

EDUCATION AND TRAINING REFORM ACT 2006

School Council Employees (Employment Conditions, Salaries, Allowances, Selection and Conduct)

MINISTERIAL ORDER NO. 1389

I, **Natalie Hutchins**, Minister for Education and Minister responsible for administering the *Education and Training Reform Act 2006* (Vic) (**Act**) make this Order, which is to be cited as Ministerial Order No. 1389 - *School Council Employees (Employment Conditions, Salaries, Allowances, Selection and Conduct) Order 2022*.

Authorising provision

I make this Order under sections 2.3.8, 5.10.4 and 5.10.5 of the Act and item 8 of Schedule 6 to the Act.

Commencement

This Order is made on the date it is signed and commences in accordance with its terms.

PART 1 – PRELIMINARY

1.1.1 In the event of an inconsistency between this Order and any award, agreement or employment condition applying under the *Fair Work Act 2009* (Cth) to persons employed by a council under Part 2.3 of the Act, the relevant award, agreement or minimum employment condition provision prevails to the extent of the inconsistency.

Application

1.1.2 Unless otherwise stated, this Order applies to persons employed by a council under Part 2.3 of the Act.

Arrangement

1.1.3 This Order is divided into Parts and Divisions and provides for the following matters:

Part 1 – PRELIMINARY

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SCHEDULE 4 – UNSATISFACTORY PERFORMANCE PROCEDURES

SCHEDULE 5 – SUPPORTED WAGE SYSTEM

Definitions

1.1.4 In this Order, unless the contrary intention appears:

- (1) "**Act**" means the *Education and Training Reform Act 2006* (Vic);
- (2) "**approved**" means, unless otherwise stated elsewhere in this Order, approved by the council;
- (3) "**casual relief teacher**" means a person employed by a council as a teacher on a casual basis under section 2.3.8(1)(a)(i) of the Act;
- (4) "**council**" means a school council constituted under section 2.3.2 of the Act;
- (5) "**Department**" means the Department of Education and Training or its successor;
- (6) "**dependant**" means a person maintained by and permanently domiciled with an employee, including a spouse, a child under 16 years of age, a full-time student child and a parent;
- (7) "**domestic partner**" of an employee means a person to whom the employee is not married but with whom the employee is living as a couple on a genuine domestic basis (irrespective of gender);
- (8) "**education support class employee**" means an employee occupying, or for the time being performing the duties of, an education support class position;
- (9) "**employee**" means a person employed by a council under section 2.3.8 of the Act;
- (10) "**language instructor**" means an employee employed by the VSL council as a language instructor under section 2.3.8(1)(a) of the Act;

- (11) "**medical certificate**" means a certificate issued by a registered health practitioner, other than a registered student, within the meaning of the **Health Practitioner Regulation National Law (Victoria) Act 2009**;
- (12) "**Merit Protection Board**" means a Merit Protection Board established under Division 7 of Part 2.4 of the Act;
- (13) "**National Employment Standards**" means the National Employment Standards under the *Fair Work Act 2009* (Cth);
- (14) "**normal rate of pay**" means the rate of pay an employee would ordinarily receive as specified in schedule 1 and, unless otherwise stated in this Order, excludes allowances, penalty payments or payments of a temporary nature;
- (15) "**principal**", means the person occupying, or for the time being performing the duties of, the position of principal of a school;
- (16) "**promotion**" means the permanent movement of an ongoing employee from one position to another position in the school with a higher attainable maximum salary;
- (17) "**required document**" means:
 - (a) in respect of personal leave for illness or injury, a medical certificate or, if it is not reasonably practicable for an employee to provide a medical certificate, a statutory declaration;
 - (b) in respect of personal leave for carer's purposes, a medical certificate or a statutory declaration;
- (18) "**school**" means a Government school as defined in section 2.3.1 of the Act;
- (19) "**Secretary**" means Secretary to the Department of Education and Training or its successor;
- (20) "**Senior Chairperson**" means the person appointed as Senior Chairperson of the Merit Protection Boards pursuant to section 2.4.45(2) of the Act;
- (21) "**service**" means, unless otherwise stated, service approved by the Secretary;
- (22) "**schedules**" means the schedules annexed to this Order;
- (23) "**session**" means a period of four hours in duration, during which instruction is scheduled to be provided by VSL;
- (24) "**spouse**" of an employee means a person to whom the employee is married or a domestic partner;

(25) "**subdivision**" means salary subdivision and represents a point on a salary scale;

(26) "**transfer**" means the permanent movement of an ongoing employee from one position to another position in the school with the same or lower attainable maximum salary;

(27) "**VSL**" means the Victorian School of Languages or its successor.

1.1.5 Unless otherwise stated in this Order, all salaries and allowances specified in the schedules are annual rates for employees employed full-time.

1.1.6 For the purposes of Part 6 of this Order:

(1) Unless otherwise stated, the entitlements of this Order apply on a pro rata basis in respect of part-time service;

(2) Any leave granted to an employee does not extend beyond the date that the employee's employment would otherwise have ceased;

(3) "**Full pay**" in relation to an employee who works less than full-time, means the pay the employee ordinarily receives;

(4) "**Half pay**" in relation to an employee who works less than full-time, means half the pay the employee ordinarily receives.

PART 2 – CLASSIFICATION, SALARIES AND ALLOWANCES

Division 1 – Education Support Class

2.1.1 (1) (a) The education support class comprises the following classifications:

Education support class level 2

Education support class level 1

(b) The education support class level 2 classification comprises one salary range and the education support class Level 1 classification comprises five salary ranges.

(2) Persons employed, or re-employed, under Part 2.3 of the Act will be employed within the education support class, except where the council determines otherwise in respect to categories of work specified in Divisions 4 and 5 of this Part or clause 1.2 of the schedule 1.

- 2.1.2 (1) On the date this Order is made education support class employees in the classifications identified in schedule 3 will translate to the revised classification structures as set out in schedule 3 with effect from 2 January 2022 or the date of their current period of employment commenced, whichever is the later.
- (2) Education support class employees are entitled to the back payment of the salaries set out in schedule 1 as follows:
- (a) Employees who commenced their current period of employment on or before 2 January 2022 will receive the salary specified in schedule 1 with effect from 2 January 2022.
- (b) Employees who commenced their current period of employment after 2 January 2022 will receive the salary specified in schedule 1 with effect from the date their current period of employment commenced.
- (3) For the purposes of subclauses (1) and (2) **“current period of employment”** means employment which commenced on or before 25 July 2022 whether or not that employment has terminated after 25 July 2022.

Division 2 – Salaries

- 2.2.1 (1) An education support class employee will be paid the salary appropriate to their classification as specified in clause 1.1 of schedule 1.
- (2) If approved by a council an education support class employee may elect in writing to receive employment benefits in lieu of her or his salary in accordance with any salary packaging policy determined by the Secretary.
- 2.2.2 (1) An education support class employee employed on a casual basis will be paid an hourly rate derived from the full-time salary applying to the minimum salary subdivision of the salary range of the position, as specified in schedule 1, plus a 35.40% casual loading. The 35.40% casual loading is in lieu of public holidays and any paid leave entitlements, other than long service leave, and the education support class employee will have no entitlement to leave, other than long service leave, under Part 6.
- (2) (a) An employee, other than education support class employee, a casual or sessional teacher or a Language Instructor at the VSL, employed on a casual basis will be paid an hourly rate derived from the full-time salary applying to the minimum salary subdivision of the salary range of the position, plus a 25.00% casual loading. The 25.00% casual loading is in lieu of public holidays and any paid leave entitlements, other than long service leave, and the employee will have no entitlement to leave, other than long service leave, under Part 6.

