

TEACHERS' (NSW HEALTH EARLY CHILDHOOD SERVICE CENTRES) SALARIES AND MISCELLANEOUS CONDITIONS AWARD 2023

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 214784 of 2023)

Before Chief Commissioner Constant

15 August 2023

AWARD

PART A

Arrangement

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PART A

1. Definitions

For the purposes of this Award, except for Clause 3, Director's and Nominated Supervisor's Allowance, all reference to teachers in this Award shall include Director or Nominated Supervisor.

- (a) "Teacher" means any person employed as such in an ECS Centre as defined in subclause (d) of this clause, holding Early Childhood qualifications as defined in subclauses (h), (i), (j) and (k) of this clause.
- (i) "Casual Teacher" means a person who may be engaged on an hourly basis, for a period which does not extend beyond one week, to provide services related to the unexpected absence of temporary, permanent or exempt employees. This provision may also encompass short-term employment associated with unanticipated peak demands.

- (ii) "Temporary Teacher" means a person who is engaged as an employee for a period not exceeding 13 weeks, provided that fixed term contracts of employment, whether for periods greater or lesser than 13 weeks, must not be offered in preference to ongoing contracts.
- (b) "Centre Year" means the number of weeks for which a particular ECS Centre is open over the course of a calendar year.
- (c) "Director" means the teacher who is responsible for the day to day operation and management of the Early Childhood Services Centre as defined in subclause (d) of this clause, holding Early Childhood qualifications as defined in subclauses (j) and (k) of this clause.
- (d) "Early Childhood Services (ECS) Centre" means an establishment which provides child care and/or educational development programmes and/or services for children under school age and shall include long day care centres. It shall not include a Recognised School or Pre-School. For the purposes of this clause:
 - (i) "Long Day Care Centre" means a child care establishment which usually provides services over a period of approximately eight hours or more each day for approximately 48 weeks or more during the year;
- (e) "Unit" means a group or class of children which does not at any one time exceed 25 children, but which need not necessarily consist of the same children at all times.
- (f) "Teacher Training Institution" means an Australian College of Advanced Education, Australian Teachers College or Australian Institute of Education recognised by the Tertiary Education Commission or its replacement.
- (g) "University" means an Australian University
- (h) "Graduate" means a teacher who holds specialist B. Ed (Early Childhood) from a Recognised University or Recognised Teacher Training Institution.
- (i) "Equivalent Qualifications or Equivalent Course" means a qualification or course as the case may be which the employer and the teacher agree as being equivalent to the qualification or course prescribed by the clause in question in this award, or which the Conciliation Committee determines as being so equivalent.
- (j) "Three Years Trained Teacher" means:
 - (i) A teacher who has satisfactorily completed a three years full-time course of study in Early Childhood Education at a Recognised Teacher Training Institution; or
 - (ii) A teacher who, in addition to satisfying the requirements for classification as a Two Years Trained Teacher, has satisfactorily completed a course of study in Early Childhood Education at Category UG2 level; or
 - (iii) A teacher who has acquired other equivalent qualifications; or
 - (iv) A three year Primary School trained teacher who has been recognised as equivalent by the New South Wales Department of Community Services.
- (k) "Four Years Trained Teacher" means:
 - (i) A teacher who is a graduate holding B. Ed (Early Childhood) (four years full-time course); or
 - (ii) A teacher who is a graduate and who holds a Diploma in Early Childhood Education from a recognised University or Recognised Teacher Training Institution; or

- (iii) A teacher who has, in addition to satisfying the requirements for classification as a three years Trained Teacher, satisfactorily completed a course of study in Early Childhood Education at Category PGI Level; or
 - (iv) A teacher who has acquired other equivalent qualifications; or
 - (v) A four year Primary School trained teacher who has been recognised as equivalent by the New South Wales Department of Community Services.
- (l) "Nominated Supervisor" means a teacher who is appointed as Nominated Supervisor under the *Children (Education and Care Services National Law Application) Act (NSW) 2010* as varied or replaced from time to time.
- (m) "Union" means the Independent Education Union of Australia NSW/ACT Branch and/or Health Services Union NSW.

