



# DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Baringa Child Care Centre Incorporated**  
(AG2023/775)

## **BARINGA CHILD CARE CENTRE INCORPORATED ENTERPRISE AGREEMENT 2021**

Children's services

COMMISSIONER P RYAN

SYDNEY, 21 APRIL 2023

*Application for approval of the Baringa Child Care Centre Incorporated Enterprise Agreement 2021*

[1] Baringa Child Care Centre Incorporated (**Applicant**) has made an application for approval of an enterprise agreement known as the *Baringa Child Care Centre Incorporated Enterprise Agreement 2021* (the Agreement) pursuant to s.185 of the *Fair Work Act 2009* (**FW Act**). The Agreement is a single enterprise agreement.

### **Regulation 2.06 Requirements**

[2] The application was accompanied by a signature page that did not comply in all respects with Regulation 2.06A of the *Fair Work Regulations 2009* (**FW Regulations**). An amended signature page was subsequently filed. I consider it appropriate in the circumstances to waive an irregularity in the form or manner in which an application was made and do so pursuant to s.586(b) of the FW Act.

### **Section 190 Undertakings**

[3] The employer provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the Agreement.

### **Section 186, 187, 188 and 190**

[4] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

### **Model Flexibility Term**

[5] The Agreement does not contain a flexibility term that meets the requirements of s.203 of the Act. Pursuant to s.202(4) of the FW Act, the model flexibility term prescribed by the FW Regulations is taken to be a term of the Agreement.

### **Approval**

[6] The Agreement is approved and, in accordance with s.54 of the FW Act, will operate from 28 April 2023. The nominal expiry date of the Agreement is 28 April 2026.



COMMISSIONER

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

### **1.1 AGREEMENT TITLE**

This agreement shall be known as the Baringa Child Care Centre Incorporated Enterprise Agreement 2021.

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### **1.3 ANTI-DISCRIMINATION**

- 1.3.1 It is the intention of the parties to this agreement to achieve the principle object in s3(e) of the Fair Work Act 2009 (Cth) through respecting and valuing the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of race, colour, gender, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 1.3.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the respondents must make every endeavour to ensure that neither the Agreement provisions nor their operation are directly or indirectly discriminatory in their effects.
- 1.3.3 Nothing in this clause is to be taken to affect:
- (a) any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation
  - (b) an employee, employer or registered association, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission; or
  - (c) Any relevant exemptions of the *Fair Work Act 2009* (Cth).

### **1.4 COMMENCEMENT DATE AND PERIOD OF OPERATION**

This Agreement comes into effect seven days after the approval of Fair Work Commission and will remain in force for a period of 3 years.

### **1.5 APPLICATION OF AGREEMENT**

This Agreement applies to:

- 1.5.1 Baringa Child Care Association Incorporated (Baringa); and
- 1.5.2 All permanent employees of Baringa who are employed in accordance with the Children's Services Award 2010 or the Social, Community, Home Care and Disability Services Industry Award 2010.

### **1.6 INCONSISTENCIES BETWEEN THE AGREEMENT AND THE AWARD**

- 1.6.1 This Agreement shall be read in conjunction with the Children's Services Award 2010 or the Social, Community, Home Care and Disability Services Industry Award 2010. To the extent of any inconsistency between the Agreement and the Awards, the provisions of the Agreement shall prevail.

### **1.7 CONTINUITY OF SERVICE**

- 1.7.1 Continuity of Service for the purpose of Long Service Leave shall be determined by the Long Service Leave Act 1976 (ACT).
- 1.7.2 For the purposes of calculating annual leave entitlements, the following shall not be deemed to break continuity of employment: absences of up to one month owing to illness covered by a medical certificate after 2 days absence; or an absence with a medical certificate extending beyond one month, in the case of an employee with an accumulation of sick leave to the extent of such accumulation; three months owing to an injury received in the course of his or her employment; or one month owing to other causes for which leave has been granted by the employer concerned.
- 1.7.3 For the purposes of calculating personal leave entitlements, the following shall not be deemed to break continuity of employment: absences up to 3 months due to accidents of which workers' compensation is paid or payable; absences due to personal leave under clause 7.2, absences due to sick leave without pay for three months in anyone year, approved leave without pay, recreation leave and public holidays.

## **1.8 POSTING OF AGREEMENT**

A copy of this Agreement shall be accessible to each employee affected by it in the workplace, and available to be viewed at a time convenient to them.

## **1.9 AIMS & OBJECTIVES OF THE AGREEMENT**

- 1.9.1 To maintain a high standard of long day care as recognised by the Australian Childrens' Education and Care Quality Authority .
- 1.9.2 To recognise the special limitations placed on workers employed in the organisation who must adhere to stringent working rosters in terms of flexible working arrangements.
- 1.9.3 To minimise the cost impact that the terms of this agreement may have on the government and existing clients.
- 1.9.4 The parties are committed to the skills development of permanent employees so that excellence may be achieved.
- 1.9.5 To maintain a high standard of service of Baringa through a commitment to excellence and by attracting and retaining qualified and experienced staff.
- 1.9.6 The parties are committed to achieving the highest quality early childhood education standards possible. In order that this is achieved all permanent Baringa employees will participate in the process of achieving and maintaining ACECQ Standards Accreditation.
- 1.9.7 The parties acknowledge that the early childhood educators have historically been undervalued for the essential and skilled work that is performed in the sector, and that these undervaluations have largely been due to the gendered nature of their work.
- 1.9.8 Baringa recognises and values the important contribution educators make to the early lives of children and supports this application to ensure educators receive equal pay for the work that they do. Baringa also acknowledges the central role of educators as advocates for their sector and their work in this application.

## **PART 2 - COMMUNICATION**

### **2.1 AGREEMENT FLEXIBILITY**

#### **2.1.1 Agreement flexibility**

Despite any other provision of this agreement, an employer and an individual employee may agree to vary the application of certain terms of this agreement to meet the genuine individual needs of the employer and the individual employee.