- (b) Casual employees in the education support class will be entitled to a minimum payment of three hours in respect of employment on any one day.
- 2.2.3
- (1) Within the salary ranges specified in schedule 1, salary progression will be from the appropriate minimum, through the subdivisional range, to the maximum subdivision of that range in accordance with procedures determined by the Secretary.
 - (2) Salary progression is not automatic and is based on demonstrated achievement against school priorities and criteria determined by the Secretary appropriate to each classification level.
 - (3) The salary progression cycle is common to all education support class employees commencing on 1 May each year and concluding on 30 April in the following year. A performance review will be undertaken at the end of each school year.
 - (4) Notwithstanding subclauses (5) and (6) of this clause, an education support class employee with less than six months eligible service in any particular progression cycle will not be eligible for salary progression.
 - (5) Where the requirements for salary progression are not met, salary progression will not occur for that progression cycle provided that the education support class employee has been:
 - (a) notified in writing of:
 - (i) the standards of performance that are expected;
 - (ii) the areas of the education support class employee's performance that do not meet the required standards;
 - (iii) the consequences of continued or repeated failure to meet these standards; and
 - (b) given the opportunity to enable improvement in performance to the required standard.
 - (6) If the notice under subclause (5)(a) of this clause is issued on or after 1 March salary progression in that cycle must be granted.
 - (7) Procedures determined by the Secretary under subclause (1) of this clause may make provision for accelerated salary progression within either of the education support class classifications. Provided that any accelerated salary progression determined under this clause only applies within the education support class employee's current school.

- (8) Notwithstanding subclauses (1) to (4) and (7) of this clause and subject to satisfying the requirements of subclauses (5) and (6) of this clause, an education support class employee is not eligible for salary progression during any period that an education support class employee is the subject of unsatisfactory performance procedures.

Salary Range Review

- 2.2.4 (1) An education support class employee may request, or the council may initiate, a review of an education support class employee's salary range. Any such request must be in writing.
- (2) A review arising under subclause (1) will be conducted in the context of any changes to the work value of the position and the performance of the education support class employee and where practicable the education support class employee will be advised of the outcome of the review within 28 days of initiation of the review.
- (3) A review under subclause (1) may result in movement to either a higher or lower salary range within the education support class employee's classification level or no change to the salary range, provided that the outcome of such a review cannot result in a salary range below the level determined on appointment to that position.
- (4) Where the review under subclause (1) results in a higher salary range the effective date of the movement to the higher salary range will be on and from the first pay period after either: the date of the education support class employee's application for review; or the date the education support class employee was directed to undertake the duties of the higher range, whichever is the earlier.
- (5) On movement to a higher salary range within a classification level, following a review under subclause (1), an education support class employee's salary will be determined as set out in clause 2.2.6(1)

Commencement Salary on Employment

- 2.2.5 (1) For the purposes of this clause "**prior employment**" means periods of employment as an education support class employee, other than casual employment, in one or more schools, provided that any break between periods of employment does not exceed twelve months.
- (2) The commencing salary of an education support class employee will be determined as follows, whichever results in the higher commencing salary:
 - (a) an education support class employee will commence employment at the minimum salary level applying to the position; or

- (b) the current equivalent of the salary subdivision, as specified in schedule 1, received by the education support class employee on the last day of their most recent period of prior employment. Provided that:
 - (i) if the prior employment was at a higher classification or salary range, the commencement salary will be determined at the minimum salary subdivision of the relevant salary range as specified in schedule 1 plus an additional salary subdivision for each year of satisfactory prior employment at or above the relevant classification or salary range;
 - (ii) where the salary in the prior employment was determined incorrectly or is inconsistent with normal salary progression for an employee, the commencement salary will be determined at the minimum salary subdivision of the relevant classification and salary range as specified in schedule 1 plus an additional salary subdivision for each year of satisfactory prior employment at or above the relevant salary range.
 - (c) the commencement salary for an education support class employee at Level 1 Range 2 will be determined in accordance with sub clauses (a) or (b) or the following, whichever results in the higher salary:
 - (i) roles that require co-ordination, specialised student/teacher support tasks, or technical tasks, commence at Level 1, Range 2, subdivision 4; or
 - (ii) roles that require an Australian Qualification Framework (AQF) certificate qualification commence at Level 1, Range 2, subdivision 4; or
 - (iii) roles that require an Australian Qualification Framework (AQF) diploma qualification (or in the case of an Enrolled Nurse, an equivalent qualification leading to registration) commence at Level 1, Range 2, subdivision 5.
- (3) The commencing salary determined in accordance with this clause cannot exceed the maximum salary specified in schedule 1 for the relevant classification level or salary range.

Salary on Promotion or Transfer

- 2.2.6 (1)
- (a) Subject to subclause (1)(b) of this clause, on promotion an education support class employee will be paid at the minimum salary specified in schedule 1 for the salary range of the position.
 - (b) Where prior to the effective date of promotion, the education support class employee had been in receipt of salary (including any higher duties

allowance) at or above the minimum salary of the promotion position within the education support class employee's current period of employment, the salary on promotion will be at that higher level.

- (c) Where the salary determined under subclause (1)(b) of this clause exceeds the maximum salary of the promotion position the salary on promotion will be determined as if all of the education support class employee's current service at or above the promotion position had been at that promotion position.
- (2) On transfer an education support class employee will be paid at their current salary subdivision or the minimum commencing salary specified for the position in schedule 1 whichever is the higher. Provided that:
- (a) unless otherwise determined by the Secretary, the salary of an education support class employee whose salary has been accelerated in accordance with clause 2.2.3(7) is the salary subdivision that would have applied had acceleration not been approved;
 - (b) the salary of an education support class employee transferred to a position at a lower classification level or salary range is the salary subdivision determined as if all of the education support class employee's service at or above that lower classification level or salary range had been at that lower classification level or salary range;
 - (c) with the exception of action under Division 4 of Part 3 of this Order, an education support class employee cannot be transferred to a lower classification level or salary range without that employee's consent.
- (3) Notwithstanding subclauses (1) and (2) of this clause, the salary determined in accordance with this clause cannot exceed the maximum salary of the position as specified in schedule 1.
- (4) An education support class employee employed, transferred or promoted to a position will be paid from the effective date of the employment, transfer or promotion as the case may be. Provided that if an education support class employee changes their time fraction, other than by employment, transfer or promotion the change in proportionate salary commences from the date of effect of the changed time fraction.

Division 3 – Allowances

- 2.3.1 An employee may, in addition to the salary payable in accordance with this Part, receive one or more of the allowances specified in this Division, if such allowance is applicable to the position occupied by the employee.

