer of the Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.2.2 will not result in resolution of the dispute.
- 3.2.5 If, after discussion between the parties, or their nominees mentioned in clause 3.2.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 3.2.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.2.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.2.8 All parties shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.2.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.2.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.
- 3.2.11 Where a grievance arises in respect to an employee's performance of duties the problem shall be brought to the employee's attention in writing and shall state the specifics of the nature of allegations made. The employee shall be invited to respond in writing to the employer.
 - (a) Should the employer require discussion in respect to the matters, the employee may if the employee so desires, be accompanied by a Union representative.
 - (b) Should the matter not be resolved at that point, the employer shall formally advise the employee in writing as to the employer's requirements, the assistance the employer proposes to provide to the employee and a process of assessment.
 - (c) Should either of the parties not agree to these matters, the issue may be referred to the Commission for conference and/or mediation.

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

4.1 Employment categories

- 4.1.1 Employees shall be advised in writing of their employment category upon appointment.

Employment categories are:

- (a) full-time engaged for the maximum hours prescribed by this Award;
- (b) part-time (as prescribed in clause 4.2);
- (c) casual (as prescribed in clause 4.3);
- (d) Replacement employee (as prescribed in clause 4.4); or
- (e) Relief employee (as prescribed in clause 4.5)

4.2 Part-time employment

- 4.2.1 A "part-time employee" is one engaged for a period less than the maximum hours prescribed in this Award.
- 4.2.2 Part-time employees shall be paid a proportion of the salary prescribed in clause 5.1 according to the number of hours actually worked by such employee during the ordinary working week as provided by clause 6.1.
- 4.2.3 A part-time employee will receive, on a *pro rata* basis, equivalent pay and conditions to those of full-time employees.
- 4.2.4 A part-time Teacher shall be required to complete the equivalent of a full Working Year from the time of the Teacher's first appointment or of the Teacher's last increment before being eligible for the next increment, provided that the Teacher who has completed 1,000 hours of teaching duty shall have completed one Working Year.
- 4.2.5 The ordinary hours of work for a part-time employee may be altered by mutual agreement recorded in writing. In such cases part-time employees may work the maximum ordinary hours prescribed by clause 6.1. The additional hours so worked shall be taken into account in the *pro rata* calculation of entitlements.

4.3 Casual employment

- 4.3.1 A casual employee shall be employed as such, engaged on an hourly basis to perform duties up to and including 20 hours per week.
- 4.3.2 A casual Teacher shall be paid a proportion of the salary prescribed in clause 5.1 according to the relevant fortnightly rate divided by 75 with an additional 23% loading.
- 4.3.3 There shall be a minimum engagement of 2 hours per day and payment shall be made for preparation and other duties on the ratio of one hour for every 5 hours in charge of children.
- 4.3.4 A casual employee, other than a Teacher shall be paid a proportion of the salary prescribed in clause 5.1 according to the relevant fortnightly rate divided by 76, with the addition of 23% loading. Further, there shall be a minimum engagement of 2 hours per day on each engagement.

4.4 Replacement employee

- 4.4.1 A replacement employee is a person engaged for a specific period of time as notified in a letter of appointment. Such period of time shall be (or is to be) less than a full Working Year.
- 4.4.2 *Replacement appointments*
 - (a) The employer may appoint an employee for a defined fixed term period of employment. The letter of employment shall identify the period of employment and the purpose for which the employee has been employed.
 - (b) The appointment shall be on a full time basis in accordance with the salaries and scales prescribed in clause 5.1 and the employee shall be entitled to *pro rata* payment for annual leave, schools vacations and public holidays in accordance with clauses 7.1 and 7.6.

4.5 Relief employee

- 4.5.1 Relief employee means an employee who relieves another employee for a specified time for the purpose of carrying out the absent employee's function. Where the engagement is for more than one month a relief employee should be regarded as a replacement in accordance with clause 4.4.

4.5.2 A relief Teacher shall be paid a proportionate hourly rate in accordance with the salaries and scales prescribed in clause 5.1 by dividing the appropriate fortnightly rate by 75 and adding a loading of 23%:

Provided that a minimum of 2 hours shall be paid for each engagement.

