

**EDUCATION ASSISTANTS' (GOVERNMENT) GENERAL AGREEMENT 2023****WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

<b>PARTIES</b>	DEPARTMENT OF EDUCATION	<b>APPLICANT</b>
	-v-	
	UNITED WORKERS UNION (WA)	<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER C TSANG	
<b>DATE</b>	FRIDAY, 3 MARCH 2023	
<b>FILE NO/S</b>	APPL 11 OF 2023	
<b>CITATION NO.</b>	2023 WAIRC 00133	

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**Result** Agreement varied

**Representation**

**Applicant** Ms N Sanders

**Respondent** Mr P Bergesio

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*Order*


WHEREAS this is an application pursuant to s 43(1) of the *Industrial Relations Act 1979* (WA) to vary an existing industrial agreement by substituting the reference to '2021' with '2023' at clause 35.2;

AND WHEREAS the parties consent to the application being determined on the papers;

AND WHEREAS I am satisfied that the agreement meets the requirements of the *Industrial Relations Act 1979* (WA) and that it should be varied;

NOW THEREFORE, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

THAT clause 35.2 of the agreement entitled *Education Assistants' (Government) General Agreement 2023* registered on 1 December 2022 be varied by substituting the reference to '2021' with '2023', attached to this order.

 (Sgd.) C. TSANG

COMMISSIONER C TSANG

**EDUCATION ASSISTANTS' (GOVERNMENT)  
GENERAL AGREEMENT 2023**

**AG 20 of 2022**

## **PART 1 – APPLICATION OF AGREEMENT**

### **1. TITLE**

This Agreement is known as the Education Assistants’ (Government) General Agreement 2023 and replaces the Education Assistants’ (Government) General Agreement 2021 (AG 25 of 2020).

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### 3. DEFINITIONS

3.1 For the purposes of this General Agreement the following definitions will apply:

- (a) "Award" means the *Teachers' Aides' Award 1979 No R 4 of 1979* or the *Miscellaneous Government Conditions and Allowances Award A 4 of 1992*.
- (b) "Child" and "grandchild" shall be read as including children of a multiple birth or adoption.
- (c) "Department" means the Department of Education.
- (d) "Education Assistant" means an Employee who works as an Education Assistant including Mainstream, Special Needs, Lead, English as an Additional Language/Dialect, Defence Force Transitional, Engagement Centre, Auslan, Braille, Advanced Education Assistants (Special Needs) and Aboriginal and Islander Education Officers.
- (e) "Director General" means the Chief Executive Officer as defined in section 4 of the *School Education Act 1999 (WA)* and section 3 of the *Public Sector Management Act 1994 (WA)*.
- (f) "Employee" means an Employee working at the Department of Education as an Education Assistant as defined in subclause 3.1(d).
- (g) "Employer" means the Director General of the Department of Education or successor.
- (h) "General Agreement" means the Education Assistants' (Government) General Agreement 2023.
- (i) "General Order" means General Order No. 763 of 1982 *Long Service Leave Conditions – State Government Wages Employees (66 W.A.I.G. 319)*.
- (j) "Headquarters" means the place in which the principal work of an Employee is carried out, as defined by the Employer.
- (k) "Home Economic Assistant" means an Employee engaged to assist the Teacher with the delivery of the home economics program.
- (l) "Partner" means a person who is a spouse or a de facto partner.
- (m) "Redeployment period" means the redeployment period as defined by regulation 28 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- (n) "Regional employee" means any Employee other than one whose assigned headquarters are within the metropolitan area.
- (o) "Registered employee" means a registered employee as defined by section 94(1A) of the *Public Sector Management Act 1994*.
- (p) "Registrable employee" means a registrable employee as defined by section 94(1A) of the *Public Sector Management Act 1994*.
- (q) "Replacement employee" means an Employee specifically engaged to replace an Employee proceeding on maternity leave, adoption leave, other parent leave or grandparental leave.
- (r) "Suitability" means suitable office, post or position or suitable employment as defined by section 94(6) of the *Public Sector Management Act 1994* as read with regulation 7 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- (s) "Suitable office, post or position", and "Suitable employment" have the meaning given in section 94(6) of the *Public Sector Management Act 1994* as read with regulation 7 of the *Public Sector Management*

*(Redeployment and Redundancy) Regulations 2014.*

- (t) "Surplus employee" means either a Registrable employee or a Registered employee.
- (u) "Suspend" means to suspend the continuance of an Employee's Redeployment period in accordance with regulation 29 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- (v) "Union" means United Workers Union (WA).
- (w) "WAIRC" means the Western Australian Industrial Relations Commission.

#### **4. PURPOSE OF AGREEMENT**

4.1 The parties agree the purpose of this General Agreement is to provide:

- (a) wage increases for employees bound by this General Agreement; and
- (b) core employment conditions together with the Awards identified in subclause 5.3 of this General Agreement.

#### **5. APPLICATION AND PARTIES BOUND**

5.1 The parties bound by this General Agreement are the Director General, Department of Education and United Workers Union (WA).

5.2 This General Agreement in its entirety applies to all employees as defined in subclause 3.1(d) who are members, or eligible to be members, of the Union. At the date of registration the approximate number of Education Assistants covered by this General Agreement is 11,859 (headcount). This General Agreement applies to Home Economic Assistants for the purposes of the provisions identified in subclause 5.4 only. At the date of registration the approximate number of Home Economic Assistants is 263 (headcount).

5.3 This General Agreement is read in conjunction with the:

- (a) *Teachers' Aides' Award 1979 No R 4 of 1979* for Education Assistants; and
- (b) *Miscellaneous Government Conditions and Allowances Award A 4 of 1992*.

5.4 (a) Home Economic Assistants' conditions of employment, with the exception of wages, shall be subject to the *Government Services (Miscellaneous) General Agreement 2019* which is read in conjunction with the *Cleaners and Caretakers (Government) Award 1975* and the *Miscellaneous Government Conditions and Allowances Award A 4 of 1992*.

(b) The following provisions of this General Agreement shall apply to Home Economic Assistants:

- (i) Clause 32 – Home Economic Assistants;
- (ii) Clause 34 – Recognition of Prior Service;
- (iii) Clause 35 – Wages; and
- (iv) Subclause (e) – Home Economic Assistants of Schedule 2 – Wages.

5.5 Where provisions of the relevant Awards are inconsistent with this General Agreement the provisions of this General Agreement prevail.

## **6. TERM OF AGREEMENT**

- 6.1 This General Agreement operates on and from 1 January 2023 and expires on 31 December 2024.
- 6.2 The parties to this General Agreement agree to re-open negotiations for a replacement General Agreement at least six months prior to the expiry of this General Agreement with a view to implement a replacement General Agreement operative from 1 January 2025.

## **7. NO FURTHER CLAIMS**

- 7.1 The parties to this General Agreement undertake that for the term of this General Agreement there will be no wage increases sought or granted other than those provided under the terms of this General Agreement. This includes wage adjustments arising out of State Wage Cases.
- 7.2 The parties to this General Agreement undertake that for the term of this General Agreement there will be no further claims on matters contained in this General Agreement except where otherwise provided.

## **8. CORE CONDITIONS**

- 8.1 The core conditions of employment for employees covered by this General Agreement are the terms and conditions of this General Agreement and the following provisions contained in the *Miscellaneous Government Allowances and Conditions Award A 4 of 1992*:

Clause 18 – Time and Wages Record;

Clause 20 – Trade Union Training Leave;

Clause 21 – Leave to Attend Union Business; and

Clause 31 – Witness and Jury Service.

# **PART 2 – GENERAL TERMS OF EMPLOYMENT**

## **9. GENERAL EMPLOYMENT**

- 9.1 The Employer may direct an Employee to carry out such duties as are within the limits of the Employee's skill, competence and training, including work, which is incidental or peripheral to the Employee's main tasks or functions.
- 9.2 Employees can be appointed full time or part time on a:
- (a) permanent basis; or
  - (b) fixed term basis.
- 9.3 An Employee can be appointed on a casual basis.
- 9.4 All employees must be advised in writing of the terms of their engagement and such advice must specify the date of commencement and the hours of work. In the case of an Education Assistant employed on a fixed term contract or casual basis the commencement advice will also include the commencement and finishing date of their contract and the reason for engagement.



## **10. EMPLOYER PREFERENCE**

- 10.1 The Employer recognises that permanent employment is the preferred form of engagement for Employees covered by this General Agreement.
- 10.2 The Employer recognises that casual employment, labour hire, and other contract for service arrangements are not the preferred methods for delivery of services, and the Employer will work towards minimising the use of casual employment, labour hire and other contract for service arrangements.
- 10.3 The Employer recognises that fixed term contract and casual employment are required to allow flexibility in appropriate circumstances for both Employers and Employees.
- 10.4 Within 60 days of a request being made in writing, the Employer will provide to the Union the names of the labour hire businesses used; the functions undertaken; the headcount number of labour hire employees performing the work; and the amount of money paid to each labour hire business.
- 10.5 Prior to engaging, or extending the engagement of, a labour hire employee, or otherwise entering into a new or extended labour hire arrangement, the Employer must first consider whether any permanent Surplus employees can undertake the role or duties required. All duties undertaken by labour hire employees will be assessed every three months for the possibility of a Surplus employee instead undertaking the role or duties. If a permanent Surplus employee can undertake the role or duties, they will be offered the employment.
- 10.6 Where more than one appropriate permanent Surplus employee exists, the following hierarchy shall apply for access to the role or duties:
- (a) internal Surplus employees are considered first;
  - (b) if no internal Surplus employees are suitable, Registered employees from other employing authorities are considered; and
  - (c) if no Registered employees are suitable, Registrable employees from other employing authorities are considered.

## **11. INDUCTION**

- 11.1 The provisions of this clause replace clause 30(5) of the *Miscellaneous Government Conditions and Allowances Award No A 4 of 1992*.

### Definitions

- 11.2 For the purposes of this clause the following definitions shall apply:
- (a) “New employee” means an employee who has not been employed in a position covered by this General Agreement within the three years preceding commencement of their employment.
  - (b) “Metropolitan region” means the North Metropolitan education region and South Metropolitan education region.
  - (c) “Regional area” means the Goldfields, Kimberley, Midwest, Pilbara, South West and Wheatbelt education regions.

### Employer induction

- 11.3 The Employer will provide an induction for all new employees. Surplus Employees who are permanently or temporarily placed in a position will be provided with an induction to their new worksite.

### Union induction

- 11.4 The Employer recognises the right for union representatives (delegates) to be provided with time to discuss the benefits of union membership with new employees in accordance with clause 76.4(e) of this General Agreement.
- 11.5 The Union is entitled to at least thirty minutes to address new employees without Employer representatives being present (“union induction”). The Union will meet the costs associated with its attendance at such sessions.
- 11.6 (a) The Employer shall schedule a new employee employed in a school located in the metropolitan region for a union induction within three months of commencement of employment.
- (b) The Employer shall schedule a new employee employed in a school located in a regional area for a union induction within six months of commencement of employment.
- (c) Surplus Employees who have been permanently placed in a position shall be scheduled for a union induction within three months of their permanent placement in a metropolitan school or within six months of their permanent placement in a regional school.
- 11.7 Union inductions are to be scheduled by the Employer twice each term for schools located in the metropolitan area and twice a year for schools located in regional areas, unless otherwise agreed by the parties. Union inductions shall be scheduled during term time.
- 11.8 The Union will be given at least 14 days' notice of the time and place of the union inductions and the names of those Employees attending. The Employer will notify the Union if there are no new Employees scheduled for induction.

## **12. PERIOD OF PROBATION**

- 12.1 All new employees are employed on a probationary period not exceeding three months.
- 12.2 Employees who have been employed for at least three months in the same position prior to winning it through merit selection and whose performance was deemed satisfactory will be appointed on a permanent basis with no further probationary period.
- 12.3 Prior to the expiry of a probationary period of employment, the Employer will:
- (a) confirm the appointment; or
- (b) extend the probation for a further period as determined by the line manager, but cannot exceed a further three months where performance issues have been identified and appropriate support and training to enhance performance has been documented; or
- (c) terminate the appointment due to unsatisfactory performance.

## **13. CASUAL EMPLOYMENT**

- 13.1 A casual Employee means an Employee engaged on an hourly basis in a specified position for a period not exceeding four weeks in any school, centre or site.
- 13.2 Casual employees will receive a 25% loading in lieu of personal leave and any student vacation time.
- 13.3 The employment of a casual Employee may be terminated at any time by the casual Employee or the Employer giving to the other one hour's prior notice. In the event of the Employer or the casual Employee failing to give the required notice, one hour's wages is forfeited respectively.

13.4 District Allowance is payable to casual employees on an hourly rate basis in accordance with the formulae:

$$\frac{\text{Appropriate District Allowance Rate}}{\text{Annual}} \times \frac{12}{313} \times \frac{1}{65}$$

13.5 A casual Employee shall become entitled to 13 weeks' long service leave after a period of 10 years' continuous service and each further period of seven years' continuous service, in accordance with clause 54 of this General Agreement.

#### **14. PART TIME EMPLOYMENT**

14.1 Part time employment is defined as work that is regularly undertaken for less than the designated full time hours specified in Clause 22 – Hours of Work.

14.2 A part time Employee is entitled to the same entitlements as a full time Employee on a pro-rata basis in accordance with the hours worked.

14.3 At the time of engagement the Employer and the part time Employee will agree, in writing, on a regular pattern of work, specifying the hours worked each day, which days of the week the Employee will work and the actual starting and finishing times each day.

14.4 Where a part time Employee works and is paid additional hours in the same classification, at the same or other school, they are entitled to be paid at the same step as their permanent or fixed term employment.

#### **15. PERMANENCY AND TENURE**

15.1 Subject to subclause 15.3, Education Assistants are employed on a permanent basis, subject to probation as outlined in Clause 12 – Period of Probation.

15.2 All appointments are to be made in accordance with the *Commissioner's Instruction No. 1 - Employment Standard and Commissioner's Instruction No. 2 - Filling a Public Sector Vacancy*, or their replacement, as published by the Public Sector Commission.

##### Fixed term and casual employment

15.3 Fixed term and casual employment may only be used in the following circumstances:

- (a) special projects or
- (b) to temporarily fill vacancies, where a decision has been made to fill that vacancy, whilst the recruitment process is undertaken; or
- (c) to fill vacancies due to:
  - (i) parental leave;
  - (ii) long service leave;
  - (iii) personal leave;
  - (iv) worker's compensation;
  - (v) secondment;
  - (vi) leave without pay;

- (vii) other forms of leave as prescribed in this General Agreement and/or the Award;
- (viii) the usual occupant agreeing to reduce their hours of work;
- (ix) the usual occupant being temporarily deployed elsewhere or acting higher duties in another position;
- (d) any other situations as agreed between the Employer and the Union.

15.4 For the purposes of clause 15.3(a) of this General Agreement, “special project” means work on projects:

- (a) with a finite life, where funding is not guaranteed past a certain date or the work is seasonal in nature; and
- (b) for a specified purpose, that constitutes work of a one-off nature.

Fixed term contract employment

15.5 Before employing a person as a fixed term contract Employee or providing a new or extended fixed term contract to an Employee, the Employer must first consider whether any permanent Surplus employees can undertake the role or duties required. If a permanent Surplus employee can undertake the role or duties, they will be offered the employment.

15.6 Where more than one appropriate permanent Surplus employee exists, the following hierarchy shall apply for access to the role or duties:

- (a) internal Surplus employees are considered first;
- (b) if no internal Surplus employees are suitable, Registered employees from other employing authorities are considered; and
- (c) if no Registered employees are suitable, Registrable employees from other employing authorities are considered.

15.7 Pursuant to clause 9.4 of this General Agreement, Employees appointed for a fixed term shall be advised in writing of the terms of the appointment, including the circumstances of the appointment as provided under clause 15.3 of this General Agreement, and such advice shall specify the dates of commencement and termination of employment.

15.8 The Employer will provide the Union the names and work locations of all Employees on fixed term contracts within 28 days of a request being made in writing.

Review of fixed term contracts

15.9 The parties agree that Education Assistants who are employed on fixed term contracts and who are not employed in the circumstances as provided for in subclause 15.3 are reviewed on request for permanency.

15.10 Education Assistants (Special Needs) working in Education Support Units or with individual students in mainstream schools employed on fixed term contracts in accordance with subclause 15.3(a) are deemed permanent after two years’ continuous service. Service is deemed continuous where breaks in employment are no longer than 26 weeks.

Dispute settlement

15.11 If a dispute arises about modes of employment of an Employee it is to be dealt with in accordance with Clause 77 – Dispute Settlement Procedure.

## **16. REVIEW OF CONTRACTED HOURS**

- 16.1 A part-time Employee may request a review of their contracted hours. The Employer will respond with a decision resulting from the review within three months of the request being received by the Employer.
- 16.2 Any proposed variation to an Employee's contracted hours must consider any hours that the Employee has been rostered to work in excess of their contracted hours, excepting any shifts worked to cover absence arising from the situations described in subclause 15.3.
- 16.3 If the Employer declines to change the employee's contracted hours, the Employer will set out reasons for the decision in writing.

## **17. VARIATION OF HOURS**

- 17.1 The parties to this General Agreement acknowledge that Education Assistants' hours in schools or centres can vary according to operational requirements. The Principal shall not vary an Employee's total weekly hours of duty without the Employee's consent, except by following the four step process provided for at clauses 17.5 to 17.8 of this General Agreement.
- 17.2 For the purposes of this clause "surplus hours" means hours in a school that are worked by Education Assistants which are in excess of the required Education Assistant FTE determined for that school by the Principal. Where surplus hours are identified, these hours are to be removed using the four step process as outlined in subclauses 17.5 to 17.8.
- 17.3 The parties are committed to a process that is at all times fair, equitable and takes account of the needs of the Education Assistant.
- 17.4 The four step process at clause 17.5 to 17.8 of this General Agreement shall apply to both permanent and fixed term contract employees.
- 17.5 Step 1: Voluntary Reduction in Hours
- (a) The Principal must initially call for expressions of interest from Education Assistants to voluntarily reduce their hours.
  - (b) Employees can agree to a temporary reduction of hours for a fixed period of time.
  - (c) Where employees volunteer for a reduction in hours they will be given priority consideration to access additional hours should they become available at the school in the future.
- 17.6 Step 2: Compulsory Reduction in Hours
- (a) If there are still surplus hours after completing subclause 17.5, the Principal may achieve the balance by equitably reducing the hours of Education Assistants in their first year of employment, or Education Assistants (Special Needs) working in Education Support Units or with individual students in mainstream in their first two years of employment.
  - (b) Employees who are not covered by subclause 17.6 (a) cannot be compelled to accept a reduction in their hours of employment; however, they may volunteer to reduce their hours in accordance with clause 17.5 of this General Agreement.
  - (c) Where employees have hours compulsorily reduced by the Principal in accordance with subclause 17.6, they will be given priority consideration to access additional hours should they become available at the school in the future.
- 17.7 Step 3: Employee Expressions of Interest for Relocation

If there are still surplus hours in the school after completing subclause 17.6, the Principal will seek expressions of interest from Education Assistants to relocate to another school, subject to Departmental approval processes. If the required reduction of hours corresponds with the hours of employment of the Education Assistant volunteering for relocation, then the process has been completed.

17.8 Step 4: Selection Process for Employer Initiated Placement (EIP)

If subclause 17.7 is not achievable, that is, there are no Education Assistants in their first year of employment, or Education Assistants (Special Needs) working in Education Support Units or with individual students in mainstream in their first two years of employment, or there are more expressions of interest for voluntary relocation than corresponds with the number of hours to be reduced, subject to Departmental approval processes, the Principal needs to initiate a selection process to determine which Education Assistant is to be relocated by way of EIP, using the following process:

- (a) A selection panel conforming to normal selection procedure is established. A suggested panel could be the Principal (or nominee), a Teacher and a third panel member who is not on the teaching staff.
- (b) The selection criteria will be as simple and objective as possible and based on school priorities (as identified through the school development plan) and how these relate to the role, skills and responsibilities of Education Assistants.
- (c) The selection criteria should be circulated in writing, and affected Education Assistants advised of the selection process that will take place, in advance.
- (d) Once the panel has made its decision, written notification is to be provided to affected employees (including reasons for the decision) as early as possible. Employees selected for EIP will be given the opportunity to discuss the reasons and have further counselling with regard to their options.
- (e) The Employer will ensure that any employees selected for EIP are placed in the new position as soon as is practicable.
- (f) Any person affected by an EIP must, wherever possible, be relocated to a position that reflects their total current hours of employment, rather than the proportion that is supernumerary in the school, in order to reduce the need for multiple employment locations.
- (g) In all cases, appropriate written documentation must be kept by the Employer reflecting the outcomes agreed between the employer and the Employee.