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

#### **2.1.3 The agreement between the employer and the individual employee must not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment.**

#### **2.1.4 For the purposes of clause 2.1.1 the agreement will be taken not to disadvantage the individual employee in relation to the individual employee's terms and conditions of employment if:**

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

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

## **2.2 CONSULTATION REGARDING MAJOR WORKPLACE CHANGE**

- 2.2.1 Employers to notify
- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
  - (b) Significant **effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where the relevant Award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.
- 2.2.2 Employers to discuss change
- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 2.2.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
  - (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 2.2.1.
  - (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to

affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

### 2.2.3 Consultation about changes to rosters or hours of work

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
  - i. provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
  - ii. invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
  - iii. give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

## 2.3 DISPUTE RESOLUTION

- 2.3.1 In the event of a dispute about a matter under this agreement, or *National Employment Standards* (NES), in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 2.3.2 If a dispute about a matter arising under this agreement or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 2.3.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 2.3.3 The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 2.3.4 Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the relevant Act that it considers appropriate to ensure the settlement of the dispute.
- 2.3.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 2.3.6 While the dispute resolution procedure is being conducted, work must continue in accordance with this Agreement and the Acts. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

## 2.4 CONSULTATIVE COMMITTEE

- 2.4.1 A Consultative Committee shall continue to operate at workplace level to discuss the impact of significant changes on the day to day operation of the organisation, and ways of achieving productivity gains over the life of this Agreement.

2.4.2 The Consultative Committee shall be comprised of an equal number of staff and management representatives, and shall meet on a needs basis to deal with issues including but not exclusive to:

- Federal or Territory legislation;
- Significant industry changes; and
- Client demand.

2.4.3 A written record of all meetings of the Consultative Committee shall be kept and actions in relation to them recorded and made available to any staff member covered by this Agreement upon written request.

## **2.5 RIGHTS & OBLIGATIONS OF EMPLOYEES & EMPLOYER IN RELATION TO WORKPLACE ISSUES**

2.5.1 Employees have the right and obligation to raise a matter with the employer if:

- They are unhappy about any aspect of their work situation;
- They feel they have been unfairly treated; or
- They feel their workplace needs are not met.

2.5.2 Performance improvement process

In the event of identified performance issues the following process shall be adhered to:

Step 1- Meet with the employee to discuss the problem;

1. The supervisor will hold a meeting with the employee;
2. The employee may bring a union delegate or if none available, another support person with them;
3. The meeting will be in a private place that is non-threatening;
4. The supervisor will explain the problem in specific terms and in language that the employee can understand;
5. The employee will have the opportunity to have their point of view heard and considered;
6. The supervisor and the employee will try to work out a solution together. This may include giving the employee extra assistance or additional time;
7. If a problem is identified the employee shall be given adequate time to improve. The timeframe will be agreed by the employee and the supervisor;
8. The agreed outcome of the meeting will be written down by the supervisor and signed by the employee and their representative.

Step 2

If the same or a very similar problem continues to occur after the agreed timeframe has passed then then the following actions will be taken.

If a new problem occurs then Step 1 (above) will be taken.

1. The supervisor shall meet with the employee
2. The employee may bring a union delegate or support person.
3. The supervisor shall clearly explain why he or she thinks that the employee has not improved.
4. The employee may be given:
  - a. Further counselling;
  - b. Further support; or if the issue is serious in nature;
  - c. A formal warning letter.
5. If a formal warning letter is issued, the employee must be given the opportunity to respond.

2.5.3 In the case of serious misconduct, the employee may be terminated without notice.



## **PART 3 – EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS**

### **3.1 CONTRACT OF EMPLOYMENT**

- 3.1.1 An employee shall be engaged on either a full-time, part-time, or casual basis, as defined. Upon being employed, the employer shall provide its employee with a letter in writing setting out their employment status and classification including qualification and incremental level.
- (a) Other than for higher level work employees shall be paid in accordance with the classification and qualification level as advised at the time of engagement in accordance with this clause.
- 3.1.2 At the time of engagement, the employer and the employee will agree in writing, on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day. Any agreed variation to the regular pattern of work will be recorded in writing.

### **3.2 FULL-TIME EMPLOYEES**

- 3.2.1 A full-time employee shall be a person who is engaged for no less than 38 ordinary hours per week.

### **3.3 REGULAR PART-TIME EMPLOYEES**

- 3.3.1 A part-time employee is an employee who is engaged to work less than 38 ordinary hours per week.
- 3.3.2 A part-time employee shall be paid, for each hour worked, one thirty-eighth of the rate prescribed for the appropriate classification set out in Part 4, Clause 4.1. Such part-time employee shall be entitled to receive all benefits of the Agreement on a pro rata basis.
- 3.3.3 For work performed on any shift a part-time employee shall receive a minimum payment of two and one half hours. Provided that where a part-time employee, working in before and after school care works a broken shift, the minimum payment for the morning part of the shift shall be one and one half hours and the minimum payment for the afternoon part of the shift shall be two and one half hours.
- 3.3.4 The rostered hours of work for a part-time employee may be altered by mutual agreement recorded in writing. Such recording may be contained on a time sheet. In such cases part-time employees may work up to 38 hours per week or 8 hours per day without the payment of overtime.

### **3.4 REDUNDANCY**

- 3.4.1 Definitions
- (a) Business includes trade, process, business or occupation and includes part of any such business.
- (b) Redundancy occurs when an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.
- (c) Transmission includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning.
- (d) Week's pay means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:
- overtime;
  - penalty rates;
  - disability allowances;
  - shift allowances;
  - special rates;
  - fares and travelling time allowances;
  - bonuses; and
  - any other ancillary payments of a like nature.

### 3.4.2 Transfer to lower paid duties

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

### 3.4.3 Redundancy Pay

- (a) An employee whose employment is terminated by reason of redundancy is entitled to the following amount of redundancy pay in respect of a period of continuous service:

Period of continuous service	Redundancy pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years or more	16 weeks' pay
10 years or over	18 weeks pay

\* **Week's pay** is defined in 3.4.1(d).

- (b) Provided that the redundancy payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.
- (c) Continuity of service shall be calculated in the same way as for the purposes of annual leave, as set out in clause 1.7.2.