Special Payment

- 2.3.2 (1) For the purposes of this clause "**special payment**" means an allowance paid to an employee in accordance with procedures determined by the Secretary.
- (2) An employee may be paid a special payment in accordance with procedures determined by the Secretary under subclause (1) for the following purposes:
- (a) for undertaking a task that is additional to the responsibilities that can be required of the employee at their respective classification level and salary range;
 - (b) as an attraction and/or retention incentive;
 - (c) any other purpose determined by the Secretary.
- (3) The minimum and maximum annual amounts of a special payment are specified in clause 2.1 of schedule 2. Subject to any procedures determined under clause 2.3.2(1), the special payment may be paid fortnightly or as a lump sum if the council and the employee agree.
- (4) An employee in receipt of a special payment under subclause (2) on a fortnightly basis for a continuous period of less than 12 months immediately prior to an absence on personal leave with pay will continue to receive the special payment during the period of personal leave for up to one month or until the expiration of the special payment, whichever is the earlier.
- (5) An employee who has been in receipt of a special payment under subclause (2) on a fortnightly basis for a continuous period of 12 months immediately prior to the commencement of paid leave (including personal leave) and who would have continued to receive the special payment but for their absence on leave, will continue to be paid the special payment during the period of paid leave or until the expiration of the special payment, whichever is the earlier.

Higher Duties Allowance

- 2.3.3 (1) An employee performing at least half of the duties of a position for which the specified salary is higher than that applicable to the employee's substantive position will be paid a higher duties allowance in accordance with the terms and conditions of this clause if the assignment is for a period of longer than five consecutive working days.
- (2) The following conditions apply to the payment of a higher duties allowance:
- (a) At least one half of the duties of the assigned position must be performed. Where less than the full duties are performed, the higher duties allowance paid is proportionate to the extent of the higher duties carried out.

- (b) Assignments commence from the date of taking up the higher duties and cease at the end of the assignment period or the last day of the school year, whichever is the earlier. Provided that an employee in receipt of a higher duties allowance, except as stated in subclause (3), for at least one month immediately prior to the last day of the school year will be paid the allowance to 31 December of that year. Provided further that if such employee is re-assigned the duties of that position from the first day of the succeeding school year they will be paid the appropriate higher duties allowance from 1 January of that year.
 - (c) Subject to subclause (2)(a), the higher duties allowance equals the amount required to raise the employee's salary to the salary of the position to which they have been assigned for the eligible period that the higher duties are performed.
- (3) Employees who are in receipt of a higher duties allowance and who are absent on personal leave with pay continue to receive the higher duties allowance for up to one month from the commencement of the personal leave or the expiration of the assignment period, whichever is the earlier. Provided that if an employee has been in receipt of a higher duties allowance continuously for a period in excess of 12 months they will continue to receive the higher duties allowance for periods of personal leave in excess of one month up to the expiration of personal leave or the expiration of the assignment period, whichever is the earlier.
 - (4) An employee assigned higher duties in accordance with subclause (1) is entitled to such increases in the higher duties allowance as are equivalent to the increases in salary the employee would have received had they been promoted to the higher position.

Salary Loading Allowance

- 2.3.4 (1) Subject to subclause (3), an employee, other than an employee employed on a casual or sessional basis, is entitled to be paid, on a date determined by the council, a salary loading allowance each year equivalent to 17.5 per cent of four weeks of the total salary to which they are normally entitled as at 1 December of the year in which the allowance is paid or the maximum amount specified in clause 2.2 of Schedule 2, whichever is the lesser.
- (2) An employee with part-time service during the relevant year will be paid a pro rata salary loading allowance based on the aggregate of the employee's paid service over the 12 months preceding the date determined under subclause (1).
 - (3) An employee with less than a complete year of service will be paid a pro rata salary loading allowance based on the aggregate of the employee's paid service over the 12 months preceding the date determined under subclause (1). Leave without pay

for religious observance and vacation periods which do not attract pay but are otherwise counted as service will be regarded as paid service.

- (4) Any unpaid salary loading will be paid in lieu to an employee on cessation of employment.

Remote Allowances

- 2.3.5 (1) Remote allowances as specified in clause 2.3 of schedule 2 will be paid to employees in schools determined by the Secretary to be remote.
- (2) The Secretary will determine whether a school is classified as Remote Category A or Remote Category B and may vary the remote category in which a school is classified.

First Aid Allowance

- 2.3.6 An education support class employee who holds a first aid qualification approved by the Secretary who agrees to perform first aid duties in addition to the normal duties of their position and is required to be available to provide first aid, will be paid the first aid allowance specified in clause 2.4 of schedule 2. Provided that a first aid allowance is payable where first aid duties comprise less than 60% of an education support class employee's normal duties.

Intensive Care Allowance

- 2.3.7 (1) An education support class employee who is in receipt of a salary less than subdivision 4 of Range 2 Level 1 and who satisfies the following criteria will be paid the intensive care allowance specified in clause 2.6 of schedule 2:
 - (a) the employee was in receipt of the intensive care allowance immediately prior to the commencement of this Order; and
 - (b) the employee continues to be required to provide intensive attendant care, administer medical support or assist in the development of independent living skills for individual students or groups of students while employed in a special school;provided that the intensive care allowance will cease from the date the employee is in receipt of subdivision 4 of Range 2 Level 1 salary or higher.
- (2) An education support class employee who is in receipt of a salary at subdivision 4 of Range 2 Level 1 or higher at the date this Order commences and who satisfies the following criteria will be paid the intensive care allowance specified in clause 2.6 of schedule 2:

- (a) the employee was in receipt of the intensive care allowance immediately prior to the commencement of this Order; and
- (b) the employee continues to be required to provide intensive attendant care, administer medical support or assist in the development of independent living skills for individual students or groups of students while employed in a special school.

Leave Purchase Allowance

- 2.3.8 (1) Where an education support class employee attends for duty under subclauses 4.1.2(1)(b) to (f) of this Order, they will be paid a leave purchase allowance equal to 72.47% of the education support class employee's hourly rate of pay for each hour that the employee attends for duty during the additional paid leave accrued under clause 6.1.1(1)(b).
- (2) The maximum amount of leave that may be purchased in any year is 228 hours.
- 2.3.9 (1) The leave purchase allowance under clause 2.3.8 may be paid fortnightly or as a lump sum.
- (2) A leave purchase allowance under clause 2.3.8 paid on a fortnightly basis will continue to be paid during an employee's absence on paid leave provided the employee would have continued to receive the allowance but for their absence on paid leave.
- (3) Where an education support class employee is in receipt of a leave purchase allowance on an ongoing basis the allowance will be treated as salary in addition to the salary specified in schedule 1.

Position Allowance

- 2.6.11 (1) Education support class employees specified in subclause (2) are entitled to be paid in December each year, on a date determined by the council, a position allowance equivalent to one per cent of the total salary to which the employee is normally entitled as at 1 December of the year in which the allowance is paid.
- (2) Education support class employees at level 2, level 1 ranges 3 to 5 or level 1 range 2 subdivision 2-8 will be paid the annual lump sum payment set out in subclause (1).

Division 4 – Casual and Sessional Teachers

Casual Relief Teachers

- 2.4.1 A council may employ a casual relief teacher pursuant to section 2.3.8(1)(a) of the Act for a period of up to 30 days.
- 2.4.2 (1) (a) Subject to subclauses (2) and (3) of this clause, casual relief teachers will be paid the hourly rate set out in clause 1.2(1) of schedule 1.
- (b) Payment for fractions of an hour will be calculated to the nearest quarter of an hour by rounding up for periods equal to or greater than seven and a half minutes and rounding down for periods less than seven and a half minutes.
- (c) The total hours of work will be calculated on a daily basis and will not be aggregated over more than one day.
- (2) The payment calculated under sub clause (1) will not exceed the maximum payment set out in clause 1.2(2) of schedule 1.
- (3) Casual relief teachers will be entitled to a minimum payment of three hours in respect of employment on any one day.
- (4) If approved by a council a casual relief teacher may elect in writing to receive employment benefits in lieu of her or his salary in accordance with any salary packaging policy determined by the Secretary.
- 2.4.3 The rates of pay set out in clause 1.2 of schedule 1 include a casual loading of 22% in lieu of annual leave, personal leave and public holidays and persons employed under this Order will have no entitlement to payment for annual leave, personal leave or public holidays.
- 2.4.4 (1) The maximum hours of duty of casual relief teachers will be 38 hours per week.
- (2) A casual relief teacher will be entitled to an unpaid lunch break of not less than 30 minutes free from assigned duties between the hours 11:30 am to 2:30 pm.