4.5.3 A relief employee, other than a Teacher, shall be paid a proportionate hourly rate in accordance with the salaries and scales prescribed in clause 5.1 by dividing the appropriate fortnightly rate by 76, with a loading of 23%:

Provided that a minimum of 2 hours shall be paid for each engagement.

4.6 Termination of employment

4.6.1 Statement of employment

The employer shall, in the event of termination of employment, provide upon request to an employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.6.2 Termination by employer

(a) In order to terminate the employment of an employee the employer will give the employee 4 weeks' notice.

(b) In addition to the notice in clause 4.6.2(a), employees over 45 years of age at the time of giving of notice and with not less than 2 years' continuous service, will be entitled to an additional week's notice.

(c) Payment in lieu of notice will be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(d) In calculating any payment in lieu of notice the ordinary time rate of pay for the employee concerned will be used.

(e) The period of notice in clause 4.6.2 will not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or to replacement, relief or casual employees.

4.6.3 Notice of termination by employee

The notice of termination required to be given by an employee will be the same as that required of an employer, except that there will be no additional notice based on the age of the employee concerned. If an employee fails to give the appropriate notice the employer has the right to withhold monies due to the employee up to an amount equal to the ordinary time rate for the period of notice not given.

4.6.4 The notice prescribed in clauses 4.6.2 and 4.6.3 shall be given during term-time.

4.6.5 The provisions of clause 4.6 may be varied by mutual consent.

4.7 Continuity of service - transfer of calling

In cases where a transfer of calling occurs, continuity of service should be determined in accordance with sections 67-71 of the Act as amended from time to time.

4.8 Anti-discrimination

4.8.1 It is the intention of the parties to this Award to prevent and eliminate discrimination, as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* as varied from time to time, which includes:

(a) discrimination on the basis of sex, relationship status, family responsibilities, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality and association with, or relation to, a person identified on the basis of the above attributes;

(b) sexual harassment; and

(c) racial and religious vilification.

- 4.8.2 Accordingly, in fulfilling their obligations under the grievance and dispute settling procedure in clause 3.2, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 4.8.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 4.8.4 Nothing in clause 4.8 is to be taken to affect:
- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*;
 - (b) an employee, employer or registered organisation, pursuing matters of discrimination, including by application to the Australian Human Rights Commission/Anti-Discrimination Commission Queensland.

4.9 Incidental and peripheral tasks

- 4.9.1 An employer may direct an employee to carry out such duties as are reasonably within the limits of the employee's skill, competence and training.
- 4.9.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment (where relevant).
- 4.9.3 Any direction issued by an employer pursuant to clauses 4.9.1 and 4.9.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 Wages

- 5.1.1 The following scale of salaries shall apply to Teachers:

	Per Fortnight \$
BAND 1	
Step 1	1,510.50
Step 2	1,538.80
Step 3	1,573.30
Step 4	1,609.90
BAND 2	
Step 1	1,640.40
Step 2	1,701.40
Step 3	1,762.20
Step 4	1,823.10
Step 5	1,880.00
BAND 3	
Step 1	1,926.70
Step 2	1,977.50
Step 3	2,028.30
Step 4	2,079.10

- 5.1.2 *Wages (other than teachers)*

Salary rates for kindergarten and preschool assistants shall be as follows:

	Per Fortnight \$
Grade 1	
1st year	1,248.00
2nd year	1,268.00
Grade 2	

1st year	1,297.60
2nd year	1,317.60
Grade 3	
1st year	1,364.50
2nd year	1,385.10

Salary rates for Exempted Teachers are as follows:

Grade 1	1,364.50
Grade 2	1,385.10
Grade 3	1,410.00

Note 2: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2011 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.

5.1.3 Kindergarten and Preschool Assistants and Exempted Teachers referred to in clause 5.1.2 where described by grade are defined as follows:

- (a) employees who are described as grade 1 are untrained.
- (b) employees described as grade 2 have had one year of formal training or have completed the equivalent number of accredited professional in-service hours.
- (c) employees described as grade 3 have a minimum of 2 years of formal training or the equivalent number of accredited professional in-service hours.
- (d) employees with 3 years of formal training or the equivalent number of accredited professional in-service hours shall be employed in their first year of service as grade 3, second year.