### 3.4.4 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in clause 3.5 - Notice of Termination. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

### 3.4.5 Job search entitlement

- (a) During the period of notice of termination given by the employer in accordance with clause 3.5.1, an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.
- (c) The job search entitlements under this subclause apply in lieu of the provisions in clause 3.5.3.

### 3.4.6 Transmission of business

- (a) The provisions of this clause are not applicable where a business is before or after the date of this Agreement, transmitted from an employer (in this subclause called the transmitter) to another employer (in this subclause called the transmittee), in any of the following circumstances:

- i. Where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee; or
- ii. Where the employee rejects an offer of employment with the transmittee:
  - in which the terms and conditions are substantially similar and no less favourable, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
  - which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.

### 3.4.7 Employees exempted

This clause does not apply to:

- employees terminated as a consequence of serious misconduct that justifies
- dismissal without notice;
- probationary employees;
- casuals; or
- employees engaged for a specific period of time or for a specified task or tasks.

## 3.5 NOTICE OF TERMINATION

### 3.5.1 Notice of termination by employer

- (a) In order to terminate the employment of an employee the employer must give to the employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

In the case of serious misconduct, or situations where can be established that a child has been put at serious risk due to the actions of the employee or it can be established that the actions of the employee provides a significant risk to the reputation of Baringa Child Care Centre, the employee may be terminated without notice.

Period of continuous service

- (b) In addition to the notice in 3.5.1(a), employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.
- (c) Payment in lieu of the prescribed notice in 3.5.1(a) and 3.5.1(b) must be made if the appropriate notice period is not required to be worked. Provided that employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.
- (d) The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period. That total must be calculated on the basis of:
- i. the employee's ordinary hours of work (even if not standard hours); and
  - ii. the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and
  - iii. any other amounts payable under the employee's contract of employment.
- (e) The period of notice in this clause does not apply:
- i. in the case of dismissal for serious misconduct; 3.5.1(e)(ii) to apprentices;
  - ii. to employees engaged for a specific period of time or for a specific task or tasks; 3.5.1(e)

- iii. casuals;
- iv. to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement.

(f) Continuous service is defined in clause 1.7.2.

### 3.5.2 Notice of termination by an employee

- (a) The notice of termination required to be given by an employee is the same as that required of an employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.
- (b) If an employee fails to give the notice specified in clause 3.5.2(a) the employer has the right to withhold monies due to the employee to a maximum amount equal to the amount the employee would have received under 3.5.1(d).

### 3.5.3 Transmission of business

Where a business is transmitted from one employer to another, as set out in clause 3.4 –

Redundancy, the period of continuous service that the employee had with the transmitter or any prior transmitter is deemed to be service with the transferee and taken into account when calculating notice of termination. However, an employee shall not be entitled to notice of termination or payment in lieu of notice for any period of continuous service in respect of which notice has already been given or paid for.

## PART 4 - WAGES AND RELATED MATTERS

### 4.1 CLASSIFICATIONS AND WAGE RATES

#### 4.1.1 Classifying employees

- (a) All employees shall be classified by the employer into one of the levels contained in *the Children's Services Award 2010* or the *Social, Community, Home Care and Disability Services Industry Award 2010*, in accordance with the employee's skills, responsibilities, qualifications and duties.
- (b) Where an employee believes they have been wrongly classified the matter shall be dealt with in accordance with the dispute settling procedure set out in Part 2 - Communication (or clause 4.1.7(b) as appropriate).
- (c) Progression within a level is subject to the provisions of clause 4.1.7. Employees moving from one classification level to another will commence on the 1st year of service rate of the higher level.
- (d) In this clause "the Act" means the *Children's and Young People Act 2008 (ACT)* (as amended) and related regulations and licensing conditions.

#### 4.1.2 Wages rates

- (a) Each permanent employee under *the Children's Services Award 2010* shall be paid as follows:
  - i. 10.50% above the Award rate for each classification set out in the Award from the next full pay cycle after the approval of this Agreement.
  - ii. 11.00% above the Award rate for each classification set out in the Award from the first full pay cycle, one (1) year after 4.1.2(a)(i) commenced.
  - iii. 11.50% above the Award rate for each classification set out in the Award from the first full pay cycle two (2) years after 4.1.2(a)(i) commenced.
  - iv. Following this, wage rates will continue to remain at 11.50% above the Award, as adjusted by the Annual National Wage Review variations.
- (b) Each permanent employee under *the Social, Community, Home Care and Disability Services Industry Award 2010* will be paid at the award rate.

#### 4.1.3 Salary Arrangements for the Centre Director

Where the employer makes a decision to permanently appoint an employee to the position of Centre Director, the employer and the employee so appointed may enter into an individual salary arrangement. Provided that such arrangement provides an overall benefit, including annual wage adjustments that, taken overall, are of greater benefit than the wages and conditions provided for under this Arrangement.

Employees performing the role of Centre Acting Director will not be subject to salary arrangements but shall be paid according to the wages rates for that classification level in the Award together with wage increases as set out in sub-clause 4.1.2.

#### 4.1.4 Salary Arrangements for Centre Assistant Director

Where the employer makes a decision to permanently appoint an employee to the position of Centre Assistant Director, the employer and the employee so appointed may enter into an individual salary arrangement. Provided that such arrangement provides an overall benefit, including annual wage adjustments that, taken overall, are of greater benefit than the wages and conditions provided for under this Arrangement.

#### 4.1.5 Flexibility of work

An employer may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling. However, any direction issued by an employer must be consistent with the employer's responsibilities to provide a safe and healthy working environment.

#### 4.1.6 Excess rates

Where by mutual agreement between an employer and an employee, rates are paid in excess of those provided by this Agreement, the amount of such excess rates shall not be applied as an offset against any payment due in respect of overtime and/or time worked on any Sunday and/or any holiday.