17.9 Filling a Vacancy

If the principal chooses to employ an Education Assistant these positions will be filled subject to Departmental staffing processes and if relevant *Commissioner's Instruction No. 1 - Employment Standard and Commissioner's Instruction No. 2 - Filling a Public Sector Vacancy*, or their replacement, as published by the Public Sector Commission.

- 17.10 Any dispute arising from the application of this Clause will be dealt with pursuant to Clause 77 – Dispute Settlement Procedure.

**18. NOTICE OF TERMINATION**

- 18.1 The provisions of this clause replace clause 10 – Contract of Service of the *Teachers' Aides' Award 1979*.

**Notice of termination by Employee**

- 18.2 The contract of employment of every Employee shall be terminable by one week's notice by the Employee. In the event of the Employee not giving the required notice, one week's wages shall be forfeited.

### **Notice of termination by Employer**

- 18.3 An Employee, other than a casual Employee, must not be terminated unless the Employer has given the Employee the required period of notice in accordance with the following table, or the Employer has provided the Employee with payment in lieu of notice.

Period of continuous service	Required period of notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

- 18.4 The period of notice for an Employee, who at the time of being terminated is over 45 years of age and has completed at least two years' continuous service with the employer, shall be increased by one week.
- 18.5 The Employee may be terminated by the Employer giving the Employee part of the required period of notice, with payment in lieu for the remainder of the required period of notice.
- 18.6 Payment in lieu of notice must be worked out on the basis of the employee's ordinary hours of work.

### **19. SUPERVISION OF STUDENTS**

- 19.1 Education Assistants at any classification level can agree to be rostered on with teachers to assist in the supervision of students during student breaks including recess periods and lunch.
- 19.2 Any issues that may arise regarding Education Assistants assisting in the supervision of students during student breaks including recess and lunch, may be brought to the attention of the Principal for resolution. In addressing issues raised by either party, both parties will take all reasonable steps in attempting to resolve the issues.
- 19.3 Education Assistants working in pre-primary or kindergarten can agree to be rostered on with teachers to assist in the supervision of students during student breaks including recess periods and lunch. Such agreement cannot be unreasonably withheld if it compromises the controlled outdoor and social learning of the students. This is limited to supervision of pre-primary and/or kindergarten students.
- 19.4 Education Assistants who are rostered on with teachers to assist in the supervision of students during student breaks including recess periods and lunch, will continue to have access to break periods to which they are currently entitled.

### **20. CLASS PREPARATION TIME**

- 20.1 The Student Centred Funding Model (SCFM) allows sufficient flexibility for Principals to plan for adequate resourcing of all programs. Apart from any student characteristics funding and salary allocations, this includes additional flexibility to use available funding to cover additional time that may be required for special projects, programs and preparation of resources from time to time.
- 20.2 Where students with special needs and classes are allocated to an Education Assistant, it is important that the Teacher and Education Assistant work collaboratively to allow all lesson preparation to be managed during the Education Assistant's hours of work. Where it may be necessary for additional resources to be developed at a particular point in time, additional time for planning will be given to allow for this during the Education Assistant's hours of work.
- 20.3 It is not reasonable to expect that an Education Assistant will assist the teacher by doing preparation in their own time outside their usual hours of work.

## **21. REDEPLOYMENT AND REDUNDANCY**

- 21.1 The parties acknowledge that the *Public Sector Management Act 1994* and the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* (Regulations) provide the legislative framework for redeployment and redundancy for all Employees covered by this General Agreement. If the provisions of this General Agreement and the Regulations are inconsistent, the provision of the Regulations shall prevail.
- 21.2 The Employer and prospective Employer will assess the Suitability of a Surplus employee broadly which includes, but is not limited to:
- (a) acknowledging that the Employee's classification level illustrates core competencies for that classification level;
  - (b) providing sufficient weight to the Employee's knowledge, skills and experience; and
  - (c) recognising the transferability of skills to roles where a direct fit may not exist.
- 21.3 The Employer and prospective Employer will seek to place Surplus employees in suitable positions in accordance with clause 21.2.
- 21.4 When considering a suitable position in accordance with subclause 21.2 of this General Agreement, the Employer should also consider the reasonableness of the required travelling distance between the home address and/or current school address and the proposed suitable position.
- 21.5 The Employer will provide Surplus employees with direct access to priority vacancies through the online Recruitment Advertising Management System.
- 21.6 The Employer will provide Surplus employees with case management in line with the Public Sector Commission's Redeployment and Redundancy Guidelines and the Public Sector Commission's Redeployment and Redundancy Guidelines Appendix A – Case Management or any revised arrangement subsequent to the review of the redeployment and redundancy provisions. The Employer will ensure that Surplus employees are provided with an appropriately skilled case manager/s, a skills audit and continual support to find Suitable employment.
- 21.7 Upon notification of registration, the Employer shall provide an Employee who is notified of the Employer's intention to register them under regulation 18 of the Regulations with the written reason/s for the intended registration and the possible employment, placement and training options available to them.
- 21.8 Where the Employer is able to do so consistent with *Commissioner's Instruction No. 12 – Redeployment and Redundancy*, the Employer may Suspend the Redeployment period of a Registered employee for the duration that the Employee is participating in retraining, a secondment or other employment placement arrangement. Where suspension of the total duration would exceed the allowable duration under *Commissioner's Instruction No. 12 – Redeployment and Redundancy*, the Employer may Suspend the Redeployment period for the portion allowable.
- 21.9 When a Registered employee enters the last three months of their Redeployment period, the Employer will notify the Union as soon as possible.

## **PART 3 – HOURS OF WORK**

### **22. HOURS OF WORK**

- 22.1 The ordinary full time hours of work for an Education Assistant appointed pursuant to the *Teachers' Aides' Award 1979* is 32.5 hours per week unless otherwise provided by subclauses 22.2, 22.3, 22.4 or 22.5.



- 22.2 Where the nature of the work requires the ordinary hours of work to be longer than 32.5 hours per week, the Employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 hours per week.
- 22.3 (a) The ordinary hours of work for Education Assistants (Engagement Centre) are 32.5 hours per week.
- (b) Any Education Assistant (Engagement Centre) who has ordinary hours of work greater than 32.5 hours per week as at the date of registration of this General Agreement shall have their ordinary hours maintained while they remain employed as an Education Assistant (Engagement Centre).
- (c) Nothing in this subclause shall exclude Education Assistants (Engagement Centre) from the provisions of clause 17 – Variation of Hours of this General Agreement.
- 22.4 Where an Employee is employed for bus and classroom duties the ordinary hours of work will not exceed 42 hours per week.
- 22.5 (a) The line manager must ensure that an Employee appointed in accordance with subclause 22.1 who works 0.9 FTE is not to be rostered to work more than 4.5 working days in one week, unless there is mutual agreement to work the time over five days.
- (b) Employees who work less than 0.9 FTE can compact or expand their FTE across fewer or more days, by mutual agreement between the Employee and the Principal. Provided student needs and educational outcomes are met, such a request will not be unreasonably refused.
- (c) Based on student needs and educational outcomes, if Principals require an Employee's current hours worked to be compacted or expanded refer to clause 22.6 of this General Agreement.
- 22.6 Subject to clause 22.7 of this General Agreement, to meet operational requirements the Principal may vary the rostering arrangements including the times and days that an Employee is required to work in accordance with the following:
- (a) The Principal will first call for volunteers from all suitably qualified part time employees to change their times and/or days of work.
- (b) Before making a direction pursuant to subclause 22.6(c) the Principal will:
- (i) Take into account the views and concerns of affected or potentially affected employees in an open and transparent fashion, with conditions outside the workplace taken into account; and
- (ii) Seek to minimise any potential adverse impacts on affected employees and will take reasonable steps to mitigate the adverse consequences.
- (c) If the call for volunteers does not satisfy the operational need, the Principal will give the Employee at least one month's notice to vary their times and/or days of work. Employees may request an extended notice period which will not be unreasonably refused by the Principal.
- 22.7 The Principal shall not vary the Employee's total weekly hours of duty without the Employee's consent, except as provided by Clause 17 – Variation of Hours.
- 22.8 When making the decision to vary an Employee's times or days of work the Employer will consider the ability to reasonably transfer the Employee to an alternative work location at the Employee's current days of work.
- 22.9 The minimum period of engagement and payment on any one day is for two hours, and the Employee will receive a minimum payment for two hours whether the two hours are fully utilised or not.

**23. TEA BREAK**

- 23.1 All Education Assistants are allowed a paid tea break of fifteen minutes daily between the second and fourth hour from the school starting time.
- 23.2 An Employee is not required to supervise students or undertake other duties during their rostered tea break.

**24. RESIDENTIAL CAMPS**

- 24.1 The provisions contained in this clause replace those contained in clause 15 – Residential Camps of the *Teachers' Aides' Award 1979*.
- 24.2 Education Assistants who attend residential camps in the course of their employment shall be paid 12 hours' pay at the ordinary rate of pay for each day while attending such camp in lieu of the payment the Education Assistant would have received for working their ordinary hours.

**PART 4 – CLASSIFICATION STRUCTURE AND  
INCREMENTAL PROGRESSION**

**25. EDUCATION ASSISTANTS (MAINSTREAM)**

- 25.1 New Education Assistants (Mainstream) are initially employed at level 1 step 1 of the classification Education Assistant (Mainstream).
- 25.2 Education Assistants (Mainstream) progress through the steps of the classification by annual increments subject to subclause 25.3.
- 25.3 An Education Assistant (Mainstream) progresses to level 2 step 1 on their increment date, unless the Principal indicates prior to an Education Assistant's (Mainstream) increment date that the Education Assistant's (Mainstream) work performance is not satisfactory and the Employee is not capable of exercising the responsibilities and carrying out the duties of an Education Assistant (Mainstream) level 2 position. The Principal must be able to demonstrate that performance issues are genuine and have been raised with the Education Assistant (Mainstream).
- 25.4 Education Assistants (Mainstream) progressing to level 2 step 1 will carry out the functions and duties as prescribed by the Education Assistant (Mainstream) level 2 Job Description Form (JDF).

**26. EDUCATION ASSISTANTS (SPECIAL NEEDS) WORKING IN SCHOOLS WITH DEPARTMENT ENDORSED EDUCATION SUPPORT PROGRAMS, SPECIALIST LEARNING PROGRAMS (ASD) OR WITH INDIVIDUAL STUDENTS IN MAINSTREAM SCHOOLS**

- 26.1 Prior to the selection or employment of Education Assistants (Special Needs) working in schools with Department endorsed education support programs, specialist learning programs for students with Autism Spectrum Disorder (ASD) or with individual students in mainstream schools, the position will be assessed as either a level 2 or level 3 in accordance with the needs of the position.
- 26.2 An Education Assistant (Special Needs) employed in a position classified as commencing at level 2 will progress by annual increments through level 3 subject to subclause 26.3.
- 26.3 An Education Assistant (Special Needs) will progress from level 2 to level 3, unless the Principal indicates prior to an Education Assistant's (Special Needs) increment date that the Education Assistant's (Special Needs) work performance is not satisfactory and the Employee is not capable of exercising the responsibilities and

carrying out the duties of a level 3 Education Assistant (Special Needs). The Principal must be able to demonstrate that the performance issues are genuine and have been raised with the Education Assistant (Special Needs).

- 26.4 An Education Assistant (Special Needs) progressing to level 3 step 1 must carry out the functions and duties as prescribed by the level 3 Education Assistant (Special Needs) JDF.
- 26.5 An Education Assistant (Special Needs) in a level 2 position who believes they should be recognised as being eligible to be paid at level 3 may apply for their position to be reassessed in accordance with the procedure outlined between subclauses 26.6 to 26.10.
- 26.6 An Education Assistant (Special Needs) applying for reassessment must complete the Request for level 3 Recognition Form. The Education Assistant (Special Needs) must forward the form to Workforce Division for consideration. The form must be signed by either the school principal or the classroom teacher with whom the Education Assistant (Special Needs) works.
- 26.7 Upon receipt of the form, the Workforce Division will forward a receipt of acknowledgement to the Education Assistant (Special Needs).
- 26.8 The Employer will assess each submission based on the special needs requirements of students considering the Documented Plan and the role requirements provided in the relevant level 3 Education Assistant (Special Needs) JDF.
- 26.9 If the Employer confirms that the position is that of a level 3 Education Assistant (Special Needs), the Employee will be classified as level 3 Education Assistant (Special Needs).
- 26.10 If the Employer determines that the position does not warrant level 3 classification, the Education Assistant (Special Needs) will continue at their current classification.
- 26.11 An Education Assistant (Special Needs) may appeal the decision by utilising Clause 77– Dispute Settlement Procedure.
- 26.12 Where agreement cannot be reached in relation to a particular condition, the dispute will be dealt with under Clause 77 – Dispute Settlement Procedure.

**27. EDUCATION ASSISTANTS (SPECIAL NEEDS) IN EDUCATION SUPPORT SCHOOLS OR EDUCATION SUPPORT CENTRES OR EDUCATION ASSISTANTS (DEFENCE FORCE TRANSITIONAL)**

- 27.1 Education Assistants (Special Needs) in Education Support Schools or Centres or Education Assistants (Defence Force Transitional) will initially be employed at level 3 step 1 of the classification structure.
- 27.2 Education Assistants (Special Needs) in Education Support Schools or Centres and Education Assistants (Defence Force Transitional) employed at level 3 will carry out the functions and duties as prescribed by the level 3 Education Assistant (Special Needs) and Education Assistant (Defence Force Transitional) JDF.
- 27.3 Education Assistant (Special Needs) and Education Assistant (Defence Force Transitional) will progress through level 3 of the classification structure by annual increments.

**27A. ADVANCED EDUCATION ASSISTANTS (SPECIAL NEEDS) IN EDUCATION SUPPORT SCHOOLS OR EDUCATION SUPPORT CENTRES**

- 27A.1 Advanced Education Assistants (Special Needs) will be employed at the Education Assistant (Auslan), Education Assistant (Braille), Education Assistant (Engagement Centre) and Education Assistant (Lead) classification.

- 27A.2 Advanced Education Assistant (Special Needs) will be employed as an Advanced Education Assistant (Special Needs) in Education Support Schools or Education Support Centres and will carry out the functions and duties as prescribed by the Advanced Education Assistants (Special Needs) JDF.
- 27A.3 An Education Assistant (Special Needs) who has worked for a minimum of 6 months at level 3.3 in an Education Support School or Education Support Centre may apply for their position to be reassessed for classification as an Advanced Education Assistant (Special Needs) in accordance with the terms of this clause.
- 27A.4 An Employee applying for reassessment will submit a completed Advanced Education Assistant (Special Needs) Recognition Form (Form) and the Advanced Education Assistant (Special Needs) Training/Experience Checklist (Checklist) to the Employer for consideration. The Form and Checklist must be signed by the school Principal.
- 27A.5 Upon receipt of the Form and Checklist, the Employer will provide a receipt of acknowledgement to the Employee.
- 27A.6 The Employer will assess each submission based on the criteria and role requirements provided in the Checklist.
- 27A.7 If the Employer confirms that the submission meets the criteria as set out in the Checklist, the Employee will be classified as an Advanced Education Assistant (Special Needs), for as long as the Employee remains at an Education Support School or Education Support Centre.
- 27A.8 If the Employer determines that the submission does not meet the criteria as set out in the Checklist, the Employee will continue at their current classification.
- 27A.9 Where an Education Assistant (Special Needs) at an Education Support School or Education Support Centre requires additional training to meet the criteria to be recognised as an Advanced Education Assistant (Special Needs), they may request that the Employer provides such training. The Principal, having consideration for the needs of the students, the continuum of providing a specific service for future students and other operational requirements of the School, can agree to the request and will facilitate training for the Education Assistant (Special Needs) as soon as practicable.
- 27A.10 Where the Employer determines a submission does not meet the requirements for classification as an Advanced Education Assistant (Special Needs), an Employee may appeal the decision by utilising Clause 77– Dispute Settlement Procedure.
- 27A.11 Where agreement cannot be reached in relation to a particular criterion or the provision of training, the dispute will be dealt with under Clause 77 – Dispute Settlement Procedure.

## **28. ABORIGINAL AND ISLANDER EDUCATION OFFICERS**

- 28.1 Aboriginal and Islander Education Officers will initially be employed at level 3 step 1 of the classification structure.
- 28.2 Aboriginal and Islander Education Officers employed at level 3 will carry out the functions and duties as prescribed by the Aboriginal Islander Education Officer JDF.
- 28.3 Aboriginal and Islander Education Officers will progress through level 3 of the classification structure by annual increments.

## **29. EDUCATION ASSISTANT (ENGLISH AS AN ADDITIONAL LANGUAGE/DIALECT)**

- 29.1 Education Assistant (English as an Additional Language/Dialect (EAL/D)) (formally Ethnic Assistant) will initially be employed at level 3 step 1 of the classification structure.

29.2 Education Assistant (EAL/D) employed at level 3 will carry out the functions and duties as prescribed by the Ethnic Assistant or Education Assistant (EAL/D) JDF.

29.3 Education Assistant (EAL/D) will progress through the level 3 classification structure by annual increments.

**30. EDUCATION ASSISTANTS (AUSLAN), EDUCATION ASSISTANTS (BRAILLE), EDUCATION ASSISTANTS (ENGAGEMENT CENTRE)**

30.1 Education Assistants (Auslan), Education Assistants (Braille) or Education Assistants (Engagement Centre) will be employed at the Education Assistants (Auslan), Education Assistants (Braille) or Education Assistants (Engagement Centre) classification.

30.2 Education Assistants (Auslan), Education Assistants (Braille) and Education Assistants (Engagement Centre) will be employed as Education Assistants (Auslan), Education Assistants (Braille) and Education Assistants (Engagement Centre) in the classification structure and will carry out the functions and duties as prescribed by the Education Assistants (Auslan), Education Assistants (Braille) and Education Assistants (Engagement Centre) JDF.

**31. EDUCATION ASSISTANTS (LEAD)**

31.1 Education Assistants (Lead) will be employed at the Education Assistants (Auslan), Education Assistants (Braille), Education Assistants (Engagement Centre) or Education Assistants (Lead) classification.

31.2 Education Assistants (Lead) will be employed as Education Assistants (Lead) in the classification structure and will carry out the functions and duties as prescribed by the Education Assistants (Lead) JDF.

31.3 Principals may appoint employees to the position of Education Assistant (Lead) to meet operational requirements.

**32. HOME ECONOMIC ASSISTANTS**

32.1 New Home Economic Assistants are initially employed at level 1 step 1 of the Home Economic Assistants' classification.

32.2 Home Economic Assistants progress through the steps of the classification by annual increments subject to subclause 32.3.

32.3 Home Economic Assistants progress to level 2 step 1 on their increment date, unless the Principal indicates prior to a Home Economic Assistant's increment date that the Home Economic Assistant's work performance is not satisfactory and the Home Economic Assistant is not capable of exercising the responsibilities and carrying out the duties of a Home Economic Assistant level 2. The Principal must be able to demonstrate that performance issues are genuine and have been raised with the Employee.

32.4 Home Economic Assistants progressing to level 2 step 1 will carry out the functions and duties as prescribed by the Home Economic Assistant level 2 JDF.

**33. RECOGNITION OF QUALIFICATIONS**

33.1 An Education Assistant who holds a relevant qualification upon commencement of employment will progress an increment point within their relevant classification, effective on the date of employment. Where an Education Assistant is appointed at a higher increment point, clauses 33.2 and 33.3 shall not apply.

- 33.2 An Education Assistant who obtains a relevant qualification after commencement of their employment will progress an increment point within their relevant classification. This provision will only be applicable upon the completion of one qualification.
- 33.3 An Education Assistant who obtains a relevant qualification will move to the next increment point in that classification after the presentation of the certificate to the Employer. An Education Assistant's increment date for the purposes of progression will change to the date of presentation of the qualification.
- 33.4 Where an Education Assistant through no fault of their own is unable to produce confirmation of a qualification for the purposes of sub clause 33.3, the Employer will recognise the qualification from the date of notification of the qualification to the Employer, subject to the Employee providing evidence that would satisfy a reasonable person that the qualification is held or has been obtained.
- 33.5 Notwithstanding the above an Education Assistant (Special Needs) will not move an increment on the completion of a qualification.

#### Interpreter Allowance

- 33.6 An Education Assistant working in the classification of Education Assistant (Auslan) who has a qualification which provides eligibility to be recognised as a NAATI Certified Provisional Interpreter (or a higher certification) will receive a weekly allowance of \$43.65, paid on a fortnightly basis. Payment of the allowance will be pro rata for eligible part-time and casual employees.