5.1.4 All previous experience prior to the operative date of this Award shall be counted for the determination of years of service.

5.1.5 For the purpose of this Award "year(s) formal training" shall be training as may be completed in a college of Technical and Further Education, a college of Advanced Education or a University or such similar institution that may be relevant to the early childhood education field.

5.1.6 For the purposes of clause 5.1 equivalent accredited professional in-service hours are equal to 175 hours. For each grade advancement the employee will be required to complete either a formal training year or alternatively 175 hours of accredited professional in-service.

5.1.7 *Credits for previous experience*

When a Teacher is employed on a second or subsequent engagement credit shall be given for the Teacher's previous teaching experience in any educational institution, including but not limited to, kindergartens, creches, childcare centres, schools, etc. A Teacher shall be required to produce evidence of such previous experience.

5.2 Band access

5.2.1 Access from Band 2 to Band 3 for 3 year Trained Teachers:

- (a) A Teacher will progress to Band 3 after serving one year on the 5th step of Band 2. Such Teacher will then progress through Band 3 by biennial increments: i.e. every 2 years served on each incremental step of Band 3 shall then entitle the Teacher to move to the next appropriate step on Band 3.
- (b) Teachers may accelerate this progression by performing a minimum of 8 days professional development activity in their own time and submitting a portfolio of these activities and any other relevant matters material to the Union/Employer validation committee for assessment.

- (c) Teachers may undertake an appropriate additional year of formal training which shall entitle them to move to the appropriate step on the scale that relates to their years of experience up to the maximum of Band 3 Step 4.
- (d) Credit for professional development activities shall be given if such activities occurred prior to 1 July 1991 if these activities can be appropriately documented to the satisfaction of the Union/Employer validation committee.
- (e) A Teacher three year trained shall keep a portfolio of the Teacher's professional development activities which shall be validated by a joint Employer/Union validation committee before the Teacher is entitled to move between Band 2 and 3.

5.2.2 *Annual progression* - Except as otherwise provided in clause 5.2.1, progression from one salary step to a higher salary step shall be by annual increment.

5.2.3 *Teacher (3 year trained)*

- (a) Teachers admitted to the service with 3 years of Teacher training or such other qualifications recognised by the employer for this purpose may be appointed as a Teacher (3 year trained).
- (b) A Teacher (3 year trained) shall commence on the 1st step of Band 1 and progress by annual increment to the 5th step of Band 2.
- (c) A Teacher (3 year trained) shall progress from the 5th step of Band 2 to the 1st step of Band 3 subject to access criteria agreed by the employer and Union being met and shall then progress by annual increment to the 4th step of Band 3.

5.2.4 *Teacher (4 year trained)*

- (a) Teachers admitted to the service who hold an approved degree from a recognised University or an approved equivalent tertiary qualification plus at least one year of Teacher training or such other qualifications, recognised by the employer as equivalent to one year of Teacher training, may be appointed as a Teacher (4 year trained).
- (b) A Teacher (4 year trained) shall commence on the first step of Band 2 and shall progress by annual increment to the fourth step of Band 3.
- (c) A Teacher admitted to the service as a Teacher (4 year trained) who has an approved bachelor's degree with first or second class honours, or a higher degree or two approved degrees from a recognised University and one year of Teacher training shall commence on the 2nd step of Band 2.
- (d) A Teacher (3 year trained) who obtains an approved degree from a recognised University or an approved equivalent tertiary qualification shall be appointed as a Teacher (4 year trained) with the same years of service.

5.3 Allowances

5.3.1 *Locality allowance*

Teachers will be paid the locality allowances prescribed under *Directive 19/99 Locality Allowances*, as issued and amended by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*. The single rate of allowance will apply to Teachers except those who furnish satisfactory proof of their being the main supporter of their family and these Teachers will be paid the married rate of allowance.