#### 4.1.7 Progression for permanent employees employed under *the Children's Services Award 2010* is as follows.

(a) Progression from one level to the next within a classification is subject to an employee meeting the following criteria:

- competency at the existing level;
  - 12 months experience at that level (or in the case of employees employed for 19 hours or less per week, 24 months) and in-service training as required; and
  - demonstrated ability to acquire the skills necessary for advancement to the next pay point.
- i. Where an employee is deemed not to have met the requisite competency at their existing level at the time of the appraisal, progression may be deferred for a period of three months provided that:
- the employee is notified in writing of the reasons for the deferral;
  - the employee has, in the previous 12 months, been provided with the in-service training required to attain a higher pay point; and
  - following any deferral, the employee is provided with the training necessary to advance to the next level.
- ii. Where an appraisal has been deferred for operational reasons beyond the control of either party and the appraisal subsequently deems the employee to have met the requirements of clause 4.1.7(a), any increase in wages will be back paid to the 12 (or 24) month anniversary date of the previous progression.

(b) An employee whose progression has been refused or deferred may invoke the provisions of Part 2 - Communication. If the resolution results in the advancement being granted, any increase in wages will be backdated to the relevant anniversary date.

- (c) An employee employed as a Children's Services Employee Level 2 on completion of an accredited introductory early childhood education qualification will immediately progress by one additional level beyond that determined in accordance with clause 4.1.7(a). Any additional steps will be subject to meeting the requirements of clause 4.1.7(a).

## **4.2 HIGHER LEVEL WORK**

- 4.2.1 An employee called upon to perform duties associated with a higher classification for a period of more than four hours within any shift or day shall be paid at that higher rate for the whole time worked.
- 4.2.2 An employer may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling and that the direction is consistent with the provision of a safe and healthy working environment.

## **4.3 PAYMENT OF WAGES**

- 4.3.1 All wages shall be paid fortnightly by electronic funds transfer and will be made no later than Thursday in any week during ordinary hours of work. If pay day falls on a public holiday, wages will be paid on the preceding business day.
- 4.3.2 In the event that wages are not available for the employee at the predetermined time, the employee will be paid at ordinary time rates for all time waiting.
- 4.3.3 Upon termination of an employee's employment (either by the employer or the employee) all monies owing including outstanding wages and any accrued entitlements shall be paid out as soon as possible, and no later than five working days after the date of termination.
- 4.3.4 On the day of payment each employee may request a payslip detailing the payment made, including details of payment for ordinary hours worked, overtime hours worked, any accrued time off in lieu, rostered days off owing, penalty rates and allowances as well as superannuation and any other authorised deductions.

## **4.4 ALLOWANCES**

Allowances shall be determined by the *Children's Services Award 2010* and the *Social, Community, Home Care and Disability Services Industry Award 2010* save for the following:

### **4.4.1 Professional Development**

- (a) Subject to the operational requirements of the organisation, permanent employees will be given opportunity to attend in-service training without loss of pay.
- (b) As a further encouragement for the professional development of staff, upon application to Management, staff may be reimbursed for course fees over \$400. Such reimbursement shall be conditional upon:
- The course being an approved early childhood education related study;
  - The successful completion of such a course; and
  - The approval, considered individually and on the merits of the case, of Management.

Each approval will last for a 12 month period; should the course of study be for a duration greater than 12 months, multiple applications must be made for consideration by Management.

For professional development where the total fee is less than \$400, approval is at the discretion of Management.

- (c) Each financial year for the life of this Agreement, the organisation will conduct a Staff Development Day.

## **4.5 SUPERANNUATION**

4.5.1 "HESTA" shall mean the Health Employees Superannuation Trust Australia.

4.5.2 Choice of fund

- (a) Superannuation shall be governed by federal SGC legislation, as varied from time to time.
- (b) Where an employee does not nominate a fund for contribution, superannuation payments will be made into HESTA.

## **4.6 STAFF WELLBEING**

4.6.1 Each permanent employee shall be provided, at the cost of the employer, with income protection insurance for the life of this Agreement.

4.6.2 Each permanent employee shall be provided access to an Employment Assistance Program for the life of this Agreement.

## **PART 5 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK**

### **5.1 HOURS OF WORK**

5.1.1 The ordinary hours of work of full-time employees shall be an thirty-eight hours per week.

5.1.2 Ordinary hours shall be worked in periods of around 8 hours per day, but can be up to 10 hours per day if requested by staff (e.g. for those who work full time over 4 days per week) in unbroken periods save for rest and meal breaks, Monday to Friday.

5.1.3 The commencement time of the ordinary hours of work shall not be earlier than 7.00 a.m. and the ceasing time of the ordinary hours of work shall not be later than 7.00 p.m.

5.1.4 Rostered Time Off for Full-Time Employees

- (a) The method of rostering the 38 hour week may be any of the following:
  - i. by employees working less than 8 ordinary hours of each day; or
  - ii. by employees working less than 8 ordinary hours on one or more days each week; or
  - iii. by rostering employees off on various days of the week day during that cycle; or
  - iv. by accumulating rostered days off with a maximum of five such days being taken consecutively.
- (b) In the absence of agreement between the employer and the employee, to be recorded in writing, in respect to the rostering of the 38 hour week, the procedures for dispute avoidance and resolution in Part 2 - Communication of the Agreement shall apply.

5.1.5 Non-Contact Time

- (a) Subject to clause 5.1.S(b) employees responsible for programming and planning for a group of children shall be allowed 2 and a half paid hours per week away from face to face work with the children in their care. Employees responsible for pre-school programming will be given three and a half hours non contact time. This time is to be spent on planning, preparing, researching and programming activities.
- (b) Permanent employees responsible for programming the Outside Program shall be entitled to two hours paid non-contact time per week.
- (c) Permanent employees responsible for programming the Multicultural Program and Sign Language Program shall be entitled to two hours paid noncontact time per week.
- (d) All employees in charge of a group of children shall be entitled to 1 paid hour every 3 weeks to complete observations and to develop long-term programs.
- (e) The hours at which such non-contact time will be taken will be decided by the Director/Co-ordinator following discussion with the employee concerned, and provided such time is within the normal working hours of that employee. Wherever possible such non-contact time should be rostered in advance so as to minimise the disruption to the service and the cost impact.