### **34. RECOGNITION OF PRIOR SERVICE**

- 34.1 (a) Subject to clause 34.1(b) of this General Agreement, where an Education Assistant recommences with the Department in the same classification they previously held, within three years of leaving, the Education Assistant will be placed on the same classification level and increment they had on termination.
- (b) Where an Education Assistant recommences with the Department as an Education Assistant (Mainstream) within three years of leaving, the highest classification and increment the employee shall recommence at shall be Level 2.4.
- 34.2 All new Education Assistants, apart from those detailed in subclause 34.1, will be placed at the appropriate increment that takes into account prior relevant service within the previous three years.
- 34.3 Where an Education Assistant recommences at a higher classification level, previous years of service will not count towards incremental progression.
- 34.4 (a) Subject to clause 34.4(b), an Education Assistant (Mainstream) Level 2 will maintain their increment if they obtain temporary or permanent employment as an Education Assistant (Special Needs) Level 2.
- (b) An Education Assistant (Mainstream) who has proceeded to increment 2.4 shall be placed at Level 3.1 if they obtain temporary or permanent employment as an Education Assistant (Special Needs).
- (c) Education Assistants and Home Economics Assistant required to perform work in a lower grade for any of their usual shift or portion thereof shall not have their wages reduced whilst employed in such lower capacity.

## **PART 5 – WAGES AND ASSOCIATED ALLOWANCES**

### **35. WAGES**

- 35.1 The wages provided for by this General Agreement will be those contained in Schedule 2. Schedule 2 provides for an increase on and from 1 January 2023 and a further increase on and from 1 January 2024.
- 35.2 An Employee who is employed by the Employer on the date of registration of this General Agreement will, on registration of the General Agreement, receive a payment equivalent to the additional wages that would have been paid had the wages in Schedule 2 been paid on and from 1 January 2023.
- 35.3 An Employee who resigns or retires or whose employment is otherwise terminated prior to the registration of this General Agreement is not entitled to the payment provided in clause 35.2.
- 35.4 The wages provided in Schedule 2 - Wages of this General Agreement include full and final settlement of productivity improvements up to the date of commencement of the Education Assistants (Government) General Agreement 2013.

#### Payslips

- 35.5 An employee who has difficulty accessing their payslip electronically will, upon request to their line manager, have a hard copy of their payslip made available to them at their workplace after each pay period.

### **36. TRAINEESHIPS**

#### 36.1 Definitions

- (a) Part time trainee means a trainee who is employed for a minimum of 20 hours per week (except in the case of school based traineeships) and has regular and stable hours of work each week, to allow training to occur. Wages and entitlements accrue on a pro rata basis.
- (b) Traineeship means a full time or part time structured employment based training arrangement approved by the Department of Training and Workforce Development where the trainee gains work experience and has the opportunity to learn new skills in a work environment. On successful completion of the traineeship the trainee obtains a nationally recognised qualification.
- (c) Traineeship Training Contract means the agreement between the Employer and the trainee that provides details of the traineeship and obligations of the Employer and trainee and is registered with the Department of Training and Workforce Development.
- (d) Training Plan means the plan that outlines what training and assessment will be conducted off-the-job and what will be conducted on-the-job and how the Registered Training Organisation will assist in ensuring the integrity of both aspects of the training and assessment process.

#### 36.2 Traineeships

- (a) Trainees are to be additional to the normal workforce of the Employer so that trainees will not replace paid workers or volunteers or reduce the hours worked by existing employees.

(b) Training Conditions

The arrangements between the Employer and the trainee in relation to training are as specified in the Traineeship Training Agreement, as administered by the Department of Training and Workforce Development.

(c) Employment Conditions

- (i) The initial period of employment for trainees is the nominal training period endorsed at the time

the particular traineeship is established.

- (ii) Completion of the traineeship scheme will not guarantee the trainee future employment in the Public Sector, but the Employer will cooperate to assist the trainee to be placed in suitable employment should a position arise.
- (iii) Trainees are permitted to be absent from work without loss of continuity of employment to attend off the job training in accordance with the training plan. Except for absences provided for under this General Agreement and the relevant Award, failure to attend for work or training without an acceptable cause will result in loss of pay for the period of the absence.
- (iv) Trainees will receive a mix of supervised work experience, structured training on the job and off the job, and the opportunity to practice new skills in a work environment.
- (v) Overtime and shift work will not be worked by trainees except to enable the requirements of the training to be effected. When overtime and shift work are worked the relevant allowances and penalties of the relevant Award, based on the training wage stated in subclause 36.2(d) will apply. Trainees will not work overtime or shift work on their own.

(d) Wages

The wages applicable to trainees will be as prescribed in the *National Training Wage Award 2000* or its subsequent replacement for employees up to and including 20 years of age. Adult trainees will be paid the rate prescribed under the *Minimum Conditions of Employment Act 1993* (WA) for the minimum weekly rate of pay for employees 21 or more years of age.

**37. HIGHER DUTIES ALLOWANCE**

- 37.1 This Clause applies only to an Education Assistant who is appointed to act in a position that is classified at a higher level than their substantive position.
- 37.2 An Education Assistant who is directed by the Employer to act in a position that is classified higher than the Employee's own substantive position and who works for a continuous period of more than two hours, will be paid an allowance equal to the difference between the Employee's own wage and the wage of the higher classified position.
- 37.3 The allowance paid may be adjusted during the period of higher duties.
- 37.4 Where an Education Assistant is directed to act in a position which has an incremental range of wages the Education Assistant will be entitled to receive an increase in the higher duties allowance equivalent to the annual increment the Education Assistant would have received had the Education Assistant been permanently appointed to such position. The application of this provision is on the basis that the acting service with allowances for acting in positions for the same classification or higher than the position during the 18 months preceding the commencement of such acting will aggregate as qualifying service towards such an increase in the allowance.
- 37.5 Where an Education Assistant who is in receipt of an allowance granted under this Clause and has been so for a continuous period of 12 months or more, proceeds on a period of approved leave of not more than four weeks other than student vacation leave, the Employee will continue to receive the allowance for the period of leave. This Clause will also apply to an Employee who has been in receipt of an allowance for less than 12 months if during the Employee's absence no other Employee acts in the position in which the Employee was acting immediately prior to proceeding on leave and the Employee resumes in the position immediately on return from leave.
- 37.6 This Clause does not apply to Education Assistants working within the same classification, where that Education Assistant is classified higher due to their personal annual progression.



### **38. FIRST AID ALLOWANCE**

38.1 For the purposes of this Clause the following terms will have the following meanings:

- (a) “Appointed” means an Employee suitably qualified in first aid who has nominated themselves to carry out first aid in the workplace; and where the Principal has accepted the nomination in writing, confirming that the Employee has been appointed to carry out first aid in the workplace and for the duration of the appointment.
- (b) “Workplace” means the school in which the Employee has been employed to work in the ordinary course of their employment.
- (c) “Suitably qualified in first aid” means holding a current statement of attainment that satisfies the national training requirement HLTAID003 – Provide First Aid. This includes, but is not limited to, successful completion of the Provide First Aid training courses offered by the St John Ambulance Association or the Australian Red Cross Society.

38.2 An Employee who has been appointed by the Employer to carry out first aid duties at the worksite and who is suitably qualified in first aid is paid a first aid allowance of \$25.73 per fortnight.

38.3 Where a part time Employee is eligible for the payment of the first aid allowance under this Clause it is calculated on a pro rata basis having regard for any variations to the Employee’s working hours over that fortnight.

38.4 The first aid allowance will not be paid for any continuous absence greater than two weeks.

38.5 The allowance is adjusted from the date of any wage increase by the same percentage that has been granted to a level 2.4 Education Assistant (Mainstream) in that wage increase. The allowance to be paid is as follows:

- (a) \$25.73 per fortnight on and from 1 January 2023; and
- (b) \$27.16 per fortnight on and from 1 January 2024.

### **39. DISTRICT ALLOWANCE**

39.1 The provisions of District Allowance (Government Wages Employees) General Agreement 2010 or any subsequent replacement shall form part of this General Agreement for the purposes of payment and administration of district allowance.

### **40. STUDENT VACATION LEAVE TRAVEL CONCESSION**

40.1 Subject to clause 40.2 of this General Agreement, Employees are entitled to a student vacation leave travel concession pursuant to clause 25(5) of the *Miscellaneous Government Conditions and Allowances Award No A 4 of 1992*.

40.2 The travel concession shall only be accessible during a period of student vacation leave.

### **41. RECOVERY OF UNDERPAYMENTS**

41.1 Where an Employee is underpaid in any manner:

- (a) the Employer will, once the Employer is aware of the underpayment, rectify the error as soon as practicable;

- (b) where possible the underpayment shall be rectified no later than in the pay period immediately following the date on which the Employer is aware that an underpayment has occurred; and
  - (c) where an Employee can demonstrate that an underpayment has created serious financial hardship, the Employee shall be paid by way of a special payment as soon as practicable.
- 41.2 An Employer shall compensate an Employee for costs resulting directly from an underpayment, where it is proven that the costs resulted directly from the underpayment. This includes compensation for overdraft fees, dishonoured cheque costs, and dishonour fees related to routine deductions from the bank account into which an Employee's wage is paid.
- 41.3 Nothing in this Clause shall be taken as precluding the Employee's legal right to pursue recovery of underpayments.
- 42. RECOVERY OF OVERPAYMENTS**
- 42.1 The Employer has an obligation under the *Financial Management Act 2006 (WA)* to account for public monies. This requires the Employer to recover overpayments made to an Employee.
- 42.2 Any overpayment will be repaid to the Employer within a reasonable period of time.
- 42.3 Where an overpayment is identified and proven, the Employer will provide the Employee with the written details of the overpayment and notify the Employee of their intent to recover the overpayment.
- 42.4 Where the Employee accepts that there has been an overpayment, arrangements for the recovery of the overpayment will be negotiated between the Employer and Employee.
- 42.5 If agreement on a repayment schedule cannot be reached within a reasonable period of time, the Employer may deduct the amount of the overpayment over the same period of time that the overpayment occurred provided:
- (a) the Employer may not deduct or require an Employee to repay an amount exceeding 5% of the Employee's net pay in any one pay period without the Employee's agreement; and
  - (b) where necessary, an Employer may deduct money over a period of time greater than the period of time over which the overpayment occurred.
- 42.6 If the Employee disputes the existence of an overpayment and the matter is not resolved within a reasonable period of time, the matter should be dealt with in accordance with Clause 77 - Dispute Settlement Procedure. No deductions relating to the overpayment shall be made from the Employee's pay while the matter is being dealt with in accordance with the Dispute Settlement Procedure.
- 42.7 Nothing in this Clause shall be taken as precluding the Employer's legal right to pursue recovery of overpayments.
- 42.8 Where an Employer alters the pay cycle or pay day, any consequential variations to an Employee's fortnightly wage and/or payments to compensate shall not be considered an overpayment for the purposes of this Clause.

## **PART 6 – LEAVE OF ABSENCE**

### **43. PERSONAL LEAVE**

#### Introduction

- 43.1 The provisions of this clause replace Clause 9 – Sick Leave of the *Teachers' Aides' Award 1979*.

- 43.2 The intention of personal leave is to give employees and Employers greater flexibility by providing leave on full pay for a variety of personal purposes. Personal leave replaces sick leave and paid carer's leave.
- 43.3 Personal leave is not for circumstances normally met by other forms of leave.
- 43.4 This Clause does not apply to casual employees.
- 43.5 An Employee employed on a fixed term contract for a period of twelve months or more shall be credited with the same entitlement as a permanent Employee. An Employee on a fixed term contract for a period less than twelve months shall be credited on a pro-rata basis for the period of the contract.
- 43.6 A part time Employee shall be entitled to the same personal leave credits as a full time Employee but on a pro-rata basis according to the number of hours worked each fortnight. Payment for personal leave shall only be made for those hours that would normally have been worked had the Employee not been on personal leave.

Entitlement

- 43.7 The Employer shall credit each permanent, full time Employee with 15 days' personal leave credits for each year of continuous service of which 13 days are cumulative and 2 days are non-cumulative as follows.

	<b>Personal Leave: Cumulative</b>	<b>Personal Leave: Non-cumulative</b>
On the day of initial appointment	6.5 days	2 days
On completion of 6 months continuous service	6.5 days	0 days
On the completion of 12 months continuous service	13 days	2 days
On the completion of each further period of 12 months continuous service	13 days	2 days

- 43.8 Where employees access personal leave, it shall be deducted from their non-cumulative entitlement in the first instance.
- 43.9 In the year of accrual the 15 days' personal leave entitlement may be accessed for illness or injury, carer's leave, unanticipated matters or planned matters in accordance with the provisions of this Clause. On completion of each year of accrual, unused personal leave from that year up to a maximum of 13 days will be cumulative and added to personal leave accumulated from previous years. Unused non-cumulative leave will be lost on completion of each anniversary year.
- 43.10 Whilst employees are able to access personal leave in accordance with subclause 43.23, to ensure compliance with the *Minimum Conditions of Employment Act 1993 (WA)* a minimum of ten days must be available to employees for the purposes of an Employee's entitlement to paid leave for illness or injury; or carer's leave.
- 43.11 Personal leave will not be debited for public holidays that the Employee would have observed.
- 43.12 Personal leave may be taken on an hourly basis.
- 43.13 War caused illnesses
- (a) An Employee who produces evidence from the Department of Veterans' Affairs stating that the Employee has a war-caused illness will be credited special paid leave of 15 working days per annum.

- (b) Paid leave under this clause:
  - (i) may accumulate up to a maximum of 45 working days;
  - (ii) is to be recorded separately to the Employee's normal personal leave entitlement;
  - (iii) is only to be accessed for sickness related to the war-caused illness; and
  - (iv) may be accessed despite normal personal leave credits being available.
- (c) An application for paid leave under this clause is to be supported by evidence that would satisfy a reasonable person of the entitlement.

#### Variation of Ordinary Working Hours

- 43.14 When an Employee's ordinary working hours change during an anniversary year, personal leave credits are adjusted to reflect the pro-rata portion for that anniversary year.
- 43.15 At the time ordinary working hours change, personal leave credits are adjusted to reflect ordinary working hours up to that point in time as a proportion of the total ordinary working hours for the anniversary year.
- 43.16 Personal leave is credited pro-rata on a weekly basis from the time ordinary working hours change until the next anniversary date such that total hours credited for that anniversary year is on a pro-rata basis according to the number of ordinary working hours for the period.

#### Reconciliation

- 43.17 At the completion of an anniversary year, where an Employee has taken personal leave in excess of their current and accrued entitlement the unearned leave must be debited at the commencement of the following anniversary year/s.
- 43.18 The requirements of the *Minimum Conditions of Employment Act 1993* (WA) must be met at the commencement of the following anniversary year. The remaining portion of debited personal leave that exceeds the leave credited is to be debited at the commencement of the subsequent and where necessary following anniversary year/s.
- 43.19 Where an Employee ceases duty and has taken personal leave that exceeds the leave credited for that anniversary year, the Employee must refund the value of the unearned leave, calculated at the rate of wage as at the date the leave was taken. No refund is required in the event of the death of the Employee.

#### Access

- 43.20 An Employee is unable to access personal leave while on any period of leave without pay; Maternity Leave, Adoption Leave or Other Parent Leave; or long service leave, except as provided for in subclause 43.33.
- 43.21 If an Employee has exhausted all accrued personal leave the Employer may allow the Employee who has at least twelve months service to anticipate up to five days' personal leave from next year's credit. If the Employee ceases duty before accruing the leave, the value of the unearned portion must be refunded to the Employer, calculated at the wage rate as at the date the leave was taken, but no refund is required in the event of the death of the Employee.
- 43.22 In exceptional circumstances the Employer may approve the conversion of an Employee's personal leave credits to half pay to cover an absence on personal leave due to illness.

#### Application for Personal Leave

- 43.23 Reasonable and legitimate requests for personal leave will be approved subject to available credits. Subject to subclauses 43.6 and 43.7, the Employer may grant personal leave in the following circumstances:

- (a) where the Employee is ill or injured;
- (b) to provide care or support to a member of the Employee's family or household who requires care or support because of an illness or injury to the member; or an unexpected emergency affecting the member;
- (c) for unanticipated matters of a compassionate or pressing nature which arise without notice and require immediate attention; and
- (d) by prior approval of the Employer having regard for agency requirements and the needs of the Employee, planned matters where arrangements cannot be organised outside of normal working hours or be accommodated by the utilisation of flexi time credits by employees working according to approved flexible working hours arrangements or other leave. Planned personal leave will not be approved for regular ongoing situations.

- 43.24 An Employer may grant two days' unpaid personal leave per occasion to an Employee to provide care and support to a member of the Employee's family or household due to the birth of a child to the member. This entitlement does not of itself limit an Employee's access to paid personal leave as provided by subclause 43.23 or partner leave as provided for by Clause 61 – Partner Leave of this General Agreement. This leave may also be substituted with accrued long service leave to which the Employee is entitled
- 43.25 Employees must complete the necessary application and clearly identify which of the above circumstances apply to their personal leave request.
- 43.26 The definition of family shall be the definition contained in the *Equal Opportunity Act 1984 (WA)* for "relative." That is, a person who is related to the Employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the Employee.
- 43.27 Where practicable, the Employee must give reasonable notice prior to taking leave. Where prior notice cannot be given, notice must be provided as early as possible on the day of absence. Where possible, an estimate of the period of absence from work shall be provided.

#### Evidence

- 43.28 An application for personal leave exceeding two consecutive working days shall be supported by evidence that would satisfy a reasonable person of the entitlement.
- 43.29 In general, supporting evidence is not required for single or two consecutive day absences. Where the Employer has good reason to believe that the absence may not be reasonable or legitimate, the Employer may request evidence be provided. The Employer must provide the Employee with reasons for requesting the evidence. The leave shall not be granted where the absence is not reasonable or legitimate.
- 43.30 Personal leave will not be granted where an Employee is absent from duty because of personal illness attributable to the Employee's serious and wilful misconduct in the course of the Employee's employment.
- 43.31 Where the Employer has reasonable grounds to believe that the Employee's illness is due to serious and wilful misconduct in the course of the Employee's employment, the Employer may require the Employee to submit to a medical examination by a medical practitioner of the Employer's choice, which the Employee must attend. Where it is reported that the absence is because of illness caused by serious and wilful misconduct of the Employee in the course of their employment, or the Employee fails without reasonable cause to attend the medical examination, the fee for the examination must be deducted from the Employee's wage and personal leave will not be granted.
- 43.32 If the Employer has reason to believe that an Employee is in such a state of health as to render a danger to themselves, fellow employees or the public, the Employee may be required to obtain and furnish a report as to the Employee's condition from a registered medical practitioner nominated by the Employer. The Employer shall pay the fee for any such examination.

#### Re-crediting Long Service Leave

- 43.33 Where an Employee is ill or injured during the period of long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Employer that as a result of illness or injury the Employee was confined to their place of residence or a hospital for a period of at least 14 consecutive calendar days, the Employer may grant personal leave for the period during which the Employee was so confined and reinstate long service leave equivalent to the period of confinement.

#### Personal Leave without Pay Whilst Ill or Injured

- 43.34 Employees who have exhausted all of their personal leave entitlements and are ill or injured may apply for personal leave without pay. Employees are required to complete the necessary application and provide evidence to satisfy a reasonable person. The Employer shall not unreasonably withhold this leave.
- 43.35 Personal leave without pay not exceeding a period of three months in a continuous absence does not affect wage increment dates, anniversary date of personal leave credits, long service leave entitlements or student vacation leave entitlements. Where a period of personal leave without pay exceeds three months in a continuous absence, the period in excess of three months is excised from qualifying service.
- 43.36 Personal leave without pay is not available to employees who have exhausted all of their personal leave entitlements and are seeking leave for circumstances outlined in subclauses 43.23(b), (c) and (d) or 43.24. However, other forms of leave including unpaid carer's leave and leave without pay may be available.

#### Other Conditions

- 43.37 Where an Employee who has been retired from the Public Sector on medical grounds resumes duty therein, personal leave credits at the date of retirement shall be reinstated. This provision does not apply to an Employee who has resigned from the Public Sector and is subsequently reappointed.
- 43.38 Unused personal leave will not be cashed out or paid out when an Employee ceases their employment.

#### Workers' Compensation

- 43.39 Where an Employee suffers an injury within the meaning of section 5 of the *Workers' Compensation and Injury Management Act 1981* (WA) which necessitates that Employee being absent from duty, personal leave with pay shall be granted to the extent of personal leave credits. In accordance with section 80(2) of the *Workers' Compensation and Injury Management Act 1981* (WA) where the claim for worker's compensation is decided in favour of the Employee, personal leave credit is to be reinstated and the period of absence shall be granted as personal leave without pay.