5.3.2 Employees other than Teachers employed outside the eastern district of the southern division shall be paid the following amounts in addition to the rates of wages prescribed by clause 5.1 for employees employed within that district:

	Per week
	\$
Northern Division, Eastern District	.80
Northern Division, Western District	2.45
Mackay Division	.68
Southern Division, Western District	.80

5.3.3 *Directors' allowance*

- (a) A Teacher appointed as a Director under this Award shall be paid the following allowance in addition to their salary as determined under clause 5.1:

1 Unit	-	\$1,811 per annum,	\$69.80 per fortnight;
2 Units	-	\$2,719 per annum,	\$104.20 per fortnight;
3 Units	-	\$3,622 per annum,	\$138.80 per fortnight.

(b) Teachers sharing the responsibility of Director shall be entitled to 50% of the appropriate allowance.

(c) Where a Teacher is appointed to relieve the Director (Teacher in charge) the following additional amounts per day shall be paid whilst in charge:

1 Unit	-	\$8.66
2 Units	-	\$13.01
3 Units	-	\$17.31

5.4 Occupational superannuation

5.4.1 Local Government Employers

All Local Governments and Local Government Entities subject to this Award must comply with superannuation arrangements prescribed in the *Local Government Act 2009* and *Local Government (Operations) Regulation 2010*.

Local Governments and their Entities employing persons defined as being "non-contributory members" of the LG Super Scheme pursuant to s. 223 of the *Local Government Act 2009*, shall on behalf of such employees, contribute an amount to the LG Super Scheme that must be made to avoid being required to pay the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992* in respect of such employees.

5.4.2 Non-Local Government Employers

(a) *Application* - In addition to the rates of pay prescribed by clause 5.1, eligible employees, as defined in clause 5.4.2(c)(i), shall be entitled to Occupational Superannuation Benefits, subject to the provisions of clause 5.4.2.

(b) *Contributions*

Amount - As from 1 January 2005 every employer shall contribute on behalf of each eligible employee an amount calculated at 9% of the employee's ordinary time earnings, into an approved fund, as defined in this clause. Each such payment of contributions shall be rounded off to the nearest ten (10) cents:

Provided that where an employee is absent and is receiving by way of workers' compensation an amount of money no less than the award rate of pay the contribution shall be calculated at 3%.

(i) *Minimum level of earnings* - As from 1 January 2005 no employer shall be required to pay superannuation contributions on behalf of any eligible employee in respect of any month during which the employee's ordinary time earnings, as defined, is less than \$450.00.

(ii) *Absences from work* - Contributions shall continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer shall be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on workers' compensation.

(c) *Definitions* -

(i) "Eligible employee" means an employee who is covered by this Award, but does not include an employee employed by a Local Government or Local Government Entity employer for which the LG Super Scheme applies, and who has been employed by an employer during four (4) consecutive weeks and who has worked a minimum of 40 hours during that period. On completion of the above qualifying period, superannuation contributions shall be made in accordance with clause 5.4.2(b) retrospective to the commencement of that period.

(ii) "Ordinary time earnings" means the actual ordinary rate of pay the employee receives for the ordinary hours of work performed and includes locality and Directors' allowances. Overtime, holiday penalty rates, laundry, disability allowances, fares and travelling time and other extraneous payments including bonuses and commissions are not included in the calculation of ordinary time earnings.

(iii) An "Approved Occupation Superannuation Scheme or Fund" shall be:

(A) The Queensland Independent Education and Care Superannuation Trust.

(B) Such other scheme or fund as may be agreed upon between an employer and the Union parties to this Award and recorded in an approved Industrial Agreement.

(C) In relation to any particular employee, any other scheme or fund to which that employer has for the benefit of employees and those employees are either members of or are eligible to become members of such scheme or fund as at 12 May 1989 and which scheme or fund is approved under the *Occupational Superannuation Standards Act 1987*.

(d) *Freedom of choice* - Except as otherwise provided for herein, no employer shall be required to make contributions into more than one fund at any time:

Provided that employees including those in existing schemes or funds covered by clause 5.4.2(c)(iii)(C) shall have the right to choose to have contributions specified in clause 5.4.2(b) above paid into any scheme or fund provided for in clause 5.4.2(c)(iii) as decided by a majority of the employees to whom these provisions apply.

(e) *Cessation of contributions* - An employer shall not be required to make any further contributions on behalf of an eligible employee after the end of the day upon which the contract of employment ceases to exist.