2. Salaries

- 2.1 Full time Teacher employees shall be paid the rates and allowances in the tables of Part B - Monetary Rates of this Award.
- 2.2 The minimum weekly salary payable to full-time teachers shall, subject to the other provisions of this Award, be calculated by dividing the per annum rates as set out in Table 1 - Rates of Pay, of Part B, Monetary Rates, by 52.17857.
- (a) Three Years Trained Teachers
 - (i) A Three Years Trained Teacher shall commence on Step 1 of the scale and progress according to normal years of service to Step 11 of the scale.
 - (b) Four Years Trained Teachers
 - (i) A Four Years Trained Teacher shall commence on Step 1 of the scale and progress according to normal years of service to Step 9 of the scale.
- 2.3 Part-Time and Temporary Teachers
- (a) A permanent part-time employee is one who is permanently appointed by the employer to work a specified number of hours which are less than those prescribed for a full-time employee. Permanent part-time employees shall be paid an hourly rate calculated on the basis of one thirty-eighth of the rate prescribed by the salaries clause of each relevant calling, with a minimum payment of 3 hours for each start.
 - (b) The days of attendance and normal hours of work of a part-time teacher may be varied or increased at any time only by mutual agreement between the employer and the teacher. Such agreement will not be unreasonably withheld by either party.
 - (c) A temporary full-time teacher shall be paid at the same rate as that prescribed for a full-time teacher with the corresponding classification. Where the temporary contract is 13 weeks or less, a loading of 10% shall be applied.
- 2.4 Casual Teachers
- (a) The hourly rate of a casual teacher shall be calculated by dividing the weekly salary prescribed in 2.1 of this clause by 38. A loading of 10% shall then be added to the hourly rate. A casual teacher shall be paid a minimum of 2 hours for each engagement.
 - (b) The amount obtained by the operation of paragraphs (a) and (b) of this subclause is exclusive of the pro rata payment to which the teacher is entitled under the *Annual Holidays Act 1944*.

2.5 Calculation of Service

- (a) For the purpose of this clause, any teacher if required by the employer, shall upon engagement establish to the satisfaction of the employer, the length of their teaching service in any Pre-school, ECS Centre, Multi-Purpose Centre or in early childhood education services for children up to eight years of age, or in the Infants Department of Schools registered or certified under the appropriate legislation in other States or Territories of the Commonwealth of Australia. That period so established shall be taken to be the length of service for the purpose of that employment.
- (b) Teachers employed at the time of the making of this Award with existing recognised experience which may not directly fall into the categories as prescribed in paragraph (a) above, shall continue to have their experience recognised for the purposes of incremental progression.
- (c) For the purpose of calculating service:
 - (i) Any employment as a full-time employee (including employment as a temporary full-time employee) as referred to in paragraph (a) of this subclause shall be counted as service.
 - (ii) The amount of service of a part-time teacher (including a temporary part-time teacher) shall total one year for every 1,982 hours of service. (1,982 hours is the number of ordinary hours worked by a full-time ECS teacher in a calendar year).
 - (iii) The amount of service of a casual teacher shall be calculated as one year for every 1,982 hours of service. (1,982 hours is the number of ordinary hours worked by a full-time ECS teacher in a calendar year). Casual service performed only in the preceding four years shall be included in determining incremental progression.

2.6 Re-Classification

The transfer to a higher salary scale of a teacher who has completed a course of training which makes the teacher eligible to be so transferred and the progression of such teacher through the salary steps on that higher salary scale shall be effected as follows: -

- (a) A teacher seeking such transfer shall make application in writing to the employer and shall attach to such application documentary evidence establishing that they have had or will have conferred on them the diploma, degree or equivalent recognition of the completion of the course of training which makes them eligible to be so transferred.
- (b) Where an application is made under paragraph (a) above which establishes that a teacher is eligible to be transferred to a higher salary scale, such transfer shall take effect:
 - (i) From the beginning of the first pay period to commence on or after the date of completion of formal course requirements. Provided that the application for transfer is received by the employer no later than four months after the conferral of the diploma, degree or equivalent recognition of the completion of such course of training; or
 - (ii) Where the application for transfer is not received by the employer within the time specified in subparagraph (i) of this paragraph, from the beginning of the first pay period to commence on or after the date on which the employer receives such application.
- (c) A teacher who has completed a course of training entitling the teacher to transfer to a higher salary scale pursuant to this subclause shall, for the purpose of advancing through the steps on the higher salary scale to which the teacher has been so transferred, retain the teacher's normal salary incremental date.

Provided that if the transfer of the teacher to the higher salary scale coincides with the teacher's normal salary incremental date, the increment shall be applied prior to the teacher being transferred to the higher salary scale.
- (d) A teacher shall be transferred to the higher salary scale on the following basis:

- (i) A Three or Four Years Trained Teacher shall be transferred to the salary step on the higher salary scale which shall be determined by the teacher's years of service on the lower scale.
- (e) The transfer to a higher salary scale of a teacher who has acquired a qualification (other than the completion of a course of training) which makes the teacher eligible to be so transferred, and the progression of such teacher through the steps on that higher salary scale shall be effected in accordance with the provisions of paragraphs (a), (b), (c) and (d) of this subclause.