Language Instructors – VSL

- 2.4.5 VSL council may employ language instructors for a designated period or for the specified task of instructing in a course of instruction pursuant to section 2.3.8(1)(a) of the Act.
- 2.4.6 (1) Employment of language instructors for a designated period by VSL council in any VSL school year will be:
- (a) for an initial maximum period of six weeks; and

- (b) for a fixed term not exceeding the period remaining until the final day of the VSL school year, upon confirmation of VSL's continuing need for the employment of the language instructor beyond the initial maximum period of six weeks.
 - (2) Sessions will be assigned in advance for the period of the school year and confirmed no later than six weeks after commencement of the school year depending on confirmation of enrolments.
 - (3) Employment of language instructors may be discontinued within the first six weeks of commencement if assigned class enrolments do not reach the minimum required number of students (being not more than 18 students).
- 2.4.7 (1) Employment of language instructors for a specified task by VSL council in any given VSL school year will be for an agreed number of sessions of instruction of designated length to be conducted during the period of a VSL semester.
- (2) Sessions will be assigned in advance for the designated period.
 - (3) Sessions will be conducted contingent upon enrolments in the relevant course of instruction maintaining the minimum required number of students (being not more than 18 students).
 - (4) The VSL council may employ a casual relief language instructor for a period of up to six sessions.
- 2.4.8 (1) Subject to subclauses (2) and (3) of this clause language instructors employed for a designated period under clause 2.4.6 or on a sessional basis under clause 2.4.7 will be paid the sessional rate specified in schedule 1.
- (2) Language instructors will be entitled to a standard payment of four hours in respect of any one session comprising three hours of instruction and one hour for administration and preparation. Provided that a language instructor who attends a professional development program at the direction of the VSL will be paid the sessional rate set out in clause 1.3 of schedule 1 for each hour of attendance.
 - (3) VSL centre supervisors will receive not less than an extra 0.5 hours' pay per session in recognition of management responsibilities associated with the VSL centre supervisor role.
 - (4) The rates of pay set out in clause 1.3 of schedule 1 include a loading of 50%, as a payment in advance for annual leave, paid personal leave and public holidays and in recognition of weekend work or inconvenient hours. This additional loading may be offset against any such entitlements which would otherwise apply. Any annual leave is deemed to be taken during non-session periods of the year, with payment having been made in advance in accordance with this clause.

- (5) If approved by the council a language instructor may elect in writing to receive employment benefits in lieu of her or his salary in accordance with any salary packaging policy determined by the Secretary.

2.4.9 Generally language instructors are employed to conduct sessions on a Saturday during the VSL school year. Nothing in this Order prevents the VSL from conducting sessions on a day other than a Saturday.

General

- 2.4.10 (1) To be eligible for employment as a casual relief teacher or a language instructor a person must satisfy the requirements of and be registered, or have permission to teach, under Part 2.6 of the Act.
- (2) In addition to the requirements stated in subclause (1) of this clause, the council may require particular qualifications for any specific position.

Division 5 – General

- 2.5.1 (1) The council may determine the salary of any employee for whose circumstances no provision is made in this Part.
- (2) Notwithstanding Divisions 1 and 2 of this Part, the council may determine that an employee commences at a salary other than the minimum.
- (3) The commencing salary determined in accordance with subclause (2) of this clause must not be less than the salary determined under Division 2 of this Part and cannot exceed the maximum salary specified in schedule 1 for the relevant classification level or salary range of the employee.

Division 6 – Supported Wage

- 2.6.1 The Supported Wage System set out in Schedule 5 applies to an employee who is unable to perform the range of duties to the competence level required within the employee's class of work, because of the effects of a disability on the employee's productive capacity and who meets the impairment criteria for receipt of a disability support pension.

PART 3 – TERMS OF EMPLOYMENT

Division 1 – General

- 3.1.1 (1) Subject to the limitations contained in section 2.3.8(1)(a) of the Act, a person may be employed pursuant to section 2.3.8(1) of the Act full-time or part-time on either an ongoing or fixed term basis or on a casual basis.
- (2) An employee who has attained the age of 55 years may elect to retire.
- (3) Unless otherwise stated, the provisions of this Order, other than Part 7, will apply to an employee employed part-time on a pro rata basis.
- (4) Other than leave under Division 14 of Part 6, an employee employed on a casual or sessional basis is not entitled to paid leave under Part 6 of this Order.
- 3.1.2 (1) Subject to the Act, a person is not eligible for employment under Part 2.3 of the Act unless the council is satisfied:
- (a) that the person is:
- (i) an Australian citizen or a permanent resident in Australia under any law of the Commonwealth or entitled to permanent residency in Australia under any law of the Commonwealth; or
- (ii) entitled to be resident in Victoria for sufficient periods to enable the person to undertake the duties of the position;
- (b) as to the person's health and fitness following completion of an approved pre-employment health declaration. If the council has reason to doubt a person's health and fitness the council may require the person to be examined by a medical practitioner approved by the Secretary;
- (c) that the person is a fit and proper person to be an employee; and
- (d) that the person has fulfilled such qualification requirements as are in effect at the time.
- (2) The Secretary may waive any of the requirements in subclause (1) of this clause if the Secretary considers that it is in the interests of Victoria that a person who does not satisfy the requirements should be employed under Part 2.3 of the Act.
- 3.1.3 The council may require particular qualifications and/or training for any specific position.

- 3.1.4 The council may employ, transfer or promote a person who would not otherwise be qualified for employment, transfer or promotion under this Part provided that the person satisfies the requirements of Division 2 of this Part.
- 3.1.5 (1) The Secretary may determine that a person's eligibility for employment under Part 2.3 of the Act is subject to an employment limitation.
- (2) The Secretary may establish criteria and procedures for imposing an employment limitation on a person, including the grounds for a review of an employment limitation.
- (3) If a person is the subject of an employment limitation, that person's eligibility for employment under Part 2.3 of the Act is subject to the terms and conditions of that employment limitation.

Division 2 – Suitability for Employment

- 3.2.1 This Division applies notwithstanding anything in any other Part of this Order or any other Order.
- 3.2.2 In this Division:
- (1) **"approved organisation"** means an organisation, company or other body approved by the Secretary to undertake record checks in respect of employees or other persons seeking employment in any school conducted by the State of Victoria under the Act;
- (2) **"duties of a teacher in a school"** has the same meaning as in Part 2.6 of the Act;
- (3) **"initial employment"** means the employment of any person under Part 2.3 of the Act who immediately prior to that employment was not an employee;
- (4) **"records check"** means the information provided by the approved organisation in relation to the criminal record of a person;
- (5) **"records check form"** means a form issued by the Secretary being a form consenting to a records check;
- (6) **"WWC check", "WWC clearance" and "WWC exclusion"** have the same meanings as under the **Worker Screening Act 2020**.
- 3.2.3 In applying this Division:
- (1) Any position which requires its incumbent to undertake the duties of a teacher in a school is a position which requires its incumbent to be registered or have permission to teach under Part 2.6 of the Act.