#### Portability

- 43.40 The Employer shall credit an employee additional personal leave credits up to those held at the date that employee ceased previous employment provided:
- (a) immediately prior to commencing employment in the Public Sector of Western Australia, the employee was employed in the service of:
    - (i) the Commonwealth Government of Australia, or
    - (ii) any other State of Australia, or
    - (iii) in a State body or statutory authority prescribed by Administrative Instruction 611; and
  - (b) the employee's employment in the Public Sector of Western Australia commenced no later than one week after ceasing previous employment; and

- (c) the personal leave credited shall be no greater than that which would have applied had the entitlement accumulated whilst employed in a State body or statutory authority prescribed by *Administrative Instruction 611*.

43.41 The maximum break in employment permitted by subclause 43.40(a), may be varied by the approval of the Employer provided that where employment in the Public Sector of Western Australia commenced more than one week after ceasing the previous employment, the period in excess of one week does not exceed the amount of accrued and pro rata annual/ student vacation leave paid out at the date the employee ceased with the previous Employer.

#### Travelling time for Regional Employees

43.42 Subject to the evidence requirements set out in subclauses 43.28 to 43.32, a regional Employee who requires medical attention at a medical facility in Western Australia located 240 kilometres or more from their workplace will be granted paid travel time undertaken during the Employee's ordinary working hours up to a maximum of 37.5 hours per annum.

43.43 The Employer may approve additional paid travel time to a medical facility in Western Australia where the Employee can demonstrate to the satisfaction of the Employer that more travel time is warranted.

43.44 The provisions of subclauses 43.42 and 43.43 are not available to employees whilst on leave without pay or personal leave without pay.

43.45 The provisions of subclauses 43.42 and 43.43 apply as follows:

- (a) An Employee employed on a fixed term contract for a period greater than twelve months shall be credited with the same entitlement as a permanent Employee for each full year of service and pro-rata for any residual portion of employment.
- (b) An Employee employed on a fixed term contract for a period less than twelve months shall be credited with the same entitlement on a pro rata basis for the period of employment.
- (c) A part time Employee shall be entitled to the same entitlement as a full time Employee for the period of employment, but on a pro rata basis according to the number of ordinary hours worked each fortnight.
- (d) The provisions do not apply to casual employees.

## **44. FAMILY AND DOMESTIC VIOLENCE**

44.1 The Employer recognises that Employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, the Employer is committed to providing support to employees who experience family and domestic violence.

44.2 An Employee will not be discriminated against because of their disclosure of, experience of, or perceived experience of, family and domestic violence.

44.3 The Employer will not tolerate Employees perpetrating family and domestic violence in or from the workplace. Employees must not use work facilities to perpetrate family and domestic violence. Any such conduct may constitute a breach of discipline.

#### Definition of Family and Domestic Violence

44.4 (a) The meaning of family and domestic violence is in accordance with the definition in the *Restraining Orders Act 1997* (new Section 5A) as amended by the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016*.

- (b) To avoid doubt, this definition includes behaviour that:

- (i) is physically or sexually abusive; or
- (ii) is emotionally or psychologically abusive; or
- (iii) is economically abusive; or
- (iv) is threatening; or
- (v) is coercive; or
- (vi) in any other way controls or dominates the family or household member and causes that person to feel fear for their safety or wellbeing or that of another person; or
- (vii) causes a child to hear or witness, or otherwise be exposed to the effects of, such behaviour.

Access to family and domestic violence leave

- 44.5 In accordance with the following sub clauses, an Employee, including a casual employee, may make application for leave to deal with activities related to family and domestic violence. The Employer will assess each application and give consideration to the personal circumstances of the Employee seeking the leave.
- 44.6 Such activities related to family and domestic violence may include attendance at medical appointments; legal proceedings; counselling; appointments with a medical or legal practitioner; relocation or making other safety arrangements; and other matters of a compassionate or pressing nature related to the family and domestic violence which arise without notice and require immediate attention.
- 44.7 Subject to clauses 44.5 and 44.6, an employee experiencing family and domestic violence will have access to ten non-accumulative days per year of paid family and domestic violence leave, in addition to their existing leave entitlements.
- 44.8 Upon exhaustion of the leave entitlement in clause 44.7, Employees will be entitled to up to two days' unpaid family and domestic violence leave on each occasion.
- 44.9 Family and domestic violence leave does not affect salary increment dates, long service leave entitlements or personal leave entitlements.
- 44.10 Subject to the Employer's approval of the application, family and domestic violence leave may be taken as whole or part days off.
- 44.11 Application of the leave entitlement for casual employees will be considered by the Employer on a case by case basis.

Notice and Evidentiary Requirements

- 44.12 The Employee shall give his or her employer notice as soon as reasonably practicable of their request to take leave under this clause.
- 44.13 Supporting evidence of family and domestic violence may be required to access paid leave entitlements however this should not be onerous on the Employee. Leave can be granted without supporting documentation when the employer is satisfied that it is not required.
- 44.14 Evidence may be in the form of a document issued by the police, a court, a legal service, a health professional or a counsellor, or a refuge service. A statutory declaration may also be provided.
- 44.15 Such evidence will be dealt with in accordance with the confidentiality provisions in this clause. Only the Employee will retain a copy of the evidence and information will not be kept on an Employee's personnel file.



#### Access to other forms of leave

- 44.16 Subject to the leave provisions of this General Agreement or the Award(s), an Employee experiencing family and domestic violence may use other leave entitlements.
- 44.17 Subject to the Employer's approval of the application, and sufficient leave credits being available, leave may be taken as whole or part days off.
- 44.18 Forms of other paid leave include:
- (a) personal entitlements;
  - (b) accrued long service leave; and/or
  - (c) purchased leave.
- 44.19 Approval of leave without pay is subject to the provisions of clause 52 – Leave Without Pay of this General Agreement.

#### Confidentiality

- 44.20 The Employer will take all reasonable steps to ensure any information disclosed by Employees regarding family violence is kept strictly confidential. Disclosure will be on a need-to-know basis only and only to maintain safety. Where possible, disclosure will only occur with the express consent of the employee.
- 44.21 Employers will take reasonable steps to ensure any information or documentation provided by an Employee regarding family and domestic violence is kept confidential.
- 44.22 Only the Employee will retain a copy of evidence for accessing family and domestic violence leave and information will not be kept on the Employee's personnel file unless otherwise agreed. The Employer will record that any evidence produced was sighted.
- 44.23 Subsequent disclosure within an organisation should be on a need-to-know basis, for example if there is a potential for workplace safety to be impacted and generally with the consent of the Employee.
- 44.24 This clause does not override any legal obligations to disclose information.

#### Contact person

- 44.25 The Employer will identify contact/s within the workplace who will be trained in family and domestic violence and associated privacy issues. The Employer will advertise the name of any family and domestic violence contacts within the workplace.

#### Individual Support

- 44.26 Where there is a risk to the personal health or safety of an employee who is experiencing or has experienced family and domestic violence, the Employer, where appropriate, may:
- (a) facilitate flexible working arrangements, such as changes to hours/days worked, working different days or length of days, changed shift/rostering arrangements, in accordance with the provisions of this General Agreement or the Award(s); and/or
  - (b) make workplace modifications including changes to the Employee's telephone number and email address and, where appropriate/practicable, the Employee's work location.
- 44.27 An Employee who is experiencing or has experienced family and domestic violence may access confidential counselling support via the Employer's employee assistance program.

Workplace Safety

- 44.28 Where an Employee raises issues of family and domestic violence the Employer should establish with the Employee the level of risk and seek advice from their human resource/safety specialist to review and implement specific safety and emergency management systems and plans.
- 44.29 With the exception of access to the Employer's employee assistance program, which is available to all Employees, the provisions of this clause are only applicable to Employees who are victims of family and domestic violence.

**45. STUDENT VACATION LEAVE**

- 45.1 The provisions of this Clause replace Clause 7 – Holidays of the *Teachers' Aides' Award 1979*.
- 45.2 An Employee shall not be required to present for duty on any day on which the school at which the Employee is employed is not open.
- 45.3 Subject to the provisions of subclauses 45.5 and 45.6, each Employee shall be paid their ordinary wages for any day on which the Employee is relieved of the obligation to present for work.
- 45.4 Any Employee required to work on any day observed as a school holiday shall be paid for the time worked at the rate of double time and one half.
- 45.5 A full time Employee shall accrue an entitlement to their ordinary rate of pay for student vacation periods in accordance with the following:

$$\begin{array}{r} \text{Accrual of} \\ \text{student} \\ \text{vacation leave} \\ \text{(days)} \end{array} = \begin{array}{r} \text{Number of days} \\ \text{worked} \end{array} \times \frac{\begin{array}{r} \text{Total number of student vacation days} \\ \text{in the school year} \end{array}}{\begin{array}{r} \text{Total number of working days in the} \\ \text{school year} \end{array}}$$

- 45.6 A part time Employee shall accrue the entitlement on a pro rata basis. Where a part time Employee's rostered hours have been varied their pay shall be adjusted accordingly.
- 45.7 An Employee shall only accrue an entitlement to payment during Christmas and term vacation periods for each day the Employee actually worked in the school, including periods of paid leave. Leave without pay which exceeds 14 days in a continuous period is excised in full from qualifying service.
- 45.8 Where an Employee has been justifiably dismissed for misconduct, there will be no entitlement for payment in respect of the period from the first day of the school term in which the misconduct for which the Employee was dismissed occurred.
- 45.9 The summer student vacation period is deemed to include a period of four weeks' annual leave as prescribed by the *Minimum Conditions of Employment Act 1993* (WA).
- 45.10 Any entitlement to payment for Christmas and term vacation periods accrued in accordance with this Clause shall not be carried over to the next school year.
- 45.11 (a) This subclause replaces Clause 8(1) of the Award.
- (b) A student vacation leave loading, based on four weeks' wages at the rate of pay applicable at the time of payment, shall be included on the first pay period in December in the calendar year in which the leave accrues, or in the event of a termination prior to the end of the school year in the final payment made to the Employee.

- (c) In order to facilitate the student vacation leave loading payment, an Employee's anniversary date for annual leave accrual is at 1 January in the calendar year in which the leave accrues.

#### **46. BEREAVEMENT LEAVE**

46.1 The provisions contained in this clause replace those contained in clause 8 – Bereavement Leave of the *Miscellaneous Government Conditions and Allowances Award 1992*.

46.2 Employees including casuals, shall on the death of:

- (a) the spouse or de facto partner of the Employee;
- (b) a former spouse or former de-facto partner of the Employee;
- (c) a child, step-child, foster child or grandchild of the Employee (including an adult child, step-child or grandchild);
- (d) a parent, step-parent, foster parent or grandparent of the Employee;
- (e) a parent in law or former parent in law of the Employee;
- (f) a brother, sister, step brother or step sister of the Employee; or
- (g) any other person who, at or immediately before that person's death, lived with the Employee as a member of the Employee's household;

be eligible for up to three days' paid bereavement leave.

46.3 The Employer will not unreasonably withhold approval to grant bereavement leave to an Employee in respect of some other person with whom the Employee had a special relationship, on the request of the Employee.

46.4 The three days need not be consecutive.

46.5 Bereavement leave is not to be taken during any other period of leave, including period of unpaid leave.

46.6 Payment of such leave may be subject to the Employee providing evidence, if so requested by the Employer, of the death or relationship to the deceased that would satisfy a reasonable person.

46.7 An Employee requiring more than three days' bereavement leave in order to travel interstate or overseas in the event of a death of a person referred to in clause 46.2 or 46.3 may, upon providing adequate proof, in addition to any bereavement leave to which the Employee is eligible, have immediate access to accrued long service leave or leave without pay provided all accrued leave is exhausted.

46.8 Travelling time for Regional Employees

- (a) Subject to prior approval from the Employer, an Employee entitled to bereavement leave and who, as a result of such bereavement, travels to a location within Western Australia that is more than 240 km from their workplace will be granted paid time off for the travel period undertaken in the Employee's ordinary working hours up to a maximum of 13 hours per bereavement. The Employer will not unreasonably withhold approval.
- (b) The Employer may approve additional paid travel time within Western Australia where the Employee can demonstrate to the satisfaction of the Employer that more than two days travel time is warranted.
- (c) The provisions of this Clause are not available to employees whilst on leave without pay or sick leave without pay.
- (d) The provisions of subclauses 46.8 (a) and (b) apply as follows:

- (i) An Employee employed on a fixed term contract for a period greater than 12 months shall be credited with the same entitlement as a permanent Employee for each full year of service and pro-rata for any residual portion of employment.
- (ii) An Employee employed on a fixed term contract for a period less than 12 months shall be credited with the same entitlement on a pro rata basis for the period of employment.
- (iii) A part time Employee shall be entitled to the same entitlement as a full time Employee for the period of employment, but on a pro rata basis according to the number of ordinary hours worked each fortnight.
- (iv) For casual employees, the provisions apply to the extent of their agreed working arrangements.

**47. CULTURAL/CEREMONIAL LEAVE**

- 47.1 Cultural/ceremonial leave is available to all employees.
- 47.2 Such leave includes leave to meet the Employee's customs, traditional lore and to participate in cultural and ceremonial activities.
- 47.3 An Employee is entitled to time off without loss of pay for cultural/ceremonial purposes, subject to agreement between the Employer and Employee and sufficient leave credits being available.
- 47.4 The Employer will assess each application for ceremonial/cultural leave on its merits and give consideration to the personal circumstances of the Employee seeking the leave.
- 47.5 The Employer may request reasonable evidence of the legitimate need for the Employee to be allowed time off.
- 47.6 Cultural/ceremonial leave may be taken as whole or part days off. Each day or part thereof, will be deducted from:
- (a) the Employee's long service leave, but in full days only; or
  - (b) planned personal leave.
- 47.7 Leave without pay may be granted by arrangement between the Employer and the Employee for cultural/ceremonial purposes.

**48. PURCHASED LEAVE - DEFERRED WAGES ARRANGEMENT**

- 48.1 With the written agreement of the Employer, an Employee may elect to receive, over a four-year period, 80% of the wage they would otherwise be entitled to receive in accordance with this General Agreement.
- 48.2 The Employer will assess each application for deferred salary on its merits and give consideration to the personal circumstances of the Employee seeking the leave.
- 48.3 On completion of the fourth year, an Employee is entitled to 12 months leave and will receive an amount equal to 80% of the wage they were otherwise entitled to in the fourth year of deferment.
- 48.4 Where an Employee completes four years of deferred wage service and is not required to attend duty in the following year, the period of nonattendance will not constitute a break in service and will count as service on a pro-rata basis for all purposes.

- 48.5 An Employee may withdraw from this arrangement prior to completing a four year period by written notice. An Employee will receive a lump sum payment of wages forgone to that time but will not be entitled to equivalent absence from duty.
- 48.6 The Employer will ensure that superannuation arrangements and taxation effects are fully explained to the Employee by the relevant Authority. The Employer will put any necessary arrangements into place.

#### Variation of the Arrangements

- 48.7 As an alternative to subclause 48.5, and only by mutual agreement of the Employer and the Employee, the provisions of the deferred arrangement may be varied subject to the following:
- (a) the term of the arrangement will not extend beyond that contemplated by this Clause,
  - (b) the variation will not result in any consequential monetary or related gain or loss to either the Employer or the Employee, and
  - (c) the percentage of wage to apply during the 12 months' leave as specified in subclause 48.3 will be calculated as 80% of the average ordinary prescribed hours worked over the previous four years.

### **49. BLOOD/PLASMA DONORS LEAVE**

- 49.1 Subject to operational requirements, employees are entitled to absent themselves from the workplace in order to donate blood or plasma in accordance with the following general conditions:
- (a) prior arrangements with the supervisor has been made and at least two days' notice has been provided;  
or
  - (b) the Employee is called upon by the Red Cross Blood Centre.
- 49.2 The notification period is waived or reduced where the line manager is satisfied that operations would not be unduly affected by an Employee's absence.
- 49.3 Employees are required to provide proof of attendance at the Red Cross Blood Centre upon return to work.
- 49.4 Employees are entitled to two hours of paid leave per donation for the purpose of donating blood or plasma to the Red Cross Blood Centre.

### **50. EMERGENCY SERVICES LEAVE**

- 50.1 Subject to operational requirements, paid leave of absence is granted by the Employer to an Employee who is an active volunteer member of State Emergency Service, St John Ambulance Brigade, Volunteer Fire and Rescue Service, Bush Fire Brigades, Volunteer Marine Rescue Services Groups or Department of Fire and Emergency Services Units, in order to allow for attendances at emergencies as declared by the recognised authority.
- 50.2 The Employer must be advised as soon as possible by an Employee, the emergency service, or other person as to the absence and, where possible, the expected duration of leave.
- 50.3 The Employee must complete a leave of absence form immediately upon return to work.
- 50.4 The application form must be accompanied by a certificate from the emergency organisation certifying that the Employee was required for the specified period.
- 50.5 An Employee, who during the course of an emergency, volunteers their services to an emergency organisation, will comply with subclauses 50.2, 50.3 and 50.4.

## **51. LEAVE FOR TRAINING WITH DEFENCE FORCE RESERVES**

51.1 The Employer must grant leave of absence for the purpose of defence service to an Employee who is a volunteer member of the Defence Force Reserves or the Cadet Force. Defence service means service, including training, in a part of the Reserves or Cadet Force.

51.2 Leave of absence may be paid or unpaid in accordance with the provisions of this Clause.

51.3 Application for leave of absence for defence service shall, in all cases, be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted, the Employee shall provide a certificate of attendance to the Employer.

### **51.4 Paid leave**

- (a) An Employee who is a volunteer member of the Defence Force Reserves or the Cadet Force is entitled to paid leave of absence for the purpose of attending a training camp, school, class or course of instruction, subject to the conditions set out hereunder.
- (b) Part time employees shall receive the same paid leave entitlement as full time employees but payment shall only be made for those hours that would normally have been worked but for the leave.
- (c) On written application, an Employee shall be paid wage in advance when proceeding on such leave.
- (d) Casual employees are not entitled to paid leave for the purpose of defence service.

### **51.5 Attendance at a Camp for Annual Continuous Obligatory Training**

- (a) An Employee is entitled to paid leave for a period not exceeding ten days on full pay in any period of twelve months commencing on 1 July in each year.
- (b) If the Employee-in-Charge of a military unit certifies that it is essential for an Employee to be at the camp in an advance or rear party, a maximum of four extra days leave on full pay shall be granted in the twelve-month period.

### **51.6 Attendance at One Special School, Class or Course of Instruction**

- (a) In addition to the paid leave granted under subclause 51.5, an Employee is entitled to a period not exceeding 20 calendar days in any period of twelve months commencing on 1 July in each year, provided the Employer is satisfied that the leave required is for a special purpose and not for a further routine camp.
- (b) The employees wage during the period shall be at the rate of the difference between the normal remuneration and the defence force payments to which the Employee is entitled if such payments do not exceed normal wage. In calculating the pay differential, pay for Saturdays, Sundays, Public Holidays and special rostered days off is to be excluded and no account is to be taken of the value of any board or lodging provided for the Employee.

### **51.7 Unpaid leave**

- (a) Any leave for the purpose of defence service that exceeds the paid entitlement prescribed in subclause 51.4 shall be unpaid.
- (b) Casual employees are entitled to unpaid leave for the purpose of defence service.

### **51.8 Use of other leave**

- (a) An Employee may elect to use long service leave credits for some or all of their absence on defence

service, in which case they will be treated in all respects as if on normal paid leave.

- (b) An Employer cannot compel an Employee to use long service leave for the purpose of defence service.

## **52. LEAVE WITHOUT PAY**

52.1 Subject to the provisions of subclauses 52.2 and 52.3, the Employer may grant an Employee leave without pay for any period and is responsible for that Employee on their return.

52.2 Subject to the provisions of subclause 52.3, every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met:

- (a) the work of the Department is not inconvenienced; and
- (b) all other leave credits of the Employee are exhausted.

52.3 An Employee shall, upon request be entitled to two days' unpaid personal leave.

52.4 An Employee on a fixed term contract may not be granted leave without pay for any period beyond that Employee's approved period of engagement.

## **53. INTERNATIONAL SPORTING EVENTS LEAVE**

53.1 Special leave with pay may be granted by the Employer to an Employee chosen to represent Australia as a competitor or official, at a sporting event, which meets the following criteria:

- (a) it is a recognised international amateur sport of national significance; or
- (b) it is a world or international regional competition; and
- (c) no contribution is made by the sporting organisation towards the normal salary of the Employee.

53.2 The Employer shall make enquiries with the Department of Sport & Recreation:

- (a) whether the application meets the above criteria; and
- (b) the period of leave to be granted.

## **54. LONG SERVICE LEAVE FLEXIBILITIES**

54.1 This Clause is to be read in conjunction with Clause 12 – Long Service Leave of the *Teachers' Aides' Award 1979* and the General Order.

