



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF
EMPLOYERS AND INDUSTRIES (AFEI)

AM2008/70
AM2008/77

AWARD MODERNISATION

AFEI

Australian Federation of
Employers & Industries

BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AWARD MODERNISATION

SUBMISSIONS MADE IN RESPECT OF AM2008/70 – EDUCATIONAL SERVICES – PRE SCHOOL TEACHERS AND AM2008/77 HEALTH AND WELFARE SERVICES (REMAINDER) CHILDREN'S SERVICES

AFEI and the Childcare Industry

1. AFEI has had a significant history of representing employers in the Childcare Industry in NSW and has been the lead employer party in the making of the Miscellaneous Workers Kindergarten and Childcare Workers (State) Award¹ and the teachers in early childhood state Awards.²
2. AFEI has members that span across the broad range of the childcare industry. Specifically, AFEI has members who are pre-schools, long day centres, out of school hours care centres and others, which has allowed AFEI scope to develop an understanding of the needs of the industry over a long period of time.
3. As part of the development of this submission, AFEI has had discussions with members to ensure that proposals outlined herein (and the attached AFEI draft Award) accurately reflect the needs of the industry.

¹ Miscellaneous Workers Kindergartens and Child Care Centres & c (State) Award, Re [2006] NSWIRComm 64

² Teachers (Non-Government Pre Schools) (State) Award [2001] NSWIRComm 335

AFEI – earlier childcare submissions

4. As part of Stage 3 of the Award Modernisation process, AFEI has made submissions in respect of the Childcare Services Industry in Matter AM2008/33 – Educational Services (other than higher education). AFEI relies extensively on these earlier submissions in these matters presently before the Commission in Stage 4 and attaches the earlier submission for reference marked Appendix A.
5. In addition to AFEI’s earlier submissions, AFEI makes the following submissions in respect of the childcare industry:
 - funding within the industry;
 - one Award for Childcare;
 - distinction between teachers in schools and Childcare; and
 - the AFEI draft Award - reviewed

Funding within the industry

6. Generally speaking, employers within the childcare industry primarily receive funding from the Government and fees charged to parents. The nature of such revenue is precarious and is not guaranteed from term to term. In addition, wages do account for a high percentage of operating costs in this industry and consequently, any labour cost increase impacts directly on service delivery.
7. Employers within the childcare industry in NSW specifically receive funding in the form of the childcare benefit from the Commonwealth Government, Inclusion Support Subsidy (ISS) for children with additional needs (Commonwealth) and Supporting Children with Additional Needs (SCAN) scheme (Department of Community Services, NSW).

8. Some childcare employers receive a set amount of funding to provide a service delivery on a one to one basis for a child with special needs under SCAN and the ISS. Where labour costs are increased for employers the industry, there is a consequent decrease in service delivery for such children. The Commission should be minded to ensure that, in the event that labour costs are increased as a result of the making of a new childcare Award, transitional must apply to limit any negative impact on service delivery for children with special needs. We reserve our position on transitional provisions for this industry until such time as the Commission publishes its decision on transitional arrangements.

One Award for Childcare

9. AFEI has lodged a draft Children's Services Industry Award 2010 in respect of matter AM2008/33 – Educational Services (other than higher education) on 16 March 2009. This draft Award proposed one industry Award that provided for the inclusion of pre-school teachers and non-teaching staff, such as Childcare workers. AFEI formed the view that this coherent approach was consistent with the Ministerial Award Modernisation Request:

"9. The Commission is to have regard to the desirability of avoiding the overlap of awards and minimising the number of awards that apply to a particular employee or employer [our emphasis]."

10. A single Award for childcare would reduce the regulatory burden on employers who are bound under relevant state Childcare regulations to employ at least one teacher as part of licensing requirements.

11. The creation of one industry specific modern Award would further promote the career progression of Childcare workers who may seek to commence study to become a qualified teacher. In such circumstances, an employer would be able to better manage the individual transition from Childcare worker to teacher within one industrial framework.

Distinction between teachers in schools and Childcare

12. In the event that the Commission is minded not to create a modern Award that includes both childcare workers and teachers, AFEI submits a distinction between teachers in early childhood education and teachers in schools should be maintained in modern Award coverage.
13. In making this alternate position, AFEI relies upon its previous submission for the Childcare Services Industry (made on 6 March 2009 in AM2008/33). In these earlier submissions (and set out above), AFEI identified the key ways in which the Childcare Industry was distinct from other categories of 'educational services (other than higher education)' [refer to Appendix A].
14. To further support this alternate position, AFEI notes the earlier submissions and draft awards of key union organisations in the industry as a further demonstration of the need for a separation. For example, the Independent Education Union of Australia ("IEUA") filed a draft award named the Educational Services Non-Government Early Childhood Education (Teachers) Award 2010. Differences in terms and conditions within the respective early childhood draft Awards notwithstanding, AFEI notes the preference of the IEUA for a separate Award for teachers in early childhood.

15. Furthermore, the distinction between teachers in schools and teachers in Childcare is supported by the existence of two Childcare teachers NAPSAs in New South Wales (herein after referred to as “the NSW Teachers NAPSAs”):
- Teachers (Non-Government Pre-Schools) (State) Award [NSW – NAPSA];
 - Teachers (Non-Government Early Childhood Service Centres other than Pre-Schools) (State) Award [NSW – NAPSA]
16. Further still, this separation of early childhood teachers is replicated in Victoria, the ACT and South Australia:
- Early Childhood Teachers Interim Award 1999 (an Award of the Australian Industrial Relations Commission);
 - Child Care Industry (Teachers) (Australian Capital Territory) Award 1999 (an Award of the Australian Industrial Relations Commission); and
 - Pre-School (Kindergarten) Teaching Staff Award.
17. AFEI submits that it would be inappropriate through the Award Modernisation process to simply add pre-school and early childhood teachers into a general schools Award given the industrial separation of teachers in early childhood industry across a significant number of states. AFEI submits that the Commission should not disturb the current industrial separation of teachers in schools and teachers in early childhood services having regard to the significant industrial history that has gone before. Such an inclusion should be subject to an appropriate hearing and evidentiary process, and the Award Modernisation is not the forum where this can or should occur.

