



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Swinburne University of Technology
(AG2017/4693)

SWINBURNE UNIVERSITY OF TECHNOLOGY – PATHWAYS AND VOCATIONAL EDUCATION AGREEMENT 2017

Educational services

DEPUTY PRESIDENT KOVACIC

CANBERRA, 20 DECEMBER 2017

Application for approval of the Swinburne University of Technology - Pathways and Vocational Education Agreement 2017.

[1] An application has been made for approval of an enterprise agreement known as the *Swinburne University of Technology - Pathways and Vocational Education Agreement 2017* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Swinburne University of Technology. The Agreement is a single enterprise agreement.

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

[3] The National Tertiary Education Industry Union and the Australian Education Union being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) I note that the Agreement covers these organisations.

[4] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 27 December 2017. The nominal expiry date of the Agreement is 31 December 2020.



Swinburne University of Technology – Pathways and Vocational Education Enterprise Agreement 2017

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SECTION 1: ABOUT THIS AGREEMENT

1 Who does the Agreement apply to?

The Agreement covers and applies to the Employees, the Employer and the Unions.

2 When does the Agreement operate?

The Agreement commences operation seven days after approval by the Commission and will nominally expire on 31 December 2020.

3 Words and phrases used in the Agreement

Some of the words and phrases in the Agreement have a particular meaning. These words and phrases can identified by the capitalisation of the first letter of the word or the first letter of each word in the phrase. The definitions for these words and phrases can be found in Schedule 1.

SECTION 2: WORKING ARRANGEMENTS

4 Types of employment

4.1 Commitments

The Parties to this Agreement agree to prioritise ongoing employment over fixed-term and casual employment. However the Parties also recognise that some fixed-term or casual employment will continue to be necessary. Such employment will be in accordance with the terms of this Agreement.

4.2 Employees will be employed in one of the following types of employment:

- 4.2.1 ongoing employment on a full-time or regular part-time basis; or
- 4.2.2 fixed-term employment on a full-time or regular part-time basis; or
- 4.2.3 employment as a Casual Employee.

5 Contract of employment

5.1 On appointment, the Employer shall provide Employees with a letter of appointment, which stipulates the type of employment and contains the following information:

- 5.1.1 the date employment is to commence;
- 5.1.2 the classification and rate of pay to be received by the Employee;
- 5.1.3 the time-fraction to be worked by the Employee, other than a Casual Employee;
- 5.1.4 the other main terms and conditions of employment applicable to the Employee including usual work location and the documentary or other recorded sources from which such conditions derive and the duties and reporting relationships to apply upon appointment;
- 5.1.5 for a fixed-term Employee, the date employment is to cease;
- 5.1.6 for a fixed-term Employee, the reason for the fixed-term contract of employment;
- 5.1.7 for a Casual Employee, the duties required and the rate of pay for each class of duty required.

5.2 An Employee may apply to the Employer for a temporary adjustment of the time fraction applying to their position. The Employer may agree to a temporary adjustment of the time fraction applying to the position for a specified period of time having regard to the Employee's reasons and the operational requirements of the Employer. Reversion to the prior time fraction shall occur at the conclusion of the temporary adjustment unless otherwise agreed between the Employee and the Employer.

6 Full-time employment

- 6.1 A full-time Employee is employed for an average of 38 ordinary hours per week. Ordinary hours may be averaged over a period of up to 12 weeks provided that any such arrangement complies with clause 13.8.

7 Part-time employment

- 7.1 A part-time Employee is employed for an average of less than 38 ordinary hours per week. Ordinary hours may be averaged over a period of up to 12 weeks provided that any such arrangement complies with clause 13.8.
- 7.2 The terms of the Agreement apply on a pro rata basis to part-time Employees.
- 7.3 Prior to commencement of employment, the Employer and a part-time Employee will agree on the Employee's pattern of attendance. The agreed pattern of attendance may only be changed by mutual agreement between the Employer and the Employee; however, the Employer may request a change to the Employee's pattern of attendance and the Employee may only refuse such a request on reasonable grounds, including, but not limited to, where an Employee has primary carer responsibilities or other employment.

8 Fixed-Term employment

- 8.1 The Employer will only engage Employees on fixed-term contracts in circumstances where:
- 8.1.1 replacement of staff on leave is required;
 - 8.1.2 a new program area has been introduced no more than three years ago;
 - 8.1.3 a short-term (no greater than three years) program area is introduced;
 - 8.1.4 the viability of an existing program is threatened:
 - 8.1.4.1 based on a two-year demonstrated downward trend in student numbers; or
 - 8.1.4.2 by a decision of an External Party that will result in a major change to funding and/or government policy.

In the event that the Employer engages an Employee on a fixed-term contract in accordance with clause 8.1.4.1 or 8.1.4.2, the Employer shall, upon request by the Employee and/or the Union(s), present the evidence that was relied upon by the Employer in engaging the Employee on that fixed-term contract;
 - 8.1.5 the Employer has made a definite decision to close a program area;
 - 8.1.6 an Employee with current industry experience is required for a limited term; or

- 8.1.7 the Employee is engaged to work on a specific task or project that has an identifiable completion date or outcome. For the avoidance of doubt, a standard teaching period is not considered to be a specific task or project.

9 Casual employment

- 9.1 An Employee may only be employed as a Casual Employee where the work to be performed is of an irregular nature or for a short period of time.
- 9.2 For the purposes of clause 9.1, **a short period of time** means:
- 9.2.1 where the purpose of the casual employment is to replace an Employee on approved leave, up to 30 days. A Casual Employee in this circumstance may be required to take the full allocation of teaching duties of the Employee being replaced; or
- 9.2.2 the work to be performed does not exceed eight hours of Teaching Duties per week or, by mutual consent, up to a maximum of 21 hours of Teaching Duties in any one week, to a maximum of 720 hours of Teaching Duties per year. However, the maximum of 21 hours of Teaching Duties per week may be exceeded by mutual agreement, subject to no Casual Employee exceeding 42 hours of Teaching Duties in a two-week roster period.
- 9.3 A Casual Employee shall be paid the appropriate rate as set out in Schedule 2. The Teaching Duties rate for a Casual Employee is inclusive of 0.5 hours of preparation and correction. Any correction required in excess of 0.5 hours (as agreed to in advance by the Employee's line manager) shall be paid at the Non-Teaching Duties rate.
- 9.4 Where the Employer considers it desirable for a Casual Employee to attend meetings or to attend professional development sessions, these hours shall not be included in the 720 hour maximum referred to in clause 9.2.2 and the Employee will be paid at the Non-Teaching Duties rate prescribed by the Agreement.
- 9.5 The following clauses do not apply to Casual Employees, except to the extent expressly provided for in the relevant clause:
- 9.5.1 clause 12 – work location and non-teaching time;
- 9.5.2 clause 17 – accident make up pay;
- 9.5.3 clause 20 – annual leave;
- 9.5.4 clause 21 – personal/carer's leave;
- 9.5.5 clause 23 – parental leave;
- 9.5.6 clause 26 – recognition of cultural obligations;
- 9.5.7 clause 27 – leave for industrial dispute resolution training purposes;
- 9.5.8 clause 28 – study leave;

- 9.5.9 clause 29 – sabbatical leave;
 - 9.5.10 clause 35 – disciplinary procedures;
 - 9.5.11 clause 36 – redundancy; and
 - 9.5.12 clause 37 – notice of termination.
- 9.6 The allocation of duties for a Casual Employee will be consistent with clauses 13.8 and 13.9 of the Agreement, but the remainder of clause 13 does not apply to Casual Employees.
 - 9.7 The rates of pay for Casual Employees are as per clause 15.1 and Schedule 2 and Casual Employees are entitled to the loadings as per clause 15.6, but the remainder of clause 15 does not apply to Casual Employees.
 - 9.8 Unless the Casual Employee agrees otherwise, the Employer may only require a Casual Employee to perform more than one session of Teaching Duties on a particular day during the ordinary span of hours identified in clause 11.2 if there is a break of no more than three hours between the sessions of Teaching Duties.
 - 9.9 The Employer must roster a Casual Employee for a minimum of three consecutive hours of work when performing Teaching Duties. The three hours of work may be entirely Teaching Duties or a combination of Teaching Duties and non-Teaching Duties. If the Employer intends to cancel a shift of a Casual Employee, the Employer must give the Employee a minimum of two hours' notice before the shift commencement time. If the Employer fails to provide the requisite two hours' notice, the Employee must be paid for a minimum of three hours' work at the applicable rate of pay.
 - 9.10 In the event that the Employer requires a Casual Employee to attend a specified work location for the purpose of performing Service Duties, the Casual Employee must be engaged for a minimum of two hours. If the Employer no longer requires a Casual Employee to attend a specified work location for the purpose of performing Service Duties, the Employer must give the Employee a minimum of two hours' notice. If the Employer fails to provide the requisite two hours' notice, the Employee must be paid for a minimum of two hours' work at the applicable rate of pay.
 - 9.11 The minimum engagements set out in clauses 9.9 and 9.10 are not cumulative. If, on a particular day, the requirements of both clauses are met in relation to a particular Casual Employee, that Employee will be entitled to the minimum engagement in clause 9.9 only.

10 Conversion

General

- 10.1 An Employee must not be engaged and re-engaged nor have their hours reduced in order to avoid any obligation under this clause.
- 10.2 At the time of appointment, the Employer shall advise a fixed-term or Casual Employee of the conversion provisions in this Agreement and a copy of the conversion provisions shall be made available to such Employees at the time of appointment.

- 10.3 The Employer shall also take reasonable steps from time to time to inform Casual Employees and fixed-term Employees of the conversion provisions of the Agreement.
- 10.4 Conversion may be to either an ongoing or fixed-term employment. The minimum time fraction offered to the Employee will be calculated based on their average hours of work across the 24-month period immediately prior to conversion. The conversion offer shall also constitute (and include other details as are required for) a contract of employment under clause 5 of the Agreement.
- 10.5 Employees converted under this clause will not have their casual service count as service for the purpose of calculating any other entitlements except for:
- 10.5.1 long service leave; and
 - 10.5.2 any applicable unpaid parental leave; and
 - 10.5.3 subject to meeting the qualification requirements of Schedule 4 and clauses 15.3.1.1 and 15.3.1.2 of the Agreement, where a Casual Employee is converted to a fixed-term or ongoing position by the Employer each 400 Teaching Duties of casual prior service with the Employer shall be recognised as one increment when establishing the commencing salary.

Casual to fixed-term or ongoing employment

- 10.6 An Employee who has been employed as a Casual Employee on a regular and systematic basis in the same or a similar role for a continuous period of 18 months will be offered a fixed-term or ongoing contract of employment, provided that:
- 10.6.1 the work of the position is still required;
 - 10.6.2 the Employee has the qualifications and experience required for the position as set by this Agreement, any relevant regulatory body, government and/or legislation;
 - 10.6.3 the Employee has not been subject to any formal process in relation to the Employee's unsatisfactory conduct and/or performance within the immediately preceding six-month period (excepting circumstances where the process cleared the Employee of any unsatisfactory performance and/or conduct). The Employer shall not initiate or unduly stall a disciplinary process for the purpose of avoiding its obligations under these conversion provisions; and
 - 10.6.4 a fixed-term contract of employment will only be offered if one or more of the circumstances listed in clause 8.1 of this Agreement apply. In the absence of any of the circumstances listed in clause 8.1 applying to the Employee, the Employer will offer the Employee ongoing employment.
- 10.7 The Employer will assess eligibility for conversion in accordance with clause 10.6 in May (**First Conversion Period**) and November (**Second Conversion Period**) each year. For Employees assessed as eligible in the First Conversion Period, any offer of fixed-term or ongoing employment must have a start date of no later than 1 July of that calendar year. For Employees assessed as eligible in the Second Conversion Period, any offer of fixed-

term or ongoing employment must have a start date of no later than 1 February of the following year.

- 10.8 If there are more eligible Employees under clause 10.6 or 10.12 than available ongoing or fixed-term positions, the Employer will determine an objective merit-based process by which to select the Employees who will be converted into those available ongoing or fixed-term positions.
- 10.9 For the purposes of this clause, occasional and short-term work performed by the Employee in another classification, job or department shall not affect the Employee's eligibility for conversion.
- 10.10 An Employee who is offered fixed-term or ongoing employment in accordance with this clause may elect to accept the offer or to reject the offer and remain a Casual Employee. If the Employee does not accept the offer within two weeks of receiving the offer, the Employee is deemed to have rejected the offer.
- 10.11 If an Employee rejects an offer of employment under this clause, the Employee will not be offered fixed term or ongoing employment in any subsequent Conversion Periods, unless and until the Employee gives written notice to the Employer that they wish to be considered in future Conversion Periods.

Fixed-term to ongoing employment

- 10.12 Where a fixed-term Employee has been employed on a fixed-term contract; or a series of fixed-term contracts in the same or similar role, for a continuous period of service of at least 2 years (minimum of 45 weeks per calendar year), the Employee will be offered the position on an ongoing basis provided that:
 - 10.12.1 the work of the position is still required;
 - 10.12.2 they are not replacing a staff member who is on leave;
 - 10.12.3 the Employee is not engaged to work in a new program area which was introduced no more than three years ago;
 - 10.12.4 the Employee is not engaged to work in a short-term (no greater than three years) program area;
 - 10.12.5 the Employee is not engaged to work in a program area where the viability of the program is threatened;
 - 10.12.5.1 based on a two-year demonstrated downward trend in student numbers; or
 - 10.12.5.2 a decision by an External Party that will result in a major change to funding and/or government policy.

In the event that the Employer does not offer conversion on the basis of this sub-clause, the Employer shall, upon request by the Employee and/or the Union(s), present the evidence that was relied upon by the Employer in deciding not to offer conversion;

- 10.12.6 the Employee is not engaged to work in a program area which the Employer has made a definite decision to close;
 - 10.12.7 the Employee is not engaged to work on a specific task or project that has an identifiable completion date or outcome. For the avoidance of doubt, a standard teaching period is not considered a specific task or project; and
 - 10.12.8 the Employee has not been subject to any formal process in relation to the Employee's unsatisfactory conduct and/or performance within the immediately preceding six-month period (excepting circumstances where the process cleared the Employee of any unsatisfactory performance and/or conduct). The Employer shall not initiate or unduly stall a disciplinary process for the purpose of avoiding its obligations under these conversion provisions.
- 10.13 The Employer will assess eligibility for conversion in accordance with clause 10.12 in May (**First Conversion Period**) and November (**Second Conversion Period**) each year. For Employees assessed as eligible in the First Conversion Period, any offer of ongoing employment must have a start date of no later than 1 July of that calendar year. For Employees assessed as eligible in the Second Conversion Period, any offer of ongoing employment must have a start date of no later than 1 February of the following year.
- 10.14 If there are more eligible Employees under clause 10.6 or 10.12 than available ongoing positions, the Employer will determine an objective merit-based process by which to select the Employees who will be converted into those available ongoing positions.
- 10.15 For the purpose of this clause, occasional and short-term work performed by the Employee in another classification, job or department shall not affect the Employee's eligibility for conversion.
- 10.16 An Employee who is offered ongoing employment in accordance with this clause may elect to accept the offer or to reject the offer and remain a fixed-term Employee. If the Employee does not accept the offer within two weeks of receiving the offer, the Employee is deemed to have rejected the offer.
- 10.17 If an Employee rejects an offer of employment under this clause, the Employee will not be offered ongoing employment in any subsequent Conversion Periods, unless and until the Employee gives written notice to the Employer that they wish to be considered in future Conversion Periods.