(f) Any dispute arising in relation to this clause should be dealt with in accordance with the disputes procedure set out in Part 2 - Communication. Extra programming time can be allocated as required at the discretion of the Director.

(g) For further information refer to the Educational Programming Policy.

#### 5.1.6 Attendance at Court

Where it is necessary for an employee to attend a court on the employer's or employer's clients' behalf in connection with any matter arising out of or in connection with his duties, the time so occupied shall count as time worked.

Where an employee is required to attend court for the purposes of jury service, they shall be permitted a leave of absence for the duration of that period upon provision to the Employer of proof of attendance of jury duty and proof of jury fees received. During such a period of absence, the employee shall be paid the difference between the jury service fees received and the employee's normal rate of pay. Employees should provide notice of the requirement to attend to the Employer as soon as is practicable after receipt.

#### 5.1.7 Staff Meetings

All permanent employees are required to attend staff meetings. If employees are unable to attend any staff meetings throughout the year, a written apology must be forwarded to Management. To compensate for staff meetings, employees will be given the equivalent number of hours as Time in Lieu

Staff will be given notice of staff meetings at the commencement of each year. Dinner will be provided for staff meetings with a duration of 2 hours or more as per the Award, and at the cost of the organisation.

### 5.2 BREAKS

#### 5.2.1 Meal breaks

(a) An employee, including a part-time or casual employee, shall not be 5.2.1(a)(i) required to work in excess of five hours without a meal break.

(b) 5.2.1(a)(ii) Provided that employees who are engaged for not more than 6 hours continuously per shift may elect to forgo a meal break. Such an election shall be recorded in writing and signed by the employee.

#### 5.2.2 Rest pauses

An employee on the *Children's Services Award*, including a part-time or casual employee working in excess of five hours on any engagement, shall be allowed an unpaid meal break of not less than thirty minutes and not more than one hour at a time mutually agreed upon by the employer and employee.

The meal break shall be uninterrupted. Where there is an interruption to the meal break and it is occasioned by the employer, overtime shall be paid until an uninterrupted break is taken.

(a) An employee including a part-time or casual employee working four hours or more on any engagement shall be allowed without deduction of pay a rest period of 15 minutes.

- i. Provided that an employee working 6-1/2 hours or more per engagement shall be allowed without deduction of pay two separate rest periods of 15 minutes.
- ii. An employee working 6-1/2 hours may, by mutual agreement, forego one rest pause.
- iii. No rest pause shall be given or taken within one hour of the employee's commencing or ceasing time or within one hour before or after a meal or rest break unless by mutual agreement between the employee and their employer.
- iv. The rest periods shall be uninterrupted.



### **5.3 OVERTIME**

- 5.3.1 Subject to clauses 5.3.2 and 5.3.3 all work performed outside the ordinary hours of work shall be overtime and shall be paid for at the rate of time and one half of the first two hours and double time thereafter. In calculation of overtime each day's work shall stand alone.
- 5.3.2 All permanent staff shall be required to attend staff meetings each month, provided further that attendance at such meetings will, for purposes of this subclause, be limited to two hours per month.
- 5.3.3 Where, due to a genuine and pressing emergency situation, an employee is required to remain at work after his/her normal finishing time such time shall be paid at the ordinary rate applicable for the employee's classification, provided that such emergency overtime is limited to one hour per week. For the purposes of this subclause an emergency situation may include a natural disaster affecting either a parent, another employee or the centre/service or the death of a child or parent or, a child requiring urgent hospitalisation or medical attention.
- 5.3.4 All work performed on a Sunday shall be paid for at the rate of double time.

### **5.4 SHIFT WORK**

- 5.4.1 Shift work is provided for by the *Children's Services Award 2010* and the *Social, Community, Home Care and Disability Services Industry Award 2010*

### **5.5 WEEKEND WORK**

- 5.5.1 Time and one half rates for the first two hours and double time thereafter shall be paid for work on a Saturday.
- (a) However shift workers required to work their ordinary hours on a Saturday shall be paid time and one half rates for all hours worked.
- 5.5.2 All time worked on Sundays shall be paid for at the rate double the ordinary prescribed rate.
- 5.5.3 All time worked on a holiday shall be paid for at the rate of double time and a half the ordinary prescribed rate.
- 5.5.4 Should an employee's day off fall on a holiday, such employee shall be granted another day off in lieu thereof, or the extra day shall be added to the period of annual leave, or, the employee shall be paid an additional day's pay.
- 5.5.5 Employees working on a Saturday, Sunday or holiday shall receive a minimum payment as for four hours worked.

### **PART 6 - NOTIFICATION OF SHIFTS AND WORK LOCATIONS**

- 6.1.1 An employer shall post a legible notice at some place readily accessible to employees indicating the hours of commencement and cessation of work. The said hours shall only be changed after at least seven days' notice to the employee concerned, otherwise overtime shall be paid.
- 6.1.2 As required by the employer, an employee shall start and cease work on the job at the commencing and finishing times within which the ordinary hours shall be worked and shall transfer from job to job as directed by the employer. An employee transferred from one job to another during a shift shall be paid for the time occupied in travelling.
- 6.1.3 Where an employee is required to permanently transfer from one job to another (other than by mutual agreement) the employee shall be given seven days' notice of such change or be overtime as prescribed in clause 5.3.1 for each day the employee reports for duty at the new location until seven days have expired from the date of the notice of such change.

#### 6.1.4 Travelling time

Where an employee is sent to work from an employer's recognised place of business the employer shall pay all travelling time at the appropriate ordinary time rate from such place of business to the job and if the employee is required to return the same day to the employer's place of business the employer shall pay all travelling time at the appropriate ordinary time rate to the place of business. An employee sent for duty to a place other than the employee's regular place of duty or required by the employer to attend a court or any inquiry in connection with the employee's employment shall be paid all travelling expenses.

### **PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS**

#### **7.1 ANNUAL LEAVE**

7.1.1 Annual leave is provided for by the Childrens' Services Award 2010, the *Social, Community, Home Care and Disability Services Industry Award 2010* and the National Employment Standards.