- (2) Any position, other than a position covered by subclause (1) of this clause, that usually involves or is likely to involve work in a school is subject to the person providing evidence the person has had a WWC Check and an WWC clearance.
 - (3) The Secretary may determine any dispute about:
 - (a) whether a position requires its incumbent to undertake the duties of a teacher in a school; or
 - (b) whether a position usually involves or is likely to involve work in a school.
- 3.2.4 The initial employment or the promotion, transfer, assignment or otherwise, of a person to a position which requires that the person be registered with the Victorian Institute of Teaching, is subject to the person providing evidence to the council that they are currently registered or deemed to be registered under Part 2.6 of the Act, provided that the council may require any such person to undergo a records check in accordance with the procedure set out in clause 3.2.6.
- 3.2.5 The initial employment or the promotion, transfer, assignment or otherwise, of a person to a position that usually involves or is likely to involve work in a school, and does not require the person to be registered with the Victorian Institute of Teaching, is subject to the person providing evidence to the council that they have had a WWC Check and an WWC clearance, provided that the Secretary may require any such person to undergo a records check in accordance with the procedure set out in clause 3.2.6.
- 3.2.6 The initial employment or the promotion, transfer, assignment or otherwise of a person to any position under the Act that does not require the person to be registered or have permission to teach under Part 2.6 of the Act or have a WWC Check and an WWC clearance will be subject to:
- (1) the person completing and forwarding a records check form (together with any relevant fee) to the Department; and
 - (2) the Secretary, being satisfied that, having regard to the records check, it is appropriate to employ the person in the position.
- 3.2.7 If an employee has, following notice, at any time as determined by the Secretary, not applied for a WWC check in accordance with section 53 of the **Worker Screening Act 2020**, the council may suspend the employee without pay until such time as the employee provides to the council an WWC clearance in relation to the employee under the **Working Screening Act 2020**, or until such time as the council determines to terminate the employee's employment.
- 3.2.8 The council may determine to terminate the employment of an employee who does not provide to the council, when required, a WWC clearance provided to the

employee under the **Worker Screening Act 2020**, provided that such termination must not occur fewer than 14 days from the employee's receipt (or deemed receipt) of a notice from the council requiring production to the council of a WWC clearance in relation to the employee.

- 3.2.9 By operation of this Division, the employment of an employee who surrenders a WWC clearance or who receives a WWC exclusion under the **Worker Screening Act 2020** ceases upon the employee's surrender of the WWC clearance or the employee's receipt of the WWC exclusion, provided that such cessation will be deemed to have no effect in the event that the employee receives a WWC clearance by order of the Victorian Civil and Administrative Tribunal under Part 4.3 of the **Worker Screening Act 2020**.
- 3.2.10 The council must notify in writing an employee whose employment is suspended or terminated or whose employment ceases under this Division.
- 3.2.11 A person recommended for initial employment, promotion, transfer, assignment or otherwise who undergoes a records check under this Division in accordance with the procedure set out in clauses 3.2.6:
- (1) must be notified in writing if the Secretary is not satisfied that it is appropriate to employ or otherwise appoint that person; and
 - (2) may, within 14 days of being so notified, apply in writing to the Senior Chairperson for a review of that notification, to be conducted by a Merit Protection Board.
- 3.2.12 Where a review is sought under clause 3.2.11, the position to which the person was recommended for employment, transfer, promotion or assignment must remain vacant pending the outcome of the review.
- 3.2.13 Any review is to be conducted on the grounds that the criminal convictions disclose such unsatisfactory behaviour (and in particular any behaviour involving abuse of children, violence, theft or dishonesty, violent crimes or drug trafficking) that make it inappropriate to employ, promote, transfer or assign the person to the position having regard to:
- (1) the duties and requirements of the position, including in particular:
 - (a) the likelihood of the person having the care or supervision of children, or being involved in decisions relating to the care or supervision of children, or having contact with children; and
 - (b) the likelihood of the person being appointed to a position of trust involving dealings with the public, handling of accounts or moneys, or otherwise entrusted to perform duties with minimal supervision;

- (2) the potential of the person to be called upon to perform higher duties and the type of such higher duties; and
- (3) the general standards of conduct required in the Public Sector.

3.2.14 After receiving an application for review under clause 3.2.11(2), the Senior Chairperson will refer the matter to a Merit Protection Board.

3.2.15 Members of Merit Protection Boards who conduct or participate in the review must not have had any prior involvement in the matter under review.

3.2.16 The Merit Protection Board will determine an application for review under clause 3.2.11 and may, in respect of the decision under review, and subject to applicable legislation:

- (1) affirm that decision;
- (2) vary that decision; or
- (3) set aside that decision and:
 - (i) make a determination for another decision to be substituted for the decision set aside; or
 - (ii) remit the matter for reconsideration by the decision-maker in accordance with any recommendations or directions provided by the Merit Protection Board;

provided that any determination of the Merit Protection Board under this Division must have regard to the operational requirements of the Department and, if relevant, the educational requirements of the school including the interests, safety and welfare of the students.

3.2.17 For the purposes of determining an application for review in accordance with clause 3.2.16, the Merit Protection Board has all the functions of the person who took the action under review.

3.2.18 Except in special circumstances, the Merit Protection Board must not accept a referral from the Senior Chairperson of an application for review after the 14-day time limit referred to in clause 3.2.11 has expired. The Merit Protection Board cannot hear and determine a review lodged outside the 14-day time limit referred to in clause 3.2.11 if the applicant has not made an application in relation to special circumstances.

3.2.19 All proceedings under this Division must be conducted without regard to legal formalities and be directed by the best evidence available (including evidence that may not have been available to the person who took the action under review),

whether that is evidence that the law admits, requires or demands in other cases or not.

3.2.20 The processes for conducting a review must allow for:

- (1) where possible, conciliation to occur before any resolution of the matter through arbitration;
- (2) the principles of natural justice to be applied;
- (3) the applicant, on request, being represented at any hearing by an agent other than (except in exceptional circumstances where the Merit Protection Board considers it appropriate) a person who is or has been a duly qualified legal practitioner in a State or Territory of the Commonwealth; and
- (4) the review to be concluded promptly, with any outcome of the review to be binding on the parties.

3.2.21 Nothing in this Division is intended to prevent any informal resolution of a matter that could otherwise be the subject of a request for review under this Division.

Division 3 – Probation

3.3.1 (1) Except where the council otherwise determines either generally or in a particular case, the employment of a person on an ongoing basis is subject to a probationary period not exceeding six months as the council determines whether generally or in any particular case or class of cases.

- (2) The probationary period for an employee who has at least 12 months' service with the council in the previous 24 months (including any period of fixed term employment) will be up to three months.

3.3.2 At the expiration of the period of probation determined under clause 3.3.1, the council will either:

- (1) confirm the employment of the probationer;
- (2) annul the employment of the probationer; or
- (3) extend the probation for a further period not exceeding six months.

3.3.3 Where the council extends the probation for a further period under clause 3.3.2, the council may confirm or annul the employment at any time during that further period and if the employment has not been confirmed or annulled before the expiration of that period, the council will as soon as practicable confirm or annul the employment.