SECTION 3: HOURS OF WORK

11 Hours of work

11.1 The ordinary hours of work are an average of 38 hours per week for a full-time Employee and pro rata for a part-time Employee based on their time fraction. Ordinary hours may be averaged over a period of up to 12 weeks in accordance with clause 13.8. Subject to the provisions of the Agreement, an Employer may, from time to time, request an Employee to work reasonable additional hours.

11.2 Span of ordinary hours

11.2.1 The span of ordinary hours is from 7:30 am to 6:00 pm, Monday to Friday.

11.2.2 However, the Employer may request that an Employee work ordinary hours on one Evening per week, Monday to Friday, without a penalty loading applying to that work. An Employee may refuse the request on reasonable grounds including, but not limited to, where an Employee has primary carer responsibilities.

11.3 Employees shall not be required to work for more than five hours without being allowed an unpaid meal break of at least 30 minutes. Employees shall not be required to take meal breaks of more than one hour. Employees shall not be required to attend during meal breaks. Employees shall be entitled to take their lunch break between the hours of 12.00 midday and 2.00 pm and shall be entitled to take an evening meal break between the hours of 5.00 pm and 7.00 pm, provided that an Employee will only be entitled to one meal break per day.

11.4 No Employee shall be required to work more than 10 hours in one day.

11.5 No Employee shall be required to commence work without having had a break of at least 10 hours after the conclusion of their rostered work on the previous day.

12 Work location and non-teaching time

Note: except for clause 12.2, this clause applies to part-time Employees on a pro-rata basis.

12.1 The Employer may direct Employees classified as Teachers to attend at a specified work location for up to 30 hours per week during the 42-week period referred to in clause 12.2. The Employee shall determine the location from which the remaining hours of work are performed, provided that:

12.1.1 those hours remain accountable work hours as per clause 13.1; and

12.1.2 the Employee is able to be contacted by their line manager during those hours.

12.2 Teaching Duties will not be rostered over more than 42 weeks in a calendar year. This clause 12.2 does not apply on a pro rata basis to part-time Employees.

- 12.3 Where an Employee takes more or less than four weeks of annual leave in a particular calendar year, the 42-week period referred to in clauses 12.1 and 12.2 will be reduced or increased in accordance with clause 20.3 or 20.4.
- 12.4 Employees classified as Teachers are entitled to at least 4 weeks (20 working days) per year during which no Teaching Duties may be performed and during which the Employee may determine the location from which work is performed (**Non-attendance Days**), provided that:
- 12.4.1 those weeks are accountable work hours as per clause 13.1; and
 - 12.4.2 the Employee is able to be contacted by their line manager during those hours;
 - 12.4.3 those weeks do not fall on a week in which Teaching Duties have been rostered in accordance with clause 12.2;
 - 12.4.4 the Employer may request an Employee to attend at a work location for all or part of a Non-attendance Day provided that the Employer gives the Employee at least 48 hours' notice and the attendance is not for the purpose of performing Teaching Duties. The Employee may only refuse such a request on reasonable grounds; and
 - 12.4.5 if an Employee attends at a work location on a Non-attendance Day in accordance with a request under clause 12.4.4, the Employer will then give the Employee a replacement Non-attendance Day and the Employee may request when that Non-attendance Day occurs. A replacement Non-attendance Day may occur during a week in which Teaching Duties have been rostered in accordance with clause 12.2.
- 12.5 Employees classified as Senior Educators are to perform work at an agreed location for 38 hours per week. The Employer will not unreasonably withhold its agreement to a request by the Employee to work from a particular location. If agreement cannot be reached, the Employer may direct the Employee to attend at a specified work location.
- 12.6 Patterns of attendance for part-time Employees will be agreed in accordance with clause 7.3.

13 Allocation of duties

Note: this clause applies to part-time Employees on a pro-rata basis.

- 13.1 Within a calendar year, Employees are accountable for 1748 hours of teaching and other duties. This is broken down as follows:

Maximum Teaching Duties:	up to 800 hours
Maximum preparation/correction duties:	up to 400 hours
Minimum Service Duties	at least 548 hours
TOTAL accountable hours:	1748 hours

- 13.2 The 1748 accountable hours are based on:
- 13.2.1 an average of 7.6 accountable hours per day over 230 days in the calendar year (equivalent to an average of 38 hours over 46 weeks);
 - 13.2.2 an Employee taking four weeks of annual leave per calendar year (not accountable); and
 - 13.2.3 83.6 hours of public holidays per calendar year (not accountable).
- 13.3 Where an Employee takes more or less than four weeks of annual leave in a particular calendar year, the Employee's accountable hours for that year will be reduced or increased in accordance with clause 20.3 or 20.4.
- 13.4 Teaching Duties and preparation/correction duties shall be proportionately reduced when Service Duties exceed 548 hours per year ($\frac{2}{3}$ of the excess Service Duties deducted from Teaching Duties, and $\frac{1}{3}$ of the excess Service Duties deducted from preparation/correction duties).
- 13.5 Where it is agreed in the teacher work plan that an Employee's preparation/correction duties will exceed 400 hours in a calendar year, there will be a proportionate reduction in that Employee's Service Duties.
- 13.6 The following time allowances are deducted from Teaching Duties hours:
- 13.6.1 curriculum time allowances as detailed in clause 13.18; and
 - 13.6.2 Manager, Senior Educator, Course Coordinator and Level Convenor time allowances as detailed in clause 13.19;
- 13.7 The following time allowances are deducted from Service Duties hours:
- 13.7.1 the OH&S time allowances as detailed in clause 13.20; and
 - 13.7.2 a minimum of 30 hours per year of professional development, including retraining and industrial release opportunities.
- 13.8 Consultation and agreement of the Employee, at the start of the averaging period referred to in clause 13.9, is required for an allocation of more than 21 hours of Teaching Duties in any one week, provided that an Employee shall not unreasonably refuse the Employer's request to perform an allocation of more than 21 hours of Teaching Duties in any one week.
- 13.9 Any agreement under clause 13.8 must not provide for more than an average of 21 hours of Teaching Duties per week over a period of up to 12 weeks.
- 13.10 Where an Employee is appointed for a period of less than the full calendar year or on a specific project, the maximum Teaching Duties that can be delivered are:
- Number of weeks of appointment x 21 hours per week (up to a maximum of 800 hours per year).

- 13.11 For the purposes of Teaching Duties and preparation/correction duties, an Employee whose services are terminated at the Employee's initiative or for just cause prior to the end of a full teaching year shall be deemed to have taught the whole of the year.
- 13.12 Duties shall be scheduled for periods of not less than four weeks (**the roster period**). An Employee's attendance pattern within the roster period may only be varied with the agreement of the Employee concerned. Allocations shall be made no less than two weeks prior to the commencement of each roster period.
- 13.13 The provisions of clause 13.12 shall not apply to the first four weeks of a teaching program in the first semester of each year.
- 13.14 Where classes are cancelled by the Employer, two weeks' notice of cancellation shall be provided to the Employee. Where two weeks' notice is not given, hours allocated for classes cancelled by the Employer will be deemed to have been taught.
- 13.15 Subject to clause 13.16, Employees on approved leave other than personal leave or annual leave shall be deemed to have performed four hours of Teaching Duties for each day of leave.
- 13.16 Deemed duties pursuant to clause 13.15 shall not be used for the purpose of calculating excess Teaching Duties payments under clause 15.7.
- 13.17 Teaching Duties allocated on days approved as personal leave shall be deemed to have been performed.
- 13.18 **Curriculum time allowances**
- 13.18.1 The maximum curriculum time allowance available to an Employee is 80 hours per year.
- 13.18.2 Curriculum time allowances are to be deducted from the maximum Teaching Duties.
- 13.18.3 Employees involved in courses which meet the following criteria shall receive a curriculum time allowance of up to 80 hours per year based on the relative proportion of each type of course taught.

Criteria	Allowance
Teaching programs accredited for the Victorian Certificate of Education	Up to 80 hours per year
Teaching modules or units in a Certificate IV program (including both nested and standalone Certificate IVs)	Up to 60 hours per year
Teaching modules or units in a Diploma level program or above	Up to 80 hours per year

Criteria	Allowance
Teaching in associate diploma programs or equivalent	Up to 80 hours per year
Preparation of classes and assessment of programs which are part of degree programs	Up to 80 hours per year
Teaching in courses and performing work which meets any of the following criteria: • moderation of assessments when required by the accredited program; • work being subject to formal out-of-class examination; • preparation of assessment materials for formal out-of-class assessment; and • preparation and development of learning or assessment materials for the use of teachers in competency, distance/flexible, articulated or other learning approaches	Up to 80 hours per year

13.19 **Managers, Senior Educators, Course Coordinators and Level Convenors time allowance**

Managers and Senior Educators shall receive deductions from Teaching Duties of up to 800 hours per year. Course Coordinators and Level Convenors shall receive deductions from Teaching Duties of up to 240 hours per year. In exceptional circumstances, a Course Coordinator or Level Convenor may be given a further deduction from Teaching Duties, at the Employer's discretion.

13.20 **OH&S time allowances**

OH&S representatives shall be released from normal duties or receive time allowances deducted from Service Duties as required in accordance with the *Occupational Health and Safety Act 2004* (Vic) including, but not limited to, for the purposes of attending required training.

14 **Teacher work plans**

Note: for the avoidance of doubt, the calculation of Teaching Duties for the purposes of the teacher work plan will be based on the definition of Teaching Duties in Schedule 1.

14.1 Line managers, in consultation with Employees, will be responsible for the appropriate and equitable distribution of workload within their management units.

14.2 The Parties agree that workloads will be regulated to ensure that Employees do not have excessive or unreasonable workloads.

- 14.3 Teacher work plans will be subject to an annual approach by line managers in consultation with individual Employees, with adjustment and review throughout each calendar year as required. Teacher work plans will reflect a fair, transparent and equitable workload in accordance with the provisions of this Agreement, particularly clause 13.
- 14.4 The teacher work plan shall allocate hours for duties and tasks which represent a fair, sufficient and accurate estimate of the time that a relevant, competent employee covered by the teacher work plan should take to perform that work at a professional standard.
- 14.5 An Employee will be provided with their individual teacher work plan and all relevant information pertaining to their workload within a reasonable time following the commencement of the applicable teaching period for their program area.
- 14.6 Within three months of the commencement of this Agreement, the Employer will update the teacher work plan tool to reflect the provisions of this Agreement and then:
 - 14.6.1 as an interim measure, whilst gathering feedback, the updated tool will be utilised for teacher work plans; and
 - 14.6.2 the Employer will provide the updated tool to the PAVE consultative committee and seek feedback about the tool; and
 - 14.6.3 the Employer will give genuine consideration to the feedback from the PAVE consultative committee before finalising the updated tool within six months of the commencement of this Agreement.

SECTION 4: PAY AND BENEFITS

15 Salaries and allowances

15.1 Employees covered by this Agreement shall be paid no less than the rate appropriate to their classification and mode of employment as specified in Schedule 2.

15.2 Commencing classification and salary

The commencing classification and salary of a new Employee shall be determined by the Employer in accordance with Schedule 4.

15.3 Incremental progression – Teacher Classification

15.3.1 Subject to this clause, within the rates specified in Schedule 2, Employees shall proceed by annual increment from the minimum to the maximum of the sub-divisional range appropriate to their classification and level on the anniversary of their date of appointment, subject to the following:

15.3.1.1 progression beyond classification Teacher Level 1.1 is subject to:

15.3.1.1.1 the Employee possessing a current Certificate IV in Training and Assessment, if the Employee is employed in a program area for which the relevant regulator (or equivalent body) requires the Employee to have a Certificate IV in Training and Assessment in order to teach unsupervised; or

15.3.1.1.2 the Employee having the relevant teaching qualifications and/or experience as required by the relevant regulator (or equivalent body) to permit them to teach unsupervised, if the Employee is employed in a program area which does not require the Employee to have a Certificate IV in Training and Assessment.

15.3.1.2 progression beyond classification Teacher Level 2.2 is subject to the Employee possessing a teaching qualification that is accredited at an AQF 5 level or higher, and which is applicable to the program area in which the Employee is employed; and

15.3.1.3 the Employee achieves a satisfactory outcome on the annual review of their performance.

15.3.2 Where a salary increment is intended to be deferred on the basis of an unsatisfactory annual performance review, such an increment can only be deferred where the following process has been followed:

15.3.2.1 the Employer has counselled the Employee and explained clearly:

15.3.2.1.1 the requirements that are expected;

- 15.3.2.1.2 how the Employee has failed to fulfil these requirements; and
- 15.3.2.1.3 the consequences of continued or repeated failure to meet these requirements; and
- 15.3.2.2 the Employer has provided the opportunity through mentoring, guidance and support to assist Employees who are not performing satisfactorily.
- 15.3.3 Salary progression can only be deferred where the process outlined above has been commenced early enough to ensure the Employee receives sufficient notice to enable improvement in performance, being at least three months before a decision is taken.
- 15.3.4 Where a decision is taken to defer salary progression, the Employee will be notified as soon as possible in writing and the reasons for the decision will be given. An Employee aggrieved by a decision may access the dispute resolution procedure in this Agreement.

15.4 **Higher duties allowance**

Where an Employee is required to perform the duties of a higher level position such as a Senior Educator Level for which the remuneration is higher than that of the Employee for a period longer than one week, they shall be paid that higher remuneration in proportion to the amount of the duties of the higher position performed. The Employee shall also receive such time allowances as prescribed in this Agreement that pertain to the role for which they are receiving the higher remuneration.

15.5 **Salary packaging**

Employees may elect to salary package employment benefits including superannuation in accordance with Government policy, taxation legislation and Employer policy in lieu of salary provided that their salary as specified in Schedule 2 shall be used for calculating all benefits or entitlements upon cessation of employment.

15.6 **Ordinary hours of work performed outside the span of ordinary hours**

- 15.6.1 An Employee may be requested to perform work as part of their ordinary hours of work outside the span of ordinary hours of duty as set out in clause 11.2.
- 15.6.2 The allocation of ordinary duties at such times shall only be determined following consultation with, and the agreement of, the Employee concerned.
- 15.6.3 Subject to prior approval from the Employee's manager for the work to be performed outside of the span, Employees shall be paid a loading for ordinary hours of work required to be performed outside the span of ordinary hours of duty as follows:
 - 15.6.3.1 for each hour worked on a Monday to Saturday until 10pm, a loading of 25% of the Base Hourly Rate shall be paid;

- 15.6.3.2 for each hour worked on a Monday to Saturday after 10pm, a loading of 75% of the Base Hourly Rate shall be paid; and
- 15.6.3.3 for each hour worked on a Sunday, a loading of 50% of the Base Hourly Rate shall be paid.