#### 7.1.2 End of Year Shut Down

The employer shall observe an annual End of Year shut down. The employer will ensure that:

- At least three months written notice is provided to all employees of the dates of this shut down.
- Employees are allowed access to any annual leave entitlements (or pro-rata entitlements accrued) as at the time of the close down.
- Employers may allow the taking of annual leave in advance of its accrual.

In addition, all permanent employees will be entitled to one additional day's leave to be taken during the End of Year Shut Down period.

Provided that an employee may only access this leave when they would have normally been rostered for work.

7.1.3 Where the employer makes a decision to observe an End of Year Shut Down period employees shall be entitled to take annual leave or leave without pay for a period of not less than one week nor more than four consecutive weeks inclusive of public holidays, with permission from the employer taking into account rostering and operational requirements.

7.1.4 In the event an employee is granted leave in advance and resigns before accruing sufficient leave credits to cover the advanced leave then the employer may deduct from whatever remuneration owed to the employee at the time of termination the equivalent of the annual leave advanced exclusive of public holidays.

#### 7.1.5 Leave Without Pay

Subject to the operational requirements of the organisation and based on the merits of each particular case, an employee may be granted leave without pay for periods of six months. Each case shall be considered by the Board of Directors. The period for which an employee is absent on leave without pay shall not constitute a break in the employee's service.

#### **7.2 PERSONAL LEAVE**

The provisions of this clause apply to all permanent employees.

#### 7.2.1 Definitions

(a) In this clause the term immediate family means:

- i. spouse (including a former spouse, de fact spouse and a former de facto spouse) of the employee. A de facto spouse means a person who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- ii. child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

## 7.2.2 Amount of paid personal leave

(a) Paid personal leave is available to a permanent employee when they are absent:

- Due to personal illness or injury; or
- For the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.

(b) The amount of paid personal leave is as defined by the National Employment Standards. Employees get:

- 10 days each year for full-time employees, and
- Pro rata 10 days each year for part-time employees.

## 7.2.3 Effect of workers compensation

If an employee is receiving workers compensation payments, they are not entitled to personal leave.

## 7.2.4 Personal leave for personal injury or sickness

Employees may take up to the full amount of their personal leave for the purposes of personal illness or injury, subject to the conditions set out in this Part.

## 7.2.5 Personal leave to care for an immediate family or household member

(a) Subject to clauses 7.2.5(b) and 7.2.5(c), a full time employee is entitled to use their personal leave to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency.

(b) The entitlement in clause 7.2.5(a) is subject to the employee being responsible for the sole care and support of the person concerned. In normal circumstances an employee is not entitled to take leave for this purpose where another person has taken leave to care for the same person.

(c) Except as provided for in clause 7.2.7 not more than 10 days personal leave can be used in a year by an employee for the purposes set out in clause 7.2.5(a). This limit applies to the employee's total accrued personal leave which includes any untaken personal leave which has accumulated from previous years. This limit can be extended by mutual agreement between the employer and the employee.

## 7.2.6 Employee must give notice

(a) When taking leave for the personal illness or injury, the employee must, if required by the employer, establish by production of a medical certificate or statutory declaration that the employee was unable to work because of injury or personal illness.

A medical certificate or other evidence satisfactory to the employer shall be provided where the absence exceeds two consecutive days, where the employer has previously been absent for an aggregate of four days without production of a medical certificate during the current year of service, or where the absence falls on a working day before or after a public holiday.

(b) When taking leave to care for members of their immediate family or household who are sick and require care and support, the employee must, if required by the employer, establish by production of a medical certificate or statutory declaration the illness of the person concerned and that such illness requires care by the employee.

### 7.2.7 Infectious Diseases

- (a) An employee who contracts an infectious disease through a contact in the area of employment shall be entitled to infectious diseases leave in accordance with the following scale:

<b>Length of time worked for the employer</b>	<b>Personal leave (days)</b>
Chicken Pox (Varicella)	5 working days
German Measles (Rubella)	5 working days
Head Lice	1 working day
Hepatitis	as decided by medical practitioner
Impetago	2 working days
Measles (Morbelli)	10 working days
Mumps	10 working days
Rheumatic Fever	as decided by medical practitioner
Ringworm	2 working days
Scarlet Fever	10 working days
Conjunctivitis	2 working days
Whooping Cough	10 working days
Cold Sores	2 working days
Hepatitis A.	5 working days
Scabies	1 working day
Streptococcal Infection	1 working day
Active Tuberculosis	20 working days or as decided by a medical practitioner

#### Leave With Pay

- (b) A duly signed certificate by a qualified medical practitioner stating the nature of the illness must accompany any application for leave with pay under the provisions of this subclause.
- (c) Leave taken in accordance with this subclause shall not be debited against normal sick leave credits.

### 7.2.8 Unpaid personal leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave for personal injury or illness, to care for members of their immediate family or household who are sick and require care and support or who require care or support due to an unexpected emergency. The employer and employee shall agree on a period. Where agreement cannot be reached, the employee is entitled to take up to two days of unpaid leave per occasion, provided the notice requirements of clause 7.2.6 are met.

### 7.2.9 Special leave

An extra 4 days leave per financial year may be given to permanent full-time employees (Special Leave) at the discretion of Management. The Board in some instances may be required to be involved in authorising this leave.

- (a) Part time employees will be entitled to the same on a pro-rated basis, per financial year.
- (b) Employees will provide their written request for Special Leave to Management and the Special Leave will need to be approved by Management, at their reasonable discretion, taking into account operational requirements and financial capacity.
- (c) Special Leave may be applied for, as an example:
- Adjacent to the End of Year shut down;
  - For religious, cultural or ceremonial reasons; or
  - For additional bereavement leave.
- (d) For further information refer to the Special Leave Policy.

## 7.3 PARENTAL LEAVE

The provision of this clause applies to full-time and regular part-time employees, but do not apply to casual employees.

Subject to the terms of this clause employees are entitled to parental and adoption leave and to work part-time in connection with the birth or adoption of a child.