- 3.3.4 Nothing in clauses 3.3.2 and 3.3.3 prevents the council from confirming or annulling the employment of a person at any time while they are a probationer.
- 3.3.5 Where any employment is annulled the annulment will take effect from such date as is determined by the council. The effective date of annulment cannot be retrospective and the employee must be provided with any period of notice required under the National Employment Standards.
- 3.3.6 A person may lodge a grievance with the Merit Protection Boards in relation to a decision to annul their employment.

Division 4 – Misconduct and Unsatisfactory Performance

- 3.4.1 (1) This Division applies only to education support class employees.
- (2) For the purposes of this Part “**misconduct**” includes but is not limited to an employee:
- (a) conducting themselves in a disgraceful, improper or unbecoming manner in an official capacity or otherwise;
 - (b) during their period of service, being convicted or found guilty of a criminal offence punishable by imprisonment or a fine;
 - (c) being negligent or incompetent in the discharge of their duties;
 - (d) contravening a provision of the Act or a Ministerial Order made for the purposes of Chapter 2 of the Act;
 - (e) contravening a requirement by or under any Act that corporal punishment not be administered to any school student;
 - (f) without reasonable excuse, contravening or failing to comply with a lawful direction given to the employee by a person with authority to give the direction;
 - (g) without permission and without reasonable excuse, being absent from their duties; or
 - (h) being unfit on account of character or conduct to discharge their duties.
- 3.4.2 Any investigation and determination of an inquiry under this Division in respect of alleged misconduct of an education support class employee will comply with the following principles:
- (1) Natural justice, including the right of an education support class employee:

- (a) to know the allegation(s) being made against him or her; and
 - (b) to be treated fairly and to be heard in respect to the allegations; and
- (2) Procedural and substantive fairness, including:
- (a) providing an education support class employee a reason why they are at risk of being disciplined or dismissed; and
 - (b) in appropriate circumstances, giving an education support class employee a reasonable chance to rectify the problem.
- 3.4.3 For the purposes of this Part "**unsatisfactory performance**", in relation to an education support class employee, means the repeated failure of the education support class employee to discharge their duties in the manner expected of the employee at their level in their position as evidenced by one or more of the following:
- (1) the negligent, inefficient or incompetent discharge by the education support class employee of their duties;
 - (2) the failure by the education support class employee:
 - (a) to exercise care and diligence in performing their duties; or
 - (b) to perform any of their duties;
 - (3) the education support class employee engaging in unsatisfactory conduct that impacts on the discharge of their duties including, without reasonable excuse:
 - (a) contravening or failing to comply with a lawful direction given to the employee by a person with authority to give the direction; or
 - (b) being absent from their duties without permission.
- 3.4.4 Any investigation and determination of an inquiry under this Division in respect of the unsatisfactory performance of an education support class employee will comply with the principles set out in Schedule 4.
- 3.4.5 (1) Where the council becomes aware that an education support class employee may have committed an act of misconduct, the council may investigate the matter in accordance with the principles in clause 3.4.2.
- (2) If the council is satisfied, following investigation under sub clause (1) of this clause, that an education support class employee has committed an act of misconduct,

the council may take one or more of the following actions against the education support class employee:

- (a) a reprimand;
 - (b) a reduction in classification or salary range; or
 - (c) termination of employment.
- (3) This clause does not affect the right of the council to summarily dismiss an employee in cases of serious misconduct or criminal action.
- (4) Where the council takes any action under this clause, the education support class employee may lodge a personal grievance to a Merit Protection Board in accordance with Part 5 of this Order.

Division 5 – Redundancy

- 3.5.1 (1) As a result of changes in the organisation, management or funding of a school the council may determine, in accordance with procedures determined by the Secretary, that an employee is surplus to the requirements of the efficient working of the school.
- (2) Where the council determines in accordance with subclause (1) of this clause that an employee, other than an employee employed on a casual or sessional basis, is surplus, the employee will be advised in writing that they are surplus to the requirements of the school.
- 3.5.2 In respect of any employee who receives a notice in accordance with sub-clause 3.5.1(2), the council will make all reasonable efforts to redeploy the employee to an alternative position in accordance with procedures determined by the Secretary. The employee will be advised in writing of the outcome of any redeployment action.
- 3.5.3 If an employee remains in excess after a period of six months from the date of receipt of the notice under sub-clause 3.5.1(2), their employment may be terminated by giving notice in accordance with Division 6 of this Part.
- 3.5.4 An employee given notice under clause 3.5.3 will be given a minimum of one day release from duty without loss of pay for the purpose of seeking other employment. The release from duty will be taken at times that are convenient to the employee in consultation with the council. The council may grant additional release from duty where, in the opinion of the council, special circumstances exist.

Division 6 – Termination of employment

3.6.1 The employment of an employee may be terminated without notice or warning:

- (1) at any time determined by the council in respect of a person employed as a casual employee (other than a regular and systematic casual who has met the required period of employment as provided under the *Fair Work Act 2009* (Cth)); or
- (2) by the expiration of a specified period of employment or specified maximum period of employment; or
- (3) when the council believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal. Serious misconduct includes
 - (a) theft, fraud or violence;
 - (b) serious breaches of occupational health and safety procedures;
 - (c) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment; or
 - (d) the employee being intoxicated at work.

3.6.2 (1) Following an unauthorised absence exceeding 20 working days:

- (a) in circumstances where the council could not reasonably, after due enquiry, have been aware of any reasonable grounds for the absence;
- (b) without the permission of the council; and
- (c) without contacting the council to provide an explanation for the absence;

the council is entitled to treat the employee as having resigned and the employment as having been terminated by the employee at the employee's initiative.

- (2) (a) A person who ceases to be an employee under clause 3.6.2 may lodge an application for a personal grievance in accordance with Part 5 of this Order if that person considers their employment should not have been terminated.
- (b) If the Merit Protection Board directs that the person be reinstated, the person is to be treated as not having ceased to be an employee.

3.6.3 (1) Notice of termination is provided for in the National Employment Standards. The notice periods in this clause supplement the provision in the National Employment Standards which deal with termination of employment.

- (2) Subject to any entitlement to a longer period of notice under the National Employment Standards, the employment of an employee will not be terminated without at least four weeks' notice (inclusive of the notice required under the National Employment Standards).
 - (2) In addition to the notice, or payment in lieu of notice, provided in subclause (2) of this clause, an employee over 45 years of age with at least five years' continuous service, will be entitled to an additional week's notice, or payment in lieu of notice.
 - (3) If the employment of an employee employed for a specified maximum period is terminated on notice prior to expiry of that period, the employee will not be entitled to notice of termination or payment in lieu of notice, beyond the expiry date of that period.
 - (4) The requirements of this clause are met where the employment is terminated by a combination of a period of notice and payment in lieu of notice.
 - (5) Payment in lieu of notice will be made on the basis of the employee's normal rate of pay and any allowances, penalty payments or payments of a temporary nature the employee would have received if they had worked during the notice period.
- 3.6.4 An employee given notice or payment in lieu of notice under clause 3.6.3 will be advised in writing of the grounds for termination and the date of termination.
- 3.6.5 If requested by the employee, the council will provide a written statement of the period of the employee's employment and the classification and the type of work performed by the employee.