(f) *Other contributions* - Nothing in clause 5.4.2 shall preclude an employee from making contributions to a scheme or fund in accordance with the provisions of the trust deed of the fund.

Only those established schemes or funds to which a particular employer party to this Award was actually making genuine contributions on behalf of the employees concerned as at 22 March 1989, shall be recognised under clause 5.4.2(c)(iii)(C).

The making of contributions subsequent to 22 March 1989 but on a retrospective basis, in respect of any period up to and including 22 March 1989, shall not under any circumstances, bring a scheme or fund within the meaning of clause 5.4.2(c)(iii)(C).

(g) *No other deductions* - No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the scheme or fund apart from remission of contributions on a monthly basis.

(h) *Exemptions*

(i) An employer may apply to the Commission for exemption from the provisions of clause 5.4.2 on the grounds of:

(A) incapacity to pay the costs associated with its implementation; or

(B) special or compelling circumstance peculiar to the business.

(ii) An employer may apply to the Commission for relief from the specification of funds listed in clause 5.4.2(c)(iii) where employees working under this Award are a distinct minority within the employer's workforce and/or an undue multiplicity of funds would otherwise result.

(i) *Operative date* - No employer shall be required to make Occupational Superannuation contributions greater than 9% of an eligible employee's ordinary time earnings.

5.5 Payment of wages

5.5.1 Except where otherwise mutually agreed to between the employer and the employee, payment of salaries shall be made fortnightly.

5.5.2 Payments may be made by cash, cheque or direct transfer into the employee's bank account.

5.5.3 Any payment of salary which falls due during a vacation period shall be paid in advance on the last day of the term preceding that school vacation period except as otherwise mutually agreed.

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

6.1 Hours of work

6.1.1 The ordinary hours of duty for a Teacher shall not exceed 37.5 hours per week of which not more than 27.5 shall relate to the teaching of an educational programme.

6.1.2 The ordinary hours of duty for an employee, other than a Teacher, shall not exceed 38 hours per week.

- 6.1.3 The employee shall be entitled to a half hour per day paid meal break to be considered as time worked where the employee works for at least 5 hours in that day.
- 6.1.4 A part-time Teacher employed for less than 27.5 hours per week teaching an educational programme shall be entitled to time for preparation and other duties on the ratio of one hour for every 5 hours of teaching.
- 6.1.5 A full time Teacher shall be entitled to preparation and other duties on the ratio of one hour for every 5 hours teaching an educational programme for children.
- 6.1.6 The employer may require an employee to perform peripheral and incidental tasks associated with their employment during school vacation periods, such as enrolments, securing of the premises and other similar tasks.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

- 7.1.1 An employee upon appointment shall be paid as from the date upon which the employee commenced duty provided that an employee who has worked (or has been granted leave by the employer), for each day of the standard year at a particular centre, shall be paid for a full calendar year.
- 7.1.2 An employee who ceases duty after at least ten teaching weeks of employment shall be paid the proportion of the employee's salary for that year that the employee's services excluding vacation periods, bears to the standard year.
- 7.1.3 A standard year is deemed for the purposes of clause 7.1 to be 42 teaching weeks.
- 7.1.4 The salary that is proportioned shall be calculated on the salary the employee is receiving immediately before the cessation of employment.
- 7.1.5 The employee who ceases duty before completing 10 weeks of employment shall be paid an amount equal to 1/12th of their ordinary pay for the period of employment.
- 7.1.6 A further amount calculated at the rate of 17.5% of the amount of salary payable in clause 5.1 shall be paid to all employees calculated on the basis of an entitlement of 4 weeks annual leave and in the case where an employee does not teach for the full 42 weeks then in the same proportions that the employee's teaching (excluding vacations) bears to the standard year.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every employee, except casuals, is entitled to 10 days' sick leave for each completed year of their employment with their employer.
- (b) This entitlement will accrue at the rate of one day's sick leave after each four weeks of employment up to a maximum 10 days in any one year.
- (c) Payment for sick leave will be made based on the ordinary number of hours that would have been worked if the employee were not absent on sick leave.
- (d) Sick leave may be taken for part of a day.
- (e) Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.
- (f) Part-time employees accrue sick leave on a proportional basis.