15.7 **Excess Teaching Duties**

- 15.7.1 An Employee performs excess Teaching Duties if the Employee performs:
 - 15.7.1.1 more than 800 hours of Teaching Duties (minus allowances) in a year (pro rata for part-time Employees);
 - 15.7.1.2 more than 21 hours of Teaching Duties in a week (pro rata for part-time Employees), except where such work is subject to an agreement made under clause 13.8; or
 - 15.7.1.3 work in excess of an agreement made under clause 13.8.
- 15.7.2 An Employee shall be paid for excess Teaching Duties in accordance with this clause.
- 15.7.3 The allocation of excess Teaching Duties is determined following consultation with, and agreement of, the Employee concerned provided that an Employee shall not unreasonably refuse the Employer's request to perform excess Teaching Duties. Any discussion in relation to excess Teaching Duties will only occur after the total annual accountable hours in clause 13 are accounted for in the work plan. In determining whether the Employer's request is reasonable or an Employee's refusal is unreasonable, the principles of the criteria outlined below will be considered:
 - 15.7.3.1 any risk to the Employee's health and safety from working the additional hours;
 - 15.7.3.2 the Employee's personal circumstances, including family responsibilities;
 - 15.7.3.3 the needs of the department in which the Employee is employed;
 - 15.7.3.4 whether the Employee is entitled to receive excess Teaching Duties payments, penalty rates or other compensation for the additional hours, or receives a level of remuneration that reflects an expectation of working additional hours;
 - 15.7.3.5 the notice (if any) given by the Employer of any request or requirement to work the additional hours;
 - 15.7.3.6 the notice (if any) given by the Employee of their intention to refuse to work the additional hours;
 - 15.7.3.7 the usual patterns of work in the department in which the Employee works;

- 15.7.3.8 the nature of the Employee's role and the Employee's level of responsibility; and
- 15.7.3.9 any other relevant matter.
- 15.7.4 Excess Teaching Duties occurring under clause 15.7.1.2 or clause 15.7.1.3 above and paid in accordance with this Agreement will not be counted towards the Employee's annual or weekly maximum Teaching Duties.
- 15.7.5 The following rates shall be paid for excess Teaching Duties:
 - 15.7.5.1 **Monday to Saturday inclusive**
 - 15.7.5.1.1 Where the excess Teaching Duties occur within the Employee's ordinary hours, an amount of 50% of the Base Hourly Rate, in addition to the salary already paid to the Employee for those hours.
 - 15.7.5.1.2 Where the excess Teaching Duties occur outside the Employee's ordinary hours, at the rate of 150% of the Base Hourly Rate for each hour of excess Teaching Duties for the first two hours on each day.
 - 15.7.5.1.3 Where the excess Teaching Duties occur outside the Employee's ordinary hours, at the rate of 200% of the Base Hourly Rate for each hour of excess Teaching Duties beyond the first two hours on each day.
 - 15.7.5.2 **Sunday**
 - 15.7.5.2.1 In all cases, at the rate of 200% of the Base Hourly Rate.
- 15.7.6 Payment for excess Teaching Duties shall be made in the next available pay period after a claim for payment is made, provided that an Employee may make a written request for payment in advance for excess Teaching Duties that are scheduled to be undertaken over a teaching period or a year in accordance with clause 15.7.3. In accordance with the written request, the Employer may approve that such payment would be included as a part of the Employee's fortnightly salary. The Employer may deduct, from the Employee's salary and/or termination of employment entitlements, any payments made under this clause for planned excess Teaching Duties that are not actually performed.

16 Superannuation

16.1 Superannuation legislation

- 16.1.1 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 clause 16.4 applies.

- 16.1.2 The rights and obligations in these clauses supplement those in superannuation legislation.

16.2 **Employer contributions**

16.2.1 **Ongoing and fixed-term Employees – except ESS Super defined benefit members**

The Employer must make superannuation contributions of 12% of Ordinary Time Earnings for each Employee, other than a Casual Employee. The contribution above is paid in satisfaction of any liability and to avoid the Employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that Employee.

16.2.2 **Ongoing and fixed-term Employees – ESS Super defined benefit members**

For an Employee who, as at the date that this Agreement commences operation, is a member of an ESS Super defined benefit scheme, the Employer must continue to make superannuation contributions in accordance with the Employee's pre-existing arrangements. If such an Employee ceases to be a member of an ESS Super defined benefit scheme, clause 16.2.1 will instead apply to that Employee.

16.2.3 **Casual Employees**

The Employer must make such superannuation contributions to a superannuation fund for the benefit of a Casual Employee as will avoid the Employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that Casual Employee.

16.3 **Voluntary Employee contributions**

- 16.3.1 Subject to the governing rules of the relevant superannuation fund, an Employee may, in writing, authorise their Employer to pay on behalf of the Employee a specified amount from either the gross or net wages of the Employee into the same superannuation fund as the Employer makes the superannuation contributions provided for in clause 16.2.

- 16.3.2 An Employee may adjust the amount the Employee has authorised their Employer to pay from the wages of the Employee from the first of the month following the giving of three months' written notice to their Employer.

- 16.3.3 The Employer must pay the amount authorised under clause 16.3.1 and 16.3.2 no later than 28 days after the end of the month in which the deduction authorised under clause 16.3.1 and 16.3.2 was made

16.4 Superannuation fund

Unless, to comply with superannuation legislation, the Employer is required to make the superannuation contributions provided for in clause 16.2 to another superannuation fund that is chosen by the Employee, the Employer must make the superannuation contributions provided for in clause 16.2 and pay the amount authorised under clause 16.3.1 and 16.3.2 to one of the following superannuation funds or its successor:

- 16.4.1 AustralianSuper;
- 16.4.2 Statewide Superannuation Trust;
- 16.4.3 Tasplan;
- 16.4.4 UniSuper Limited;
- 16.4.5 VicSuper;
- 16.4.6 any superannuation fund to which the Employer was making superannuation contributions for the benefit of its Employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector scheme; or
- 16.4.7 a superannuation fund or scheme of which the Employee is a defined benefit member.

17 Accident make up pay

- 17.1 Where an absence from duty results from an injury which is the subject of a claim for compensation under the *Accident Compensation Act 1985* (Vic) ("ACA") or the *Workplace Injury, Rehabilitation and Compensation Act 2013* (Vic) ("WIRCA") or any successor thereto, the Employee is entitled to personal leave on full pay equivalent to any personal leave credits accrued at the time of application for personal leave.
- 17.2 Where liability is subsequently accepted in accordance with the ACA or WIRCA, the Employee shall have any personal leave taken in respect of that injury re-credited.
- 17.3 Where an Employee is absent from duty as a result of sustaining an injury in respect of which the Employee is entitled to weekly payments under the ACA or the WIRCA or any successor thereto, the Employee shall be entitled to accident make up pay. The maximum period of accident make up pay is a continuous period of 52 weeks, or an aggregate of 52 weeks, in respect of the compensable injury.
- 17.4 For the purposes of clause 17.3 of this Agreement, accident make up pay shall mean a weekly payment of an amount being the difference between the weekly amount of compensation payable to the Employee under the ACA or the WIRCA, and an amount equal to the pre-injury average weekly earnings (as defined in the ACA or the WIRCA) of the Employee immediately prior to the injury.
- 17.5 An Employee is not entitled to access personal leave with pay while receiving compensation payments for the same hours under the ACA or WIRCA or any successor thereto.

- 17.6 Any period of time during which make-up pay is paid shall count as service for all purposes as if the Employee had not sustained an injury or incapacity. Accordingly, the Employee continues to accrue annual leave, personal leave and long service leave while in receipt of accident make-up pay as they were accruing such leave immediately prior to commencing accident make-up pay.

18 Reimbursement of expenses

- 18.1 The Employer shall reimburse an Employee any prior approved reasonable out-of-pocket expenses actually and necessarily incurred in the course of their authorised duties. The amount of an expense will be considered to be reasonable where it does not exceed the relevant amount set by the Australian Taxation Office ("ATO") as adjusted from time to time. Where an expense exceeds the relevant ATO amount, the Employer is only required to reimburse at the ATO rate, unless prior authorisation is provided to incur the greater expense. Where the ATO does not provide an amount for an expense, the Employer shall reimburse the actual amount incurred.
- 18.2 Allowable expenses include:
- 18.2.1 travel, accommodation, meals and other incidental expenses associated with overnight or longer absences from home, or part day duties away from the workplace including professional development;
 - 18.2.2 expenses incurred in the use of the Employee's private motor vehicle; and
 - 18.2.3 any other expenses incurred in the course of the Employee's employment and authorised by the Employer.
- 18.3 Ordinarily the Employer will provide transport for Employees engaged in authorised work. Employees may refuse work where transport is not provided. Where in the course of employment, an Employee is required to use their private motor vehicle, they shall be reimbursed mileage costs subject to obtaining prior approval from the Employer to use the vehicle and submission of a declaration stating the date, purpose of the trip, number of kilometres and type of vehicle.
- 18.4 In circumstances which warrant it, the Employer may enter an agreement with an Employee to provide comprehensive insurance cover for the private vehicle of the Employee where the Employee is required to use the private vehicle for work.

SECTION 5: PUBLIC HOLIDAYS AND LEAVE

19 Public holidays

- 19.1 An Employee is entitled to be absent from work on a public holiday in accordance with the NES.
- 19.2 Employees, other than Casual Employees, will be entitled to the following public holidays without loss of pay:
- 19.2.1 Christmas Day;
 - 19.2.2 Boxing Day;
 - 19.2.3 New Year's Day;
 - 19.2.4 Queen's Birthday;
 - 19.2.5 Australia Day;
 - 19.2.6 Good Friday;
 - 19.2.7 Easter Saturday;
 - 19.2.8 Easter Sunday;
 - 19.2.9 Easter Monday;
 - 19.2.10 ANZAC Day;
 - 19.2.11 Melbourne Cup Day;
 - 19.2.12 Labour Day;
 - 19.2.13 Friday before the AFL Grand Final;
 - 19.2.14 Any additional days declared or prescribed as public holidays in a State, Territory or locality where an Employee is primarily engaged to perform work for the Employer;
- Or any day substituted under Victorian law for a day that would otherwise be a public holiday.
- 19.3 Where the Employer requires an Employee to perform work on a public holiday, all work performed on that public holiday must be paid at 250% of the Employee's Base Rate of Pay.

20 Annual leave

- 20.1 This clause does not apply to Casual Employees.
- 20.2 Employees are entitled to 4 weeks of paid annual leave per year in accordance with the NES and this clause. Annual leave accrues progressively throughout a year of service according to the Employee's ordinary hours of work, and accumulates from year to year.
- 20.3 If an Employee takes more than 4 weeks of annual leave in a particular calendar year, then, for each additional week of annual leave taken:
- 20.3.1 the Employee's annual accountable hours reduce by 38 hours; and
- 20.3.2 The 42-week period referred to in clauses 12.1 and 12.2 reduces by one week.
- This clause applies on a pro rata basis for additional part weeks of annual leave taken and for part-time Employees.
- 20.4 If an Employee takes less than 4 weeks of annual leave in a particular calendar year, then, for each week of annual leave not taken:
- 20.4.1 the Employee's annual accountable hours increase by 38 hours; and
- 20.4.2 The 42-week period referred to in clauses 12.1 and 12.2 increases by one week.
- This clause applies on a pro rata basis for part weeks of annual leave not taken and for part-time Employees.
- 20.5 The Employer may direct an Employee who has more than 6 weeks of accrued annual leave to take a period of annual leave in order to reduce the Employee's accrued annual leave, provided that the Employee retains a balance of at least 4 weeks accrued annual leave after the direction. The Employer must provide an Employee with at least four weeks' written notice of a direction to take annual leave in accordance with this sub-clause.
- 20.6 Annual leave shall be taken at a mutually agreeable time having regard to the operation of the Employer and a request for leave shall not be unreasonably refused.
- 20.7 By agreement between the Employer and an Employee, a period of annual leave may be taken in advance of the entitlement accruing. Provided that, if the leave is taken in advance and the employment terminates before the entitlement has accrued, the Employer may make a corresponding deduction from any money due to the Employee on termination.
- 20.8 The Employer may specify a close-down period of up to 5 days, commencing no earlier than 24 December in one calendar year and ending no later than 2 January in the following calendar year, during which the Employer will be closing down its operations. For this period, the Employer may require an Employee to take annual leave, subject to the requirement that the Employee is given notice as soon as practicable of the Employer's intention to close down.

Annual leave loading

- 20.9 An annual leave loading of 17.5% of four weeks' pay shall be paid to each Employee in the last pay in August in respect of the preceding calendar year from 1 July to 30 June.
- 20.10 Upon termination of employment, an Employee will be paid the annual leave loading on a pro-rata basis.

21 Personal/carer's leave

- 21.1 Employees are entitled to personal/carer's leave in accordance with the NES and this clause.
- 21.2 An Employee, other than a Casual Employee, is entitled to 15 days of paid personal/carer's leave for each year of service.
- 21.3 An Employee, other than a Casual Employee, will be credited with 15 days of paid personal/carer's leave upon appointment. After completion of the first year of service, leave will accrue progressively during each year of service in accordance with the NES.
- 21.4 The Employer may grant paid personal/carer's leave in advance of the entitlement accruing. Provided that, if the leave is taken in advance and the employment terminates before the entitlement has accrued, the Employer may make a corresponding deduction from any money due to the Employee on termination.
- 21.5 **Evidence requirements**
 - 21.5.1 Within a 12-month period, an Employee may use up to 5 days of personal/carer's leave without providing evidence, provided that none of those absences are for 3 or more consecutive working days.
 - 21.5.2 Any absence on personal/carer's leave of 3 or more consecutive working days must be supported by evidence that would satisfy a reasonable person that the leave is being taken for a permissible purpose (for example, a medical certificate).
 - 21.5.3 Any absence which causes an Employee's total personal/carer's leave use to exceed 5 days within a 12-month period must be supported by evidence that would satisfy a reasonable person that the leave is being taken for a permissible purpose (for example, a medical certificate).
 - 21.5.4 Where a weekend and/or public holiday falls between two working days, those working days are considered to be consecutive working days for the purposes of this clause.
- 21.6 Where an Employee with accrued personal/carer's leave credits is ill or injured for at least 5 consecutive days whilst on long service leave, the Employee shall be entitled to be placed on personal/carer's leave upon provision of a medical certificate and no deduction shall be made from the Employee's long service leave credits for the days in question.

- 21.7 The Employer shall recognise the cumulative personal/carer's leave credits from the immediate prior employment at any of the following authorities or institutions:
- 21.7.1 a Victorian TAFE Institute or University; or
- 21.7.2 any other previous employer as may be agreed between the Employee and the Employer at the time of the Employee's appointment.
- 21.8 Any claim for recognition of cumulative personal/carer's leave must be made within six months of the Employee's date of appointment.
- 21.9 Employees, including Casual Employees, are entitled to 2 days of unpaid carer's leave for each occasion they need it. An Employee cannot take unpaid carer's leave during a particular period if the Employee could instead take paid personal/carer's leave.
- 21.10 An Employee who supports an individual experiencing domestic violence (not limited to a member of the Employee's Immediate Family) may use their carer's leave entitlements to accompany the individual to court, to the hospital or to mind their children.

22 Compassionate Leave

22.1 Summary of compassionate leave entitlements (including NES entitlements)

Employment type	Occasion	
	Death of Immediate Family or household member	Life-threatening illness or injury to Immediate Family or household member
Ongoing / fixed-term	3 days of paid leave per occasion	2 days of paid leave per occasion
Casual	2 days of unpaid leave per occasion	2 days of unpaid leave per occasion

- 22.2 Employees are entitled to compassionate leave in accordance with the NES and this clause.
- 22.3 In addition to the NES entitlements, and upon the provision of reasonable evidence, an Employee, other than a Casual Employee, shall be entitled to one additional day of paid leave, (up to 3 days' paid leave in total), on each occasion of the death of a member of the Employee's Immediate Family or household.