54.2 Where provisions of the General Order are inconsistent with this General Agreement the provisions of this General Agreement prevail.

54.3 An Employee shall become entitled to 13 weeks' long service leave after a period of 10 years' continuous service and each further period of seven years' continuous service, in accordance with clause 54 of this General Agreement.

54.4 A part-time Employee who qualifies for accrued long service leave or early access to pro-rata long service leave shall be paid that entitlement according to the variation to their hours worked over the applicable accrual period.

54.5 Employees may, by agreement with their Employer, clear any accrued entitlement to long service leave, or long service leave accessed pursuant to subclause 54.10, in minimum periods of one day.

54.6 Notwithstanding clause 6 of the General Order, an employee may retain up to five days of a long service leave credit to be available until their next entitlement of long service leave is accrued. At this time, if there is any credit remaining, it will be cashed out.

Long Service Leave on Half Pay

54.7 Subject to the Employer's convenience, the Employer may approve an Employee's application to take an accrued entitlement to long service leave on half pay.

Long Service Leave on Double Pay

54.8 Employees may by agreement with their Employer, access any portion of an accrued entitlement to long service leave on double pay for half the period accrued. In these circumstances the leave actually taken is 50 percent of the accrued entitlement accessed.

54.9 Where Employees proceed on long service leave on double pay in accordance with subclause 54.8, the entitlement accessed is excised for the purpose of continuous service in accordance with the General Order.

Early Access to Pro-Rata Long Service Leave

54.10 Casual Employees shall qualify for pro-rata payment in lieu of leave pursuant to Clause 11 of the General Order.

54.11 Subject to subclause 54.13, Employees within seven years of their preservation age under Western Australian Government superannuation arrangements may, by agreement with their Employer, choose early access to their long service leave at the rate of:

(a) 6.5 days per completed twelve-month period of continuous service for full time employees in their first period of long service leave accrual; or

(b) 9.28 days per completed twelve month periods of continuous service for full time employees in subsequent periods of long service leave accrual.

54.12 Part time Employees have the same entitlement as full time Employees.

(a) For part time Employees, their entitlement is calculated on a pro-rata basis according to any variations to their ordinary working hours during the accrual period.

(b) For casual Employees, their entitlement is calculated on a pro-rata basis according to the average hours worked during the accrual period.

54.13 Early access to pro-rata long service leave does not include access to long service leave to which the Employee has become entitled or accumulated prior to being within seven years of their preservation age.

54.14 Under this clause, pro-rata long service leave can only be taken as paid leave and there is no capacity for payment in lieu of leave.

54.15 Early access to pro-rata long service leave can be taken at half or double pay in accordance with subclauses 54.7, 54.8 and 54.9.

54.16 Where Employees access pro-rata long service leave early, any period of leave taken will be excised for the purpose of continuous service in accordance with the General Order.



### Cash Out of Accrued Long Service Leave Entitlement

- 54.17 Employees may by agreement with their Employer, cash out any portion of an accrued entitlement to long service leave.
- 54.18 Casual Employees who agree to cash out accrued long service leave entitlement will receive that payment at the rate of pay applicable to the last engagement with the Employer, including the loading prescribed at clause 13.2.
- 54.19 Where an Employee cashes out any portion of an accrued entitlement to long service leave in accordance with subclause 54.16, the entitlement accessed is excised for the purpose of continuous service in accordance with the General Order.

### **Casual Employees application of long service leave and interaction with the General Order**

- 54.20 A casual Employee's entitlement to long service leave as provided at clause 54.3 of this General Agreement shall be determined in the following manner:
- (a) For the purposes of this clause "service" shall be deemed to include:
- (i) absence of the casual Employee on approved unpaid carer's leave and unpaid parental leave not exceeding 14 days;
  - (ii) absence of the casual Employee on workers' compensation for any period not exceeding six months, or for such greater period as the Minister for Industrial Relations may allow;
  - (iii) absence of the casual Employee on family and domestic violence leave, bereavement leave and long service leave;
  - (iv) absence of a casual Employee on approved leave to attend Trade Union training courses or on approved leave to attend Trade Union business; and
  - (v) employment in the service of the Commonwealth or another State of Australia as provided in clause 16 of the General Order.
- (b) The service of an employee shall be deemed NOT to include:
- (i) service of an employee after the day on which they have become entitled to 26 weeks' long service leave until the day on which they commence the taking of 13 weeks of that leave; and
  - (ii) any other absence of the Employee except such absences as are provided in service by virtue of subclause (a).
- (c) Subject to subclause (a) and (b), the service of a casual Employee shall not be deemed to have been broken:
- (i) by resignation if they resign from one Public Authority in this State and commences with another Public Authority in this State within one working week of the day on which this resignation became effective; or
  - (ii) if their employment is ended by the Employer for any other reason other than serious misconduct but only if the Employee resumes employment with the Government not later than six months from the day on which their employment has ended and payment pursuant to clause 11 of the General Order has not been made.
- 54.21 Any accrued long service leave entitlement is calculated on the average weekly hours worked by the Employee of the entire qualifying period.

- 54.22 A casual Employee shall be paid during long service leave the rate of pay applicable to the last engagement with the Employer, including the loading prescribed at clause 13.2.
- 54.23 Further to clauses 54.20 to 54.22, clauses 4 to 13, 15 and 16 of the General Order apply to the accrual and taking of long service leave by a casual Employee as if those clauses were part of this General Agreement.

## **55. STUDY ASSISTANCE**

- 55.1 (a) The Employer may provide an Employee with paid study leave and/or financial assistance for study purposes in accordance with the provisions of this Clause.
- (b) Employees are not eligible for study assistance if they have previously received study assistance for an approved course from their Employer. Further study assistance towards additional qualifications may, however, be granted in special cases, at the discretion of the Employer.

### **55.2 Study Leave**

- (a) An Employee may be granted time off with pay for study purposes at the discretion of the Employer.
- (b) In every case the approval of time off to attend lectures and tutorials will be subject to:
- (i) Employer's convenience;
  - (ii) employees undertaking an acceptable formal study load in their own time;
  - (iii) employees making satisfactory progress with their studies;
  - (iv) the course being an approved course as defined by subclause 55.5;
  - (v) the course being of value to the agency; and
  - (vi) the Employer's discretion when the course is only relevant to the Employee's career in the service and being of value to the State.
- (c) Part time employees are entitled to study leave on the same basis as full time employees, with their entitlement calculated on a pro-rata basis. Employees working shift work or on fixed term contracts have the same access to study leave as all other employees.
- (d) Time off with pay may be granted up to a maximum of five hours per week including travelling time, where subjects of approved courses are available during normal working hours, or where approved study by correspondence is undertaken.
- (e) Employees who are obliged to attend educational institutions for compulsory block sessions may be granted time off with pay, including travelling time, up to the maximum annual amount allowed in subclause 55.2(d).
- (f) Where an Employee is undertaking approved study via distance education and/or is not required to attend formal classes, the Employer may allow the Employee to access study leave up to the maximum annual amount allowed in subclause 55.2(d).
- (g) Employees shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.
- (h) An acceptable part time study load should be regarded as not less than five hours per week of formal tuition with at least half of the total formal study commitment being undertaken in the Employee's own time, except in special cases such as where the Employee is in the final year of study and requires less

time to complete the course, or the Employee is undertaking the recommended part time year or stage and this does not entail five hours' formal study.

- (i) In cases where employees are studying subjects which require fortnightly classes the weekly study load should be calculated by averaging over two weeks the total fortnightly commitment.
- (j) Travelling time returning home after lectures or tutorials is to be calculated as the excess time taken to travel home from such classes, compared with the time usually taken to travel home from the Employee's normal place of work.
- (k) An Employee shall not be granted more than 5 hours' time off with pay per week except in exceptional circumstances where the Employer may decide otherwise.
- (l) Time off with pay for those who have failed a unit or units may be considered for one repeat year only.
- (m) An Employee performing service with the Australian Defence Force is not entitled to study leave for any period of service with the Australian Defence Force that they receive defence force reserves leave as provided for by Clause 51 – Leave for Training with Defence Force Reserves.
- (n) A service agreement or bond will not be required.

#### 55.3 Financial Assistance

- (a) An Employer may reimburse an Employee for the full or any part of any reasonable cost of enrolment fees, Higher Education Loan Program, compulsory text books, compulsory computer software and other necessary study materials for studies commenced during their employment.
- (b) Half of the value of the agreed costs shall be reimbursed immediately following production of written evidence of enrolment and costs incurred, and the remaining half shall be reimbursed following production of written evidence of successful completion of the subject for which reimbursement has been claimed.
- (c) The Employer and Employee may agree to alternative reimbursement arrangements.

#### 55.4 Cadets and Trainees

- (a) Agencies are to meet the payment of higher education administrative charges for cadets and Trainees who, as a condition of their employment, are required to undertake studies at a university or college of advanced education. Employees who of their own volition attend such institutions to gain higher qualifications will be responsible for the payment of fees.
- (b) This assistance does not include the cost of textbooks or Guild and Society fees.
- (c) An Employee who is required to repeat a full academic year of the course will be responsible for payment of the higher education fees for that particular year.

#### 55.5 Approved Courses for Study Purposes

- (a) For the purposes of subclauses 55.2 and 55.3, the following are approved courses:
  - (i) degree or associate diploma courses at a university within Australia;
  - (ii) degree or diploma courses at an authorised non-university institution;
  - (iii) diploma courses provided by registered training organisations, including State Training Providers;

- (iv) any Nationally accredited certificate courses in the area of Education Support and Children's Services provided by registered training organisations, including State Training Providers;
  - (v) courses recognised by the National Accreditation Authority for Translators and Interpreters (NAATI) in a language relevant to the needs of the Public Sector; and
  - (vi) secondary courses leading to the Western Australian Certificate of Education or courses preparing students for the mature age entrance conducted by the Tertiary Institutions Service Centre.
- (b) For the purposes of subclause 55.5(a):
- (i) The term 'university' includes recognised Australian universities and recognised overseas universities as defined by the *Higher Education Act 2004* (WA);
  - (ii) An authorised non-university institution is a non-university institution that is authorised under the *Higher Education Act 2004* (WA) to provide a higher education course; and
  - (iii) A registered training organisation is an organisation that is registered with the Training Accreditation Council or equivalent registering authority and complies with the nationally agreed standards set out in the Australian Quality Training Framework (AQTF).
- (c) An Employee who has completed a diploma through a State Training Provider is eligible for study assistance to undertake a degree course at a university within Australia or an authorised non-university institution.
- (d) An Employee who has completed a two-year full time certificate through a State Training Provider is eligible for study assistance to undertake a diploma course specified in subclause 55.5(a)(iii) or a degree or diploma course specified in subclauses 55.5(a)(i) or (ii).

#### 55.6 Full Time Study

- (a) Subject to the provisions of subclause 55.6(b), the Employer may grant an Employee full time study leave with pay to undertake:
- (i) post graduate degree studies at Australian or overseas tertiary education institutions; or
  - (ii) study tours involving observations and/or investigations; or
  - (iii) a combination of postgraduate studies and study tour.
- (b) Applications for full time study leave with pay are to be considered on their merits and may be granted provided that the following conditions are met:
- (i) The course or a similar course is not available locally. Where the course of study is available locally, applications are to be considered in accordance with the provisions of Clause 52 – Leave Without Pay of this General Agreement.
  - (ii) it must be a highly specialised course with direct relevance to the Employee's profession;
  - (iii) it must be highly relevant to the agency's corporate strategies and goals;
  - (iv) the expertise or specialisation offered by the course of study should not already be available through other employees employed within the agency;
  - (v) if the applicant was previously granted study leave, studies must have been successfully completed at that time. Where an Employee is still under a bond, this does not preclude approval being granted to take further study leave if all the necessary criteria are met; and

- (vi) a fixed term contract Employee may not be granted study leave with pay for any period beyond that Employee's approved period of engagement.
- (c) Full time study leave with pay may be approved for more than 12 months subject to a yearly review of satisfactory performance.
- (d) Where an outside award is granted and the studies to be undertaken are considered highly desirable by an Employer, financial assistance to the extent of the difference between the Employee's normal wage and the value of the award may be considered. Where no outside award is granted and where a request meets all the necessary criteria then part or full payment of wage may be approved at the discretion of the Employer.
- (e) The Employer supports recipients of coveted awards and fellowships by providing study leave with pay. Recipients normally receive as part of the award or fellowship; return airfares, payment of fees, allowance for books, accommodation or a contribution towards accommodation.
- (f) Where recipients are in receipt of a living allowance, this amount should be deducted from the Employee's wage for that period.
- (g) Where the Employer approves full time study leave with pay the actual wage contribution forms part of the agency's approved average staffing level funding allocation. Employers should bear this in mind if considering temporary relief.
- (h) Where study leave with pay is approved and the Employer also supports the payment of transit costs and/or an accommodation allowance, the Employer will gain approval for the transit and accommodation costs as required.
- (i) Where employees travelling overseas at their own expense wish to participate in a study tour or convention whilst on tour, study leave with pay may be approved by the Employer together with some local transit and accommodation expenses providing it meets the requirements of subclause 55.6(b). Each case is to be considered on its merits.
- (j) The period of full time study leave with pay is accepted as qualifying service for leave entitlements and other privileges and conditions of service prescribed for employees under the award.

## **56. CULTURAL LEAVE FOR ABORIGINAL AND TORRES STRAIT ISLANDERS**

- 56.1 Employees who identify as Aboriginal or Torres Strait Islander people are entitled to paid cultural leave which can be accessed to participate in any of the following:
- (a) cultural and ceremonial obligations under Aboriginal or Torres Strait Islander peoples lore, customs or traditional law; and
  - (b) community cultural events such as NAIDOC Week activities, Reconciliation Week or Coming of the Light festivals.
- 56.2 Up to five days of paid cultural leave per calendar year will be available under this clause. The leave need not be taken in one continuous period. Paid cultural leave will not accrue from year to year and will not be paid out on termination.
- 56.3 The Employer will assess each application for cultural leave on its merits and give consideration to the personal circumstances of the Employee seeking the leave.
- 56.4 The Employer may request reasonable evidence of the legitimate need for the Employee to be allowed time off.

56.5 If an Employer requires an Employee to attend to business associated with an Aboriginal or Torres Strait Islander peoples organisation, or an organisation that works to facilitate Aboriginal or Torres Strait Islander peoples interests, the attendance is considered to be a part of the Employee's normal duties and the Employee need not access leave under this or any other clause to enable it.

56.6 Cultural leave granted under this clause is in addition to the leave provided by clause 46 - Bereavement Leave of this General Agreement and clause 47 - Cultural/Ceremonial Leave of this General Agreement.

## **57. SCHOOL CLOSURES**

57.1 In the event of a temporary closure of a school, Employees may be required by the Employer to:

- (a) temporarily undertake alternative duties at the Employee's usual workplace or at another workplace;
- (b) work at home; or
- (c) temporarily cease work.

57.2 Employees are to be paid their ordinary wages for any day on which they are advised by the Employer to temporarily cease work as per clause 57.1 (c).

57.3 Clause 57.2 does not apply to Employees who:

- (a) refuse to undertake alternative duties as per 57.1 (a) or (b). Employees that refuse to undertake alternative duties will be provided the option to apply for leave or will be placed on leave without pay for the duration of the temporary closure;
- (b) are on any form of approved leave at the time of the temporary closure of the school, for the duration of the approved leave; or
- (c) are casual Employees.

## **PART 7 – PARENTAL LEAVE**

### **58. MATERNITY LEAVE**

58.1 This Clause replaces the Parental Leave provisions, contained in Clause 6 – Parental Leave of the *Miscellaneous Government Conditions and Allowances Award A 4 of 1992*.

#### **58.2 Eligibility**

- (a)
  - (i) A pregnant permanent, fixed term contract or eligible casual Employee is entitled to unpaid Maternity Leave on the birth of a child.
  - (ii) The period of leave for a fixed term contract Employee shall not extend beyond the term of that contract.
  - (iii) An Employee is eligible, without concluding their Maternity Leave and resuming duty, for subsequent periods of Maternity Leave, including paid Maternity Leave, in accordance with the provisions of this Clause.
- (b) A pregnant permanent or fixed term Employee must have completed twelve months continuous service in the Western Australian Public Sector as defined under the *Public Sector Management Act 1994 (WA)*

immediately preceding the Maternity Leave in order to receive the forms of paid leave as provided for by this Clause.

- (c) An Employee on a period of leave without pay unrelated to Maternity Leave, Adoption Leave or Other Parent Leave must resume duties prior to being entitled to paid Maternity Leave in accordance with the eligibility requirements.

#### 58.3 Casual Employees

- (a) A pregnant eligible casual Employee is entitled to unpaid Maternity Leave only.
- (b) For the purposes of this Clause an “eligible casual Employee” means a casual Employee employed by the Employer:
  - (i) on a regular and systematic basis for several periods of employment with a break of no more than three months between each period of employment and where the combined length of the periods of employment are at least twelve months and the breaks of employment were the result of the Employer’s initiative; or
  - (ii) on a regular and systematic basis for a sequence of periods of employment during a period of at least twelve months; and, but for the birth or adoption of a child, the Employee has a reasonable expectation of continuing engagement on a regular and systematic basis.
- (c) Service performed by an eligible casual Employee for a Public Sector employer shall count as service for the purposes of determining twelve months continuous service as per subclauses 58.2 and 58.3 where:
  - (i) the eligible casual Employee has become a permanent or fixed term contract Employee with the same employer; and
  - (ii) the break between the period of eligible casual employment and permanent or fixed term contract employment is no more than three months.

#### 58.4 Notice Requirements

- (a) An eligible Employee shall give at least eight weeks’ written notice of:
  - (i) their intention to proceed on paid or unpaid Maternity Leave;
  - (ii) the date the Employee proposes to commence paid or unpaid Maternity Leave; and
  - (iii) the period of leave to be taken.
- (b) An Employee who has given their Employer notice of their intention to take Maternity Leave shall provide the Employer with a medical certificate from a registered medical practitioner naming the Employee, confirming the pregnancy and the estimated date of birth.
- (c) An Employee is not in breach of Clause 58.4(a) by failing to give the required period of notice if such failure is due to the birth of the child taking place prior to the date the Employee had intended to proceed on Maternity Leave.
- (d) An Employee proceeding on Maternity Leave may elect to take a shorter period of Maternity Leave to that provided by this Clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks written notice is provided.

#### 58.5 General Entitlement to Maternity Leave

- (a) Subject to the requirements of this Clause an eligible Employee is entitled to 52 weeks' unpaid Maternity Leave.
- (b)
  - (i) Subject to the requirements of this Clause an eligible Employee is entitled to 14 weeks' paid Maternity Leave that will form part of the 52 week unpaid entitlement.
  - (ii) The 14-week period of paid Maternity Leave is inclusive of any public holidays falling within that time.
  - (iii) The period of paid Maternity Leave can be extended by the Employee taking double the leave on a half pay basis and its effect is in accordance with subclause 58.16.
- (c) An Employee must take Maternity Leave in one continuous period with the exception of Special Temporary Employment or Special Casual Employment pursuant to subclause 58.14.
- (d) Except for leave provided under Clause 61 – Partner Leave, only one parent can proceed on Maternity, Adoption or Other Parent Leave at any one time.
- (e) Where less than the 52 weeks' Maternity Leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (f)
  - (i) Notwithstanding subclause 58.5(c), paid Maternity Leave may be taken in more than one period by an Employee who meets the requirements of subclause 58.6(d).
  - (ii) Unpaid Maternity Leave may be taken in more than one continuous period where the Employee undertakes special temporary employment or special casual employment in accordance with subclause 58.13 – Employment During Unpaid Maternity Leave.
- (g)
  - (i) Where both employees are employed in the WA Public Sector an entitlement to paid or unpaid Maternity Leave, Adoption Leave or Other Parent Leave or parental leave provided for by another industrial agreement can be shared; and
  - (ii) the entitlement provided to the employees shall not exceed the paid Maternity, Adoption or Other Parent Leave quantum for one Employee or its half pay equivalent; and
  - (iii) the employees may only proceed on paid and/or unpaid Maternity, Adoption or Other Parent Leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under subclause 58.6(d). This does not prevent an Employee from taking paid or unpaid Partner Leave as prescribed by Clause 61 – Partner Leave.

#### 58.6 Payment for Paid Maternity Leave

- (a)
  - (i) Subject to subclause 58.6(c), a full time Employee proceeding on paid Maternity Leave is to be paid according to their ordinary working hours at the time of commencement of Maternity Leave.
  - (ii) Subject to subclause 58.6(c), payment for a part time Employee is to be determined according to an average of the hours worked by the Employee over the preceding twelve months; or their ordinary working hours at the time of commencement of Maternity Leave, whichever is greater.
- (b) An Employee may elect to receive pay in advance for the period of paid Maternity Leave at the time the Maternity Leave commences or may elect to be paid the entitlement on a fortnightly basis over the period of the paid Maternity Leave.