7.2.2 Employee must give notice

The payment of sick leave is subject to the employee promptly advising the employer of the employee's absence and its expected duration.

7.2.3 Evidence supporting a claim

In circumstances where 4 or more days sick leave entitlements have been used in any calendar year, it will be necessary for the employee, upon request by the Employer, to provide an appropriate medical certificate for single day absences or otherwise

7.2.4 *Accumulated sick leave*

An employee's accumulated sick leave entitlements are preserved when:

- (i) The employee is absent from work on unpaid leave granted by the employer;
- (ii) The employer or employee terminates the employee's employment and the employee is re-employed within 3 months; or
- (iii) The employee's employment is terminated because of illness or injury and the employee is re-employed by the same employer without having been employed in the interim.

The employee accumulates sick leave entitlements whilst absent from work on paid leave granted by the employer.

7.2.5 *Workers' compensation*

Where an employee is in receipt of workers' compensation, the employee is not entitled to payment of sick leave.

7.3 Bereavement leave

7.3.1 *Full-time and part-time employees*

Full-time and part-time employees shall, on the death of a member of their immediate family or household be entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

7.3.2 *Long-term casual employees*

- (a) A long-term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person's immediate family or household.
- (b) a "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under clause 7.3.2.

7.3.3 "Immediate family" includes:

- (a) A spouse (including a former spouse, a *de facto* spouse and a former *de facto* spouse, spouse of the same sex) of the employee; and
- (b) A child or an adult child (including an adopted child, a foster child, an ex-foster child, a stepchild or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

7.3.4 *Unpaid leave*

An employee with the consent of the employer, may apply for unpaid leave when a member of the employee's immediate family or household dies and the period of bereavement leave entitlement provided in clause 7.3 is insufficient.

7.4 Long service leave

Subject to clauses 7.4.1 to 7.4.10, employees covered by this Award are entitled to long service leave on full pay in accordance with the provisions of Chapter 2, Part 3, sections 42-58 of the Act as amended from time to time.

Where clauses 7.4.1 to 7.4.10 are inconsistent with Chapter 2, Part 3, sections 42-58 of the Act clauses 7.4.1 to 7.4.11 shall prevail to the extent of the inconsistency where such an interpretation would result in a more favourable outcome for an employee.

7.4.1 An employee covered by this Award, shall be entitled to long service leave on the following basis:

- (a) In respect of service completed prior to 1 July 1989 in accordance with section 17 of the *Industrial Conciliation and Arbitration Act 1961-1989*.

(b) In respect of service from 1 July 1989 on the basis of 13 weeks' long service for each 10 years of service.

(c) For an employee who is not a Teacher, the date of 1 January 1992 applies instead of 1 July 1989.

7.4.2 An employee may apply to take long service leave as from 1 July 1989 after 10 years of continuous service notwithstanding that the period of entitlement accrued may be less than 13 weeks.

7.4.3 An employer may direct an employee to take the full period of long service leave accrued within 12 months upon which the employee's accrued entitlement has reached 13 weeks and such employee shall take that leave within 12 months of the notice from the employer.

7.4.4 Any accrued entitlement to long service leave after 1 July 1989 may be in periods of no less than 4 weeks and no more than 13 weeks.

7.4.5 An employee shall provide at least 6 calendar months' notice in writing of an intention to take leave.

7.4.6 Upon termination by an employee payment in lieu of long service leave shall be made in accordance with this Award.

7.4.7 In the case of the death of an employee, the employer will be liable to pay to the employee's personal representative the whole amount of Long Service Leave which the employee would have been entitled to in accordance with clause 7.4.

7.4.8 An employee other than a full-time employee employed for a continuous period of 10 years, as defined by the Act, shall be entitled to a *pro rata* payment of long service leave in accordance with clause 7.4.

7.4.9 In respect of any further subsequent period of employment following the taking of long service leave an employee must have accrued 4 weeks of long service leave before further long service leave may be taken. However upon termination or dismissal all accrued long service leave shall become payable to the employee as calculated on the basis of 13 weeks for 10 years' service.