23 Parental leave

23.1 Summary of parental leave entitlements

23.1.1 Parental leave entitlements are summarised in the following table:

	Paid leave	Unpaid leave	Total
Non-Casual Employees			
Primary Caregiver – At least 12 months’ Continuous Service	14 weeks at full pay; and 38 weeks at 60% pay	Nil (Right to request up to 52 additional weeks unpaid leave)	52 weeks (Up to 104 weeks if request granted)
Primary Caregiver – Less than 12 months’ Continuous Service	One week at full pay per month of completed service	Up to 52 weeks, less any paid leave	52 weeks
Secondary Caregiver	20 days at full pay	Nil	20 days
Foster parent leave	6 weeks at 50% pay for a child under 5 years 3 weeks at 50% pay for a child 5 years or older	Nil	6 weeks 3 weeks
Casual Employees			
Eligible Casual Employee	Nil	52 weeks	52 weeks

23.1.2 This clause operates in conjunction with the NES provisions relating to parental leave. The NES contain entitlements to parental leave which may be accessed by an Employee in conjunction with, instead of or in addition to the entitlements under this clause, subject to the Employee meeting any eligibility requirements set by the NES. Such entitlements may include:

- 23.1.2.1 keeping in touch days;
- 23.1.2.2 unpaid special maternity leave;
- 23.1.2.3 transfer to a safe job;
- 23.1.2.4 paid/unpaid no safe job leave;
- 23.1.2.5 unpaid pre-adoption leave.

23.2 **Eligible Casual Employees**

- 23.2.1 An Eligible Casual Employee is entitled to 12 months of unpaid parental leave in accordance with the NES.
- 23.2.2 A Casual Employee, including an Eligible Casual Employee, is not entitled to any paid parental leave under this clause. The remainder of this clause does not apply to Casual Employees.

23.3 **Parental leave entitlements**

- 23.3.1 In order for an Employee to be entitled to parental leave in accordance with this clause, the leave must be associated with either:
 - 23.3.1.1 the birth of a child (or children from a multiple birth) of the Employee or the Employee's Spouse;
 - 23.3.1.2 the placement of a child with the Employee for adoption, provided that the child:
 - 23.3.1.2.1 is, or will be, under 16 years of age as at the day of placement, or the expected day of placement;
 - 23.3.1.2.2 has not, or will not have, lived continuously with the Employee for a period of 6 months or more as at the day of placement, or the expected day of placement; and
 - 23.3.1.2.3 is not (otherwise than because of the adoption) a child of the Employee or the Employee's Spouse.

23.3.2 **Primary Caregiver entitlement – at least 12 months' Continuous Service**

- 23.3.2.1 An Employee who is the Primary Caregiver for the child and who, as at the date of commencement of the leave, has completed at least 12 months' Continuous Service with the Employer since the commencement of their employment and/or since the end of their most recent period of parental leave is entitled to 52 weeks of parental leave consisting of:
 - 23.3.2.1.1 14 weeks of leave at the Employee's Full Rate of Pay; and
 - 23.3.2.1.2 38 weeks of leave at 60% of the Employee's Full Rate of Pay.
- 23.3.2.2 An Employee may, with the agreement of their manager, return to work during the period of up to 38 weeks' leave at 60% of the Employee's Full Rate of Pay. An Employee will not be able to work or be paid for more than their full time fraction with the combination of Primary Caregiver leave and work. The Employee must be the

Primary Caregiver for the child on the leave days in order to remain eligible for Primary Caregiver leave.

23.3.2.3 An Employee may, with the agreement of their manager, take 28 weeks of leave at 50% of the Employee's Full Rate of Pay instead of the 14 weeks' leave at the Employee's Full Rate of Pay, resulting in the Employee taking up to 66 weeks of parental leave.

23.3.2.4 If requested by the Employee, the paid Primary Caregiver leave may be paid to the Employee in advance as a lump sum.

23.3.3 **Primary Caregiver entitlement – less than 12 months' Continuous Service**

23.3.3.1 An Employee who is the Primary Caregiver for the child but who, as at the date of commencement of the leave, has completed less than 12 months' Continuous Service with the Employer since the commencement of their employment and/or since the end of their most recent period of parental leave is entitled to 52 weeks of parental leave consisting of:

23.3.3.1.1 one week of leave at the Employee's Full Rate of Pay for each completed month of Continuous Service (but not less than four weeks' paid leave); and

23.3.3.1.2 additional unpaid leave, such as to bring the total period of parental leave to no more than 52 weeks.

23.3.3.2 If requested by the Employee, the paid Primary Caregiver leave may be paid to the Employee in advance as a lump sum.

23.3.4 **Primary Caregiver entitlement – employee couples**

23.3.4.1 An Employee is a member of an employee couple if both the Employee and the Employee's Spouse are employees of the Employer (whether the Employee's Spouse's employment is covered by this Agreement or another instrument).

23.3.4.2 The combined amount of paid parental leave which may be taken by an employee couple cannot exceed 52 weeks of leave, unless an Employee is taking a portion of their leave at half pay in accordance with clause 23.3.2.3 (or the Employee's Spouse is taking a portion of their leave at half pay under an equivalent clause in the instrument that applies to them), in which case the period of leave will be extended accordingly.

23.3.5 **Taking Primary Caregiver leave**

23.3.5.1 If the Employee is the birth-mother and she will be the first Primary Caregiver, her period of birth-related parental leave must start no sooner than 20 weeks before the expected date of birth and must start no later than the date of birth.

23.3.5.1.1 However, if a pregnant Employee continues to work during the six-week period immediately preceding the expected date of birth, the Employer may require the Employee to provide a medical certificate stating that she is fit to perform her normal duties. If the Employee provides such a certificate, she may continue to work. If the Employee does not provide such a medical certificate within 7 days, or provides a medical certificate stating that the Employee is not fit to perform her normal duties, the Employer may require the Employee to commence Primary Caregiver leave.

23.3.5.2 If the Employee is not the birth-mother and they will be the first Primary Caregiver, their period of parental leave must start on the date of birth/placement.

23.3.5.3 If the Employee is the second Primary Caregiver, their period of parental leave must start immediately following the end of the first Primary Caregiver's period of parental leave.

23.3.5.4 Primary Caregiver leave must be taken in a single continuous period (except keeping in touch days and any part-time Primary Caregiver leave taken in accordance with clause 23.3.2.2).

23.3.5.5 Any paid Primary Caregiver leave must end before the child's first birthday (birth-related leave) or first anniversary of placement (adoption-related leave) unless the Employee is taking a portion of their leave at half pay in accordance with clause 23.3.2.3, in which case the end date will be extended accordingly.

23.3.6 **Secondary Caregiver entitlement**

23.3.6.1 An Employee who is a Secondary Caregiver for the child is entitled to 20 days' parental leave at the Employee's Full Rate of Pay.

23.3.6.2 An Employee may take both Secondary Caregiver and Primary Caregiver leave in relation to the same child; however, the Employee's entitlement to Primary Caregiver leave is reduced by the amount of any Secondary Caregiver leave taken by that Employee.

23.3.7 **Taking Secondary Caregiver leave**

23.3.7.1 Secondary Caregiver leave must start no sooner than three months before the expected date of birth/placement and must end no later than three months after the date of birth/placement.

23.3.7.2 Secondary Caregiver leave may be taken in a single continuous period or in separate, shorter periods.

23.4 Notice and evidence requirements

23.4.1 An Employee must give the Employer at least 10 weeks' written notice of their intention to take parental leave, including the proposed start and end dates. At this time, the Employee must also provide the following documentation to the Employer:

23.4.1.1 Birth-related leave

23.4.1.1.1 A statutory declaration stating:

23.4.1.1.1.1 that a child of the Employee or the Employee's Spouse has been or is expected to be born;

23.4.1.1.1.2 the actual or expected date of birth;

23.4.1.1.1.3 that the Employee will be either the Primary Caregiver or the Secondary Caregiver, as appropriate;

23.4.1.1.1.4 the particulars of any parental leave that the Employee's Spouse has taken or intends to take; and

23.4.1.1.1.5 that for the period of parental leave the Employee will not engage in any conduct inconsistent with their contract of employment; and

23.4.1.1.2 A medical certificate stating the actual or expected date of birth.

23.4.1.2 Adoption-related leave

23.4.1.2.1 A statutory declaration stating:

23.4.1.2.1.1 that a child is to be placed with the Employee for adoption;

23.4.1.2.1.2 the actual or expected date of placement;

23.4.1.2.1.3 the age of the child at the actual or expected date of placement;

23.4.1.2.1.4 that the Employee will be either the Primary Caregiver or the Secondary Caregiver, as appropriate;

23.4.1.2.1.5 the particulars of any parental leave that the Employee's Spouse has taken or intends to take; and

23.4.1.2.1.6 that for the period of parental leave the Employee will not engage in any conduct inconsistent with their contract of employment; and

23.4.1.2.2 A statement from an adoption agency or other appropriate body confirming the adoption, including the actual or expected date of placement.

23.4.2 At least four weeks before the intended commencement of parental leave, the Employee must give the Employer written confirmation of the intended start and end dates notified in accordance with clause 23.4.1, or advise the Employer of any changes to the start and end dates notified in accordance with clause 23.4.1.

23.5 Use of leave

23.5.1 During a period of unpaid parental leave or a period of parental leave at 50% or 60% of the Employee's Full Rate of Pay, an Employee may take annual, long service or personal/carer's leave, subject to the usual requirements for taking such leave.

23.5.2 Annual, long service or personal/carer's leave taken in accordance with clause 23.5.1 does not extend the Employee's parental leave entitlements.

23.5.3 An Employee cannot be paid for more than their full time fraction with a combination of paid parental leave and other leave taken in accordance with clause 23.5.1.

23.6 Varying parental leave

23.6.1 Extending Primary Caregiver parental leave

23.6.1.1 An Employee who has initially elected not to take their full entitlement to Primary Caregiver leave, may extend the period of Primary Caregiver leave on one occasion by giving the Employer at least 14 days' written notice, if the extension does not cause the total period of Primary Caregiver leave to exceed 52 weeks.

23.6.1.2 An Employee and the Employer may agree in writing to further extensions to the Employee's Primary Caregiver leave, if the extension does not cause the total period of Primary Caregiver leave to exceed 52 weeks.

23.6.2 Shortening Primary Caregiver leave

An Employee may apply to shorten a period of Primary Caregiver leave by giving the Employer at least 14 days' written notice. The Employer may grant or reject such an application at its discretion.

23.7 **Unplanned ending of parental leave**

23.7.1 If Primary Caregiver leave has commenced, or has been applied for but not yet commenced, and:

23.7.1.1 the Employee's pregnancy terminates other than by the birth of a living child; or

23.7.1.2 the child dies during the period that the Employee is on leave;

the Employee shall be entitled to fourteen weeks of paid leave and twelve weeks of unpaid leave, or such longer period of unpaid leave as may be certified by a medical practitioner up to a total of 52 weeks of combined paid and unpaid leave.

23.7.2 If Secondary Caregiver leave has commenced and the child dies during the period that the Employee is on leave, the Employee is entitled to up to ten days of unpaid leave, or such longer period of unpaid leave as may be certified by a medical practitioner up to a total of 4 weeks, in addition to any period of compassionate leave or personal/carers' leave that the Employee is otherwise entitled to under this Agreement.

23.8 **Extending parental leave beyond 52 weeks**

23.8.1 **Extending by up to a further 52 weeks**

An Employee who is on Primary Caregiver leave may request to take a period of unpaid parental leave for a period of up to 52 weeks immediately following the end of the Primary Caregiver leave period. The request must be in writing and must be given to the Employer at least four weeks before the end of the Primary Caregiver leave.

The Employer must give the Employee a written response to the request stating whether the Employer grants or refuses the request. The response must be given as soon as practicable, and not later than 21 days, after the request is made. If the Employer refuses the request, the response must set out the reason(s) for the refusal and the Employer may only refuse the request on reasonable business grounds.

23.9 **Returning to work**

23.9.1 At least four weeks before the end of the notified parental leave period, the Employee must give the Employer written confirmation of the Employee's return to work. Any variation or extension to the Employee's parental leave period must be in accordance with clause 23.5 or 23.7.

23.9.2 On ending parental leave, an Employee is entitled to return to their pre-parental leave position or, if that position no longer exists, an available position for which the Employee is qualified and suited nearest in status and pay to their pre-parental leave position.

- 23.9.3 An Employee returning to work from parental leave has the right to request to return to their pre-parental leave position on a part-time basis until the child reaches school age. The Employer will consider the request having regard to the Employee's circumstances and, provided that the request is genuinely based on the Employee's parental responsibilities, the Employer may only refuse the request on reasonable grounds related to the effect on the workplace or the Employer's business. Such grounds may include cost, lack of adequate replacement staff, loss of efficiency or the impact on customer service.

23.10 **Fixed-term Employees**

- 23.10.1 If a fixed-term Employee's employment ends upon the expiry of their fixed-term contract, their entitlement to parental leave will also end on that date, except as provided in clauses 23.10.2 or 23.10.3.
- 23.10.2 If a fixed-term Employee's contract expires during a period of Primary Caregiver leave or when the Employee is at least 20 weeks pregnant, the Employee is entitled to a payment equivalent to any remaining entitlement to Primary Caregiver leave, unless:
- 23.10.2.1 the Employee was offered and refused another contract of broadly comparable employment; or
 - 23.10.2.2 the work that the Employee was performing under the fixed-term contract is no longer required to be performed at all; or
 - 23.10.2.3 the Employee was engaged to replace a staff member on leave.
- 23.10.3 If a fixed-term Employee's contract expires during a period of Primary Caregiver leave and the Employee is re-engaged on another employment contract after a gap of no more than 12 months, the Employee is entitled to a payment equivalent to any remaining entitlement to Primary Caregiver leave that the Employee would have had if their employment had not ended.

23.11 **Foster parent leave**

- 23.11.1 The preceding provisions of this clause 23 do not apply to foster parent leave.
- 23.11.2 An Employee who is acting as the Primary Caregiver of a foster child is entitled to take the following periods of leave commencing on the date that the child enters their care:
- 23.11.2.1 if the child is under five years of age, six weeks' leave at 50% of the Employee's Full Rate of Pay;
 - 23.11.2.2 if the child is five years of age or older, but under 16 years of age, three weeks' leave at 50% of the Employee's Full Rate of Pay.

24 Long service leave

24.1 Employees are entitled to long service leave in accordance with this clause.

24.2 For the purposes of this clause 24:

Continuous Employment has the same meaning as defined in the LSL Act.

Ordinary Pay has the same meaning as defined in the LSL Act.

24.3 Entitlement

An Employee is entitled to 9.1 weeks of long service leave on Ordinary Pay on completion of 7 years' Continuous Employment and 1.3 weeks of long service leave for each additional year of Continuous Employment thereafter.

24.4 Payment of outstanding leave on termination

24.4.1 Where, on termination of employment, payment is made in lieu of long service leave accrued but not taken, the amount of such pay shall be computed on a daily basis equivalent to 1.3 weeks per annum.

24.4.2 An Employee, or where applicable their estate or legal representative, shall be entitled to payment in lieu of long service leave accrued but not taken as at the date of termination of employment where:

24.4.2.1 the employment of the Employee terminates after seven or more years' Continuous Employment; or

24.4.2.2 the employment terminates after four or more years' Continuous Employment with the Employer because the Employee is retrenched, retires on the grounds of age or ill health, or dies.