18. Inclusion of childcare in an Educational Services Award for teachers in schools also has the potential to impose significant costs increases to a sector that is presently struggling with increased regulation, increased operating costs and limited funding from government (paragraph xx of this submission).

AFEI Draft Award

19. As part of the separation of the Childcare industry (AM2008/77 – Health and Welfare Services (remainder) – Children’s Services) and Teachers in early childhood (AM2008/70 – Educational Services – Preschool teachers), AFEI has further reviewed its draft Award submitted to the Commission in Stage 3.
20. **Clause 3 Definitions:** The draft Award provides for a definition of Children’s Services Industry to refer to the various categories of service delivery models found within Childcare. AFEI submits that such references are important to ensure clarity of Award coverage provisions. AFEI further defines each category of the service delivery models.
21. **Clause 4 Coverage:** The draft Award covers employers in the Children’s Services Industry (as defined). The coverage provisions are consistent with AFEI’s preference for one industry Award covering teaching and non-teaching staff.
22. **Clause 10.1 Full-time employment:** The draft Award provides a definition of a full-time employee as one who is engaged to work an average of 38 hours per week. This definition is consistent with the prevailing standard of a full-time employee in the industry.

23. **Clause 10.2 Part-time employment:** The draft Award provides for sufficient flexibility for an employer when engaging a part-time employee, however provides important protections for part-time employees, such as regular working patterns and minimum engagements. AFEI submits that the part-time employment provisions of the draft Award provide a balance between the needs of the employer and employee.
24. Given the broad coverage provisions of the draft Award, a 2-hour minimum engagement has regard to the nature of the work and when it is undertaken at the various centres. For example, Childcare centres involved in the provision of Out Of School Hours care (OOSH) generally have a peak attendance period of between 7.00am to 9.00am and 3.30pm to 5.30pm. It would be an unfair outcome to increase the part-time minimum engagement to be greater than 2 hours for such services with the consequence of an unnecessary cost increase being incurred by employers.
25. **Clause 10.3 Casual employment:** The draft award provides a definition of a casual employee that reflects the definition in the Miscellaneous Workers Kindergarten and Childcare Centres (State) Award [NAPSA – NSW] (“the NSW Kindergarten NAPSA”), however more importantly would not disrupt or force any changes to arrangements presently in operation across Australia.
26. The draft Award provides a casual loading that is consistent with the standard casual loading adopted by the Commission across modern Awards, notwithstanding the high prevalence of 20 per cent and 23 per cent casual loadings across existing Awards and NAPSAs (with the exception of Victoria and the ACT – currently set at 25 per cent).

27. For operational reasons similar to that for part-time employees, the 2-hour casual minimum engagement is necessary. Furthermore, the 2-hour minimum casual engagement is consistent with the provisions found in South Australia, Tasmania and various classifications in the NSW Kindergarten NAPSA.
28. **Clause 14.2 Directors allowance:** The Director's allowance provision is consistent with the 2 early childhood teachers NAPSAs in New South Wales. The amounts proposed in clause 15.3, pertaining to Director's Allowance is equal to the amounts currently payable under both of the NSW Teachers NAPSAs.
29. **Clause 23 Ordinary hours of work and rostering:** The hours of work clause proposed in the draft Award applies to non-teaching employees (child care and support workers) and teachers engaged in children's services centres other than Pre-schools. Any inclusion of an ordinary hours of work clause pertaining to teachers in pre-schools would be inappropriate given the nature of the work of a teacher in such an establishment. The existing NSW NAPSA pertaining to teachers in pre-schools, for example, provides teachers with an annual rate, which provides payment during non-term time. Further, this NAPSA does not have an hours of work clause.

/APPENDIX A/



**SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF
EMPLOYERS AND INDUSTRIES (AFEI)**

AM2008/33

AWARD MODERNISATION

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BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
AM2008/33 – EDUCATIONAL SERVICES (OTHER THAN HIGHER
EDUCATION)

THE CHILD CARE SERVICES INDUSTRY

1. AFEI submits that child care services is a separate industry which is distinct from other categories of 'educational services (other than higher education)' included in the Commission's list of relevant awards. It makes the following submission in respect of scope of a modern award for the child care services industry.
2. AFEI has an interest in each area within the child care services industry, including, long day care, pre-schools, out of hours school care and family day care services. AFEI is a major employer party to the NSW awards applying to teachers and child care workers.
3. This submission has been prepared in consultation with members, as well as major employer groups within the child care industry. Many of these organisations have child care operations both within New South Wales and in other states.
4. AFEI proposes a separate award for the child care services industry. This is a sound conclusion when one examines the following features of this industry group as outlined in this submission:

- the size and nature of the industry,
- present award coverage,
- the operation of child care specific regulatory requirements,
- government funding of childcare and
- the economic context in which child care services operate.

5. AFEI submits that this approach is consistent with the requirements of part 10A of the *Workplace Relations Act* and the Ministerial Request.

SIZE & NATURE OF THE INDUSTRY

6. The child care services industry is recognized as a stand alone industry and an important contributor to the Australian economy as summarized by the following statistics:

Summary of Child Care Services Sector³

Statistics 2008 - 2009	
Industry Revenue	\$7,813,400,000
Number of Establishments	20,235
Number of Enterprises	18,819
Employment	126,206
Total Wages	\$4,904,400,000

7. According to the Productivity Commission⁴, Children's services are provided using a variety of service delivery models that can be grouped into the following seven broad categories:

³ IBIS Australian Industry Reports Pre School Education Industry Code / ANZSIC Code: N8410, 20 Jan 2009 and Child Care Services Industry Code / ANZSIC Code: N8410, 20 Jan 2009.

⁴ Productivity Commission Report on Government Services 2009 Children's Services Chapter 3 .3

- (a) *Centre-based long day care* — comprises services aimed primarily at 0–5 year olds, provided in a centre, usually by a mix of qualified and other staff. Educational, care and recreational programs are provided based on the developmental needs, interests and experience of each child. In some jurisdictions, primary school children may also receive care before and after school, and during school vacations. Centres typically operate for at least eight hours per day on normal working days, for a minimum of 48 weeks per year.

- (b) *Family day care* — comprises services provided in the carer's home. The care is largely aimed at 0–5 year olds, but primary school children may also receive care before and after school, and during school vacations. Central coordination units in all states and territories organise and support a network of carers, often with the help of local governments.