- (c) (i) An Employee in receipt of a higher duties allowance for a continuous period of twelve months immediately prior to commencing paid Maternity Leave, is to continue to receive the higher duties allowance for the first four weeks of paid Maternity Leave.
- (ii) An employee who is entitled to be paid higher duties allowance in accordance with subclause 58.6(c)(i) and elects to take paid Maternity Leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.
- (d) An Employee is entitled to remain on paid Maternity Leave if the pregnancy results in other than a live child; or the Employee is incapacitated following the birth of the child; or the child dies or is hospitalised such that the Employee or the Employee's partner is not providing principal care to the child.
- (e) Where an Employee is on a period of half pay Maternity Leave and their employment is terminated through no fault of the Employee, the Employee shall be paid out any period of unused paid Maternity Leave equivalent to the period of leave the Employee would have accessed had they been on full pay Maternity Leave when their termination occurred.
- (f) An Employee eligible for a subsequent period of paid Maternity Leave as provided for under subclause 58.2(a)(iii) shall be paid the Maternity Leave as follows:
  - (i) According to the Employee's status, classification and ordinary working hours at the time of commencing the original period of paid Maternity Leave; and
  - (ii) Not affected by any period of Special Temporary Employment or Special Casual Employment undertaken in accordance with Clause 58.14.

#### 58.7 Commencement of Maternity Leave

- (a) The period of paid leave can commence up to six weeks prior to the expected date of birth of the child.
- (b) The period of unpaid leave can commence up to six weeks prior to the expected date of birth of the child or earlier if the employer and employee so agree but must not start later than the birth of the child.
- (c) (i) If the Employer has reason to believe that the continued performance of duties by a pregnant Employee renders danger to herself, fellow employees or the public, the Employee may be required to obtain and provide a medical certificate stating that the Employee is fit to work in her present position for a stated period.
- (ii) The Employer shall pay the fee for any such examination.
- (iii) Where an Employee is deemed to be unfit to work in her present position, the provisions of subclause 58.8 - Modification of Duties and Transfer to a Safe Job, may apply.
- (d) (i) Where the pregnancy of an Employee terminates other than by the birth of a living child, not earlier than twenty weeks before the expected date of the birth, the entitlement to paid Maternity Leave remains intact and subject to the eligibility requirements of this Clause.
- (ii) Such paid Maternity Leave cannot be taken concurrently with any paid personal leave taken in this circumstance.
- (e) The period of paid Maternity Leave must be concluded within twelve months of the birth of the child.
- (f) (i) The Employer may, in exceptional circumstances, allow an Employee to take paid Maternity Leave that will result in the Employee being on paid Maternity Leave more than twelve months after the birth of the child.
- (ii) The Employer may require evidence that would satisfy a reasonable person that the circumstances warrant allowing the Employee to take their period of paid Maternity Leave such

that it would result in the Employee being on paid Maternity Leave more than twelve months after the birth of the child.

58.8 Modification of Duties and Transfer to a Safe Job

- (a) (i) A pregnant Employee may work part time in one or more periods whilst she is pregnant where she provides her Employer with a medical certificate from a medical practitioner advising that part time employment is, because of her pregnancy, necessary or preferable.
- (ii) The terms of part time employment undertaken in accordance with subclause 58.8(a)(i) shall be in writing.
- (iii) Such employment shall be in accordance with the Part time Employment Clauses of the applicable Awards and Clause 14 – Part Time Employment.
- (b) In the absence of an alternative requirement, and unless otherwise agreed between an Employer and Employee, an Employee shall provide their Employer with four weeks written notice of an intention to:
  - (i) vary part time work arrangements made under subclause 58.8(a); or
  - (ii) revert to full time employment during the Employee’s pregnancy.
- (c) An Employee reverting to full time employment in accordance with subclause 58.8(b)(ii) will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the Employee’s skill and abilities as the substantive position held immediately prior to undertaking part time employment.
- (d) If an Employee gives her Employer a medical certificate from a medical practitioner, or some other form of evidence that would satisfy a reasonable person, and it contains a statement to the effect that the Employee is fit to work, but that it is inadvisable for her to continue in her present position for a stated period because of:
  - (i) illness, or risks, arising out of her pregnancy; or
  - (ii) hazards connected with that position;then the Employer must modify the duties of the position or alternatively transfer the Employee to a safe job at the same classification level for the period during which she is unable to continue in her present position.
- (e) If an Employee’s Employer does not think it to be reasonably practicable to modify the duties of the position or transfer the Employee to a safe job:
  - (i) the Employee is entitled to be absent from the workplace on full pay for the period during which she is unable to continue in her present position;
  - (ii) an entitlement to be absent from the workplace on full pay as at Clause 58.8(e)(i) applies to an eligible casual Employee; and
  - (iii) an Employee who is absent from work pursuant to this subclause shall be paid the amount she would reasonably have expected to be paid if she had worked during that period.
- (f) An entitlement to be absent from the workplace on full pay is in addition to any leave entitlement the Employee has.
- (g) An entitlement to be absent from the workplace on full pay ends at the earliest of whichever of the following times is applicable:

- (i) the end of the period stated in the medical certificate;
- (ii) if the Employee's pregnancy results in the birth of a living child – the end of the day before the date of birth; or
- (iii) if the Employee's pregnancy ends otherwise than with the birth of a living child – the end of the day before the end of the pregnancy.

58.9 Unpaid Special Maternity Leave

- (a) A pregnant Employee is entitled to a period of unpaid special maternity leave if the Employee is not fit for work during that period because the Employee:
  - (i) has a pregnancy related illness; or
  - (ii) has been pregnant and the pregnancy ends within 28 weeks of the expected date of birth of the child otherwise than by a living child; and
  - (iii) has not utilised personal leave for the period.
- (b) An Employee must give the Employer notice of the taking of unpaid special maternity leave.
- (c) The notice must:
  - (i) be given to the Employer as soon as practicable (which may be a time after the leave has started); and
  - (ii) advise the Employer of the period, or expected period, of the leave.
- (d) An Employee who has given notice of the taking of unpaid special maternity leave must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for a reason specified in clause 58.9(a).
- (e) Without limiting clause 58.9(d), an Employer may require the evidence referred to in that subsection to be a medical certificate.
- (f) An Employee's entitlement to 12 months of unpaid maternity leave provided at clause 58.5 is not reduced by the amount of any unpaid special maternity leave taken by the Employee while the Employee was pregnant.

58.10 Interaction with Other Leave Entitlements

- (a) An Employee proceeding on unpaid Maternity Leave may elect to substitute any part of that leave with accrued student vacation and/or accrued long service leave.
- (b) Where student vacation and/or long service leave is substituted that leave shall form part of the 52 weeks' Maternity Leave entitlement.
- (c) Personal leave is not payable on a period of paid or unpaid Maternity Leave.
- (d) Where a period of paid Maternity Leave overlaps with a period of accrued student vacation leave, the period of student vacation leave is not counted as part of the paid Maternity Leave, therefore extending the period of paid Maternity Leave to the extent of the overlap.

58.11 Extended Unpaid Maternity Leave

- (a) An Employee is entitled to apply for leave without pay following Maternity Leave ("extended unpaid Maternity Leave") to extend their leave by up to two years.

- (b) Approval for an extension to unpaid Maternity Leave will be subject to all other available leave entitlements being exhausted.
- (c) Where both parents work for the WA Public Sector the total combined period of extended unpaid Maternity, Adoption and extended Other Parent Leave shall not exceed two years.
- (d) The Employer is to agree to a request for extended unpaid Maternity Leave unless:
  - (i) the Employer is not satisfied that the request is genuinely based on the Employee's parental responsibilities; or
  - (ii) agreeing to the request would have an adverse impact on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person.
- (e) The Employer is to give the Employee written notice of the Employer's decision on a request for extended unpaid Maternity Leave under subclause 58.11(a). If the request is refused, the notice is to set out the reasons for the refusal.
- (f) An Employee who believes their request for extended unpaid Maternity Leave under subclause 58.11(a) has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.

#### 58.12 Communication During Maternity Leave

- (a) If the Employer makes a decision that will have a significant effect on the status, responsibility level, pay or location of an Employee's position whilst on Maternity Leave, the Employer must take all reasonable steps to give the Employee information about, and an opportunity to discuss, the effect of the decision on that position.
- (b) An Employee shall also notify the Employer of changes of address or other contact details that might affect the Employer's capacity to comply with subclause 58.12(a).

#### 58.13 Replacement Employee

- (a) Should a replacement Employee be engaged, the replacement Employee is to be informed prior to engagement of the fixed term nature of the employment and of the rights of the Employee, who is being replaced, including that the engagement may be subject to variation according to subclause 58.4(d) and ability to extend unpaid Maternity Leave as provided for under subclause 58.11.

#### 58.14 Employment During Unpaid Maternity Leave

- (a) Special Temporary Employment:
  - (i) For the purposes of this subclause, "temporary" means employment of an intermittent nature; for a limited, specified period; and undertaken during unpaid Maternity Leave or extended unpaid Maternity Leave.
  - (ii) Notwithstanding any other provision of the Maternity Leave Clause, an Employee may be employed by their Employer on a temporary basis provided that:
    - both parties agree in writing to the special temporary employment;
    - any such period of service shall not change the Employee's employment status in regard to their substantive employment; and
    - any period of special temporary employment shall count as qualifying service for all purposes under the applicable Award and this General Agreement.

- (b) Special Casual Employment:
- (i) For the purposes of subclause 58.14, “casual” means employment on an hourly basis for a period not exceeding four weeks in any period of engagement for which a casual loading is paid. It excludes employment undertaken in accordance with subclause 58.13(a) – Special Temporary Employment.
- (ii) An Employee can be engaged on special casual employment provided that:
- both parties agree in writing to the special casual employment;
  - employees are employed at the level commensurate to the level of the available position under this General Agreement;
  - in the case of a fixed term contract Employee, the period of the casual employment is within the period of the current fixed term contract;
  - any such period of service shall not break the Employee’s continuity of service nor change the Employee’s employment status in regard to their substantive employment; and
  - any period of special casual employment shall not count as qualifying service other than with respect to entitlements a casual Employee would ordinarily be entitled to for any other purpose under any relevant award, agreement or industrial instrument.
- (c) The provisions of this Clause only apply to employment during unpaid Maternity Leave, and extended unpaid Maternity Leave taken in conjunction with Maternity Leave as provided for in subclause 58.11 – Extended Unpaid Maternity Leave.
- (d) An Employer cannot engage an Employee in special temporary employment or special casual employment whilst the Employee is on a period of paid Maternity Leave, student vacation leave, or long service leave taken concurrently with a period of unpaid Maternity Leave.
- (e) Effect of special temporary employment and special casual employment on unpaid Maternity Leave
- (i) Subject to subclause 58.14(e)(ii), a period of special temporary employment or special casual employment shall be deemed to be part of the Employee’s period of unpaid Maternity Leave or extended unpaid Maternity Leave as originally agreed to by the parties.
- (ii) An Employee who immediately resumes unpaid Maternity Leave or extended unpaid Maternity Leave following the conclusion of a period of special temporary employment or special casual employment:
- is entitled, on written notice, to extend their period of unpaid Maternity Leave or extended unpaid Maternity Leave by the period of time in which they were engaged in special temporary employment or special casual employment; and
  - shall give not less than four weeks’ notice in writing to their Employer of the new date they intend to return to work and so conclude their period of Maternity Leave or extended unpaid Maternity Leave.
- (iii) An Employee who does not immediately resume their period of unpaid Maternity Leave or extended unpaid Maternity Leave at the conclusion of a period of special temporary employment or special casual employment cannot preserve the unused portion of leave for use at a later date.

58.15 Return to Work on Conclusion of Maternity Leave

- (a) (i) An Employee shall confirm their intention in writing to conclude their Maternity Leave not

less than four weeks prior to the expiration of Maternity Leave or extended unpaid Maternity Leave.

- (ii) An Employee who intends to return to work on a modified basis in accordance with subclause 58.15(d) shall advise their Employer of this intention by notice in writing not less than four weeks prior to the expiration of Maternity Leave or extended unpaid Maternity Leave.
- (b) An Employee on return to work following the conclusion of Maternity Leave or extended unpaid Maternity Leave will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the Employee's skill and abilities as the substantive position held immediately prior to proceeding on Maternity Leave.
- (c) Where an Employee was transferred to a safe job or was absent from the workplace on full pay as provided for in subclause 58.8 – Modification of Duties and Transfer to a Safe Job, the Employee is entitled to return to the position occupied immediately prior to the transfer or their absence from the workplace on full pay.
- (d) Right to Return to Work on a Modified Basis
  - (i) An Employee may return on a part time or job share basis to the substantive position occupied prior to the commencement of leave or to a different position as determined by the Employer at the same classification level in accordance with the part time employment provisions of the applicable Award and this General Agreement.
  - (ii) An Employee may return on a modified basis that involves the Employee working on different days or at different times, or both; or on fewer days or for fewer hours or both, than the Employee worked immediately before starting Maternity Leave.
- (e) Right to Revert
  - (i) An Employee who has returned on a part time or modified basis in accordance with subclause 58.15(d) may subsequently request permission from the Employer to resume working on the same basis as the Employee worked immediately before starting Maternity Leave or full time work at the same classification level.
  - (ii) A request made under subclause 58.15(e)(i) must be in writing and must be made at least four weeks before the day on which the Employee wishes to resume working on the same basis as the Employee worked immediately before starting Maternity Leave or full time work at the same classification level.
  - (iii) An Employer is to agree to a request to revert made under subclause 58.15(e)(i) unless there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person.
  - (iv) An Employer is to give the Employee written notice of the Employer's decision on a request to revert under subclause 58.15(e)(i). If the request is refused, the notice is to set out the reasons for the refusal.
  - (v) An Employee who believes their request to revert under 58.15(e)(i) has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.
- (f) Employer Requirement to Revert
  - (i) If, on finishing Maternity Leave, an Employee has returned to work on a modified basis in accordance with subclause 58.15(d), the Employer may subsequently require the Employee to resume working on the same basis as the Employee worked immediately before starting

Maternity Leave.

- (ii) A requirement can be made under subclause 58.15(f)(i) only if the Employee no longer has a child who has not reached the compulsory education period as defined in section 6 of the *School Education Act 1999* (WA).

58.16 Effect of Maternity Leave on the Contract of Employment

- (a) (i) Paid Maternity Leave will count as qualifying service for all purposes under the applicable Award and this General Agreement.
- (ii) Qualifying service for any purpose under the applicable Award or this General Agreement is to be calculated according to the number of weeks of paid Maternity Leave that were taken at full pay or would have been had the Employee not taken paid Maternity Leave at half pay. Employees who take paid Maternity Leave on half pay do not accrue Award, agreement or other entitlements beyond those that would have accrued had they taken the leave at full pay.
- (b) (i) Absence on unpaid Maternity Leave or extended unpaid Maternity Leave shall not break the continuity of service of employees.
- (ii) Where an Employee takes a period of unpaid Maternity Leave or extended unpaid Maternity Leave exceeding 14 calendar days in one continuous period, the entire period of such leave shall not be taken into account in calculating the period of service for any purpose under the applicable Award, agreement or industrial instrument. Periods of unpaid leave of 14 days or less shall, however, count for service.
- (c) An Employee on Maternity Leave may terminate employment at any time during the period of leave by written notice in accordance with the Contract of Service Clause of the applicable Award.
- (d) An Employer shall not terminate the employment of an Employee on the grounds of the Employee's application for Maternity Leave or absence on Maternity Leave but otherwise the rights of the Employer in respect of termination of employment are not affected.

**59. ADOPTION LEAVE**

59.1 This Clause replaces the Parental Leave provisions contained in Clause 6 – Parental Leave of *the Miscellaneous Government Conditions and Allowances Award A 4 of 1992*.

59.2 Eligibility

- (a) (i) A permanent, fixed term contract or eligible casual Employee is entitled to 52 weeks' unpaid adoption leave on the placement of a child for adoption as provided for under this Clause.
- (ii) The period of leave granted to a fixed term contract Employee shall not extend beyond the term of that contract.
- (iii) An Employee is eligible, without concluding their adoption leave and resuming duty, for subsequent periods of adoption leave, including paid adoption leave, in accordance with the provisions of this Clause.
- (b) A permanent or fixed term contract Employee must have completed twelve months' continuous service in the Western Australian Public Sector as defined under the *Public Sector Management Act 1994* (WA) immediately preceding the adoption leave in order to receive the forms of paid leave as provided for by this Clause.

- (c) An Employee on a period of leave without pay unrelated to Maternity Leave, Adoption Leave or Other Parent Leave must resume duties prior to being entitled to paid adoption leave in accordance with the eligibility requirements.
- (d) An eligible casual Employee as defined under subclause 58.3 is entitled to unpaid Adoption Leave as provided by this Clause.

### 59.3 General Entitlement to Adoption Leave

- (a) Subject to the requirements of this Clause an eligible Employee is entitled to 52 weeks' unpaid Adoption Leave.
- (b)
  - (i) Subject to the requirements of this Clause an eligible Employee is entitled to 14 weeks' paid Adoption Leave that will form part of the 52-week unpaid entitlement.
  - (ii) The 14-week period of paid Adoption Leave is inclusive of any public holidays falling within that time.
  - (iii) The period of paid Adoption Leave can be extended by the Employee taking double the leave on a half pay basis and its effect is in accordance with subclause 59.16.
- (c) An Employee must take Adoption Leave in one continuous period with the exception of Special Temporary Employment or Special Casual Employment pursuant to subclause 59.14 – Employment During Unpaid Maternity Leave.
- (d) Except for leave provided under Clause 61 – Partner Leave only one parent can proceed on Maternity, Adoption or Other Parent Leave at any one time.
- (e) Where less than the 52 weeks' Adoption Leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (f) Unpaid Adoption Leave may be taken in more than one continuous period where the Employee undertakes special temporary employment or special casual employment in accordance with the provisions at subclause 58.14 – Employment During Unpaid Maternity Leave.
- (g)
  - (i) Where both employees are employed in the WA Public Sector an entitlement to paid or unpaid Maternity Leave, Adoption Leave or Other Parent Leave or Parental Leave provided for by another industrial agreement can be shared; and
  - (ii) The entitlement provided to the employees shall not exceed the paid Maternity, Adoption or Other Parent Leave quantum for one Employee or its half pay equivalent; and
  - (iii) The employees may only proceed on paid and/or unpaid Maternity, Adoption or Other Parent Leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under subclause 58.6(d). This does not prevent an Employee from taking paid or unpaid Partner Leave as prescribed by Clause 61 – Partner Leave of this General Agreement.

### 59.4 Payment for Paid Adoption Leave

- (a)
  - (i) Subject to subclause 59.4(c) a full time Employee proceeding on paid Adoption Leave is to be paid according to their ordinary working hours at the time of commencement of Adoption Leave.
  - (ii) Subject to subclause 59.4(c), payment for a part time Employee is to be determined according to an average of the hours worked by the Employee over the preceding twelve months; or their ordinary working hours at the time of commencement of Adoption Leave, whichever is greater.



- (b) An Employee may elect to receive pay in advance for the period of paid Adoption Leave at the time the Adoption Leave commences or may elect to be paid the entitlement on a fortnightly basis over the period of the paid Adoption Leave.
- (c)
  - (i) An Employee in receipt of a higher duties allowance for a continuous period of twelve months immediately prior to commencing paid Adoption Leave, is to continue to receive the higher duties allowance for the first four weeks of paid Adoption Leave.
  - (ii) An employee who is entitled to be paid higher duties allowance in accordance with subclause 59.4(c)(i) and elects to take paid Adoption Leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.
- (d) Where an Employee is on a period of half pay Adoption Leave and their employment is terminated through no fault of the Employee, the Employee shall be paid out any period of unused paid Adoption Leave equivalent to the period of leave the Employee would have accessed had they been on full pay Adoption Leave when their termination occurred.
- (e) An Employee eligible for a subsequent period of paid Adoption Leave as provided for under subclause 59.2(a)(iii) shall be paid the Adoption Leave as follows:
  - (i) According to the Employee's status, classification and ordinary working hours at the time of commencing the original period of paid Adoption Leave; and
  - (ii) Not affected by any period of special temporary employment or special casual employment undertaken in accordance with subclause 5814.
- (f) Where less than the 52 weeks' Adoption Leave is taken, paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (g) An eligible casual Employee provided for under subclause 59.2(d) is not entitled to paid adoption leave.
- (h) The "day of placement", in relation to the adoption of a child by an Employee, means the earlier of the following days:
  - (i) the day on which the Employee first takes custody of the child for the adoption; or
  - (ii) the day on which the Employee starts any travel that is reasonably necessary to take custody of the child for the adoption.
- (i) An Employee is not entitled to adoption related leave unless the child that is, or is to be, placed with the Employee for adoption:
  - (i) is, or will be, under 16 years old as at the day of placement, or the expected day of placement, of the child; and
  - (ii) has not, or will not have, lived continuously with the Employee for a period of six months or more as at the day of placement, or the expected day of placement, of the child; and
  - (iii) is not (otherwise than because of the adoption) a child or stepchild of the Employee or the Employee's partner.
- (j)
  - (i) An Employee seeking to adopt a child is entitled to two days unpaid leave to attend interviews or examinations required for the adoption procedure.
  - (ii) An Employee working or residing outside of the Perth metropolitan area is entitled to an additional day's unpaid leave.