24.5 Public holidays during leave

Where a public holiday occurs during a period of long service leave granted to an Employee, the public holiday is not to be regarded as part of the long service leave taken by the Employee.

24.6 Recognised service

24.6.1 This sub-clause 24.6 does not apply to Casual Employees.

24.6.2 For the purpose of determining an Employee's entitlement to long service leave, employment at any of the following authorities or institutions shall count towards the Employee's Continuous Employment:

24.6.2.1 a Victorian TAFE Institute or University; or

24.6.2.2 a Victorian state primary school or state secondary school; or

24.6.2.3 the Public Service of Victoria; or

24.6.2.4 a public entity as defined by section 5 of the *Public Administration Act 2004* (Vic) or its successor; or

24.6.2.5 any other previous employer as may be agreed between the Employee and the Employer at the time of the Employee's appointment;

but the following shall not count towards the Employee's Continuous Employment:

24.6.2.6 any period of service for which payment in lieu of long service leave has been made by a previous employer or for which an Employee has an entitlement for payment in lieu by a previous employer; and

24.6.2.7 any period of service with an authority or institution listed above, which preceded a break of more than 12 months in the Employee's continuous employment.

24.6.3 An Employee must make any claim for recognition of prior service within six months of the date of appointment. The Employer must, as soon as possible after the date of the Employee's appointment, but no later than 12 months from that date, notify the Employee in writing as to the amount of prior service recognised towards the Employee's Continuous Employment for long service leave purposes.

24.7 Time of taking leave

An Employee may take long service leave at a time of their choosing if they provide 6 months' notice, or at a mutually agreeable time where a lesser period of notice is provided.

24.8 Payment for leave

The Employee may elect to convert all or part of the period of entitlements to double the period by taking leave on half pay.

24.9 Counting of casual service prior to 2 December 2015

24.9.1 Summary table

Type of employment pre-2 December 2015	Service counting towards Continuous Employment pre-2 December 2015	Service counting towards Continuous Employment post-2 December 2015
Ongoing or fixed-term employment on full-time, and/or regular part-time basis only	Service counts	Service counts

Type of employment pre-2 December 2015	Service counting towards Continuous Employment pre-2 December 2015	Service counting towards Continuous Employment post-2 December 2015
Combination of casual employment and non-casual employment	Both casual and non-casual service counts towards the qualifying period to access long service leave. But, only non-casual service counts for the purposes of calculating the amount of any long service. For the avoidance of doubt, when calculating entitlements to long service leave any entitlement to leave will be pro-rated to cover periods of ongoing Full-Time, regular Part-Time or fixed-term employment only.	Service counts
Casual employment only	No service counts	Service counts

24.9.2 The 2009 Agreement states that, Casual Employees were not entitled to long service leave. Pursuant to section 113A of the FW Act, this sub-clause specifies that the period prior to 2 December 2015 is an excluded period for the purposes of long service leave for those Casual Employees, subject to clauses 24.9.3 and 24.9.4.

24.9.3 Employees with a combination of casual and non-casual service prior to 2 December 2015

24.9.3.1 This sub-clause 24.9.3 applies if, prior to 2 December 2015, an Employee had a combination of:

24.9.3.1.1 periods of service as a Casual Employee; and

24.9.3.1.2 periods of service as an ongoing and/or fixed-term employee on a full-time or regular part-time basis.

24.9.3.2 The periods of service as a Casual Employee:

24.9.3.2.1 count towards the Employee's Continuous Employment for the purposes of the 7-year qualifying period for accessing long service leave set out in clause 24.3; but

- 24.9.3.2.2 do not count towards the Employee's Continuous Employment for the purposes of calculating the amount of long service leave to which the Employee is entitled.

24.9.4 Employees with casual service only prior to 2 December 2015

If an Employee's only service prior to 2 December 2015 was as a Casual Employee, the Employee's service prior to 2 December 2015 does not count, and never again counts, as service towards the Employee's Continuous Employment for any long service leave purposes.

25 Community service leave

- 25.1 Employees are entitled to community service leave in accordance with the NES and this clause.

Emergency service leave

- 25.2 An Employee may be granted up to 38 hours of leave, paid at the Employee's Base Rate of Pay in circumstances where an Employee is requested by an Emergency Service of which they are a member to attend an emergency situation which is causing or threatens to cause damage or injury to life, property or stock. The Employer may approve further leave with or without pay where the need is of such a magnitude as to warrant special consideration.
- 25.3 This provision shall apply to Casual Employees who would have continued to be engaged but for the emergency response situation. For this class of Employee, where no loss of wages would have occurred, the entitlement of the Employee shall be that of a right to return to their former position.
- 25.4 For the purpose of sub-clauses 25.2 and 25.3, "Emergency Service" includes the Country Fire Authority, Rural Fire Services, State Emergency Services, Coast Guard, and St John Ambulance.

Court attendance leave

- 25.5 An Employee, other than a Casual Employee, who is required to appear and serve as a juror in any court shall be granted leave at the Employee's Base Rate of Pay for the period during which the attendance of the Employee at court is required.
- 25.6 An Employee, other than a Casual Employee, who is required to attend court under subpoena or order shall be paid for the period of that attendance at the Employee's Base Rate of Pay.
- 25.7 To obtain approval for leave under this clause, the Employee must provide the Employer with documentation from the relevant court evidencing the Employee's attendance.

Defence reserve leave

- 25.8 An Employee, other than a Casual Employee, who is a voluntary member of the Australian defence reserves, may be granted up to two weeks of leave per calendar year,

paid at the Employee's Base Rate of Pay, for the purpose of attending annual defence reserve training. Such an Employee is also entitled to a further four days of paid leave per calendar year for the same purpose, on the certification of the commanding officer of the particular service unit concerned.

- 25.9 Applications for paid defence reserve leave must be submitted for approval to the Employer along with documentation from the relevant defence reserve evidencing the Employee's attendance at the annual training.

26 Recognition of cultural obligations

- 26.1 This clause does not apply to Casual Employees.
- 26.2 An Employee may be granted up to 10 days of unpaid ceremonial/cultural leave per calendar year where they have a ritual obligation to participate in ceremonial activity which requires absence from work. Such leave will also include leave to meet the Employee's customary and traditional law obligations and is not limited to Aborigines and Torres Strait Islanders.
- 26.3 Applications for leave under this clause must be accompanied by documentary evidence of the activity requiring attendance and absence from work.

27 Leave for industrial dispute resolution training purposes

- 27.1 This clause does not apply to Casual Employees.
- 27.2 Employees shall be entitled to a maximum of five days of leave per calendar year, or an aggregate of ten days of paid leave over two calendar years, paid at the Employee's Base Rate of Pay, to attend an activity or course of study which contributes to a better understanding of dispute resolution provisions of this agreement, provided that the training is not conducted by an "employee organisation" as defined by the FW Act.
- 27.3 Applications for such leave must be approved prior to the taking of leave. Such applications will not be unreasonably refused providing:
- 27.3.1 the application is accompanied by a letter from the authority conducting the activity or course stating that the Employee wishes to attend and providing notice as to date, time, location, duration and content or purpose of the activity or course; and
 - 27.3.2 the release of the Employee does not cause undue inconvenience to the Employer.
- 27.4 Leave granted under this clause:
- 27.4.1 may include any necessary travelling time in normal working hours immediately before or after the activity or course; and
 - 27.4.2 shall count as service for all purposes.

- 27.5 An Employee granted leave under this clause shall not be permitted to claim reimbursement of personal expenses such as fares, accommodation or meal costs in attending the activity or course.

28 Study leave

- 28.1 This clause does not apply to Casual Employees.
- 28.2 An Employee may be granted study leave or industry release in accordance with the Employer's policy in order to obtain formal qualifications and skills that are directly related to progression through the skill-based career path. Such leave may be granted on a paid or unpaid basis.
- 28.3 Applications for such leave shall not be unreasonably refused.

29 Sabbatical leave

- 29.1 This clause does not apply to Casual Employees.
- 29.2 On application, the Employer may grant an Employee sabbatical leave of one year, once in every five calendar years, on 80% of the Employee's annual Base Rate of Pay, subject to the Employee agreeing to have their annual Base Rate of Pay reduced by 20% for the relevant four year work period preceding the leave and the Employee entering an agreement with the Employer covering the terms and conditions of the sabbatical leave.
- 29.3 Unless otherwise agreed, the leave shall be taken immediately following the completion of the relevant work period during which the annual Base Rate of Pay was reduced.
- 29.4 Sabbatical leave shall count as service for all purposes.

30 Provisions to support victims of family or domestic violence

- 30.1 The Employer recognises that some of its staff may experience situations of violence and abuse in their domestic life which may impact on their attendance or performance at work.
- 30.2 The Employer accepts the definition of family violence as provided by the *Family Violence Protection Act 2008* (Vic) and recognises that it includes physical, sexual, financial, verbal or emotional abuse by a family or household member.
- 30.3 **Leave and support to staff experiencing family or domestic violence**
- 30.3.1 Employees experiencing family or domestic violence are entitled to five days of special paid leave for the purposes of attending medical appointments, legal proceedings, seeking safe housing or other activities related to dealing with family or domestic violence (supporting evidence or proof may be required subject to clause 30.4). This leave will be in addition to other existing leave entitlements.

- 30.3.2 In addition to the entitlement in clause 30.3.1, for Employees experiencing family or domestic violence the following forms of support, will be provided in the circumstances described:
- 30.3.2.1 **Additional Leave:** Where the period of leave in clause 30.3.1 is inadequate, additional paid leave will be available upon application to the Vice President, People and Culture. The amount of leave provided will be determined by the individual's situation through consultation between the Employee, the manager and People and Culture.
 - 30.3.2.2 **Individual support:** The Employer will, in consultation with the relevant manager, approve reasonable requests for the following:
 - 30.3.2.2.1 changes to hours of work and other appropriate flexible working arrangements;
 - 30.3.2.2.2 changes to phone numbers and/or email addresses;
 - 30.3.2.2.3 changes to work location.
- 30.4 The Employer at its discretion may request relevant supporting evidence which can take the form of a document issued by the police force, a court, a medical practitioner, a family violence support service, a lawyer, or a counselling professional.
- 30.5 The Employer will appoint at least two persons who have expertise supporting persons who are experiencing domestic violence to be contact points for staff affected by domestic violence and will publicise their contact details on a regular basis to all Employees.
- 30.6 All personal information concerning family or domestic violence will be kept confidential in line with relevant Employer policies and relevant legislation.
- 30.7 This clause applies to all Employees, including Casual Employees.

SECTION 6: FLEXIBILITY ARRANGEMENTS

31 Individual flexibility arrangement

31.1 The Employer and an Employee may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:

31.1.1 the arrangement deals with one or more of the following matters:

31.1.1.1 part-time employment;

31.1.1.2 annual leave loading;

31.1.1.3 hours of work; and

31.2 The Employer must ensure that:

31.2.1 the arrangement meets the genuine needs of the Employer and the Employee in relation to one or more of the matters listed in clause 31.1.1;

31.2.2 the arrangement is genuinely agreed to by the Employer and Employee;

31.2.3 agreement to a flexibility arrangement must not be a precondition for employment, reclassification or promotion;

31.2.4 the Employee is advised that they are entitled to have a representative negotiate a flexibility arrangement on their behalf, providing that there is not requirement for the consent of a third party to the arrangement as specified in section 203(5) of the FW Act;

31.2.5 The Employee and their representative must have at least three working days to considered the proposal; and

31.2.6 The Employee is provided with a copy of the written agreement and a copy of that agreement is retained as a time and wages record.

31.3 The Employer must ensure that the terms of the individual flexibility arrangement:

31.3.1 are about permitted matters under section 172 of the FW Act;

31.3.2 are not unlawful terms under section 194 of the FW Act; and

31.3.3 result in the Employee being better off overall than the Employee would be if no arrangement was made.

31.4 The Employer must ensure that the individual flexibility arrangement:

31.4.1 is in writing;

31.4.2 includes the name of the Employer and Employee;

- 31.4.3 is signed by the Employer and Employee and, if the Employee is under 18 years of age, signed by a parent or guardian of the Employee.
- 31.4.4 includes details of:
 - 31.4.4.1 the terms of the Agreement that will be varied by the arrangement;
 - 31.4.4.2 how the arrangement will vary the effect of the terms;
 - 31.4.4.3 how the Employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
- 31.4.5 states the day on which the arrangement commences.
- 31.5 The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 31.6 The Employer or Employee may terminate the individual flexibility arrangement:
 - 31.6.1 by giving no more than 28 days written notice to the other party to the arrangement; or
 - 31.6.2 if the Employer and Employee agree in writing at any time.

SECTION 7: CONSULTATION AND DISPUTE RESOLUTION

32 Consultation

32.1 This clause applies if the Employer:

32.1.1 proposes to introduce a major change to production, program, organisation, structure or technology that is likely to have a significant effect on the Employee(s); or

32.1.2 proposes to introduce a change to the regular roster or ordinary hours of work of Employee(s).

32.2 In this clause:

Relevant Employee(s) means the Employee(s) who may be affected by a change referred to in clause 32.1.

Major change

32.3 For a major change referred to in clause 32.1.1:

32.3.1 the Employer must notify the Relevant Employee(s) and their Union of the proposal to introduce the major change; and

32.3.2 clauses 32.4 to 32.9 apply.

32.4 The Relevant Employee(s) may appoint a representative for the purposes of the procedures in this clause.

32.5 If:

32.5.1 a Relevant Employee appoints, or Relevant Employees appoint, a representative for the purposes of consultation; and

32.5.2 the Employee or Employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.

32.6 As soon as practicable after the Employer has developed a change proposal, the Employer must:

32.6.1 discuss with the Relevant Employee(s) and their representatives:

32.6.1.1 the introduction of the change; and

32.6.1.2 the effect the change is likely to have on the Employee(s); and

32.6.1.3 measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employee(s); and

- 32.6.2 for the purposes of the discussion – provide, in writing, to the Relevant Employee(s) and their representatives:
 - 32.6.2.1 all relevant information about the change including the nature of the change proposed; and
 - 32.6.2.2 information about the expected effects of the change on the Employee(s); and
 - 32.6.2.3 any other matters likely to affect the Employee(s).
- 32.7 However, the Employer is not required to disclose confidential or commercially sensitive information to the Relevant Employee(s).
- 32.8 The Employer must give prompt and genuine consideration to matters raised about the major change by the Relevant Employee(s) and/or their representatives before a decision about implementation of the change is made.
- 32.9 Significant effects include:
 - 32.9.1 the termination of employment of Employee(s); or
 - 32.9.2 major change to the composition, operation or size of the Employer's workforce or to the skills required of Employee(s); or
 - 32.9.3 the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - 32.9.4 the alteration of hours of work; or
 - 32.9.5 the need to retrain Employee(s); or
 - 32.9.6 the need to relocate Employee(s) to another workplace, provided that this does not include instances where an Employee is already contracted to work across multiple workplaces operated by the Employer; or
 - 32.9.7 the restructuring of jobs.

Change to regular roster or ordinary hours of work

- 32.10 For a change referred to in clause 32.1.2:
 - 32.10.1 the Employer must notify the Relevant Employee(s) of the proposed change; and
 - 32.10.2 clauses 32.11 to 32.15 apply.
- 32.11 The Relevant Employees may appoint a representative for the purposes of the procedures in this clause.

32.12 If:

32.12.1 a Relevant Employee appoints, or Relevant Employees appoint, a representative for the purposes of consultation; and

32.12.2 the Employee or Employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.