7.4.10 In respect to clauses 7.4.3, 7.4.4 and 7.4.5 the employer and the employee may mutually agree to vary the time periods stated.

7.4.11 Portability of long service leave entitlements for Local Government employees is provided pursuant to Division 4; Part 3; Chapter 5 - Administration of the *Local Government (Operations) Regulation 2010*.

7.5 Family leave

The provisions of the *Family Leave Award 2012* apply to and are deemed to form part of this Award.

7.5.1 It is to be noted that:

(a) part-time work can be performed by agreement in the circumstances specified in the *Family Leave Award 2012*;

(b) a copy of the *Family Leave Award 2012* is required to be displayed in accordance with section 697 of the Act.

7.5.2 The *Family Leave Award 2012* also provides for the terms and conditions of leave associated with:

(a) Maternity leave;

(b) Parental leave;

(c) Adoption leave; and

(d) Carers leave for the care and support of the employee's immediate family or household.

7.6 Public holidays

7.6.1 An employee who would ordinarily be required to work on a day on which a public holiday falls is entitled to full pay for the time the employee would ordinarily have been required to perform work on that day.

7.6.2 All work required by the employer to be done by any employee on:

- the 1st January;

- the 26th January;
- Good Friday;
- Easter Saturday (the day after Good Friday);
- Easter Monday;
- the 25th April (Anzac Day);
- Labour Day
- the Birthday of the Sovereign;
- Christmas Day;
- Boxing Day; or
- any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday

shall be paid for at the rate of double time and a-half with a minimum of 4 hours.

7.6.3 *Double time and a-half*

For the purposes of clause 7.6, where the rate of wages is a weekly rate, "double time and a-half" means one and one-half days wages in addition to the prescribed weekly rate, or *pro rata* if there is more or less than a day.

7.6.4 *Annual show*

All work done by an employee in a district specified from time to time by the Minister by notification published in the *Queensland Government Industrial Gazette* on the day appointed under the *Holidays Act 1983*, to be kept as a holiday in relation to the annual agricultural horticultural or industrial show held at the principal city or town, as specified in such notification of such district shall be paid for at the rate of double time and a-half with a minimum of 4 hours.

In a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

7.7 **Jury service**

- (a) An employee, other than a casual employee, required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the ordinary pay the employee would have been paid if the employee was not absent on jury service.
- (b) Alternatively, by agreement, fees (other than meal allowance) received by the employee to attend jury service will be paid to the employer and the employer will continue to pay the employee their ordinary pay for the time the employee was absent on jury service.
- (c) Employees shall notify their employer as soon as practicable of the date upon which they are required to attend for jury service and shall provide their employer with proof of such attendance, the duration of such attendance and the amount received in respect thereof.
- (d) If the employee is not required to serve on a jury for a day or part of a day after attending for jury service and the employee would ordinarily be working for all or part of the remaining day, the employee must, if practicable, present for work at the earliest reasonable opportunity.
- (e) "Ordinary pay" means the rate of pay that an employee would normally expect to receive for working ordinary hours on an ordinary day of the week, including any over-award payment. "Ordinary pay" excludes overtime, penalty rates of all types - including those attaching to working ordinary hours (for example) on a Saturday, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments of a like nature.

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

NOTE: No provisions inserted in this Award relevant to this Part.

PART 9 - TRAINING AND RELATED MATTERS

9.1 Professional development

- 9.1.1 Teachers are required by their employer to attend professional development activities for a total of 3 days during school vacation periods for professional development activities arranged for them.
- 9.1.2 Employees, other than Teachers, may be required by their employer to attend professional development activities for a total of 3 days during vacation periods for professional development activities arranged for them.

9.2 Union and employer validation committee

A joint Union/employer validation committee will be established between the Union and CEAS (and any other interested employer), consisting of equal representation, the purpose of which shall be to examine portfolios of professional development and assess applications by a 3 year trained Teacher for progression from Band 2 to Band 3 and to advise on the classification of assistants in accordance with clause 5.1.2 where there is disputation over classification between the employer and the employee.

PART 10 - OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES

NOTE: No provisions inserted in this Award relevant to this Part.