- (iii) The Employee may take any paid leave entitlement to which the Employee is entitled to in lieu of this leave.
- (k) (i) If an application for adoption leave has been granted for the adoption of a child, which does not eventuate, then the period of paid or unpaid adoption leave is terminated.
- (ii) Employees may take any other paid leave entitlement to which they are entitled in lieu of the terminated adoption leave or return to work.

#### 59.5 Commencement of Adoption Leave

- (a) An eligible Employee can commence adoption leave from the day of placement of the child.
- (b) The period of paid adoption leave must conclude within twelve months of the day of placement except under exceptional circumstances as provided under subclause 58.7(e) of the Maternity Leave Clause, but as it relates to Adoption Leave.

#### 59.6 Notice and Variation Requirements

- (a) An Employee shall give no less than eight weeks' written notice to the Employer of:
  - (i) the date the Employee proposes to commence paid or unpaid Adoption Leave; and
  - (ii) the period of leave to be taken.
- (b) An Employee is not in breach of subclause 59.6(a) by failing to give the required period of notice if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.
- (c) An Employee proceeding on adoption leave may elect to take a shorter period of adoption leave to that provided by this Clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks written notice is provided.

#### 59.7 Other Provisions

The following provisions, as provided under Clause 58 – Maternity Leave have application to Adoption Leave:

- (a) subclause 58.10 – Interaction with Other Leave Entitlements;
- (b) subclause 58.11 – Extended Unpaid Maternity Leave;
- (c) subclause 58.12 – Communication During Maternity Leave;
- (d) subclause 58.13 – Replacement Employee;
- (e) subclause 58.14 – Employment During Unpaid Maternity Leave;
- (f) subclause 58.15 – Return to Work on Conclusion of Maternity Leave; and
- (g) subclause 58.16 – Effect of Maternity Leave on the Contract of Employment.

### 60. **OTHER PARENT LEAVE**

- 60.1 (a) This Clause replaces the Parental Leave provisions, contained in Clause 6 – Parental Leave of the *Miscellaneous Government Conditions and Allowances Award A 4 of 1992*.
- (b) For the purposes of this Clause:

- (i) The “other parent” may or may not be the biological parent, and does not necessarily have to be the Partner of the birth parent and has a responsibility for the care of the child.
- (ii) The “primary care giver” means the Employee will assume the principal role for the care and attention of a child aged under 12 months or a newly adopted child.
- (iii) Only one person can be the primary care giver of the child at any one time.

## 60.2 Eligibility

- (a)
  - (i) Where an eligible Employee, other than an Employee entitled to paid Maternity Leave under subclause 58.3 or Adoption Leave under subclause 59.2, is the other parent and has a responsibility for the care of a child under the age of 12 months or newly adopted child the provisions of this Clause will apply.
  - (ii) An Employee must be the primary care giver of the child to access paid Other Parent leave.
  - (iii) An Employer may require an Employee to provide confirmation of their primary carer status with evidence that would satisfy a reasonable person.
- (b) An eligible casual Employee, as defined under subclause 58.3 of the Maternity Leave Clause, is entitled to unpaid Other Parent Leave as provided by this Clause.
- (c)
  - (i) A permanent, fixed term contract or eligible casual Employee is entitled to 52 weeks’ unpaid Other Parent Leave in accordance with this Clause.
  - (ii) An eligible permanent or fixed term contract Employee is entitled to 14 weeks’ paid Other Parent Leave in accordance with this Clause if they are the primary care giver of the child.
  - (iii) An Employee employed on a fixed term contract shall have the same entitlement to Other Parent Leave; however, the period of leave granted shall not extend beyond the term of that contract.
  - (iv) An Employee is eligible, without concluding their Other Parent Leave and resuming duty, for subsequent periods of Other Parent Leave, including paid Other Parent Leave, in accordance with the provisions of this Clause.
- (d) A permanent or fixed term contract Employee must have completed 12 months’ continuous service in the Western Australian Public Sector as defined under the *Public Sector Management Act 1994 (WA)* immediately preceding the Other Parent Leave in order to receive the forms of paid leave as provided for by this Clause.
- (e) An Employee on a period of leave without pay unrelated to Maternity Leave, Adoption Leave or Other Parent Leave must resume duties prior to being entitled to paid Other Parent Leave in accordance with the eligibility requirements.

## 60.3 General Entitlement to Other Parent Leave

- (a) Subject to the requirements of this Clause an eligible Employee is entitled to 52 weeks’ unpaid Other Parent Leave.
- (b)
  - (i) Subject to the requirements of this Clause an eligible Employee is entitled to 14 weeks’ paid Other Parent Leave that will form part of the 52-week unpaid entitlement if they are the primary care giver of the child.
  - (ii) The 14-week period of paid Other Parent Leave is inclusive of any public holidays falling within that time.

- (iii) The period of paid Other Parent Leave can be extended by the Employee taking double the leave on a half-pay basis and its effect is in accordance with subclause 58.16 – Effect of Maternity Leave on the Contract of Employment.
- (c) An Employee must take Other Parent Leave in one continuous period with the exception of Special Temporary Employment or Special Casual Employment pursuant to subclause 58.14 – Employment During Unpaid Maternity Leave.
- (d) Where less than the 52 weeks Other Parent Leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (e) Except for leave provided under clause 60.3(f) and clause 61 – Partner Leave of this General Agreement, only one parent can proceed on Maternity, Adoption or Other Parent leave at any one time.
- (f) (i) An Employee, whose Partner is not employed, or is employed and does not intend to take unpaid parental leave related for a child under the age of 12 months or placement of a newly adopted child as provided for in clause 59 – Adoption Leave of this General Agreement, may access unpaid Other Parent leave where:
  - (aa) the Employee will have a responsibility for the care of a child; and
  - (bb) the Partner has responsibility for the care of the child for the period between the date of birth or placement of the child and the start date of the Employee’s leave.
- (ii) The leave application must ensure that the leave commences within 12 months of the date of birth or placement of the child.
- (iii) This entitlement forms part of an Employee’s 52 weeks’ unpaid Other Parent leave entitlement and may not be extended beyond 24 months after the date of birth or date of placement of a newly adopted child as provided for in clause 59 – Adoption Leave of this General Agreement
- (g) Unpaid Other Parent Leave may be taken in more than one continuous period where the Employee undertakes Special Temporary Employment or Special Casual Employment in accordance with the provisions at subclause 58.14 – Employment During Unpaid Maternity Leave. In these circumstances, the provisions of subclause 58.14 – Employment During Unpaid Maternity Leave, shall apply.
- (h) (i) Where both employees are employed in the WA Public Sector an entitlement to paid or unpaid Maternity Leave, Adoption Leave or Other Parent Leave or Parental Leave provided for by another industrial agreement can be shared; and
- (ii) The entitlement provided to the employees shall not exceed the paid Maternity, Adoption or Other Parent Leave quantum for one Employee or its half pay equivalent; and
- (iii) The employees may only proceed on paid and/or unpaid Maternity, Adoption or Other Parent Leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under subclause 60.3(i). This does not prevent an Employee from taking paid or unpaid Partner Leave as prescribed by Clause 61 – Partner Leave of this General Agreement.
- (i) If both parents work in the Public Sector and the mother is able to remain on paid Maternity Leave despite her incapacity to be her child’s primary care giver, the Employee may choose which parent will access the paid leave.
  - (i) If the mother chooses to remain on paid Maternity Leave, the other parent may access unpaid Other Parent Leave for the period they are their child’s primary care giver.
  - (ii) If the other parent chooses to be the primary care giver of the child and accesses paid Other Parent Leave the mother may access unpaid Maternity Leave.

- (iii) Where the other parent accesses paid leave in accordance with this clause, the mother is entitled to resume paid Maternity Leave if/when she becomes her child's primary care giver, subject to the provisions of subclause 58.3(i).

An eligible casual Employee provided for under subclause 58.2(b) is entitled to unpaid Other Parent Leave only.

#### 60.4 Payment for Paid Other Parent Leave

- (a)
  - (i) Subject to subclause 60.4(c), a full time Employee proceeding on paid Other Parent Leave is to be paid according to their ordinary working hours at the time of commencement of Other Parent Leave.
  - (ii) Subject to subclause 60.4(c), payment for a part time Employee is to be determined according to an average of the hours worked by the Employee over the preceding 12 months, or their ordinary working hours at the time of commencement of Other Parent Leave, whichever is greater.
- (b) An Employee may elect to receive pay in advance for the period of paid Other Parent Leave at the time the Other Parent Leave commences or may elect to be paid the entitlement on a fortnightly basis over the period of the paid Other Parent Leave.
- (c)
  - (i) An Employee in receipt of a higher duties allowance for a continuous period of 12 months immediately prior to commencing paid Other Parent Leave, is to continue to receive the higher duties allowance for the first four weeks of paid Other Parent Leave.
  - (ii) An Employee who is entitled to be paid higher duties allowance in accordance with clause 60.4(c)(i) and elects to take paid Other Parent Leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.
- (d) An Employee is entitled to remain on paid Other Parent Leave where the mother is incapacitated following the birth of the child; or the child dies or is hospitalised such that the Employee or the Employee's Partner is not providing principal care to the child.
- (e) Where an Employee is on a period of half pay Other Parent Leave and their employment is terminated through no fault of the Employee, the Employee shall be paid out any period of unused paid Other Parent Leave equivalent to the period of leave the Employee would have accessed had they been on full pay Other Parent Leave when their termination occurred.
- (f) An Employee eligible for a subsequent period of paid Other Parent Leave as provided for under subclause 60.2(c)(iv) shall be paid the Other Parent Leave as follows:
  - (i) according to the Employee's status, classification and ordinary working hours at the time of commencing the original period of paid Other Parent Leave; and
  - (ii) not affected by any period of special temporary employment or special casual employment undertaken in accordance with subclause 58.14 – Employment During Unpaid Maternity Leave.
- (g) Where less than the 52 weeks Other Parent Leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (h) An eligible casual Employee provided for under subclause 58.2(b) is not entitled to paid Other Parent Leave.

#### 60.5 Commencement of Other Parent Leave

- (a) An eligible Employee who has a responsibility for the care of the child can commence Other Parent Leave from the child's birth date or placement, or a later date nominated by the Employee.

- (b) The period of paid Other Parent Leave must conclude within 12 months of the birth or placement of the child except under exceptional circumstances as per Clause 58.7(e) of the Maternity Leave Clause, but as it relates to Other Parent Leave.

#### 60.6 Notice and Variation Requirements

- (a) An Employee shall give no less than eight weeks' written notice to the Employer of:
  - (i) the date the Employee proposes to commence paid or unpaid Other Parent Leave; and
  - (ii) the period of leave to be taken.
- (b) (i) An Employee is not in breach of subclause 60.6(a) by failing to give the required period of notice if such failure is due to the requirement of the Employee to take on the role of primary care giver due to the birth parent or other adoptive parent being incapacitated to take on the principal caring role.
  - (ii) In such circumstances the Employee shall give notice as soon as reasonably possible.
- (c) The granting of leave under this Clause is subject to the Employee providing the Employer with evidence that would satisfy a reasonable person detailing the reasons for and the circumstances under which the leave application is made and the relationship the Employee has with the child.
- (d) An Employee proceeding on Other Parent Leave may elect to take a shorter period of Other Parent Leave to that provided by this Clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks' written notice is provided.

#### 60.7 Other Provisions

The following provisions, as provided under subclause 58 – Maternity Leave have application to Other Parent Leave:

- (a) subclause 58.10 – Interaction with Other Leave Entitlements;
- (b) subclause 58.11 – Extended Unpaid Maternity Leave;
- (c) subclause 58.12 – Communication During Maternity Leave;
- (d) subclause 58.13 – Replacement Employee;
- (e) subclause 58.14 – Employment During Unpaid Maternity Leave;
- (f) subclause 58.15 – Return to Work on Conclusion of Maternity Leave; and
- (g) subclause 58.16 – Effect of Maternity Leave on the Contract of Employment.

### **61. PARTNER LEAVE**

61.1 An Employee who is not taking Maternity Leave, Adoption Leave or Other Parent Leave is entitled to one week's partner leave as prescribed by this Clause in respect of the:

- (a) birth of a child to the Employee's partner; or
- (b) adoption of a child who is not the child or the stepchild of the Employee and/or the Employee's partner; is under the age of 16; and has not lived continuously with the Employee for six months or longer.

61.2 Subject to available credits, the entitlement to one week's partner leave may be taken as:

- (a) paid personal leave, subject to subclauses 61.7 and 61.8;
  - (b) paid long service leave; and/or
  - (c) unpaid partner leave.
- 61.3 Partner leave must be taken immediately following the birth or, in the case of adoption, the placement of the child.
- 61.4 (a) Subject to subclause 61.4 (b), the taking of partner leave by an Employee shall have no effect on their or their partner's entitlement, where applicable, to access paid Maternity Leave as provided by Clause 58 – Maternity Leave, paid Adoption Leave as provided by Clause 59 – Adoption Leave, and paid Other Parent Leave as provided by Clause 60 – Other Parent Leave of this General Agreement.
- (b) Where applicable, unpaid partner leave taken by an Employee shall be counted as part of the Employee's Other Parent Leave entitlement.
- 61.5 Any public holidays that fall during partner leave shall be counted as part of the partner leave and do not extend the period of partner leave.

Personal Leave

- 61.7 An Employee may access their accrued personal leave entitlements for partner leave purposes, subject to the requirements of the *Minimum Conditions of Employment Act 1993 (WA)* being met. That is, a minimum of 75 hours personal leave must be kept available for an Employee to access for the purposes of an Employee's entitlement to paid leave for illness or injury; or carer's leave.
- 61.8 The right to access personal leave credits for partner leave purposes does not affect an Employee's right to take more than five days personal leave for the purposes provided for in Clause 43 – Personal Leave of this General Agreement.

Right to Request Additional Unpaid Partner Leave

- 61.9 (a) The total period of partner leave provided by this Clause shall not exceed eight weeks.
- (b) An Employee is entitled to request an extension to the period of unpaid partner leave up to a maximum of eight weeks. The additional weeks shall be unpaid and the eight-week maximum is inclusive of any period of partner leave already taken in accordance with subclause 61.2.
- 61.10 (a) The extended unpaid partner leave may be taken in separate periods, but, unless the employer agrees, each period must not be shorter than two weeks.
- (b) The period of extended unpaid partner leave must be concluded within twelve months of the birth or placement of the child.
- 61.11 The Employer is to agree to an Employee's request to extend their unpaid partner leave made under Clause 61.9 unless:
- (a) having considered the Employee's circumstances, the Employer is not satisfied that the request is genuinely based on the Employee's parental responsibilities; or
  - (b) there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person. These grounds include, but are not limited to:
    - (i) cost;
    - (ii) lack of adequate replacement staff;

- (iii) loss of efficiency; and
- (iv) impact on the production or delivery of products or services by the Employer.

- 61.12 The Employer is to give the Employee written notice of the Employer's decision on a request to extend their unpaid partner leave. If the Employee's request is refused, the notice is to set out the reasons for the refusal.
- 61.13 An Employee who believes their request to extend unpaid partner leave has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.
- 61.14 Where an Employer agrees to an Employee's request to extend their period of unpaid partner leave under Clause 61.9, the Employer must allow an Employee to elect to substitute any part of that period of unpaid partner leave with accrued long service leave.
- 61.15 An Employee on unpaid partner leave is not entitled to paid personal leave.

Notice

- 61.16 (a) The Employee shall give not less than four weeks' notice in writing to the Employer of the date the Employee proposed to commence partner leave, stating the period of leave to be taken.
- (b) An Employee who has given their Employer notice of their intention to take partner leave shall provide the Employer with a medical certificate from a registered medical practitioner naming the Employee, or the Employee's partner, confirming the pregnancy and the estimated date of birth.

Effect of Partner Leave on the Contract of Employment

- 61.17 The provisions of subclause 58.16 of the Maternity Leave Clause of this General Agreement concerning the effect of Maternity Leave on the contract of employment shall apply to employees accessing partner leave, with such amendment as necessary.

Eligible Casual Employees

- 61.18 An eligible casual Employee, as defined in subclause 58.3 of the Maternity Leave Clause of this General Agreement, is only entitled to unpaid partner leave.

**62. UNPAID GRANDPARENTAL LEAVE**

- 62.1 For the purposes of this Clause "primary care giver" means the Employee who will assume the principal role for the care and attention of a grandchild.
- 62.2 An Employee is entitled to a period of up to 52 weeks' continuous unpaid grandparental leave in respect of the:
- (a) birth of a grandchild of the Employee; or
  - (b) adoption of a grandchild of the Employee, being a child who is not the grandchild or grand-stepchild of the Employee, is under the age of five and has not lived continuously with its adoptive parents for six months or longer.

Primary Care Giver Status

- 62.3 (a) An Employee is only entitled to grandparental leave if they are or will be the primary care giver of a grandchild.



- (b) Determination of primary care giver status shall be made by reference to the provision of care during what would be the Employee's ordinary hours of work had the Employee not been providing care to their grandchild.
- (c) An Employer may require an Employee to provide confirmation of their primary care giver status. Where an Employer requires an Employee to confirm their status as the primary care giver of a grandchild, the Employee is to provide the Employer with evidence that would satisfy a reasonable person of the entitlement to unpaid grandparental leave.

Commencement, Notice and Variation of Leave

- 62.4 Commencement of unpaid grandparental leave may occur any time within 24 months following the birth or placement of the Employee's grandchild.
- 62.5
  - (a) The Employee shall give not less than four weeks' notice in writing to the Employer of the date the Employee proposes to commence unpaid grandparental leave, stating the period of leave to be taken.
  - (b) The notice period in subclause 62.5(a) may be waived by the Employer in exceptional circumstances.
- 62.6 An Employee may request and an Employer may agree to an Employee taking grandparental leave on a part time basis provided:
  - (a) the Employee is their grandchild's primary care giver on those days for which care is provided by the Employee; and
  - (b) the Employee's leave concludes no later than 52 weeks after the commencement of the period of grandparental leave.

Other Entitlements

- 62.7 The following provisions contained in Clause 58 – Maternity Leave of this General Agreement shall be read in conjunction with this Clause, with such amendment as is necessary.
  - (a) Subclause 58.12(a) – Communication During Maternity Leave.
  - (b) Subclause 58.13 – Replacement Employee.
  - (c) Subclause 58.15(a)(ii) and 58.14(b) – Return to Work on Conclusion of Maternity Leave.
  - (d) Subclause 58.16 – Effect of Maternity Leave on the Contract of Employment.
- 62.8 The entitlement to grandparental leave is as prescribed in this Clause. Other than as specified in Clause 62.7, an Employee has no entitlement to the provisions contained in Clause 58 – Maternity Leave of this General Agreement with respect to the birth or adoptive placement of their grandchild.

**63. SUPERANNUATION ON UNPAID PARENTAL LEAVE**

- 63.1 In this clause, "unpaid parental leave" means:
  - (a) unpaid maternity leave, which includes unpaid maternity leave, unpaid special maternity leave and extended unpaid maternity leave under clause 58;
  - (b) unpaid adoption leave under clause 59; and
  - (c) unpaid other parent leave under 60 of this General Agreement.
- 63.2 An Employee or eligible casual employee who is entitled to unpaid parental leave is entitled to have superannuation contributions made in respect of the period of unpaid parental leave taken to a maximum of 12 weeks.

- 63.3 Superannuation contributions made under this clause will be calculated:
- (a) in respect of the period of unpaid maternity leave, unpaid adoption leave or unpaid other parent leave taken or 12 weeks; whichever is lesser;
  - (b) based on the amount that would have been paid to the Employee had they taken paid maternity leave, paid adoption leave or paid other parent leave for that period and in accordance with the following:
    - (i) for full time Employees - the ordinary working hours at the time of commencement of parental leave;
    - (ii) for part time Employees - an average of the hours worked by the Employee over the preceding 12 months; or their ordinary working hours at the time of commencement of parental leave, whichever is greater; or
    - (iii) for eligible casual employees - an average of the hours worked by the eligible casual employee over the preceding 12 months.
- 63.4 Superannuation contributions will be paid:
- (a) to the Employee's superannuation fund in respect of which superannuation contributions for that Employee are made; and
  - (b) at the time that the period of unpaid parental leave in respect of which the contributions are payable concludes.
- 63.5 Superannuation contributions will be made in accordance with the *State Superannuation Act 2000* and the *State Superannuation Regulations 2001*.