- (c) *Occasional care* — comprises services usually provided at a centre on an hourly or sessional basis for short periods or at irregular intervals, for parents who need time to attend appointments, take care of personal matters, undertake casual and part time employment, study or have temporary respite from full time parenting. These services provide developmental activities for children, and are aimed primarily at 0–5 year olds. Centres providing these services usually employ a mix of qualified and other staff.

- (d) *Preschool* — comprises services usually provided by a qualified teacher on a sessional basis in dedicated preschools. Preschool programs or curricula are also provided in long day care centres and other settings.

- (e) *Outside school hours care (OOSH)* — comprises services provided for school aged children (primarily 5–12 year olds) outside school hours during term and vacations. Care may be provided on student free days and when school finishes early.
 - (f) *Other services* — comprise government funded services to support children with additional needs or in particular situations (including children from an Indigenous or non-English speaking background, children with a disability or of parents with a disability, and children living in regional and remote areas).
8. The dominant child care service category appears to be private long day care centres and community based long day care centres (54%).⁵
 9. Child Care Services are provided by a range of community-based, not-for-profit, local council and private centres. The sector is dominated by not for profit operators and includes a range of not-for-profit community services from very small parent-run centres through to larger multi-service not-for-profit organisations. Child care centres are also provided by small privately-owned centres and a number of larger operators.
 10. The provision of before and after school care and during vacation is again the responsibility of a wide range of largely small community, private and local council organisations. The service offered is not part of the formal education system and is not compulsory. As would be expected, this sector of the industry has specific operating needs, with its hours of operations extending well beyond those of the school system.⁶

⁵ IBISWORLD Australian Industry Report *Child Care Services Industry 20 January 2009* N8410 p6

⁶ As illustrated by the *2006 Australian Government Census of Child Care Services* page 3.

11. There are around 4500 pre-school centres owned by around 3500 separate entities.⁷ These pre-school services provide support to children generally 4 to 5 years old and as with child care centres there is a wide range of size and structure, from the small parent-run, not-for-profit through to the larger local council and community service organisations. The majority of the ownership, however, is small business, small community services, local council or similar organisations. These pre-school services provide support to nearly 300,000 children and employment for 10 000 full-time equivalent child care workers and 300 auxiliary workers⁸.

Distribution of Child Care Services

12. NSW has the largest number of child care services according to the most recent national child care census (**Appendix A**).⁹
13. Charts illustrating the distribution of child care and pre school services across Australia are attached at **Appendix B**.
14. The geographic distribution of industry activity largely reflects variations in the population of children, while it is also influenced by: the cost and supply of child care; labour, income and housing affordability patterns; and child care subsidy policies. The population of children aged 0 to 4 years is a significant determinant of demand for child care services.

⁷ IBISWORLD AUSTRALIAN Industry Report, *Preschool Education in Australia*, 20 January 2009, N8410, page 4

⁸ op cit

⁹ 2006 Census of Child Care Services Table 1 page 29.

Trends within the industry

15. Currently the industry is under considerable pressure with the failures of ABC Learning Centres and a number of larger private child care providers. In addition the industry has to cope with increasing operating costs, the need for significant quality assurance and compliance with a high level of regulation and the uncertainties of the market for these services.

16. The picture is confused by the fact:

*"There is considerable variation between States in all aspects of pre-school education, including regulation, structure, costs and links to schools."*¹⁰

Ibis also reports an important characteristic of the child care industry:

"there is a trend towards childcare 'hubs', where the distinction between childcare and preschool is beginning to blur. Childcare services are now offered at many preschools, in order to expand the customer base and facilitate the attendance of children of working parents. Likewise, many traditional childcare centres offer a preschool component, and numbers are growing"

17. AFEI submits that such a trend supports the proposal for an integrated modern award which would appropriately cover different types of child care services, as well as, multi-purpose centres. Such an approach would ensure employers could apply a single award across all child care operations, facilitating the creation of a safety net that is simple to apply, easy to understand and reduces the regulatory burden on business.

¹⁰ IBISWORLD Australian Industry Report *Child Care Services Industry* 20 January 2009 N8410 p 6

PRESENT AWARD/NAPSA COVERAGE

18. Presently, AFEI has identified the following awards and NAPSAs which operate in the various states and territories in respect of the Child Care Services Industry:

- Teachers (Non-Government Early Childhood Service Centres Other Than Preschools) State Award
- Teachers (Non-Government Pre-Schools) (State) Award 2006
- Miscellaneous Workers Kindergarten and Child Care Centres State Award -NSW
- Child Care Industry Award - State 2003 – Qld
- Early Childhood Education Award - State 2003
- Early Childhood Teachers Interim Award 1999 (CRV)
- Educational Services - Early Childhood Assistants - Victoria - Award 1999
- Children's Services (Victoria) Award 1998
- Pre-School (Kindergarten) Teaching Staff Award (SA)
- Early Childhood Worker Award
- Child Care (South Australia) Award
- Child Care and Childrens Services Award TAS
- Children's Services ACT Award 2005
- Child Care Industry (Teachers) (Australian Capital Territory) Award 1999
- Child Care (Long Day Care) WA Award 2005
- Children Services (Northern Territory) Award 2005

19. Indeed, most states appear to combine the many categories of childcare services into one or a small number of instruments. In some states different awards/NAPSAs apply to early childhood teachers and other employees, as well as, pre-schools and long day care services being separate. However, such distinctions are not consistent across all states.

20. Given the requirement of the Ministerial Request regarding 'the desirability to reduce the number of awards' and 'reduce the regulatory burden on employers'; AFEI submits that the differences between such groups could be accommodated under the one award.

Early Childhood Teachers

21. As noted above, in some jurisdictions early childhood teachers are presently covered by separate awards from other employees engaged in this industry, however, this is not the case in all states.
22. While AFEI is not opposed to the creation of separate Modern Awards within established sectors of an industry (such as Early Childhood Teachers in the child care industry), it recognises the preference of the Commission to make all encompassing industry awards in complying with the Ministerial Request.
23. AFEI notes that teachers in this industry make up a minority group when compared to other categories of employees, such as child care workers. In 2008 DEWR reports that there were 16.8 thousand early childhood (pre primary) teachers compared to 96.1 thousand child carers employed across Australia¹¹. Therefore, it does not seem necessary at this point to separate them into a different award from the remainder of this industry.