Division 7 – Restriction on Employees Doing Other Work

- 3.7.1 Except with the express permission of the council:
- (1) a full-time employee must not engage in any other paid employment or carry on any business, profession or trade;
 - (2) a part-time employee must not engage in any other paid employment or carry on any business, profession or trade that, in the opinion of the council, conflicts with the proper performance of the employee's duties.
- 3.7.2 Permission given to an employee under this division may be withdrawn by notice in writing given to the employee by the council.
- 3.7.3 Nothing in this division prevents an employee from:

- (1) holding shares, or an interest in shares, in a company (within the meaning of the *Corporations Act 2001* (Cth)); or
- (2) becoming a member of an incorporated association within the meaning of the *Associations Incorporation Reform Act 2012* (Vic).

PART 4 – ATTENDANCE AND HOURS OF DUTY

Division 1 – General

- 4.1.1 (1) The ordinary hours of work for a full-time employee are 76 hours per fortnight.
- (2) An employee employed part-time is employed to work an agreed number of regular hours less than 76 per fortnight.
- 4.1.2 (1) (a) Unless otherwise agreed, an employee will be in attendance for a minimum of 7.6 hours daily (for a full-time employee) between 7:00 am and 6:00 pm from Monday to Friday.
- (b) An education support class employee can be required to attend for duty and/or professional development up to a maximum of six days of the additional paid leave specified in clause 6.1.1(1)(b). Attendance can only be required during one or two school vacation periods in a year, provided that attendance can only be required at the commencement or conclusion of a school vacation period and the employee must be provided with reasonable notice, being not later than four weeks into the preceding term.
- (c) An education support class employee can only be required to perform duties consistent with their role(s) when required to attend during school vacation periods under subclause (1)(b), unless otherwise agreed.
- (d) During a school vacation period an education support class employee at classification level 1 salary ranges 1 and 2 cannot be required to work in isolated circumstances or to attend without the presence of a responsible manager.
- (e) In addition to subclause (1)(b), an education support class employee and their principal may agree on attendance for duty and/or professional development for any or all of the additional paid leave specified in clause 6.1.1(1)(b).
- (f) Notwithstanding subclauses (1)(b) and (e), an education support class position may be advertised that requires attendance during any or all of the additional paid leave specified in clause 6.1.1(1)(b). Provided that, where an

education support class position which ordinarily requires attendance for all of the additional paid leave specified in clause 6.1.1(1)(b), including student support services positions, and does not attract the maximum leave purchase allowance specified in clause 2.3.8, the duties of that position must be commensurate with the employment arrangement.

- (g) An education support class employee attending for duty and/or professional development under subclauses (1)(b) to (f) will be paid the leave purchase allowance specified in clause 2.3.8 for attendance during any or all of the additional leave set out in clause 6.1.1(1)(b) and the additional paid leave entitlement will be reduced accordingly. The maximum period of attendance under subclauses (1)(b) to (e) of this clause in any one year is 228 hours (30 days) in total.
- (2) An employee and their principal will agree on the arrangement of their ordinary hours of work, including but not limited to:
 - (a) daily starting and finishing times;
 - (b) the time and duration of lunch breaks;
 - (c) attendance at school meetings and meetings with parents;
 - (d) in the case of part-time employment, the number of hours worked per fortnight; and
 - (e) flexible work arrangements.
 - (3) In the absence of agreed arrangements on the arrangement of ordinary hours of work under subclause (2), the applicable arrangement (for a full-time employee) will be:
 - (a) daily start and finish times of 8:30 am and 4:36 pm respectively; and
 - (b) a 30-minute lunch break in accordance with clause 4.1.3(1).
 - (4) An employee and their principal may agree to vary arrangements under subclause (2) or (3) at any time, however existing arrangements will not be varied without the agreement of the employee and their principal.
 - (5) An employee can only be required to undertake normal duties within the hours they are paid or accrue time in lieu.
- 4.1.3 (1) An employee cannot be required to work more than five hours without a lunch break of a minimum duration of 30 minutes. The lunch break is unpaid and must be free from assigned duties between the hours of 11:30 am and 2:30 pm unless otherwise agreed under clause 4.1.2(2).

- (2) In exceptional circumstances where an employee is required to undertake duties and not able to take a lunch break free from assigned duties within the period set out in subclause (1), that employee will be provided with an alternate break within five hours of the employee's commencement of work on that day.
- 4.1.4 (1) The principal may require an employee to undertake work in excess of 38 hours per week where such work is unavoidable and reasonable notice is provided. All work required in excess of 38 hours per week for a full-time employee (or on a pro rata basis for a part-time employee) must be documented by the principal.
- (2) An employee who is directed to work under subclause (1) may request not to do so where this would unreasonably affect personal or family commitments and the principal may only refuse the request on reasonable grounds.
- (3) (a) An employee will be entitled to time in lieu for work required under subclause (1).
- (b) The principal will grant time in lieu equivalent to the hours of work in excess of 38 hours of work per week for a full-time employee (or on a pro rata basis for a part-time employee) documented under subclause (1).
- (c) The timing of the time in lieu is at the discretion of the principal having regard to the operational needs of the school and the wishes of the employee.
- (d) As an alternative to time in lieu, the principal and the employee may agree to payment for time in lieu owed at the employee's normal rate of pay as follows:
- (i) at the education support class employee's normal rate of pay where the time in lieu was for work performed within the span of hours specified in clause 4.1.2(1)(a); or
- (ii) at 150% of the education support class employee's normal rate of pay where the time in lieu was for work performed outside the span of hours specified in clause 4.1.2(1)(a).
- (4) Unless otherwise agreed between the principal and the employee, where accrued time in lieu has not been granted to an education support class employee by 1 March of the following year, the employee may elect to:
- (a) take time off equivalent to the time owed, commencing immediately; or
- (b) receive payment at 150% of their normal rate of pay for the time owed.

- 4.1.5 (1) An employee must not be absent without leave. Provided that an employee prevented by sudden illness, injury or other emergency from attending their place of employment will not be deemed to be absent without leave if they report such absence as soon as practicable and furnish satisfactory evidence that the absence was unavoidable and not due to any misconduct by the employee.
- (2) Where an employee is absent from duty without leave and the absence was not authorised, the council may direct the forfeiture of the salary of the employee.
- 4.1.6 An employee's attendance at a court as a Crown witness or under subpoena or summons in the employee's official capacity will be treated as duty for salary purposes subject to presentation of evidence that they attended the court.
- 4.1.7 (1) An employee who wishes to continue breastfeeding or expressing breastmilk after returning to work from a period of parental leave may take reasonable paid time, not exceeding one hour in total per day, in addition to the lunch break. Employees should be provided access to suitable facilities to facilitate breastfeeding or expressing of breastmilk.
- (2) An employee will provide the principal with a request for lactation breaks, setting out the expected frequency, duration and timing of breaks sought, which, as far as is practicable, causes the least disruption to the educational program of the school. The employee may seek to change the arrangement at any time.
- (3) An employee may return home or attend another location during the break as agreed with the principal.
- (4) The principal will not unreasonably refuse a request made under subclause (2) and (3).

PART 5 – PERSONAL GRIEVANCE

5.1.1 For the purposes of this Part:

- (1) "**abandonment action**" means action under clause 3.6.2 to treat an employee as having resigned and the employment as having been terminated by the employee at the employee's initiative following more than 20 working days unauthorised absence.
- (2) "**action**" means a decision or action taken by a council, or a person authorised by the council, and includes refusal or failure to make a decision or take an action.
- (3) "**employment limitation internal review decision**" means a decision to maintain an employment limitation, following an internal review, in respect of an employee

under Part 2.3 of the Act and does not include a decision in relation to a person who is a casual or sessional employee or not currently employed.