32.13 As soon as practicable after proposing to introduce the change, the Employer must:

32.13.1 discuss with the Relevant Employees the introduction of the change; and

32.13.2 for the purposes of the discussion – provide to the Relevant Employees:

32.13.2.1 all relevant information about the change, including the nature of the change; and

32.13.2.2 information about what the Employer reasonably believes will be the effects of the change on the Employees; and

32.13.2.3 information about any other matters that the Employer reasonably believes are likely to affect the Employees; and

32.13.3 invite the Relevant Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

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

32.15 The Employer must give prompt and genuine consideration to matters raised about the change by the Relevant Employees before a decision about implementation of the change is made.

Employer's duty to be reasonable

32.16 The Employer shall take reasonable steps to mitigate the adverse effects of the change upon Employees

32.17 This clause shall not derogate from any other obligations the Employer has under this Agreement

32.18 At all stages during this consultation process the Employees may seek the assistance of a representative.

33 PAVE consultative committee

- 33.1 The Employer and the Union(s) shall establish a PAVE consultative committee with two representatives of each of the Employer and the Union(s). It is recognised that, from time to time, additional representation on behalf of the Employer or the Union(s) may be involved.
- 33.2 The committee shall be a forum for open discussion and shall meet regularly, and as required, to discuss matters involving implementation of the Agreement and matters affecting Employees generally.

34 Dispute resolution

- 34.1 Where there is a dispute between the Parties about any matters arising under the Agreement or in relation to the NES (including a dispute about whether the Employer had reasonable business grounds under subsection 65(5) or 76(4) of the FW Act), the procedures contained in this clause will be followed.
- 34.2 A dispute arising between an Employee or group of Employees and a line manager will, in the first instance, be discussed by them without delay in an effort to resolve the matter promptly. The Employee(s) may seek the assistance of the Union or other nominated employee representative. The line manager may also seek the assistance of a representative of the Employer.
- 34.3 Where the steps in clause 34.2 are unsuccessful or the Employer or Union wishes to raise a dispute, a representative of the Union or other nominated employee representative and a representative of the Employer will discuss the dispute and attempt to reach agreement to resolve the dispute.
- 34.4 Before the meeting in clause 34.3 occurs, the party that raises the dispute must provide the other party with a document that sets out full details of:
 - 34.4.1 the basis of the dispute; and
 - 34.4.2 the outcome sought by the party.
- 34.5 Where the dispute is not resolved under clause 34.3, at the request of any party to the dispute, a disputes committee will be convened within 5 working days of such a request being made, unless agreed otherwise. The disputes committee will consist of nominees of any party to the dispute, provided that any such nominee is not a practising lawyer.

The disputes committee will attempt to resolve the matter within 5 working days of its first meeting. Any resolution will be in the form of a written agreement subject, if necessary, to approval by the parties to the dispute.
- 34.6 Until the procedures described in clauses 34.2 to 34.5 have been exhausted:
 - 34.6.1 The status quo that existed immediately prior to the events that gave rise to the dispute will remain.
 - 34.6.2 The subject matter of the dispute must not be referred to the Commission by any party to the dispute.

- 34.6.3 Subject to clause 34.6.1, an Employee must continue to perform their work as they would normally unless they have a reasonable concern about an imminent risk to their health or safety. If the Employee does have a reasonable concern about an imminent risk to their health or safety, the Employee must comply with a direction given by the Employer to perform other duties available at the same workplace, or another workplace, unless:
- 34.6.3.1 the work is not safe; or
 - 34.6.3.2 applicable occupational health and safety legislation would not permit the work to be performed; or
 - 34.6.3.3 the work is not appropriate for the Employee to perform; or
 - 34.6.3.4 there are other reasonable grounds for the Employee to refuse to comply with the direction.
- 34.7 Where the dispute remains unresolved any party to the dispute may refer the matter to the Commission for conciliation and/or arbitration.
- 34.8 Subject to the legislative rights of any party to exercise a right of appeal against a decision of the Commission, the parties to the dispute agree to be bound by and implement any arbitrated decision of the Commission in resolution of the dispute.
- 34.9 The parties to the dispute may agree, but are in no way obliged to attempt to agree, to refer the dispute to a mediator and/or conciliator agreed to by the parties to the dispute. The parties to the dispute will implement any agreed outcome from the mediation and/or conciliation and the dispute will be resolved.

SECTION 8: DISCIPLINARY PROCEDURES, REDUNDANCY AND TERMINATION OF EMPLOYMENT

35 Disciplinary Procedures – unsatisfactory performance, misconduct and serious misconduct

35.1 This clause does not apply to Casual Employees or Employees who are in their first six months of employment.

35.2 Principles

These procedures are based on the principles of:

35.2.1 clarity;

35.2.2 fairness; and

35.2.3 openness;

and are meant to be understood by Employees and management alike.

35.3 General provisions

35.3.1 In relation to the operation of these procedures, line managers are responsible for:

35.3.1.1 ensuring that they are familiar with the procedures in this clause before commencing a process for managing unsatisfactory performance, misconduct or Serious Misconduct;

35.3.1.2 engaging with People and Culture at the earliest opportunity for guidance on the process to be followed; and

35.3.1.3 ensuring that they comply with the procedures outlined in this clause.

35.3.2 In the event that allegations of unsatisfactory performance, misconduct or Serious Misconduct are made against an Employee, the Employer will ensure that the relevant disciplinary process is initiated and concluded without undue delay.

35.3.3 The Employer and Employee will ensure that confidentiality is observed at all stages of these disciplinary processes.

35.4 Representation

An Employee may be represented by a representative of their choice at any stage of these processes. The Employer will inform the Employee of their right to representation at the commencement of each Stage of the relevant process.

35.5 **Unsatisfactory performance and misconduct**

- 35.5.1 Where the Employer considers the performance or conduct of an Employee to be unsatisfactory or inappropriate, but the Employee is not alleged to have engaged in Serious Misconduct, the following process will apply.
- 35.5.2 The Employee's line manager will notify the Employee of the specific concerns/problems relating to the Employee's performance or conduct in writing. The notification will also identify the Stage at which the process will commence and attach a copy of these procedures.
- 35.5.3 The line manager may bring the disciplinary process to an end during any Stage of the process, if the line manager determines that it is appropriate to do so.
- 35.5.4 The actions/measures developed at any Stage of the process may involve training, counselling and regular monitoring of the matter. Management will give all reasonable assistance to the Employee to enable improvements to their work performance and/or conduct to an acceptable level. The Employee will make all reasonable attempts to improve their work performance and/or conduct.
- 35.5.5 **Stage 1**
 - 35.5.5.1 The Employee's line manager will convene a meeting with the Employee to discuss the concerns/problems.
 - 35.5.5.2 At the meeting, the line manager will outline the concerns/problems in detail and provide any supporting evidence. The Employee will be given a chance to respond. The line manager and Employee will discuss the concerns/problems and (if appropriate) develop actions/measures to address the concerns/problems and timeframes for improvements to be demonstrated. Where agreement cannot be reached on appropriate actions/measures, the line manager will clearly indicate the required actions/measures and a reasonable timeframe(s) for those action/measures to be achieved.
 - 35.5.5.3 A written record of the actions/measures and timeframes will be kept and placed on the Employee's personnel file.
- 35.5.6 **Stage 2**
 - 35.5.6.1 If the concerns/problems continue, or if the notified concerns/problems relate to misconduct and are of a sufficiently serious nature to justify bypassing Stage 1, the Employee's line manager will convene a meeting with the Employee to discuss the concerns/problems relating to the Employee's performance or conduct.
 - 35.5.6.2 At the meeting, the line manager will outline the concerns/problems in detail and provide any supporting evidence. The Employee will be given a chance to respond. The line manager and Employee will discuss the concerns/problems and (if appropriate) develop

actions/measures to address the concerns/problems. Where agreement cannot be reached on appropriate actions/measures, the line manager will clearly indicate the required actions/measures to be achieved. Any actions/measures must be met within one month from the date of the meeting, unless the line manager agrees in writing to a longer period.

35.5.6.3 An outcome of the meeting may be that the Employee receives a first written warning.

35.5.6.4 A written record of the actions/measures and any written warning will be kept and placed on the Employee's personnel file.

35.5.7 **Stage 3**

35.5.7.1 If the concerns/problems continue, the Employee's line manager will convene a meeting with the Employee to discuss the concerns/problems relating to the Employee's performance or conduct.

35.5.7.2 At the meeting, the line manager and Employee will discuss and develop actions/measures to address the concerns/problems. Where agreement cannot be reached on appropriate actions/measures, the line manager will clearly indicate the required actions/measures to be achieved. Any actions/measures must be met within a period of no less than two weeks from the date of the meeting, unless the line manager agrees in writing to a longer period.

35.5.7.3 An outcome of the meeting may be that the Employee receives a second and final written warning.

35.5.7.4 A written record of the actions/measures and any written warning will be kept and placed on the Employee's personnel file.

35.5.8 **Outcome**

35.5.8.1 If the concerns/problems remain unresolved or reoccur after Stage 3, the line manager will meet with the Deputy Vice-Chancellor (PAVE) or nominee to determine an appropriate outcome.

35.5.8.2 Appropriate outcomes include, but are not limited to, termination of employment, demotion, transfer to a different position, a further written warning or termination of the disciplinary process.

35.5.8.3 The line manager will then meet with the Employee to notify them of the intended outcome and the Employee will be given a final opportunity to respond.

35.5.8.4 The line manager will consider any response provided by the Employee before confirming the outcome. Based on the Employee's response, the line manager may either confirm the outcome or determine that a different outcome is appropriate.

- 35.5.8.5 The Employee will receive confirmation of the final outcome in writing.
- 35.5.8.6 If the outcome is termination of employment, the Employee will be given notice of termination, or a payment in lieu of notice, in accordance with clause 37.

35.5.9 **Removal of documents from personnel file**

If after any warning, a period of 12 months elapses without any further warnings or action being required, all written notes and warnings relating to the Employee will be removed from the Employee's personnel file.

35.6 **Serious Misconduct**

- 35.6.1 Before summarily dismissing an Employee for Serious Misconduct, the Employer must take action in accordance with the following process.
- 35.6.2 The Employer must provide the allegations of Serious Misconduct to the Employee in writing.
- 35.6.3 At the time of providing the allegations, the Employer may suspend the Employee at their Full Rate of Pay, depending upon the circumstances and severity of the allegations.
- 35.6.4 The Employee is required to submit a written response to the allegations within 10 days of receiving the written allegations. If, due to extraordinary circumstances, the Employee requires additional time to complete their written response, the Deputy Vice-Chancellor (PAVE) shall determine a reasonable extension of time.
- 35.6.5 Based on the Employee's response, the Deputy Vice-Chancellor (PAVE) or nominee will determine whether an investigation is required.
- 35.6.6 If the Deputy Vice-Chancellor (PAVE) or nominee determines that an investigation is required:
 - 35.6.6.1 the Deputy Vice-Chancellor (PAVE) or nominee will appoint an impartial and suitably skilled investigator;
 - 35.6.6.2 the Deputy Vice-Chancellor (PAVE) or nominee will notify the Employee of the investigation and the identity of the investigator in writing;
 - 35.6.6.3 the investigator will conduct the investigation and prepare an investigation report for the Deputy Vice-Chancellor (PAVE) or nominee;
 - 35.6.6.4 the Deputy Vice-Chancellor (PAVE) or nominee will consider the findings of the investigation report and determine the appropriate outcome.

- 35.6.7 If the Deputy Vice-Chancellor (PAVE) or nominee determines that an investigation is not required, they will consider the available evidence and the Employee's response and determine an appropriate outcome.
- 35.6.8 Appropriate outcomes include, but are not limited to, termination of employment, demotion, transfer to a different position, a written warning or termination of the disciplinary process.
- 35.6.9 The Deputy Vice-Chancellor (PAVE) or nominee will meet with the Employee to notify them of the intended outcome and the Employee will be given a final opportunity to respond.
- 35.6.10 The Deputy Vice-Chancellor (PAVE) or nominee will consider any response provided by the Employee before confirming the outcome. Based on the Employee's response, the Deputy Vice-Chancellor (PAVE) or nominee may either confirm the outcome or determine that a different outcome is appropriate.
- 35.6.11 The Employee will receive confirmation of the final outcome in writing.
- 35.6.12 If the outcome is termination of employment for Serious Misconduct, the Employee is not entitled to notice of termination, or a payment in lieu of notice, in accordance with clause 37, and will be summarily dismissed.
- 35.6.13 **Removal of documents from personnel file**

If after a finding of Serious Misconduct that does not result in termination of employment, a period of 12 months elapses without any further warnings or action being required, all written notes and warnings relating to the Employee will be removed from the Employee's personnel file.

36 Redundancy

- 36.1 This clause does not apply to Casual Employees or fixed-term Employees.
- 36.2 If Employee(s)' positions become surplus to the Employer's requirements, the provisions of this clause apply.
- 36.3 Before applying the provisions of this clause, the Employer must consult with the affected Employees about the proposed change in accordance with clause 32, including notifying the Union(s) about the proposed change.
- 36.4 **Identification of surplus Employees**
 - 36.4.1 In circumstances where there is more than one Employee performing a particular position and some, but not all, of those Employees are surplus to the Employer's requirements, the Employer will adopt the following process.
 - 36.4.2 The Employer will seek expressions of interest for voluntary early separation from the potentially affected Employees.
 - 36.4.3 The Employer may only reject an expression of interest for voluntary early separation from an affected Employee where the selection of that Employee

creates a consequential vacancy or a deficit in the skills required by the Employer.

36.4.4 If the Employer accepts an expression of interest for voluntary early separation from an affected Employee, the Employee will receive their redundancy entitlements in accordance with clause 36.8.2.

36.4.5 Where insufficient volunteers or too many volunteers are forthcoming, the Employer shall determine which Employees are surplus to its requirements taking into account the following criteria:

36.4.5.1 the relative qualifications, skills and abilities between Employees as required for the continuing operation of the Employer;

36.4.5.2 any special qualifications or aptitude for the position(s) continuing to be required to be performed by the Employer; and

36.4.5.3 any reasons, including compassionate grounds, advanced by an Employee as to why they should or should not be identified as surplus.

36.4.6 Where a decision is to be made about Employees who are otherwise considered equal in relation to the criteria in clause 36.4.5, the Employee to be identified as surplus to requirements will be the Employee whose selection causes the least disruption to the continuing operation of the Employer.

36.5 **Redeployment**

36.5.1 An Employee who is surplus to requirements will be placed on a redeployment register for a redeployment period of 20 weeks. The Employer will notify the Employee in writing before placing the Employee on the redeployment register.

36.5.2 During the redeployment period, the Employee will be notified of suitable vacant positions with the Employer. The Employee must submit a written expression of interest for a vacant position by the relevant deadline in order to be considered for the position. If an Employee submits an expression of interest and the Employee meets all of the selection criteria (or could meet those criteria with reasonable retraining under clause 36.5.4), the Employee will be given preference over any candidates for whom the Employer does not have any redeployment obligations.

36.5.3 If an Employee is redeployed into a position at a lower level, the Employee's salary will be maintained at no less than their pre-redeployment salary for a period of two years from the date of redeployment.

36.5.4 **Retraining**

36.5.4.1 If the Employee submits an expression of interest for a position, but does not immediately meet all of the selection criteria (other than mandatory criteria), consideration will be given to the Employee's skills and whether the Employee could meet the selection criteria

with the provision of reasonable development and training (either on or off the job).