Family day care services

24. AFEI is currently examining the appropriateness of incorporating Family Day Care Services into this proposal. AFEI notes that the Family Day Care Awards are not included in the Commission's list of awards for consideration at this stage.

¹¹. DEWR Jobs Outlook 2008

25. Indeed, in most states Family Day Care programs are covered by separate awards from those applying to child care workers, Early Childhood Teachers and other employees employed in child caring capacities.

26. AFEI has identified the following awards applying to Family Day Care Programs as follows:

PRE-REFORM AWARDS	State
Family Day Care Services Award, 1999	NSW/ Qld
Family Day Care Coordinators and Assistants Award 2005	WA
Children's Services (Northern Territory) Award 2005	NT
Family Day Care Services (Australian Capital Territory) Award 1999	ACT
Children's Services (Australian Capital Territory) Award 2005	ACT
NAPSA	
Family Day Care Coordinators & Assistants Award, 1985	WA
Child Care & Children's Services Award	Tas

27. It notes the majority of these awards and NAPSA's do not cover the child caring aspect of a family day care service but rather apply to work associated with the implementation, co-ordination and organisation of such programs.

28. Accordingly, it may be more difficult to incorporate such classifications and respective conditions into a general child care award. AFEI is continuing to review this area and consult with members regarding the appropriateness of consolidating this category with other child care services in a single modern award.

29. The need for separate child care award coverage from other areas of 'educational services' is evident when one looks at the needs of this sector for differing award content, such as hours of work. The patterns of opening hours and weeks are different between early childhood centres and schools.¹² Many early childhood services offer a 48-week service as against the 42 or less weeks of the school system. Long day care and occasional care services also stay open for longer hours and may well have fluctuating child numbers across the week and, therefore, variable demand for workers. Vacation care services are again different from those provided in schools. Those who work in child care centres also have a more flexible and "nurturing" range of duties than teachers. Out of School Hours (OOSH) and Vacation Care have, of course, a different operational framework. This includes in the OOSH services, morning and afternoon services – with a considerable break in between.

GOVERNMENT FUNDING & SUBSIDIES

30. In contrast to funding in the school system the Government subsidises childcare services direct to the parent. The State school system is a Government service and private schools receive direct funding. Generally, Vacation Care and Out of School Hours Care are not subsidised.

¹² See also footnote 4

REGULATION OF THE CHILD CARE INDUSTRY

31. AFEI notes that there are highly specific regulatory requirements for the child care industry in each state and territory. This further demonstrates the need to treat child care as a separate industry group from other educational services industries.
32. Accreditation, Quality Assurance and other regulation determines the required ratio of staff to children, among other requirements.
33. This has been recognised by the IBISWorld Industry report as follows:

"To retain registration and thereby government funding, preschools must comply with both state/territory government regulations and operation guidelines. Regulations cover such areas as the number of children permitted, space required per child, the staff to children ratio, and so on. Operation guidelines concern preparation of acceptable budgets and programs, demonstrated parent consultation procedures and related issues. Quality Assurance Systems are also run in order to ensure the education programs are "development appropriate" and of good quality"¹³

34. AFEI also notes that each state and territory is subject to differing regulatory requirements. In NSW, for example, it is compulsory to have a qualified teacher in child care centres with more than 29 places, however, this is not the case in all states.

¹³ IBISWORLD AUSTRALIAN Industry Report, *Preschool Education in Australia*, 20 January 2009

35. AFEI notes that particular requirements may affect the ability of employers to adjust to any significant cost increases and should, therefore, be considered in the context of creating a modern award for this industry.

ECONOMICS OF CHILD CARE

36. Further, the structure of the childcare industry with its large proportion of community-based and not-for-profit services, in addition to the small size of most operators, are important considerations in the overall capacity of this industry to absorb award and related changes generated by the introduction of a new award based on different industry conditions.
37. Child care services is an industry dominated, especially since the collapse of ABC Learning Centres, by small businesses, and not-for-profit organisations. These small entities do not generally have significant financial reserves and operate on very small margins. A significant number of the smaller child care centres are run by a committee of parents who often operate on break-even or very small margins. Any response to cost increases, either through wages or conditions of employment will in most cases have to be met by charging parents more or cut backs in rooms that are open for children, and therefore to staff (subject to regulatory requirements), for at least a proportion of the week.
38. The labour costs of child care workers constitute a large operating cost – as high as 85 per cent of the operating costs of a child care business¹⁴.

¹⁴ This estimate is provided by KU Children's Services which is the largest not-for-profit organisation in this industry

39. Child care services are not compulsory and those organisations who provide them are dependent on the market for their continuity and survival depends on the market (albeit underpinned by Government funding). Price, accessibility, location, reputation and even marketing and other factors all have an impact on the use of the services and their viability. Thus for example the price elasticity of demand for child care services is likely to vary between consumers – for some families with a single high income earner or with two income earners in high-wage jobs, the elasticity may be relatively low; on the other hand, for families where there is one relatively low wage, the price elasticity may be larger.
40. Child care costs are a significant barrier for many families, particularly those with two or more children in care. For many consumers, increases in their income levels cannot match increases in child care costs.
41. Competition in the industry can be intense between child care centres and especially from alternative sources of child minding. Family-based day care, for example, is one of a number of substitute services that can be offered to families. In the end, 'competition' in the industry mainly comes from 'kinship' carers and mothers or fathers simply staying at home with their children.
42. Cost increases associated with any award changes in the industry will also have a major flow-on effect in the employment market – and the supply of workers generally if it results in parents reducing, perhaps by a day or even a few hours, the level of child care they are prepared to pay for.
43. The industry has been subject to a number of cycles of growth and downturns¹⁵ and it is particularly vulnerable to a downturn at this time as the economy slows and the level of unemployment rises.

¹⁵ Taskforce on Care Costs, February 2005.

44. The characteristics of childcare services create significantly more risk for the organisations operating in this industry, compared to those in the school system, particularly the state school system. The level of exposure to risk differentiates this industry from the school system. The small size and nature of these businesses make the level of risk much greater in the childcare services sector which operate on very low margins and government subsidies. The risks confronted by this industry cannot readily be compared with even the private school system which is dominated by large religious organisations or large schools catering for parents prepared to pay high fees.