3. Director's and Nominated Supervisor's Allowance

3.1 Director's Allowance

- (a) A full-time teacher who is appointed as a Director as defined in Clause 1, Definitions, shall be paid, in addition to the amounts payable pursuant to Clause 2, Salaries, on a weekly basis, an allowance for a Director calculated by dividing the per annum rates as set out in Table 2 - Directors' Allowance, of Part B, Monetary Rates, by 52.17857.
- (b) The level of the director's allowance shall be determined by the number of units of the service.
- (c) A part-time teacher who is appointed as a Director as defined in Clause 1, Definitions, of this Award, shall be paid, in addition to the amounts payable pursuant to Clause 2, Salaries, of this Award, an allowance in accordance with Table 2 - Director's Allowance, a proportionate basis to the hours they work.

3.2. Nominated Supervisor's Allowance

- (a) A full time teacher who is not the Director and is appointed as the Nominated Supervisor as defined in clause 1 shall be paid an allowance as set in Table 3 and shall be advised by the employer on appointment which allowance is to apply.
- (b) The level of the Nominated Supervisor's Allowance shall be determined by the number of units of the service.
- (c) A part-time teacher who is appointed as a Nominated Supervisor, as defined in clause 1, Definitions of this Award, shall be paid, in addition to the amounts payable pursuant to clause 2, Salaries of this Award, an allowance in accordance with Table 3 - Nominated Supervisor's Allowance on a proportionate basis to the hours they work.
- (d) It is not intended that Directors shall be displaced by the appointment of a Nominated Supervisor as a result of the operation of this clause.

4. Miscellaneous

4.1 Crib Break

Not more than 30 minutes nor less than 20 minutes shall be allowed to teachers each day for a midday paid crib break. Such crib break shall be counted as time worked.

Provided however that a teacher may, by agreement with the employer, leave the premises or elect not to be on call during the crib break. Where a reasonable request has been made by the teacher, the employer shall give favourable consideration to any such request. During this time the teacher cannot be counted as part of the child/staff ratios under the Education and Care Services National Regulations. Such time away from the premises or not on call shall not count as time worked nor shall any payment be made for such time.

However, if the teacher is called back to perform any duties within the centre or the break is interrupted for any reason the teacher shall be paid at time and a half for a minimum of 15 minutes and thereafter to the nearest quarter hour until an uninterrupted break or the balance of the break is taken.

Notation: It is agreed between the parties that any agreement between the teacher and the employer concerning an unpaid crib-break must be genuine. For example, a teacher cannot be required by the employer to agree to an unpaid crib-break as a condition of on-going employment. Any agreement should be recorded in writing and kept with pay records.

4.2 Professional Development, Training and Planning

- (a) Teachers are required to attend Professional Development and Training as mandated by the Education and Care Services National Regulations.
- (b) Where a Teacher attends a course as requested and required by the employer after hours, the teacher shall either receive time in lieu at ordinary rates or be paid at overtime rates for the time in attendance at the course. A teacher may not unreasonably refuse to attend courses as required under the Education and Care Services National Regulations.
- (c) Any dispute in relation to attendance shall be dealt with in accordance with Clause 7, Disputes and Grievance Procedures.

4.3 First Aid Certificate

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

4.4 Non-Contact Time

- (a) Teachers shall receive a minimum of two hours per week non-contact time to perform programming and planning duties. Teachers will not be required to supervise children during this time.
- (b) Teachers appointed as Directors or Nominated Supervisors shall receive a minimum of two and a half hours per week of non-contact time in addition to non-contact time as teacher and/or Director to perform administrative duties.

4.5 Child-Free Days

- (a) Teachers covered by this Award may, depending on the operational requirements of the Centre, participate in a child-free day(s). Child-free days may be allocated solely for the purposes of setting up the centre, group planning and cleaning of premises and resources. The number and timing of such days shall be determined at a local level. Child-free days are not guaranteed from Centre to Centre.

5. Conditions of Employment

- 5.1 Directors and Teachers employed under this Award will have all other conditions of employment established by those contained in the Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award 2023, as varied or replaced from time to time.

6. Terms of Engagement and Information to be Provided to Teachers

- 6.1 The employer shall provide all full-time, part-time and temporary teachers with a letter of appointment on engagement stating the classification and rate of salary on appointment, the hours of operation of the Centre, the teacher's entitlements to personal leave, annual leave and long service leave, the procedure as to alteration of days of attendance and notice on termination.

- 6.2 The employer may, if the employer deems appropriate, provide a teacher of children with special needs with a letter of appointment which outlines the teacher's teaching load, days of attendance, and place of employment which may be varied throughout the period of engagement. Such variations would occur from time to time and with not less than four weeks' notice or otherwise by agreement.
- 6.3 During the first three months of employment, employment shall be from week to week. After three months of continuous service, employment may be terminated only by 28 days' notice given either by the employer or the employee or by payment or forfeiture of 28 days salary, as the case may be. Nothing in this clause, however, shall prevent the summary dismissal of an employee for misconduct or neglect of duty.
- 6.4 Upon the termination of service of a teacher other than a casual teacher, the employee may request from the employer for a statement of service. The statement of service shall:
- (a) set out the length of service, the age of children taught, the positions held and any special and/or additional duties performed by such teacher, or
 - (b) include a Job Description or List of Duties.
- 6.5 On termination of casual employment, a casual teacher shall be supplied with a statement setting out the number of days of duty undertaken by the casual teacher during the period of their engagement provided that such request is made during or on termination of the casual engagement.