### 7.3.1 Definitions

- (a) For the purpose of this clause child means a child of the employee under the age of one year except for adoption of a child where child means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (b) Subject to clause 7.3.1(c), spouse includes a de facto or former spouse.
- (c) In relation to clause 7.3.5, spouse includes a de facto spouse but does not include a former spouse.

### 7.3.2 Basic entitlement

- (a) Parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. Adoption leave may be taken in the case of adoption.
- (b) Subject to clause 7.3.2(a), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
  - i. an unbroken period of one week at the time of the birth of the child;
  - ii. for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

### 7.3.3 Parental Leave

- (a) Employees are entitled to parental leave in accordance with the terms of the Federal Parental Leave Test Case decision.
- (b) The terms of this decision provide for leave for both men and women in relation to the birth of a child. An employee must have 12 months continuous service with the Centre to be entitled to take parental leave.
- (c) Men are entitled to take one week's leave at the time the baby is born and up to 51 weeks further unbroken leave in order to be the primary care giver of the child.
- (d) Women are entitled to take up to 52 weeks' leave commencing prior to or immediately after the date of confinement.
- (e) Parental leave cannot extend beyond the baby's first birthday. Parents cannot both be on parental leave at the same time (except in the first week after the birth). Also any entitlement taken by one parent reduces the entitlement of the other parent.

#### *Example One:*

The mother may take 12 weeks after the birth and return to work/ the father is then entitled to take 40 weeks.

#### *Example Two:*

The mother takes 26 weeks' leave/ half of it before the baby is born/ and returns to work when the baby is three months old/ the father takes one week at the time of the birth/ and is entitled to take 25 weeks after the mother returns to work/ ie a total of 26 weeks for each parent. In this example both have returned to work when the baby is nine months old.

- (f) An employee who decides not to return to work shall give as much notice as possible to the employer and at least four weeks' notice shall be given prior to the previously stated date of return to work from parental leave.

- (g) In lieu of or in conjunction with such leave/ an employee may take any annual leave or long service leave entitlement or any part thereof to which they are entitled. Paid sick leave or other paid authorised award absences shall not be available to an employee during their absence on such leave.
- (h) Employees are able to negotiate with the Director or Acting Director flexibility in terms of hours of work/ travel and work responsibilities prior to taking their parental leave.

#### 7.3.4 Adoption leave

- (a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (b) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
  - i. the employee is seeking adoption leave to become the primary care-giver of the child;
  - ii. particulars of any period of adoption leave sought or taken by the employee's spouse; and
  - iii. that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- (c) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- (e) An employee will not be in breach of this clause as a consequence of a failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.
- (f) An employee seeking to adopt a child is entitled to take unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employer is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such paid leave instead.

#### 7.3.5 Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion.

Notification of any such change is to be provided by the employee at least four weeks prior to the commencement of the changed arrangements.

#### 7.3.6 Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which they have accrued, such as annual leave or long service leave, subject to the total amount of leave not exceeding 52 weeks.

#### 7.3.7 Transfer to a safe job

- (a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of parental leave.
- (b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

### 7.3.8 Returning to work after a period of parental leave

- (a) An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.
- (b) An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to clause 7.3.7, the employee will be entitled to return to the position they held immediately before such transfer.
- (c) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.
- (d) Where the employee requests, and where it is reasonably practicable for the employer to do so, an employee may elect to return to work on a part time basis for a period of 24 months from the date of return.

Such a request must be made as soon as possible prior to the employee's anticipated return to work, but cannot be made earlier than 6 weeks prior to the expected date of return.

Any dispute arising out of this provision should be dealt with in accordance with the dispute resolution procedure set out in Part 2 of this Agreement.

### 7.3.9 Replacement employees

- (a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.
- (b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Clauses 7.3.9(a) and 7.3.9(b) may also apply where an employee is engaged to job share with a permanent employee who is returning to work under the terms of clause 7.3.8(d).

## 7.4 BEREAVEMENT LEAVE

The provisions of this clause apply to all permanent employees.

### 7.4.1 Paid leave entitlement

An employee other than a casual employee is entitled to up to 3 days bereavement leave on any occasion on which a member of the employee's immediate family or household dies.

### 7.4.2 Unpaid leave entitlement

Where an employee has exhausted all bereavement leave entitlements on each occasion, including other accumulated leave entitlements, he or she is entitled to take unpaid bereavement leave. The employer and employee should agree on the length of the unpaid leave. In the absence of agreement the employee is entitled to take up to 3 days unpaid leave.

## 7.5 PUBLIC HOLIDAYS

### 7.5.1 Prescribed holidays

Employees other than casual employees will be entitled to the following public holidays without loss of pay, namely:

- (a) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and
- (b) Public holidays as prescribed in the Australian Capital Territory; and
- (c) Two other days; one of which, at the discretion of the employer, may be observed on the working day immediately following Boxing Day each year; and the other which shall be taken on any weekday during the Centre's Christmas/New Year shut down period.

- (d) When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.
- (e) When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.
- (f) When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.

7.5.2 An employer and his or her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.

#### 7.5.3 Absence before or after a holiday

Absence from duty owing to illness or other causes for periods immediately preceding or succeeding such holidays, where application is made for leave and the leave is approved, will render an employee eligible for payment for the public holiday or holidays occurring within the period of absence.

#### 7.5.4 Payment for holidays

- (a) Payment must be the amount the employee would have received had the day not been a holiday and he/she had worked thereon for the usual time of the day.
- (b) Where at such time as Christmas, Easter or other holiday or holidays, works are closed down for longer periods than the ordinary holiday or holidays, employees shall receive payment for the holiday or holidays occurring in such periods on the lines mentioned above.

#### 7.5.5 Substitute day off

Where an employee's leisure day or short day or short Friday falls on a Public Holiday the employee and the employer shall agree to an alternative appropriate day for such leisure. In the absence of agreement the substituted day shall be determined by the employer.