AFEI Proposal for a Child Care Services Industry Award 2010

45. AFEI is in the process of preparing a draft Child Care Services Industry Award 2010. AFEI will file the draft when the final terms of this proposal have been endorsed by its members. It is anticipated that this process will be finalised within the following week, and will be sent to the Commission well in advance of the pre-drafting consultations on 17 March 2009.
46. While AFEI submits that it is appropriate to address particular content of such an award, at the time of filing the draft award; it makes the following observations with respect to content of such a modern award.

Cost increases and Transitional Arrangements

47. AFEI notes that in determining the final terms of a modern award(s) applying to the child care industry and the associated transitional arrangements it is paramount that the Commission exercise caution to ensure that the financial viability of this industry is not jeopardised.

48. Recent decisions in child care awards both in various States and of this Commission acknowledge the importance of balancing cost increases with the economic capacity and affordability of the industry. This is also evident in decisions to phase in increases awarded to child care workers over recent years¹⁶.
49. Currently, there is a large degree of disparity in award terms existing from state to state emphasising the need for appropriate transitional arrangements, especially given the features of this industry.
50. Care should be taken to ensure that any cost increases over time do not exceed the capacity of centres to pay or lead to significant fee increases. Such approaches will place an unnecessary burden on the market driven child care industry and are likely to result in parents using alternative and less costly forms of childcare (such as friends, relatives or leaving the workforce to care for children). AFEI submits that such outcomes are undesirable and would be contrary to the provisions of the Ministerial Request.
51. AFEI submits that the Commission must exercise caution in balancing the need to eliminate state-based differentials prior to 2015 with the affordability of resulting changes and cost increases for child care providers in this industry.

6 March 2009

¹⁶ For Example, see Re: Miscellaneous Workers Kindergarten and Child Care Centres etc., (State) Award 150 IR 290; Child Care Industry Award – State 2003 [2006] QIRComm72; 182 QGIG 318 (27 June 2006) at 8.2.1; Child Care Industry (Australian Capital Territory) Award 1998 and Children’s Services (Victoria) Award 1998 [PR957914] at paragraph 99

Children's Services Industry Award 2010

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Part 1—Application and Operation

1. Title

This award is the *Children's Services Industry Award 2010*.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Workplace Relations Act 1996* (Cth)

Commission means the Australian Industrial Relations Commission or its successor

Employee has the meaning in the Act

Employer has the meaning in the Act

Enterprise award has the meaning in the Act

NAPSA means notional agreement preserving a State award and has the meaning in the Act

NES means National Employment Standards

Standard rate means the minimum wage for an “Advanced Child Care Worker: Qualified” in clause 15.

Children's Services Industry means the industry of child care centres and early childhood education, including pre-schools, long day care centres, multi purpose centres, occasional care, outside of school care and vacation care.

Night Shift means any shift finishing subsequent to midnight and at or before 8.00am or any shift commencing at or after midnight and before 5.00am.

Afternoon Shift - means any shift finishing after 7.00pm and at or before midnight.

Early Morning Shift - means any shift commencing at or after 5.00am and before 6.00am.

Night Shift, Non-rotating - means any shift system in which night shifts are worked which do not rotate or alternate with another shift so as to give the employee at least one third of the employee's working time off night shift in each roster cycle.

Pre-School means a kindergarten, day school or nursery school and shall include:

- (a) A Full Day Care Centre which means a child care establishment which does not operate on a sessional basis, but which usually operates during hours and terms which approximate those of a recognised school.
- (b) A Sessional Care Centre which means a child care establishment which operates on the basis of morning and/or afternoon sessions and which usually operates during hours and terms which approximate those of a recognised school.

Long Day Care Centre means a child care establishment which usually provides services over a period of approximately eight hours or more each day for approximately 48 weeks or more during the year;

Multi-Purpose Centre means a child care establishment which usually provides the services of a long day care centre, together with the services of a Pre-School, occasional care, outside of school care or vacation care.

Occasional Care means services that provide short-term care to parents.

Outside School Care means services that provide care for school age children before and after normal school hours.

Vacation Care means services that provide care for school aged children during non-term time.

Unit means a group or class of children which does not at any one time exceed 25 children, but which need not necessarily consist of the same children at all times.

- 3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

This industry award covers employers throughout Australia in the Children's Services Industry and their employees in the classifications listed in clause 13 and 14.

- 4.1 The award does not cover an employee excluded from award coverage by the Act.
- 4.2 The award does not cover an employer bound by an enterprise award with respect to any employee who is covered by the enterprise award.
- 4.3 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

5. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. The National Employment Standards and this award

The [NES](#) and this award contain the minimum conditions of employment for employees covered by this award.

7. Award flexibility

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

7.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment.

7.4 For the purposes of clause 7.3(b) the agreement will be taken not to disadvantage the individual employee in relation to the individual employee's terms and conditions of employment if:

- (a) the agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual employee under this award and any applicable agreement made under the Act, as those instruments applied as at the date the agreement commences to operate; and
- (b) the agreement does not result in a reduction in the terms and conditions of employment of the individual employee under any other relevant laws of the Commonwealth or any relevant laws of a State or Territory.

- 7.5** The agreement between the employer and the individual employee must also:
- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
 - (b) state each term of this award that the employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 7.6** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 7.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 7.8** The agreement may be terminated:
- (a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b) at any time, by written agreement between the employer and the individual employee.
- 7.9** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employer to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.

- (b) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

8.2 Employer to discuss change

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

9. Dispute resolution

- 9.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 9.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.
- 9.3** The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.

- 9.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

10.1 Full-time employment

- (a) A full-time employee is an employee who is engaged to work an average of 38 hours per week.

10.2 Part-time employment

- (a) A part-time employee is an employee who is engaged to perform less than the full-time hours at the workplace on a reasonably predictable basis.
- (b) Part-time employees are entitled on a pro rata basis to equivalent pay and conditions to those of full-time employees.
- (c) At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the numbers of hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.
- (d) Changes in hours may only be made by agreement in writing between the employer and employee. Changes in days can be made by the employer giving seven days notice in advance of the changed hours in accordance with clause 24.4.
- (e) An employer is required to roster a part-time employee for a minimum of two consecutive hours on any shift.
- (f) All time worked in excess of the hours mutually arranged will be paid in accordance with clause 26.2(b) of this award.
- (g) A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

10.3 Casual employment

- (a) A casual employee is an employee engaged as such.