## **PART 8. CONTINUATION OF REFORM INITIATIVES**

### **64. STRATEGIES AND INITIATIVES DEVELOPED TO ACHIEVE OBJECTIVES**

- 64.1 The parties are committed to the continued development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and service delivery of the Department of Education.
- 64.2 The parties are committed to the development and implementation of productivity improvements which include, but are not limited to:
- (a) Student focus;
  - (b) changes to work practices;
  - (c) continuous improvement;
  - (d) review of, and implementation of, flexible application of employment conditions;
  - (e) improvement of the management of staff performance;
  - (f) current staffing practices; and
  - (g) application of new technology.

## **65. REFORM**

- 65.1 The parties agree that change will be implemented through a gradual process which ensures that individual employees are not disadvantaged and is consistent with merit and equity principles.
- 65.2 The parties acknowledge that consultation with employees will occur with respect to school-based decisions which directly affect them.
- 65.3 The parties agree to progress these workplace reforms in accordance with the terms of this General Agreement, which is expected to deliver significant enhancement to the efficiency and effectiveness of school operations in the medium to long term.
- 65.4 The major initiatives are outlined in Clauses 66 to 70.

## **66. FLEXIBLE WORKING HOURS**

- 66.1 Employees covered by this General Agreement may agree to work flexible hours where these are implemented at the school site, and where:
- (a) an improved curriculum can be offered as a result; or more effective and efficient use of resources occurs;
  - (b) consultation has occurred at a school level involving all stakeholders, including the Union, school decision making groups, parents, students and whole of school staff;
  - (c) issues such as duty of care, health, safety and welfare, equity and other legislative requirements have been allowed for;
  - (d) workload, career aspirations and family circumstances have been allowed for;
  - (e) individual circumstances have been fully and reasonably considered; and
  - (f) the distribution of hours is equitable.
- 66.2 Specifically excluded from these arrangements are longer working hours, overtime and split shifts except where provided for in the relevant award.
- 66.3 Arrangements for working of flexible hours as provided for in this Clause will be subject to the agreement of an Employee. No Employee will be coerced into working flexible hours.
- 66.4 Notwithstanding the above, where it is considered necessary to provide more economic operations, the Employer may authorise the operation of alternative working arrangements in a school. The continuing operation of any alternative working arrangements, so approved, will depend on the Employer being satisfied that the efficient functioning of the school is being enhanced by its operation.
- 66.5 The parties agree that employees may, by agreement with all parties, to meet the needs of individual Remote Teaching Service schools, vary the school year and hours per day to take into account educational, cultural, climate and local factors. The Principal will negotiate school hours and days of attendance and the employees will be consulted and have a choice of undertaking these changes without being coerced into taking the changes. The total hours worked in any one year will still equal the total hours that would have been worked if the school year had not been varied by this General Agreement.

## **67. MULTISKILLING**

- 67.1 The parties are committed to allowing employees to be deployed in a way that will best address the needs of the worksite. Employees agree to carry out such duties as are within the limits of the Employee's skills,

competencies and training. This could include the allocation of specific duties and/or temporary deployment to other positions in the worksite.

67.2 The parties to this General Agreement will develop worksite multiskilling for employees and such development will include the following:

- (a) objective(s) and guidelines for the multi-skilled position;
- (b) boundaries of the position;
- (c) rosters of work;
- (d) lines of accountability; and
- (e) adjustment, if any, to normal work.

67.3 The multiskilling proposal should not compromise any duty of care or occupational health and safety standards or requirements.

## **68. PROFESSIONAL AND CAREER DEVELOPMENT**

68.1 Professional and career development will be based on a focus on both current and future job needs, career path planning, recognition of each Employee's prior learning and building on this through the acquisition of new skills. It is agreed that accredited training is important to the development of Employee skills and that relevant training will be accessible wherever practicable.

68.2 Employees will be provided with opportunities for appropriate training and development during school hours (where applicable).

68.3 Where an Employee is required by their line manager to undertake professional development outside their ordinary hours of work, the Employee will be paid for the additional hours, or part thereof, at their ordinary rate of pay. Payment for additional hours, or part thereof, will be funded by the school salary pool. Alternately the time can be used as trade off time at the end of the school year.

68.4 Each Employee's prior learning will be recognised and built upon through the acquisition of new skills. Accredited training will be used wherever possible.

68.5 School principals will ensure that all employees covered by this General Agreement have equitable access to professional development through the provisions of the School Grant in any school year.

## **69. PERFORMANCE MANAGEMENT**

69.1 Consistent with the Department's *Employee Performance Policy*, the performance management process will involve all employees and will confirm expectations about an Employee's professional responsibilities

69.2 Performance management will be linked to worksite outcomes and the Department's Strategic Plan. The Performance Management Agreement will be in accordance with the provisions of the Department's Employee Performance Policy.

69.3 The objective of the Performance Management Agreement is to:

- (a) enhance the professional development of employees;
- (b) assist all Employees to understand the role, accountabilities and performance standards that are expected of them;

- (c) provide all Employees with feedback and constructive support to improve performance and enhance an atmosphere of mutual trust, loyalty and support; and
  - (d) provide employees with appropriate training and development to assist in the achievement of corporate business objectives.
- 69.4 The parties agree that any training which is required to be taken by the employees under the Performance Management Agreement will be fully funded and resourced by the Department.
- 69.5 Each worksite will undertake the following procedures in regard to the operation of the Performance Management Agreement.
- 69.6 That each worksite will be required to establish a plan to show the process and time line to implement Performance Management for all employees.
- 69.7 That worksites will be required to provide adequate resourcing to ensure all employees have appropriate training to undertake performance management.
- 69.8 Worksites will ensure ongoing support for the professional growth and development of employees.
- 69.9 All staff will need to take part in school decision making and be part of the performance management and professional development process.
- 69.10 Initial contact between the line manager and the Employee will be on a one-to-one basis with the option of bringing in an independent representative when and if the need arises at any stage hereafter of the performance management process.
- 69.11 Information regarding individual performance management should be current for a two-year period only with the information being non-transferable upon commencement of a new position either internally or externally. The Employee has the option to continue current performance management or undertake new performance management with the commencement of a new line manager.
- 69.12 It is the responsibility of the line manager to provide accurate and concise written feedback to the Employee after each meeting within five working days.

## **70. STAFF MEETINGS**

- 70.1 Where employees are required by their line manager to attend staff meetings, outside their ordinary hours of work, the Employee will be paid for the additional hours, or part thereof, at their ordinary rates up to a maximum of 38 hours per week. Payment for additional hours, or part thereof, will be funded by the school salary pool or used towards trade off days at the end of the school year.
- 70.2 Where the line manager determines that the agenda for a staff meeting is not relevant to an Employee, that Employee will not be required to attend.
- 70.3 Staff who would not ordinarily work on the day of the staff meeting cannot be required to attend but may elect to do so.
- 70.4 The agenda, venue and timing of meetings will be determined in consultation with all staff of a school. Equity considerations such as family responsibilities, professional and personal development commitments and flexible hours arrangements will be considered in the decision making process. The final responsibility to schedule meetings rests with the school principal.

## **71. OCCUPATIONAL SAFETY AND HEALTH REPRESENTATIVE RECORDS**

- 71.1 The Employer shall maintain an Occupational Safety and Health (OSH) Representative Register (the Register).
- 71.2 The Register is to record the following information for each OSH representative in the Department:
- (a) name;
  - (b) school;
  - (c) job title;
  - (d) date of election as an OSH representative; and
  - (e) training details on completion of relevant OSH training courses, including initial and refresher training dates.
- 71.3 The Employer shall provide a copy of the Register to the Union every six months.
- 71.4 The Register is to be submitted to the Department of Mines, Industry Regulation and Safety - Government Sector Labour Relations division on 31 January each year, for the previous year.

## **PART 9. CHANGE MANAGEMENT AND CONSULTATION**

### **72. CHANGE MANAGEMENT**

- 72.1 The parties agree and acknowledge that change and reform is an ongoing feature of education and of the Government school education system. The direction and nature of these changes will be determined largely by the Department's strategic planning process, the outcomes of which are currently reflected in the Strategic Plan for Public Schools 2016-2019 and its replacement.
- 72.2 The parties affirm their commitment to a process of collaboration and partnership in relation to the development, implementation and monitoring of key policies, procedures and reforms in education.
- 72.3 A change management process has been agreed, and is operational to ensure that all key initiatives and reforms that are to be implemented by schools are subject to a full analysis in terms of their impact on employees and schools. This process ensures that the workload, resourcing and timing of all initiatives and procedures are given due consideration in order to enable schools to plan, implement and manage these effectively. This consideration includes the need for the Department to have a cumulative, comprehensive picture of the initiatives, procedures and improvements that significantly impact at a school level.
- 72.4 The collaboration referred to in subclause 72.2 will include consideration of all issues relevant to the implementation of reforms or initiatives in order that risks are identified and managed, and issues particularly relevant to schools are able to be raised and fully considered.
- 72.5 It is recognised that many reforms and initiatives relate to matters that are routine in nature, and have little or no impact on school workload. Others are system-wide and entail major change, with consequent impacts on schools and employees. System wide initiatives will be subject to analysis as to their impact as part of the process of development and implementation.
- 72.6 The Change Management Reference Group will continue to monitor and review the process to ensure that the objectives of all parties are being met.
- 72.7 The parties acknowledge that the final responsibility and authority for making decisions to ensure the provision of a quality Public Sector education system rests with the Employer.

### **73. CONSULTATION**

- 73.1 The parties recognise the need for effective communication to improve the business/operational performance and working environment in the Department.
- 73.2 The parties acknowledge that decisions will continue to be made by the Employer, who is responsible and accountable to Government for the effective and efficient operation of the Department.
- 73.3 The parties agree that:
- (a) For the purposes of this clause “change” means situations where the Employer proposes to make changes(s) likely to affect an existing practice(s), working conditions or employment prospects of Employees.
  - (b) Where the Employer proposes to make change(s), the Union and Employees affected shall be notified by the Employer as early as possible.
  - (c) Consultation involves information sharing and opportunity for discussions between the parties on matters relevant to a proposed change conducted in a manner that enables the Union and Employees to contribute to the decision making process.
  - (d) For the purposes of such discussion the Employer shall provide to the Union and employees concerned relevant information about the changes, including the nature of the changes on the employees provided that the Employer will not be required to disclose confidential information the disclosure of which, would be harmful to the Employer’s interests.
  - (e) In the context of such discussion the Union and Employees are able to contribute to the decision making process.

### **74. STANDARDS AND INTEGRITY**

- 74.1 The parties to this General Agreement acknowledge that the policies and procedures that are to be adopted by the Department for the operation of the Standards and Integrity Directorate will have application to all employees including those covered by this General Agreement.

### **75. SCHOOL WORKLOAD ADVISORY COMMITTEE**

- 75.1 Where a Workload Advisory Committee (WAC) exists in a school then Employees have the right to representation on the Committee.
- 75.2 Where a WAC does not exist, and Employees request that one is established, the Principal may establish a WAC. The request will be made in writing to the Principal or Business Manager.
- 75.3 The WAC may, among other things, provide workload related information and advice to the Principal during the school year in order to assist with improving teaching and learning outcomes.
- 75.4 To assist in the management of workload in the school, the WAC is to make recommendations to the Principal about how to use school resources to address workload issues.
- 75.5 It is recognised the Principal has ultimate responsibility and authority for the operation of the school, including the allocation of resources, timetables and allocation of work.

## PART 10. UNION REPRESENTATIVES AND GENERAL MEETINGS

### 76. UNION FACILITIES FOR UNION REPRESENTATIVES

- 76.1 The Employer recognises the rights of the Union to organise and represent its members. Union representatives (“delegates”) in the Department have a legitimate role and function in assisting the Union in the tasks of recruitment, organising, communication and representing members’ interests in the workplace and Department.
- 76.2 The Employer will recognise Union representatives in the Department and will allow them to carry out their role and functions.
- 76.3 The Union will advise the Employer in writing of the names of the Union representatives in the Department.
- 76.4 The Employer will recognise the authorisation of each Union representative in the Department and will provide them with the following:
- (a) Reasonable paid time off from normal duties:
    - (i) to perform their functions as a Union representative such as organising, recruiting, individual grievance handling, collective bargaining, involvement in Union authorised committees; and
    - (ii) to attend Union business in accordance with Clause 21 – Leave to Attend Union Business, of the *Miscellaneous Government Conditions and Allowances Award A 4 of 1992*.
  - (b) Access to facilities required for the purpose of carrying out their duties. Facilities may include but not be limited to, the use of lockable filing cabinets, meeting rooms, telephones, fax, email, internet, photocopiers and stationery. Such access to facilities will not unreasonably affect the operation of the organisation and will be in accordance with normal agency protocols.
  - (c) A notice board for the display of Union materials including broadcast email facilities.
  - (d) Paid access to periods of leave for the purpose of attending Union training courses in accordance with Clause 20 – Trade Union Training Leave of the *Miscellaneous Government Conditions and Allowances Award No A4 of 1992*. Country representatives will be provided with appropriate travel time.
  - (e) Notification of the commencement of new employees, and as part of their induction, time to discuss the benefits of Union membership with them.
  - (f) Access to a sheltered area for meetings of members.
  - (g) Access to work location, names, rosters and hours of work of employees. This information and access will also be provided to Union officials upon request.
  - (h) Access to awards, agreements, policies and procedures.
  - (i) Access to information on matters affecting employees in accordance with Clause 73 – Consultation of this General Agreement.
  - (j) The names of any Equal Employment Opportunity and Occupational Health, Safety and Welfare representatives.
- 76.5 The Employer agrees, upon receiving written authorisation from an Employee, to provide to the Union within five working days the Employee’s bank account details and subsequent changes from time to time for the purpose of enabling the Employee to establish direct debit facility for the payment of Union dues. Employers must be indemnified against financial accountability related to these transactions.



76.6 Union General/Delegate Meetings

- (a) Employees will be granted, paid time off to attend quarterly general meetings of up to one-hour duration on site with the Union.
  - (i) Where the site meeting exceeds one hour, such absence will be without pay for the period of the meeting, which exceeds one hour.
  - (ii) To conduct these meetings the Union will be entitled to a private facility at the workplace wherever possible provided the Union gives the school management reasonable notice.
- (b) On an annual basis one of the meetings at subclause 76.6(a) can be converted to a paid district members' meeting of up to two hours duration with additional time allocated for travel. When the Union converts a paid quarterly meeting into a district members' meeting, the Union and the Employer shall hold discussions to ensure that a sufficient number of Education Assistants remain at schools so that educational programs continue to run. This Clause will not be used to unreasonably prevent an Employee from attending such a meeting.
- (c) Delegates will be able to attend paid quarterly district delegate meetings of up to two hours duration with additional time allocated for travel.
- (d) The entitlements provided for in subclauses 76.6(a), (b), and (c) to attend meetings are subject to seven calendar days' prior notice being given to the Employer, or a lesser period as agreed between the parties.

76.7 The Employer recognises that it is paramount that Union representatives in the workplace are not threatened or disadvantaged in any way as a result of their role as a Union representative.

## **PART 11 – DISPUTE SETTLEMENT PROCEDURE**

### **77. DISPUTE SETTLEMENT PROCEDURE**

- 77.1 Any questions, disputes or difficulties arising under this General Agreement will be dealt with in accordance with this Clause.
- 77.2 The Employee/s and the manager with whom the dispute has arisen will discuss the matter and attempt to find a satisfactory solution, within three working days. An Employee may be accompanied by a Union representative.
- 77.3 If the dispute cannot be resolved at this level, the matter will be referred to and be discussed with the relevant manager's superior and an attempt made to find a satisfactory solution, within a further three working days. An Employee may be accompanied by a Union representative.
- 77.4 If the dispute is still not resolved, it may be referred by the Employee/s or Union representative to the Employer or his/her nominee.
- 77.5 Where the dispute cannot be resolved within five working days of the Union representatives' referral of the dispute to the Employer or his/her nominee, either party may refer the matter to the WAIRC.
- 77.6 The period for resolving a dispute may be extended by agreement between the parties.
- 77.7 At all stages of the procedure the Employee may be accompanied by a Union representative.

77.8 Notwithstanding the above the Union may raise matters directly with representatives of the Employer. In each case the Union and the Employer will endeavour to reach agreement. If no agreement is reached either party may refer the dispute to the WAIRC for conciliation and/or arbitration.

**PART 11. SCHEDULES TO THE AGREEMENT**

**SCHEDULE 1 - SIGNATURES OF PARTIES**

[signed] Carolyn Smith

Date 11/11/22

Carolyn Smith

State Secretary

United Workers Union

Lisa Rodgers

[signed] \_\_\_\_\_

Date 10 November 2022

Lisa Rodgers

Director General

Department of Education

**SCHEDULE 2 – WAGES**

The hourly rates of pay payable to Employees covered by this General Agreement are as follows:

**(a) EDUCATION ASSISTANT (MAINSTREAM)**

<b>Classification</b>	<b>Current hourly rate</b>	<b>Hourly rate on and from 1 Jan 2023</b>	<b>Hourly rate on and from 1 Jan 2024</b>
		<b>\$60 per week increase</b>	<b>\$60 per week increase</b>
1.1	\$27.06	\$28.91	\$30.75
1.2	\$27.72	\$29.57	\$31.41
2.1	\$29.18	\$31.03	\$32.87
2.2	\$29.71	\$31.56	\$33.40
2.3	\$30.46	\$32.31	\$34.15
2.4	\$31.36	\$33.21	\$35.05

**(b) EDUCATION ASSISTANT (SPECIAL NEEDS) IN MAINSTREAM, SPECIALIST LEARNING PROGRAMS (ASD) AND DEPARTMENT ENDORSED EDUCATION SUPPORT PROGRAMS**

<b>Classification</b>	<b>Current hourly rate</b>	<b>Hourly rate on and from 1 Jan 2023</b>	<b>Hourly rate on and from 1 Jan 2024</b>
		<b>\$\$60 per week increase</b>	<b>\$60 per week increase</b>
2.1	\$29.18	\$31.03	\$32.87
2.2	\$29.71	\$31.56	\$33.40
2.3	\$30.46	\$32.31	\$34.15
3.1	\$32.09	\$33.94	\$35.78
3.2	\$32.86	\$34.71	\$36.55
3.3	\$33.68	\$35.53	\$37.37

(c) **EDUCATION ASSISTANT (SPECIAL NEEDS) IN EDUCATION SUPPORT SCHOOLS AND CENTRES, ABORIGINAL ISLANDER EDUCATION OFFICER, EDUCATION ASSISTANT (DEFENCE FORCE TRANSITIONAL) AND EDUCATION ASSISTANT (ENGLISH AS AN ADDITIONAL LANGUAGE/DIALECT)**

Classification	Current hourly rate	Hourly rate on and from 1 Jan 2023	Hourly rate on and from 1 Jan 2024
		\$60 per week increase	\$60 per week increase
3.1	\$32.09	\$33.94	\$35.78
3.2	\$32.86	\$34.71	\$36.55
3.3	\$33.68	\$35.53	\$37.37

(d) **EDUCATION ASSISTANT (AUSLAN), EDUCATION ASSISTANT (BRAILLE), EDUCATION ASSISTANT (ENGAGEMENT CENTRE), EDUCATION ASSISTANT (LEAD) AND ADVANCED EDUCATION ASSISTANT (SPECIAL NEEDS)**

Classification	Current hourly rate	Hourly rate on and from 1 Jan 2023	Hourly rate on and from 1 Jan 2024
		\$60 per week increase	\$60 per week increase
Education Assistant (Auslan) Education Assistant (Braille) Education Assistant (Engagement Centre) Education Assistant (Lead) Advanced Education Assistant (Special Needs)	\$35.59	\$37.44	\$39.28

(e) **HOME ECONOMIC ASSISTANTS**

Classification	Current hourly rate	Hourly rate on and from 1 Jan 2023	Hourly rate on and from 1 Jan 2024
		\$60 per week increase	\$60 per week increase
1.1	\$28.20	\$29.78	\$31.36
1.2	\$28.88	\$30.46	\$32.04
2.1	\$30.41	\$31.99	\$33.57
2.2	\$30.99	\$32.57	\$34.15
2.3	\$31.77	\$33.35	\$34.93
2.4	\$32.73	\$34.31	\$35.89