#### 7.5.6 Terminating employment in relation to a holiday

- (a) Where an employer terminates the employment of an employee, except by reason for the misconduct of the employee (proof whereof shall lie on the employer) within fourteen days prior to a public holiday or a group of public holidays, he or she has been employed for a period of at least one week prior to the termination of employment; provided further that where the employee is re-employed within a period of one month of the termination of his or her employment, he or she shall be paid for all holidays occurring within the period between the termination of his or her services and reemployment; provided further that no employee shall be entitled to receive payment from more than one employer in respect of the same public holidays or group of holidays.
- (b) When any two or more of the holidays prescribed in this Agreement occur within one week of one another, such holidays shall, for the purpose of this Agreement be deemed to be a group of holidays.
- (c) The provisions of this clause shall not apply to casual employees.

### 7.6 ADDITIONAL LEAVE

#### 7.6.1 Family and Domestic Violence Leave

- (a) Full time, part time and casual employees are entitled to 10 days paid family and domestic violence leave annually.
- (b) Family and domestic violence means violent, threatening or other abusive behaviour by an employee's close relative that seeks to coerce or control the employee and/or causes the employee harm or fear.
- (c) For the purpose of this clause, a close relative is considered to be an employee's:
  - i. Spouse or former spouse; or
  - ii. De facto partner or former de facto partner; or
  - iii. Child; or
  - iv. Parent; or
  - v. Grandparent; or



- vi. Grandchild; or
- vii. Sibling; or
- viii. The child of a current or former spouse or a current or former de facto partner; or
- ix. A person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

#### 7.6.2 Volunteer Leave

In addition to other leave entitlements;

- (a) Full time, part time and casual employees are entitled to take unpaid community service leave for activities such as voluntary emergency management activities annually.
- (b) An employee is entitled to take community service leave while they are engaged in the activity and for reasonable travel and rest time.
- (c) The employee seeking to take community service leave must provide the employer with written notice of their absence as soon as possible and the period/expected period of absence from the workplace.
- (d) Although there is no limit on the amount of community service leave an employee can take, the employee must work with Management to ensure rostering and operational requirements have been considered.
- (e) The employee must provide the employer with evidence that the employee is entitled to community service leave.

**PART 8 – SIGNATORIES TO THE AGREEMENT**

Signed for and on behalf of Baringa Child Care Association Incorporated by its authorised representative:



Signed \_\_\_\_\_

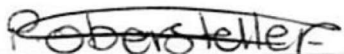
Jillian Flinders\*  
Chairperson, Board of Directors  
Baringa Childcare Association Incorporated  
64 Baddeley Crescent, Spence ACT 2615




Witness \_\_\_\_\_

PJ Ann Aguilar  
Executive Officer  
Baringa Childcare Association Incorporated  
64 Baddeley Crescent, Spence ACT 2615

Signed for and on behalf of the employees of Baringa Child Care Association Incorporated by its authorised representative:



Signed \_\_\_\_\_

Peta Obersteller\*\*   
Enterprise Bargaining Agreement Staff Working Group  
Baringa Childcare Association Incorporated  
64 Baddeley Crescent, Spence ACT 2615  
Educator Coach & Early Childhood Teacher



Witness \_\_\_\_\_

PJ Ann Aguilar  
Executive Officer  
Baringa Childcare Association Incorporated  
64 Baddeley Crescent, Spence ACT 2615

\*Jillian Flinders, Chairperson of the Board, is the signatory as per *Fair Work Regulations 2009* 2.06A(2)(a)(i) “the employer covered by the agreement”. The organisation is an Incorporated Association. As per s51.1 the Association’s Constitution, “Management of the Association will be the responsibility of the Board, which may exercise all such powers of the Association as are not, by the Act or this Constitution, required to be exercised by the Association in a general meeting.” This includes the Board acting as the employer of the organisation.

\*\*Peta Obersteller, EBA Staff Working Group Member, is the signatory as per *Fair Work Regulations 2009* 2.06A(2)(a)(ii) “representative of employees covered by the agreement”. Following the release of the NERR to commence the bargaining process, staff were requested to nominate their representative. 100% of the staff nominated for the EBA Staff Working Group to represent them. Peta Obersteller has been a member of the EBA Staff Working Group since the NERR was released.

THE FAIR WORK COMMISSION

FWC Matter NO.: AG2023/775

Applicant: Baringa Child Care Centre Incorporated

**Section 185 — Application for approval of a single enterprise agreement**

**Undertaking — Section 190**

I, Jillian Flinders, Chairperson, Board of Directors, Baringa Child Care Centre Incorporated, have the authority given to me by Baringa Child Care Centre Incorporated to give the following undertakings with respect to the Baringa Child Care Centre Incorporated Enterprise Agreement 2021 ("the Agreement"):

1. In relation to clause 1.6.1 of the Agreement, it shall be read as follows:

1.6.1 This Agreement shall be read in conjunction with, and to incorporate the terms of the *Children 's Services Award 2010* and the *Social, Community, Home Care and Disability Services Industry Award 2010*. To the extent of any inconsistency between the Agreement and the Awards, the provisions of the Agreement shall prevail.

2. In relation to clause 3.5.2(b) of the Agreement, it shall be read as follows:

Clause 3.5.2(b) If an employee fails to give the notice specified in clause 3.5.2(a) the employer has the right to withhold monies due to the employee to a maximum of 1 week's wages of the employee.

3. In relation to clause 7.5.2 of the Agreement, it shall be read as follows:

7.5.2 An employer and his or her employees may agree to substitute another day, or part day, for any prescribed in this clause that would otherwise be a public holiday. For this purpose, the consent of the majority of affected employees shall constitute agreement.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

Signature

A handwritten signature in dark ink, appearing to be 'Jillian Flinders', written on a light-colored background.

Date 18 April 2023

**Schedule 2.2—Model flexibility term**

(regulation 2.08)

**Model flexibility term**

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
  - (a) the agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
  - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
  - (a) is in writing; and
  - (b) includes the name of the employer and employee; and
  - (c) 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; and
  - (d) includes details of:
    - (i) the terms of the enterprise agreement that will be varied by the arrangement; and

- (ii) how the arrangement will vary the effect of the terms; and
  - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
  - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the employer and employee agree in writing—at any time.