- (b) A casual employee must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%. This loading is in lieu of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the NES.
- (c) Casual employees are entitled to a minimum payment of two hours' work at the appropriate rate.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

11.3 Job search entitlement

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

12. Redundancy

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

12.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

12.4 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 11.3.

12.5 Transitional provisions

- (a) Subject to clause 12.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:
 - (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Act had applied to the employee; and
 - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the NAPSA is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) Clause 12.5 ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

13. Child Care and Support Worker Classifications

13.1

14. Teachers Classifications

14.1

14.2 Director's Allowance

- (a) A full-time teacher who is appointed as a Director shall be paid an allowance per fortnight calculated by dividing the rates set out in the table at clause 15.3 by 26.07.
- (b) A part-time teacher who is appointed as a Director shall be paid an allowance on a proportionate basis to the hours of a full-time teacher that they work.
- (c) Any teacher required by the employer to act as Director for at least ten consecutive working days shall be paid for so doing at the rate prescribed for that position.

Provided that a teacher shall not be required to carry out such duties in an acting capacity for more than a full year except that a teacher may be required to carry out such duties for up to two full years where such a teacher is replacing a Director who is on leave for a specified period in excess of a full year.

14.3 First Aid Certificate

- (a) Teachers shall be required to obtain and maintain an approved first aid certificate.
- (b) Teachers will be granted paid leave to attend a first aid course, or when a first aid course is in the teacher's own time, teacher will receive time in lieu at ordinary time rates for course attendance time.

15. Minimum wages

15.1 Minimum Wages – Child Care and Support Workers

15.2 Minimum Salaries – Teachers

15.3 Table - Director's Allowance

Units	per annum \$
1	4,613
2	5,631
3	7,029
4	8,780

15.4 Supported wage system

See Schedule A

15.5 National training wage

See Schedule B

16. Allowances

16.1 Shift Work

The following additional allowances for shift work shall be paid to employees in respect of work performed during ordinary hours for shifts as defined in Clause 3, Definitions, of this award:

	Percentage
Early morning shift	10%
Afternoon shift	15%
Night shift, rotating with day or afternoon shift	17.5%
Night shift, non-rotating	30%

16.2 Uniform Laundry Allowance - In the event of an employee being required to wear a uniform such uniform shall be provided by and laundered at the employer's expense, or, by mutual agreement, such employees shall be paid a uniform laundry allowance of \$4.15 per week.

16.3 Cooks Uniform Laundry Allowance - Where an employer requires a cook to wear an ordinary white overall or wrap, coat, cap, apron and trousers, usually worn by cooks, such garments shall be laundered either at the employer's expense or at the option of the employer, the employee shall be paid a cooks uniform laundry allowance of \$6.50 per week.

16.4 First Aid Certificate:

(a) If an employer requires an employee who is not required to have a first aid certificate under this award, to obtain and/or maintain such a qualification, the employee shall be allowed time off without loss of pay for the purpose of completing the course required. The cost of the course shall be met by the employer.

(b) Employers who require employees to attend to medical procedures such as administering epi pens, suppositories and drip feeding shall ensure staff are adequately trained in such procedures, before being required to undertake them. The cost of any such training will be met by the employer.

16.5 Broken Shifts: An employee working two shifts per day (broken shifts) as provided for in clause 24.1 (b) of this award shall be paid a broken shift allowance of \$12.10 per day.

16.6 Authorised Supervisor Allowance: An employee (other than a Co-ordinator: Qualified or a Co-ordinator or a Teacher in receipt of a Directors allowance) who is required by the employer to act as an Authorised Supervisor in accordance with the *Children and Young Persons (Care and Protection) Act 1998*, as amended, shall be paid an amount of \$29.75 per week or \$5.75 per day.

16.7 Meal Money: An employee required to work overtime in excess of one and one half hours shall either be paid an allowance of \$5.95 or be supplied with a meal of equivalent value.

16.8 Travelling Expenses

Where an employee is required to use his or her vehicle in connection with employment other than for journeys between home and the place of employment, the employee shall be paid an allowance of 0.51c per kilometre of travel.

16.9 **Adjustment of expense related allowances**

(a) At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

(b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Clothing, equipment and tools allowance	Clothing and footwear group
Vehicle/travel allowance	Private motoring sub-group

17. District allowances

17.1 Northern Territory

An employee in the Northern Territory is entitled to payment of a district allowance in accordance with the terms of an award made under the *Workplace Relations Act 1996* (Cth):

(a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under that Act had applied to the employee; and

(b) that would have entitled the employee to payment of a district allowance.

17.2 Western Australia

An employee in Western Australia is entitled to payment of a district allowance in accordance with the terms of a NAPSA or an award made under the *Workplace Relations Act 1996* (Cth):

(a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under that Act had applied to the employee; and

(b) that would have entitled the employee to payment of a district allowance.

17.3 This clause ceases to operate on 31 December 2014.

18. Accident pay

18.1 Subject to clause 18.2, an employee is entitled to accident pay in accordance with the terms of:

(a) a NAPSA that would have applied to the employee immediately prior to 1 January 2010 or an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and

(b) that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.

18.2 The employee's entitlement to accident pay under the NAPSA or award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.

18.3 This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.

18.4 This clause ceases to operate on 31 December 2014.

19. Relieving in other positions

19.1 Employees employed at work for which a higher rate is fixed shall be paid such higher rate whilst so employed. If employed for four hours or more on the higher class of work employees shall be paid the higher rate for the whole of that day.

19.2 Where an employee is called upon to perform duties for which a lower rate is fixed the employee shall suffer no reduction in pay.

20. Payment of wages

20.1 Wages shall be paid weekly or fortnightly.

20.2 The employee may be paid the employee's wages by cash, cheque or direct transfer into the employee's bank (or other recognised financial institution) account.

21. Salary Packaging

21.1 Where agreed between the employer and a full-time or part-time employee, an employer may offer salary packaging in respect of salary. Neither the employer nor the employee may be compelled to enter into a salary packaging agreement.