- 36.5.4.2 Where the selection committee and the Employee agree that the Employee will be able to satisfactorily perform the tasks and functions of the position with reasonable training and support, the Employee will be offered the position on a trial basis.
- 36.5.4.3 The duration of the training and support program must be negotiated prior to the Employee commencing in the position. If the duration of the program cannot be negotiated, the selection committee will determine the length of the program.
- 36.5.4.4 The Employer will cover the cost of the training and support program.
- 36.5.4.5 Time spent undertaking retraining forms part of the Employee's Service Duties.
- 36.5.4.6 Confirmation into the position will not occur until the Employee has satisfactorily completed the training and support program.
- 36.5.4.7 If the Employee is not confirmed in the position, the Employee will be placed back onto the redeployment register and the Employee's redeployment period will resume.

36.6 Redundancy

If an Employee has not been successfully redeployed by the end of their redeployment period, the Employee will be entitled to notice of termination and redundancy pay in accordance with this clause.

36.6.1 Notice of termination

The Employee is entitled to notice of termination, or a payment in lieu of notice, in accordance with clause 37.

36.6.2 Redundancy pay

The Employee is entitled to redundancy pay worked out using the following table and paid at the Employee's Base Rate of Pay for either their current ordinary hours of work or their average ordinary hours of work over their last two years of Continuous Service, whichever is greater:

Employee's period of Continuous Service with the Employer on termination	Redundancy pay period
At least 1 year, but less than 2 years	4 weeks
At least 2 years, but less than 3 years	6 weeks
At least 3 years, but less than 4 years	9 weeks

Employee's period of Continuous Service with the Employer on termination	Redundancy pay period
At least 4 years, but less than 5 years	12 weeks
At least 5 years, but less than 6 years	15 weeks
At least 6 years, but less than 7 years	18 weeks
At least 7 years, but less than 8 years	21 weeks
At least 8 years, but less than 9 years	24 weeks
At least 9 years, but less than 10 years	27 weeks
At least 10 years	30 weeks

36.7 Leave and expenses to attend interviews

An Employee who has been given notice of termination in accordance with clause 36.6.1 is entitled to reasonable leave, as determined by the Employer, at their Full Rate of Pay to attend necessary employment interviews. Where the expenses of attending such interviews are not met by the prospective employer, the Employer shall reimburse the Employee for such reasonable travel and other incidental expenses, as determined by the Employer.

36.8 Voluntary early separation

36.8.1 An Employee who is surplus to requirements may choose to end their employment at any time after the Employee has been notified that they are to be placed on the redeployment register.

36.8.2 If an Employee chooses to end their employment early in accordance with clause 36.4.4 or 36.8.1, the Employee will be paid redundancy pay and a payment in lieu of notice in accordance with clause 36.6, plus a payment in lieu of any unused redeployment period.

37 Notice of Termination

37.1 This clause does not apply to:

37.1.1 Casual Employees;

37.1.2 Employees whose employment is terminated because of serious misconduct; and

37.1.3 Employees engaged on a fixed-term contract whose employment is terminated because of the expiry of the fixed-term.

- 37.2 Subject to clause 37.4, an Employer must not terminate a fixed-term or ongoing Employee's employment unless the Employer has either:
- 37.2.1 Provided at least:
- 37.2.1.1 4 weeks' notice of termination of employment; or
- 37.2.1.2 5 weeks' notice of termination of employment if the Employee is over 45 years of age and has completed at least 5 years of Continuous Service; or
- 37.2.2 Paid to the Employee a payment in lieu of notice of at least the amount the Employer would have been liable to pay to the Employee at the Full Rate of Pay for the hours the Employee would have worked had the employment continued until the end of the minimum period of notice.
- 37.3 Subject to clause 37.4, a fixed-term or ongoing Employee may terminate the Employee's employment by providing 4 weeks' notice of termination of employment. In these circumstances, the Employer may elect to pay the Employee in lieu of part or all of the notice period.
- 37.4 The employment of a fixed-term or ongoing Employee with less than 6 months' service may be terminated by the Employer or the Employee by giving 1 weeks' notice of termination of employment (or, in the case of an Employer, a payment in lieu of notice).

SECTION 9: MISCELLANEOUS PROVISIONS

38 Industrial relations principles

The Parties commit themselves to the following industrial relations principles:

- 38.1 cooperative and consultative relationships between management, their Employees and the representative organisations of their choice;
- 38.2 management, Employee and union relationships based on mutual respect, trust and preparedness to consider alternative viewpoints;
- 38.3 collective negotiations between management and their Employees, involving a mutual problem solving approach focusing on long term gains for all Parties;
- 38.4 to work within a progressive industrial relations culture to achieve high performance with effective workplace partnerships;
- 38.5 recognition of an appropriate role for workplace representatives.

39 Occupational health and safety

- 39.1 The Employer is required to take steps to achieve, so far as is practicable, a healthy and safe work environment.
- 39.2 The Employer acknowledges its obligations under occupational health and safety legislation, regulations, codes of practice and guidelines.

40 Relationship to other instruments

- 40.1 The Agreement is not intended to exclude any provision of the National Employment Standards in the FW Act, except to the extent permitted by law. To the extent that a term of the Agreement is inconsistent with section 55 of the FW Act, the term will be read and interpreted so that it is consistent with section 55 of the FW Act.
- 40.2 The Agreement supersedes and entirely replaces any workplace instrument that previously covered or applied to Employees (except to the extent that is expressly provided for under the Agreement).
- 40.3 To the extent permitted by law, the Agreement operates to the exclusion of any award which may otherwise apply to the Employees.

41 Transitional provisions – allocation of duties

- 41.1 This clause applies to the 2017 calendar year only.
- 41.2 If this Agreement commences operation partway through the 2017 calendar year, any work performed in 2017 under the 2009 Agreement will be treated as follows:
 - 41.2.1 Work performed as teaching duty hours under the 2009 Agreement will be treated as if it had been performed as Teaching Duties under this Agreement

and will count toward the maximum Teaching Duties in clause 13.1, unless such work was performed and paid as excess teaching duty hours under the 2009 Agreement.

- 41.2.2 Work performed as preparation and correction non-scheduled duties under the 2009 Agreement will be treated as if it had been performed as preparation/correction duties under this Agreement and will count toward the maximum preparation/correction duties in clause 13.1.
- 41.2.3 Work performed as other scheduled duties and/or other non-scheduled duties under the 2009 Agreement will be treated as if it had been performed as Service Duties under this Agreement and will count toward the Employee's Service Duties in clause 13.1

42 Transitional provisions – dispute resolution

- 42.1 A dispute commenced under the 2009 Agreement but not concluded at the time at which this Agreement commences will, by force of this Agreement, continue to be dealt with in accordance with the 2009 Agreement until that dispute is resolved.

43 No Further Claims

- 43.1 It is a term of this Agreement that there will be no further claims on matters covered by the Agreement before its nominal expiry date.

Schedule 1 – Definitions

For the avoidance of doubt, a reference to a singular in this Agreement shall be construed to include the plural or vice versa, unless the context indicates otherwise.

Agreement means this enterprise agreement, the Swinburne University of Technology – Pathways and Vocational Education Agreement 2017.

Base Rate of Pay has the same meaning as in section 16 of the FW Act.

Casual Employee(s) means an Employee engaged by the hour and employed on an irregular basis or for a short period of time.

Commission means the Fair Work Commission or its successor.

Continuous Service means continuous service as defined by section 22 of the FW Act.

Course Coordinator means an Employee who is designated as a course coordinator by the Employer.

De Facto Partner means a person who, although not legally married to the Employee, lives with the Employee in a relationship as a couple on a genuine domestic basis (whether the Employee and the person are of the same sex or different sexes); and includes a former De Facto Partner of the Employee.

Eligible Casual Employee (for parental leave purposes) means a Casual Employee who:

- as at the date (or expected date) of birth or placement, has been employed by the Employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and
- but for the birth or placement, or expected birth or placement, would have a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.

Employee(s) means employee(s) of the Employer employed as:

- a TAFE teaching staff member;
- a staff member teaching ELICOS or Pathway programs; and/or
- a staff member responsible for the oversight or development of TAFE, ELICOS or Pathway programs.

Employer means Swinburne University of Technology.

Evening means 6:00 pm to 10:00 pm.

External Party means the Skills Commission, Government bodies or agencies, licensing or accrediting organisations, or industry bodies that determine the minimum qualifications requirements of their sector.

Full Rate of Pay has the same meaning as in section 18 of the FW Act.

FW Act means the *Fair Work Act 2009* (Cth).

Immediate Family means:

- a Spouse, De Facto Partner, child, parent, grandparent, grandchild or sibling of the Employee; or
- a child, parent, grandparent, grandchild or sibling of a Spouse or De Facto Partner of the Employee.

Level Convenor means an Employee who is designated as a level convenor by the Employer.

LSL Act means the Long Service Leave Act 1992 (Vic).

Manager means an Employee who is employed as a manager.

NES means the National Employment Standards in Part 2-2 of the FW Act.

Ordinary Time Earnings has the same meaning as given to it under the Superannuation Guarantee Charge Act 1992 (Cth) and the Superannuation Guarantee (Administration) Act 1992 (Cth).

Parties means the Employees, the Employer and the Union(s).

Primary Caregiver means the parent who meets the child's physical needs more than any other person. Only one person can be a child's primary caregiver on a particular day.

Secondary Caregiver means a parent of the child, but who is not the Primary Caregiver.

Serious Misconduct includes:

- wilful or deliberate behaviour by an Employee that is inconsistent with the continuation of the contract of employment;
- conduct which causes serious and imminent risk to:
 - the health or safety of a person; or
 - the reputation, viability or profitability of the Employer's business;
- the Employee, in the course of the Employee's employment, engaging in:
 - theft; or
 - fraud; or
 - assault;
- the Employee being intoxicated at work;
- the Employee refusing to carry out a lawful and reasonable instruction that is consistent with the Employee's contract of employment.

Service Duties means any duties within the scope of an Employee's role and classification, which are not Teaching Duties or preparation/correction duties.

Spouse includes a former spouse.

Teaching Duties means sessions of instruction and/or supervision and/or direct observation of student/s, including observation for the purposes of assessment; whether delivered at a campus of the Employer or elsewhere or whether delivered in person or by other means.

Union(s) means an employee organisation that was a bargaining representative for the Agreement and that has given written notice to the Commission under section 183 of the FW Act stating that the organisation wants the Agreement to cover it.

2009 Agreement means the Victorian TAFE Teaching Staff Multi-Business Agreement 2009.

Schedule 2 – Rates of pay

Ongoing and fixed-term Employees

Employees shall be paid the salary appropriate to their classification as set out in the table below:

Classification	Prior to commencement		On commencement +13.5%		From 01/07/2018 +2%		From 01/07/2019 +2%		From 01/07/2020 +2%	
	Annual Salary	Base Hourly Rate	Annual Salary	Base Hourly Rate	Annual Salary	Base Hourly Rate	Annual Salary	Base Hourly Rate	Annual Salary	Base Hourly Rate
SE3	\$93,689	\$47.25	\$106,337	\$53.63	\$108,464	\$54.70	\$110,633	\$55.80	\$112,846	\$56.91
SE2	\$90,998	\$45.89	\$103,283	\$52.09	\$105,348	\$53.13	\$107,455	\$54.19	\$109,604	\$55.27
SE1	\$88,305	\$44.54	\$100,226	\$50.55	\$102,231	\$51.56	\$104,275	\$52.60	\$106,361	\$53.65
T5	\$85,613	\$43.18	\$97,171	\$49.01	\$99,114	\$49.99	\$101,096	\$50.99	\$103,118	\$52.01
T4.2	\$79,262	\$39.98	\$89,962	\$45.38	\$91,762	\$46.28	\$93,597	\$47.21	\$95,469	\$48.15
T4.1	\$74,488	\$37.57	\$84,544	\$42.64	\$86,235	\$43.49	\$87,959	\$44.36	\$89,719	\$45.25
T3.2	\$72,573	\$36.60	\$82,370	\$41.54	\$84,018	\$42.37	\$85,698	\$43.22	\$87,412	\$44.08
T3.1	\$67,518	\$34.05	\$76,633	\$38.65	\$78,166	\$39.42	\$79,729	\$40.21	\$81,323	\$41.01
T2.2	\$66,138	\$33.36	\$75,067	\$37.86	\$76,568	\$38.62	\$78,099	\$39.39	\$79,661	\$40.18
T2.1	\$62,282	\$31.41	\$70,690	\$35.65	\$72,104	\$36.36	\$73,546	\$37.09	\$75,017	\$37.83

Classification	Prior to commencement		On commencement +13.5%		From 01/07/2018 +2%		From 01/07/2019 +2%		From 01/07/2020 +2%	
	Annual Salary	Base Hourly Rate	Annual Salary	Base Hourly Rate	Annual Salary	Base Hourly Rate	Annual Salary	Base Hourly Rate	Annual Salary	Base Hourly Rate
T1.2	\$57,407	\$28.95	\$65,157	\$32.86	\$66,460	\$33.52	\$67,789	\$34.19	\$69,145	\$34.87
T1.1	\$53,431	\$26.95	\$60,644	\$30.59	\$61,857	\$31.20	\$63,094	\$31.82	\$64,356	\$32.46

Casual Employees

Casual Employees shall be paid the rates as set out in the table below:

Casual hourly rates	Prior to commencement	On commencement +13.5%	From 01/07/2018 +2%	From 01/07/2019 +2%	From 01/07/2020 +2%
Diploma Qualified – Teaching Duties	\$67.57	\$76.69	\$78.23	\$79.79	\$81.39
Certificate IV Qualified – Teaching Duties	\$65.02	\$73.80	\$75.27	\$76.78	\$78.31
Diploma Qualified – Non Teaching Duties	\$45.92	\$52.12	\$53.16	\$54.22	\$55.31
Certificate IV Qualified – Non Teaching Duties	\$44.19	\$50.16	\$51.16	\$52.18	\$53.23

Schedule 3 – Classifications

CLASSIFICATION REVIEW

The Parties recognise that there is a need to revise and modernise the current classification structure to ensure that Employees receive appropriate recognition for the experience and/or qualifications they bring to their roles. To this end, the Parties commit to a cooperative approach to addressing this matter, which emphasises the need for joint participation and consultation.

The Parties agree to establish a Classification Structure Review Committee (CSRC) and meet within 12 months following the commencement of this Agreement. Following this initial meeting the Parties agree that they will meet on a regular basis for the life of the Agreement. The purpose of such meetings will be to identify any concerns regarding the classification structure and potential measures to address those concerns in a revised structure to be incorporated in a future agreement.

The CSRC will comprise of two representatives of the Employer and two elected employee representatives who may be from the Union(s).

CLASSIFICATION STANDARDS

General Classification Context and Task Level for Teachers and Senior Educators

Positions classified as Teacher or Senior Educator have the following characteristics. Some tasks will be more appropriate to the senior levels of the Teacher classification or to one of the streams within the Senior Educator classification.