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

Clauses 11.1 and 11.2 replicate legislative provisions contained within the Act. In order to ensure the currency of existing legal requirements parties are advised to refer to sections 366, 372 and 373 of the Act as amended from time to time.

11.1 Right of entry

11.1.1 Authorised industrial officer

- (a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.
- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the Union.

11.1.2 Entry procedure

- (a) The authorised industrial officer is entitled to enter the workplace during normal business hours as long as:
 - (i) the authorised industrial officer alerts the employer or other person in charge of the workplace to their presence; and
 - (ii) shows their authorisation upon request.
- (b) Clause 11.1.2(a)(i) does not apply if the authorised industrial officer establishes that the employer or other person in charge is absent.
- (c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.
- (d) If the authorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

11.1.3 Inspection of records

- (a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.
- (b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
 - (i) is ineligible to become a member of the Union; or
 - (ii) has made a written request to the employer that they do not want their record inspected.
- (c) The authorised industrial officer may make a copy of the record, but cannot require any help from the employer.
- (d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

11.1.4 Discussions with employees

An authorised industrial officer is entitled to discuss with the employer, or a member or employee eligible to become a member of the Union:

- (a) matters under the Act during working or non-working time; and
- (b) any other matter with a member or employee eligible to become a member of the Union, during non-working time.

11.1.5 *Conduct*

An officer must not unreasonably interfere with any personnel with the performance of work in exercising a right of entry.

11.2 Time and wages record

11.2.1 An employer must keep, at the place of work in Queensland, a time and wages record that contains the following particulars for each pay period for each employee, including apprentices and trainees:

- (a) the employee's award classification;
- (b) the employer's full name;
- (c) the name of the award under which the employee is working;
- (d) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks;
- (e) a weekly, daily or hourly wage rate - details of the wage rate for each week, day, or hour at which the employee is paid;
- (f) the gross and net wages paid to the employee;
- (g) details of any deductions made from the wages; and
- (h) contributions made by the employer to a superannuation fund.

11.2.2 The time and wages record must also contain:

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee ceased employment with the employer; and
- (f) if a casual employee's entitlement to long service leave is worked out under section 47 of the Act - the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

11.2.4 Such records shall be open to inspection during the employer's business hours by an inspector of the Department of Justice and Attorney-General, in accordance with s. 371 of the Act, or an authorised industrial officer in accordance with ss. 372 and 373 of the Act.

11.3 Union encouragement

11.3.1 Clause 11.3 gives effect to s.110 of the Act in its entirety. Consistent with s.110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer shall also identify the existence of a Union encouragement clause in this Award.

11.3.2 *Union delegates* - Union delegates and job representatives have a role to play within a workplace. The existence of accredited Union delegates and/or job representatives is encouraged.

The employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

11.3.3 *Deduction of Union fees* - Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of Union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.

Schedule 1

For the purposes of this Award, the Divisions and Districts are as follows:

1 *Divisions*

1.1 Northern Division - That portion of the State along or north of a line commencing at the junction of the sea coast with the 21st parallel of south latitude; from that latitude due west to 147 degrees of east longitude; from that longitude due south to 22 degrees 30 minutes of south latitude; from that latitude due west to the western border of the State.

1.2 Mackay Division - That portion of the State within the following boundaries:- Commencing at the junction of the sea-coast with the 21st parallel of south latitude; from that latitude due west to 147 degrees of east longitude; from that longitude due south to 22 degrees of south latitude; from that latitude due east to the sea coast; from the sea-coast northerly to the point of commencement.

1.3 Southern Division - That portion of the State not included in the Northern or Mackay Divisions.

2 *Districts*

2.1 Northern Division:

2.1.1 Eastern District - That portion of the Northern Division along or east of 144 degrees 30 minutes of east longitude.

2.1.2 Western District - The remainder of the Northern Division.

2.2 Southern Division:

2.2.1 Eastern District - That portion of the Southern Division along or east of a line commencing at the junction of the southern border of the State with 150 degrees of east longitude; from that longitude due north to 25 degrees of south latitude; from that latitude due west to 147 degrees of east longitude; from that longitude due north to the southern boundary of the Mackay Division.

2.2.2 Western District - The remainder of the Southern Division.

Dated 18 September.

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Operative Date: 31 August 2012