21.2 The terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions:

- (a) the employer shall ensure that the structure of any agreed remuneration package complies with taxation and other relevant legislation;
- (b) where there is an agreement to salary package, the agreement shall be in writing and made available to the employee;
- (c) the employee shall have access to details of the payments and transactions made on their behalf. Where such details are maintained electronically, the employee shall be provided with a printout of the relevant information;
- (d) the employer has the right to vary or withdraw from a salary packaging agreement and/or withdraw from offering salary packaging in the event of changes to the operation of legislation that are detrimental to, or increase the costs of, salary packaging arrangements;
- (e) prior to entering into any salary packaging agreements, the employee will be given the opportunity by the employer to seek independent advice in respect of salary package arrangements including advice from the union;
- (f) in the event that the employer withdraws from a salary packaging agreement, the individual employee's salary will revert to whichever is the higher of:
 - (i) the ordinary time rate of pay that applied to the employee prior to the commencement of the salary packaging agreement; or
 - (ii) the applicable rate specified clause 15 of this Award.
- (g) notwithstanding any of the above arrangements, the employer or employee may cancel any salary packaging agreements by the giving of one month's notice of cancellation to the other party;
- (h) Superannuation Guarantee Contributions will be calculated with reference to the ordinary time rate of pay the employee would have been entitled to receive but for the salary packaging arrangement;
- (i) any allowance, penalty rates, overtime, payment for unused leave entitlements shall be calculated by reference to the ordinary time rate of pay which would have applied to the employee but for the salary packaging arrangement
- (j) unless there is agreement between the employer and the employee to the contrary, all salary packaging arrangements shall cease during any period of leave without pay, including periods of unpaid sick leave.

22. Superannuation

22.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the

superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.

- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

Part 5—Hours of work and related matters (Childcare and Support Workers and Teachers in Other than Pre-Schools)

23. Ordinary hours of work and rostering

Note: Part 5 does not apply to teachers in pre-schools

23.1 Ordinary Working Hours

- (a) The ordinary working hours, inclusive of crib breaks, shall not, without payment of overtime, exceed an average of thirty eight per week. Such hours shall be worked as follows:
 - (i) Day Workers –between the hours of 6.00 a.m. and 7.00 p.m. on any five days, Monday to Saturday inclusive.
 - (ii) Shift Workers - Fixed shifts of a duration provided for in Clause 24.2, Arrangement of 38 hour week, to be worked on five days of the week, Monday to Sunday inclusive.
- (b) Such hours may be worked in either one or two shifts on each day provided that the total hours worked on any day shall not exceed the applicable hours provided for in Clause 24.2 without payment for overtime.

23.2 Arrangement of 38 hour week.

- (a) Ordinary hours of work in accordance with clause 24.1, Hours of this award, may be worked in one of the following ways:
 - (i) by working a 19 day month;
 - (ii) by working 3 x 10 hour shifts and 1 x 8 hour shift per week;
 - (iii) by working 4 x 9.5 hour shifts per week;
 - (iv) by working 5 x 7.6 hour shifts per week;
 - (v) by working 4 x 8 hour shifts and 1 x 6 hour shift per week; or
 - (vi) any other agreed method.

23.3 Working a 19 day month

For the purpose of clause 24.2(a)(i):

- (a) An employee shall accrue two hours per week or 0.4 of an hour (i.e., 24 minutes) for each eight hour shift or day worked, to give an entitlement to take an accrued rostered day off in each four week cycle paid as though worked.
- (b) For accrual purposes each day of paid annual leave taken and any public holiday occurring during any cycle of four weeks shall be regarded as a day worked
- (c) An employee who has not worked a complete four week cycle in order to accrue a rostered day off, shall be paid a pro rata amount for credits accrued for each day worked in such cycle payable for the rostered day off or, in the case of termination of employment, on termination, (i.e. an amount of 24 minutes for each 8 hour day worked).
- (d) An employee shall accrue an entitlement to rostered days off in any twelve months of consecutive employment to the maximum provided in the following table:

Number of Weeks Establishment Open Per Year	Accrued Days Off Per Year
41 weeks	10.25
42 weeks	10.50
43 weeks	10.75
44 weeks	11.00
45 weeks	11.25
46 weeks	11.50
47 weeks	11.75
48 weeks - 52 weeks	12.00

- (e) The taking of accrued rostered days off may be organised by one of the following methods:
 - (i) In establishments operating 48 - 52 weeks, by the employer fixing a particular day off in a four week cycle or, by mutual agreement, the employee accruing sufficient days to enable the taking of rostered days off to a maximum block of five (5) days at any one time in any twelve (12) months of consecutive employment, and provided that no two (2) blocks of rostered days off shall follow on consecutively. The employee shall take such rostered days off at times mutually agreed with the employer.
 - (ii) In establishments operating 41 - 47 weeks, accumulated rostered days off shall be taken during non-term time, including but not limited to the period of paid stand-down provided in Clause 27.2 of this award.

23.4 Notification of Hours

- (a) The employer shall, by legible notice displayed at some place accessible to the employees, notify the ordinary hours of commencing and ceasing work and the ordinary times of meal or crib breaks. Such hours, once notified, shall not be changed without the payment of overtime except by seven days' clear notice to the employee, or by mutual agreement between the employer and employee to waive or shorten the notice period, or due to an emergency outside the employer's control.

Notation: An 'emergency' must be given its ordinary meaning. It is not to be understood to comprehend routine events, such as an employee having to remain at the end of their rostered hours, when a parent fails to arrive on time to collect a child. Such work, if required will involve overtime to which the award overtime provisions will apply.

Notation: For part time employees see Clause 26.2(b) of this award.

23.5 Make Up Time

- (a) An employee may elect, with the consent of their employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.

24. Breaks

24.1 Rest Pauses

- (a) All employees shall be allowed a rest break of ten minutes per shift between the second and third hour from starting time and, if the work exceeds seven hours from starting time the employee shall be allowed a further rest break of ten minutes, to be taken at a time mutually convenient to the employer and the employees in the establishment concerned, subject to the provisions relating to the supervision of children under the relevant legislation.