7. Disputes and Grievance Procedures

- 7.1 Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and the supervising staff, it shall be referred to the Chief Executive of the Public Health Organisation or their nominee, who will arrange for the matter to be discussed with the employee concerned and a local representative or representatives of the employee's Union.
- 7.2 Failing settlement of the issue at this level, the matter shall be referred to the Secretary and the relevant Head Office of the employee's Union. This dispute will then be dealt with pursuant to subclause 7.5 of this clause.
- 7.3 Whilst these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied.
- 7.4 The employee's Union may vary this procedure where it is considered a safety factor is involved.
- 7.5 With a view to an amicable and speedy settlement, all disputes that cannot be settled in accordance with subclauses 7.1 and 7.2 above may be submitted to a committee consisting of not more than 6 members, equally represented by NSW Health and the employee's Union. The committee shall have the power to investigate all matters in dispute and to report to the Public Health Organisation and the employee's Union with recommendations. In the event that no mutual decision is reached by the committee, the matter in dispute may be referred to the Public Health Employees (State) Industrial Committee.
- 7.6 This clause shall not interfere with the rights of either party to institute proceedings for the determination of any matter in accordance with the *Industrial Relations Act 1996*.

8. No Extra Claims

- 8.1 Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 (or its successor however described), there shall be no further claims/ demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2024 by a party to this Award.

8.2 The terms of the preceding paragraph do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing Award provisions.

9. Area, Incidence and Duration

9.1 This Award shall apply to all teachers employed in ECS centres as defined in subclause (d) of Clause 1, Definitions, of this Award.

9.2 Other conditions of employment not included in this Award shall be governed by the Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award 2023 as varied or replaced from time to time.

9.3 This Award shall take effect from 1 July 2023 and shall remain in force for a period of one year. The rates and allowances in the second column in the tables of Part B - Monetary Rates, will apply from the first full pay period on or after (ffppoa) 1 July 2023.

9.4 This Award rescinds and replaces the Teachers (NSW Health Early Childhood Service Centres) Salaries and Miscellaneous Conditions Award 2022 published on 8 September 2022 (392 I.G. 1040) and all variations thereof.

PART B

MONETARY RATES

Table 1 - Rates of Pay

In the period 1 July 2023 to the commencement of the first full pay period on or after 1 July 2023, the applicable rates of pay are those that applied immediately prior to the first full pay period on or after 1 July 2023.

| Classification/Incremental Salary Step | Increased Annual Rate FFPPOA 1 July 2023 Per annum\$ |
|--|--|
| Three Years Trained Teachers | |
| Step 1 | 62,457 |
| Step 2 | 65,458 |
| Step 3 | 68,694 |
| Step 4 | 71,690 |
| Step 5 | 74,840 |
| Step 6 | 78,240 |
| Step 7 | 80,119 |
| Step 8 | 81,983 |
| Step 9 | 85,109 |
| Step 10 | 88,373 |
| Step 11 and Thereafter | 90,658 |
| Four Years Trained Teachers | |
| Step 1 | 66,189 |
| Step 2 | 70,073 |
| Step 3 | 73,819 |
| Step 4 | 77,970 |
| Step 5 | 81,829 |
| Step 6 | 85,109 |
| Step 7 | 88,373 |
| Step 8 | 92,050 |
| Step 9 and Thereafter | 95,589 |

Table 2 - Director's Allowance (Clause 3.1)

| Units | Allowance Description | Increased Annual Rate FFPPOA 1 July 2023 Per annum \$ |
|--------------|-------------------------------|--|
| 1 | Director's Allowance - Unit 1 | 6845 |
| 2 | Director's Allowance - Unit 2 | 8353 |
| 3 | Director's Allowance - Unit 3 | 10426 |
| 4 | Director's Allowance - Unit 4 | 13025 |

Table 3 - Nominated Supervisor's Allowance (Clause 3.2)

| Units | Allowance Description | Increased Annual Rate FFPPOA 1 July 2023 Per annum \$ |
|--------------|---|--|
| 1 | Nominated Supervisor's Allowance - Unit 1 | 2224 |
| 2 | Nominated Supervisor's Allowance - Unit 2 | 2713 |
| 3 | Nominated Supervisor's Allowance - Unit 3 | 3396 |
| 4 | Nominated Supervisor's Allowance - Unit 4 | 4244 |

N. CONSTANT, *Chief Commissioner*

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