- Work within the Employer policies, procedures and other legislative or regulatory requirements.
- Select and deliver appropriate teaching and learning materials.
- Develop and modify appropriate teaching and learning materials.
- Facilitate and assess the learning process of students in a range of contemporary TAFE settings.
- Determine the training needs of commercial clients.
- Maintain accurate records of student, progress and assessment in accordance with established policies and procedures.
- Prepare and maintain teaching and learning resources.
- Supervise and monitor student progress.
- Liaise with the employers of students, New Apprenticeship Centres and other institutions as appropriate to ensure the establishment of strong co-operative arrangements.
- Undertake administrative duties directly related to the teaching function, including the utilisation of the Employer's systems.
- Participate in meetings and other activities relevant to the role of the position and the organisational area.
- Participate in networks beyond the Employer.
- Provide pre-course advice to students and participate in student selection and induction.

Teacher Classification (T1 to T5)

Classification Context and Task Level

The Teacher classification encompasses duties and requirements applicable to new entrants into the Employer's teaching workforce and to experienced Teachers.

Teachers classified as Teacher Level 1 will generally be under close supervision and guidance of a Teacher Level 2 or above and their focus will generally be on working with students in a direct teaching role. The teaching function will develop with experience and more highly developed skills and knowledge.

As Employees progress to the higher Teacher levels they take responsibility within assigned areas of work for preparing, conducting and assessing TAFE education programs. They assist Senior Educators in a range of activities associated with the effective operation of TAFE education programs.

Teaching roles will include planning and conducting teaching, conducting and evaluating assessment and pastoral care.

In addition to the characteristics outlined in the "General Context and Task Level for Teachers and Senior Educators", the requirements and typical functions of a Teacher are consistent with the following:

Typical Functions

- Assist others with program related administrative tasks.
- Assist team members with resource evaluation and moderation of standards leading towards interpretation of course materials.
- Provide assistance with staff induction.
- Provide advice and guidance within areas of specialist expertise.
- Assist in providing advice with team developmental needs.
- Assist with counselling.
- Assist with staff selection.
- Determine instructional strategies.
- Coordinate student resources.
- Customise units and courses as appropriate to meet client needs.
- Liaise as appropriate with specialist inter-training provider networks and learning communities.
- Conduct teaching programs.
- Establish and maintain a learning environment, including encouraging students to take responsibility for their own learning.
- Assist with diagnosing learning difficulties and identifying appropriate teaching strategies.
- Assist in relation to the establishment, maintenance and review of teaching programs.

Judgement, Problem Solving, Accountability and Extent of Authority

- Provide basic pastoral care to students leading to more complex problem resolution.
- Exercise judgment and initiative.
- Supervise and guide entry level Teachers.
- Work independently and in a team environment.

- Plan and prioritise work schedule.
- Set and achieve teaching objectives.
- Manage the learning process, including student participation and preparation of student learning plans.
- Refer learning difficulties.
- Take an active role in own professional development.
- Provide authoritative advice to stakeholders in relation to learning needs of students and training needs of the Employer.
- Encourage and support innovative strategies.
- Provide leadership in specialist areas within the teaching department and across the Employer.
- Set priorities, plan and manage resources.
- Trial and report on innovative delivery strategies.

Organisational Relationships and Impact

- Consult and provide educational services under the direction of Senior Educators.
- Provide a well-developed range of teaching strategies to TAFE students and other clients both within and external to the Employer.
- Communicate with course stakeholders as appropriate.
- Plan and conduct information sessions and student selection processes, as appropriate.
- Provide contact point for course content and student issues.
- Undertake a range of administrative, coordination, and learning services activities directly related to the areas taught.

Specialist Skills and Knowledge

- Research, develop and improve TAFE curriculum and teaching and learning methods.
- Develop teaching and learning strategies and materials.
- Conduct student entry level assessment.
- Research and prepare own teaching materials and for utilisation across the Employer.
- Adapt learning and assessment materials to cater for different students, learning environments, facilities and resources.
- Develop leadership and mentoring skills.
- Develop project and or research skills.
- Moderate validation of outcomes.
- Develop curriculum and/or consultative duties as appropriate.
- Package accredited courses as identified.
- Develop and design courses.

General Background to Senior Educator Classifications

Definitions

Co-ordinate: To bring into common action; to harmonise; to integrate.

Supervise: To oversee for direction; to inspect with authority; to guide and inspect with immediate responsibility for purpose or performance; to superintend.

Manage: To administer, supervise and coordinate staff and resources and achieve a predetermined outcome.

Lead: To lead or direct a course or in the direction of; to channel, to direct the operations of.

Senior Educator 1 Classification

Classification Context and Task Level

Employees appointed to this classification may supervise an organisational unit and/or may perform high level specialist educational functions.

In addition to the provisions outlined in the descriptors for "General Context and Task Level for Teachers and Senior Educators" and the "Teacher Classification (T1 to T5)", the requirements and typical functions of a Senior Educator 1 are consistent with the following:

Typical Functions

- Coordinate and supervise resources.
- Manage a team of staff. .
- Manage the design, development, delivery and evaluation of innovative, customised, high quality vocational education and training.
- Induct staff.
- Coordinate administrative requirements.
- Produce tenders and submissions in conjunction with other Senior Educators and Teachers.
- Manage training needs analysis and skills audits for clients.
- Provide specialist skills as appropriate within the Employer, and the wider community in Victoria, nationally or internationally.
- Apply counselling skills as appropriate.
- Conduct action-based research and prepare briefing papers on curriculum, teaching or management services as appropriate.
- Maintain program operations data as per audit requirements.
- Ensure graduation candidates are verified.
- Ensure student results are completed.
- Develop individualised self-paced learning materials.
- Develop and implement assessment systems.

Judgement, Problem Solving, Accountability and Extent of Authority

- Knowledge of problem solving strategies.
- Coordinate and supervise a functional area of delivery through a range of activities including planning, budgeting, developing strategies, managing contracts and implementing policies.
- Establish timetables/timelines.
- Identify, negotiate and manage resource requirements.
- Plan and implement/coordinate programs/projects.
- Make discretionary decisions relative to delegated budget.

Organisational Relationship and Impact

- Contribute to the development of Employer-wide educational and administrative policies and procedures.

- Provide advice and make submissions to internal and external stakeholders.
- Provide professional advice and assistance to teaching staff and Employer clients on curriculum, educational or consultative service requirements for innovative and effective education and training which meets the needs of learners, the Employer and the community. The work may involve contractually negotiated industry, public sector, and community-based programs.
- Provide high-level professional advice and assistance to teaching staff and Employer clients.
- Represent the Employer or the TAFE system to external bodies.

Specialist Skills and Knowledge

- Knowledge of conflict resolution skills.
- Knowledge of negotiation strategies.
- Demonstrated highly developed teaching skills.
- Extensive knowledge and demonstrated skill of at least one teaching area.
- Demonstrated understanding of the application of the full range of teaching methodologies, techniques and standards appropriate to subject areas within management/leadership role.
- Keep abreast of and advise on current and emerging education trends.
- Develop effective processes for the evaluation and validation of programs, systems and structures within or external to TAFE.
- Develop and maintain quality control systems.
- Apply research, analytical and innovative skills.
- Apply extensive knowledge and experience in specialist expertise area(s).

Senior Educator 2 Classification

Classification Context and Task Level

Employees appointed to positions at this classification:

- Manage the educational and/or business activities and/or services of a large and complex organisational unit or units.
- Play a major role with senior representatives of associated client groups and other key stakeholders.
- Undertake a highly developed educational leadership role requiring extensive management and/or teaching skills.

In addition to the provisions outlined in the descriptors for "General Context and Task Level for Teachers and Senior Educators" and the "Teacher Classification (T1 to T5)", and the "Senior Educator I Classification", the requirements and typical functions of a Senior Educator 2 are consistent with the following:

Typical Functions

- Lead the design, development, delivery and evaluation of innovative, customised, high quality vocational education and training responses for identified students and clients.
- Manage recruitment and selection of staff.
- Manage induction process.
- Provide support and mentoring to team.
- Assist staff to identify professional development opportunities.

- Provide staff coaching and counselling.
- Propose and implement a range of programs/courses for future delivery together with other Senior Educators and Teachers.
- Examine and make recommendations on alternative flexible delivery strategies.
- Initiate project development.
- Provide advice on improvements to records management systems.

Judgement, Problem Solving, Accountability and Extent of Authority

- Well-developed problem solving skills.
- Manage resources and a team of staff providing services to students/commercial clients.
- Manage a functional or specialist area of delivery.
- Ability to lead and manage teaching programs.
- Operate within operational autonomy.
- Manage a budget.
- Provide necessary resources for program maintenance and development.
- Provide advice to Employer management on costing and resourcing implications of proposed programs.
- Advise on cost effective delivery strategies.
- Undertake responsibility for tenders and submissions.
- Coordinate staffing and resources across a number of campuses within a discipline area and/or external to the Employer.

Organisational Relationships and Impact

- Develop Employer-wide educational and administrative policies and procedures.
- Negotiate for internal and external resources.
- Play an active role in establishing and enhancing links with the greater community to further education in practice.
- Enable the efficient integration of delivery strategies across departmental boundaries.

Senior Educator 3 Classification

Classification Context and Task Level

Employees appointed to this classification:

- Are highly skilled educational leaders and managers who have acknowledged excellence in academic leadership and developing strategic directions.
- Have significant educational and/or business focussed functions and responsibilities.
- Have a strategic focus aimed at developing links within and external to the TAFE community, focusing on long-term staff projections and team developmental needs.

In addition to the provisions outlined in the descriptors for the "General Context and Task Level for Teachers and Senior Educators", the "Teacher Classification (T1 to T5)" and the "Senior Educator 1 & 2 Classifications", the requirements and typical functions of a Senior Educator 3 are consistent with:

Typical Functions

- Responsible for projects that involve major change.
- Plan long-term resourcing needs.

- Provide support to team.
- Research and initiate continuous improvement strategies in delivery, assessment strategies, modes of learning and reporting.
- In conjunction with other Senior Educators prepare and deliver professional development for Teachers.
- Make a significant contribution to teaching strategies and directions.
- Undertake a significant role in ensuring quality teaching recruitment, including induction.
- Significant contribution to the research, development and implementation of course for the education and/or professional development of teachers.

Judgement, Problem Solving, Accountability and Extent of Authority

- Demonstrated capacity to resolve complex problems.
- Lead and manage large functional or specialist operations.
- Provide academic leadership in the Employer and across the TAFE system.
- Operate within a high degree of operational autonomy.
- Lead and manage a complex team.
- Manage staffing projections.
- Evaluate team developmental needs including professional developmental plans and multi-skilling needs.
- Manage a substantial budget.

Organisational Relationship and Impact

- Negotiate extensively with Industry, Government and other stakeholders on matters that have significant, long-term, operational impact.
- Lead the development, review and implementation of Employer strategic educational plans, initiatives and policies.
- Highly developed capacity to resolve complex conflict.
- Make a significant contribution to strategic directions.
- Investigate costings and resource implications for program areas and negotiate recommendations.
- Source funding, partnership delivery opportunities and other innovative opportunities.
- Promote and represent the department or Employer regionally and beyond, including with government bodies.
- Build networks within the wider community and source and develop future training needs.

Schedule 4 – Commencing classification – qualification requirements

1. This Schedule shows the qualification requirements for the classifications in this Agreement. Such requirements together with the recognition of teaching and industrial experience or additional study are to be used to determine the commencing salary of an Employee.
2. The following qualifications and experience entitles an Employee to be engaged and paid as a **Teacher Level 1.1**:

	Qualification (Academic or Trade)	Work Experience (Years)
(a)	Bachelor degree (or equivalent)	2
(b)	Two year post year 12 Diploma (or equivalent)	3
(c)	Certificate IV (or equivalent)	4
(d)	Certificate III (or equivalent)	8

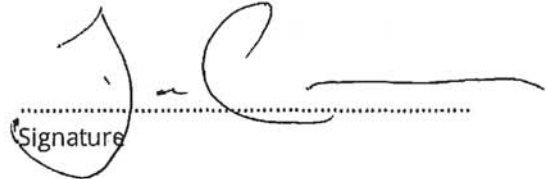
3. The following entitles an Employee to be engaged and paid as a **Teacher Level 1.2**:
 - 3.1. having the qualifications and experience listed in clause 2(a), (b), (c) or (d) of this Schedule; and
 - 3.2. either:
 - 3.2.1. having a current Certificate IV in Training and Assessment, if the Employee is employed in a program area for which the relevant regulator (or equivalent body) requires the Employee to have a Certificate IV in Training and Assessment in order to teach unsupervised; or
 - 3.2.2. having the relevant teaching qualifications and/or experience as required by the relevant regulator (or equivalent body) to permit the Employee to teach unsupervised, if the Employee is to be employed in a program area which does not require the Employee to have a Certificate IV in Training and Assessment.
4. The following entitles an Employee to be engaged and paid as a **Teacher Level 3.1**:
 - 4.1. meeting the requirements of clause 3 of this Schedule; and
 - 4.2. having completed a teaching qualification that is accredited at an AQF 5 level or higher, and which is applicable to the program area in which the Employee is employed.

5. An Employee shall not be eligible for promotion or appointment as a Senior Educator unless they are fully qualified.
6. For each completed year of actual teaching experience after becoming fully qualified, a teacher on commencement of employment shall receive one increment.
7. Subject to meeting the qualification requirements for incremental progression in this Agreement, a maximum of two increments on commencement of employment shall be paid for experience and qualifications approved in the circumstances, or combination of circumstances, as detailed below:
 - 7.1. for each two years of approved actual teaching experience prior to becoming fully qualified, a teacher shall receive one increment;
 - 7.2. for each two years of approved industrial experience in excess of the years listed in clause 2 of this Schedule, a teacher shall receive one increment. For the purpose of this clause, industrial experience shall directly relate to the qualifications held and to the subjects taught by the teacher and will normally be gained concurrently with or after the acquisition of the related qualification;
 - 7.3. for each year of approved additional studies, a teacher shall receive one increment.
8. **Fully qualified** means possessing the qualifications which entitle an Employee to be appointed at, or progress to, Teacher Level 3.1 or higher the Teacher classification.
9. Subject to meeting the qualification requirements of this Schedule and clauses 15.3.1.1 and 15.3.1.2 of the Agreement, where a Casual Employee is converted to fixed-term or ongoing employment by the Employer, each 400 hours of Teaching Duties of prior casual service with the Employer shall be recognised as one increment when establishing the commencing salary.

Signing Page

EXECUTED as an Enterprise Agreement

SIGNED for and on behalf of SWINBURNE
UNIVERSITY OF TECHNOLOGY by:


Signature

Name: DAVID COLTMAN
Title: DEPUTY VICE CHANCELLOR
Address: JOHN ST,
HAWTHORN, VIC 3122

in the presence of:


Signature of witness

Name of witness (printed): BERNADETTE WOOD

SIGNED for and on behalf of a
representative of the employees by


Signature

Name of representative: Grahame McCulloch

26 September 2017

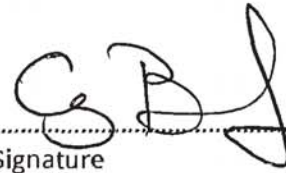
Title: General Secretary
Address: Level 1, 120 Clarendon Street
South Melbourne VIC 3205

in the presence of:


Signature of witness

Name of witness (printed): Renee Veal

SIGNED for and on behalf of a
representative of the employees by


Signature

Name of representative:

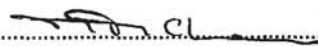
GREG BARCLAY
AEU

Title: VICE PRESIDENT, TAFE

Address: 126 TRENIERRY CRES

ABBOTSFORD VIC 3067

in the presence of:


Signature of witness

Name of witness (printed):

MARLENE MCLEAN