24.2 Crib Breaks

- (a) Not more than thirty minutes nor less than twenty shall be allowed to employees each day for a midday crib break between the fourth and fifth hour if such employee's shift exceeds five hours from commencement of work. Such crib breaks shall be taken at the premises of the employer and shall be counted as time worked.
- (b) Provided however that an employee may, by agreement with the employer, leave the premises during the crib break. Where such reasonable request has been made by an employee, the employer shall give favourable consideration to any such request having regard to the provisions of the relevant legislation relating to supervision of children. Such time away from the premises shall not

count as time worked nor shall any payment be made for such time. A record of unpaid lunch periods shall be kept in the Time and Wages records.

24.3 Unpaid Meal breaks

- (a) An employer may direct an employee to take an unpaid meal break of up to thirty minutes between the fourth and fifth hour of the employee's shift provided that the shift exceeds five hours and having regard to the provisions of the relevant legislation relating to supervision of children. During this unpaid time, the employee may leave the premises. This clause shall apply in lieu of clause 25.2.

24.4 Employee performing duties during meal break.

- (a) If an employee is required to perform duties during an unpaid meal break, the employee shall be paid at time and one half for the time worked with a minimum payment as for fifteen minutes work. Where the employee works more than fifteen minutes, the payment shall be as for thirty minutes.

25. Overtime and penalty rates

25.1 Saturday and Sunday Work

- (a) Day workers required to work their ordinary hours on a Saturday shall be paid at the rate of time and one-quarter.
- (b) Shift workers required to work their ordinary hours on a Saturday and/or Sunday shall as prescribed by clause 24.1(a)(ii), be paid for all time so worked at the following rates:

Saturday Work: Time and one-half

Sunday Work: Double time

- (i) The rates prescribed in this clause shall be in substitution for and not cumulative upon the shift work allowances prescribed in this award.
- (c) Overtime - Day Workers
 - (i) Overtime performed on Saturday shall be paid for at the rate of time and one half for the first three hours and double time thereafter with a minimum payment of not less than four hours at such rate.
 - (ii) Overtime performed on Sundays shall be paid for at the rate of double time.
- (d) Overtime - Shift Workers
 - (i) Overtime performed on Saturday shall be paid for at the rate of time and one half for the first two hours and double time thereafter.
 - (ii) Overtime performed on Sundays shall be paid for at the rate of double time.

25.2 Overtime

- (a) Subject to subclause (c) of this clause and subclauses (c) and (d) of clause 26.1, Saturday and Sunday Work of this award, for all work done outside ordinary hours the rates of pay shall be time and one half for the first two hours and double time thereafter. In computing overtime each day's work shall stand alone.
- (b) Part-time employees -

 - (i) If a part-time employee agrees to work additional hours, the additional hours must be paid at the same rate as full time employees are paid under the award. The work must be paid for at the ordinary hourly rate for all hours unless they fall outside the ordinary hours fixed by this Award for full-time employees. Any hours worked in addition to ordinary full-time hours must be paid at the overtime rate applicable to full-time employees under this Award.
- (c) Time Off in Lieu of Overtime : Where an employee performs duty on overtime the employee may at the employee's request and with the agreement of the employer subsequently be released from duty in ordinary hours subject to the following conditions:

 - (i) Where an employee elects to take any period/s of time off in ordinary hours in accordance with this clause such time off shall be with pay and shall equate to the relevant period/s of overtime worked;
 - (ii) Payment for any period/s of overtime worked and in relation to which the employee elects to take time off may be paid by the employer to the employee in the pay period in which the time off is taken;
 - (iii) An employee may not accumulate more than 20 hours of equivalent time off which shall be taken within four weeks of its accrual. Where such time off is not taken the period/s of overtime referable thereto shall be paid for in the next relevant pay period at the appropriate overtime rate otherwise applicable at the option of the employer.
- (d) Reasonable Overtime: Subject to clause (e) an employer may require an employee to work reasonable overtime at overtime rates.
- (e) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (f) For the purposes of clause (e) what is unreasonable or otherwise will be determined having regard to:

 - (i) any risk to employee's health and safety;
 - (ii) the employee's personal circumstances including any family responsibilities;
 - (iii) the needs of the workplace or enterprise;
 - (iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and

- (v) any other relevant matter.

26. Leave and Public Holidays

27. Annual leave

27.1 Annual leave is provided for in the NES.

27.2 Payment During Vacations:

Where an establishment is closed during a vacation period, other than Christmas vacation, and no work is available, an employee shall be paid the ordinary rate of pay during such a period.

During the Christmas vacation only an employee may be directed by the employer to take annual leave. An employee with insufficient credit of annual leave to maintain the ordinary rate of pay during the said vacation period may be stood down without pay for a maximum of four weeks.

Notwithstanding the above, in establishments operating more than 48 weeks per year, an employer may direct an employee to take annual leave where two or more years of leave has accrued or during a period when all or part of the establishment is closed or partially closed.

27.3 Annual Leave Loading

When entering onto a period of annual leave an employee shall be paid an additional loading of 17.5% of their base rate of pay for leave in which they have become entitled. No leave loading shall be payable in respect of leave taken in advance of accrual.

28. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the NES.

29. Community service leave

Community service leave is provided for in the NES.

30. Public holidays

30.1 Public holidays are provided for in the NES.

30.2 An employer and employee may agree to substitute another day for a public holiday by mutual agreement

30.3 An employee who works at the direction of the employer on a public holiday or a day substituted for such shall be paid for such work at the rate of double time and half with a minimum payment of four hours.

31. Miscellaneous

32. Meetings and Activities

32.1 An employee may be required to attend up to a maximum of two hours per month and co-ordinators and Directors up to four hours per month where such time involves parental meetings, staff meetings and other duties not including the supervision of children without any payment being due. Part-time employees may be required to attend such meetings outside of ordinary hours on a pro rata basis.

32.2 For any hours required to be worked in excess of those specified above an employee will either be paid or provided with time in lieu in accordance with Clause 26 Overtime of this award.

33. Professional Development, Training and Planning

33.1 Employees are responsible for ensuring that they are aware of new developments in early childhood education. However, the parties recognise that continuing professional development of employees is a joint responsibility of both the employer and the employee.

33.2 The employer may request an employee to attend any courses in non-term time or after hours relating to professional development, training and planning. The employee cannot unreasonably refuse to attend such courses, provided that a full-time employee who receives no more than four weeks' annual leave in a calendar year shall receive time in lieu for time spent at any courses outlined in this clause.

Schedule A—Supported Wage

Schedule B—Training Wage