- (4) (a) **"personal grievance"** means a grievance of an employee in respect of any action, other than those matters excluded under subclause (4)(b) of this clause, taken within a work location which directly relates to that employee and directly affects that employee in their employment and which the employee considers:
- (i) is in breach of the Act or this Order; or
 - (ii) infringes the principles of merit and equity, or infringes any personnel policy or guidelines issued by the Secretary; or
 - (iii) is otherwise unreasonable.
- (b) Notwithstanding subclause (4)(a) of this clause the following matters are excluded from the definition of personal grievance:
- (i) the selection of a person who is not an employee;
 - (ii) the selection of an employee in circumstances where the aggrieved employee is not qualified, eligible, or an applicant for the position;
 - (iii) termination of employment other than termination of employment under Division 4 of Part 3 of this Order or abandonment action under clause 3.6.2;
 - (iv) decisions under this Part to refuse an application or request for review;
 - (v) directions by the Senior Chairperson under this Part; and
 - (vi) determinations or directions by a Merit Protection Board under this Part.
- (c) A personal grievance in respect of a selection decision is limited to deficiencies in the selection process which prevented the selection of the person best suited to the position.
- (d) The only ground for review of an employment limitation internal review decision is that there was a significant deficiency in the process.
- (e) The only ground for review of an abandonment action is that there were reasonable grounds for the former employee's unauthorised absence.

- (f) A reference to an employee includes a reference to a former employee in relation to action taken during their former employment.
- 5.1.2 Subject to clause 5.1.1(4)(b), an employee, including a person employed on a casual or sessional basis, may lodge an application for a personal grievance in writing with the Senior Chairperson. Prior to determining the application referred to it by the Senior Chairperson, a Merit Protection Board must be reasonably satisfied that the Merit Protection Boards have jurisdiction to entertain the application.
- 5.1.3 If in respect of any action taken an employee has a right to seek a review or lodge an appeal under the Act or any other Part of this Order, the employee may not lodge a personal grievance under clause 5.1.2 and a Merit Protection Board cannot hear and determine that grievance under this Part.
- 5.1.4 Subject to clause 5.1.2, the Senior Chairperson will refer the personal grievance to a Merit Protection Board for determination.
- 5.1.5 Members of Merit Protection Boards who conduct or participate in the review of, an action which is the subject of a personal grievance must not have had any prior involvement in that action.
- 5.1.6 (1) With the exception of a personal grievance in respect of a selection decision, an abandonment action, or an employment limitation internal review decision, the Merit Protection Board may determine an application for review of an action under this Part, and may, in respect of the action under review:
 - (a) affirm that action;
 - (b) vary that action; or
 - (c) set aside that action and:
 - (i) make a determination for another action to be taken in substitution for the action set aside; or
 - (i) in respect of a decision, remit the matter for reconsideration by the decision-maker in accordance with any recommendations or directions provided by the Merit Protection Board;

provided that any determination of the Merit Protection Board under this Part must have regard to the operational requirements of the Department and, if relevant, the educational requirements of the school including the interests and welfare of the students.
- (2) In respect of a personal grievance concerning a selection decision, the Merit Protection Board must inquire into the claims of the employee who lodged the personal grievance application and may:

- (a) if satisfied that the grounds for review have been established, make an order requiring the council which made the decision to:
 - (i) reconsider the selection decision;
 - (ii) correct the procedural deficiency in the process;
 - (ii) readvertise the position; or
 - (b) confirm the decision.
- (3) In respect of a personal grievance concerning abandonment action, the Merit Protection Board must inquire into the claims of the former employee who lodged the personal grievance application and may:
- (a) if satisfied that there were reasonable grounds for the former employee's absence, make an order requiring that the person be reinstated to their former position. Where the person is reinstated they are to be treated as not having ceased to be an employee; or
 - (b) confirm the decision.

If the Merit Protection Board orders that the person be reinstated, the person is to be treated as not having ceased to be an employee.

5.1.7 Where a decision made under this Part of a Merit Protection Board will impact generally upon the operations of the Department or the operational or educational requirements of a school including the interests and welfare of the students, the Merit Protection Board must consult the Senior Chairperson prior to making a decision. If a Merit Protection Board determines to consult the Senior Chairperson under this clause 5.1.7, the Senior Chairperson must consult the Secretary.

5.1.8 An application for a personal grievance must be lodged within 14 days of the action that is the subject of the personal grievance, or of the date of notification of that action, whichever is the later. Except in special circumstances, the Merit Protection Board must not accept a referral from the Senior Chairperson of an application for a personal grievance that is lodged out of time. The Merit Protection Board cannot hear and determine a personal grievance application lodged outside of this 14-day period if the Merit Protection Board has not approved an application made by the applicant in relation to special circumstances. The Senior Chairperson must take all reasonable steps to ensure employees are made aware of the requirement to lodge an application for a personal grievance within 14 days.

5.1.9 For the purposes of determining an application for review in accordance with clause 5.1.6(1), the Merit Protection Board has all the functions of the person who took the action under review.

5.1.10 An application for review of an action under this Part may be refused by the Merit Protection Board if it is considered by the Merit Protection Board to be:

- (1) frivolous, vexatious, misconceived or lacking in substance; or
- (2) is otherwise an abuse of process.

5.1.11 All proceedings under this Part must be conducted without regard to legal formalities and be directed by the best evidence available (including evidence that may not have been available to the person who took the action under review), whether that is evidence that the law admits, requires or demands in other cases or not.

5.1.12 The process for investigating and hearing the grievance must allow for:

- (1) where possible, conciliation to occur before any resolution of the matter through arbitration;
- (2) principles of natural justice to be applied;
- (3) the aggrieved employee, on request, to be represented at any hearing by an agent other than (except in exceptional circumstances where the Merit Protection Board considers it appropriate) a person who is or has been a duly qualified legal practitioner in a State or Territory of the Commonwealth; and
- (4) the matter to be concluded promptly, with any outcome of the review to be binding on the parties.

5.1.13 Nothing in this Part is intended to prevent any informal resolution of grievances which could otherwise be the subject of a request for review under this Part.

PART 6 – LEAVE OF ABSENCE

Unless stated otherwise, the council has the right to grant leave under this Part.

Division 1 – Annual Leave

- 6.1.1 (1) (a) An employee is entitled to 152 hours (20 days for a full-time employee) annual leave in respect of each twelve months of service accrued progressively during a year of service according to the employee's ordinary hours of work.
- (b) In addition to annual leave accrued under subclause (1)(a) of this clause an education support class employee is entitled to 228 hours of additional paid

leave in respect of each calendar year of full-time service accrued at the rate of one twelfth of the annual entitlement for each completed month of service. The additional paid leave entitlement will be reduced by the number of hours for which the education support class employee is paid the leave purchase allowance under clause 2.3.8.

- (2) Employees must take annual leave and additional paid leave at such times as the council determines provided that the wishes of the employee concerned are taken into consideration as far as practicable.
- (3) Service for annual leave under subclause (1)(a) of this clause and additional paid leave under subclause (1)(b) of this clause does not include any period of leave without pay in excess of one month in any calendar year unless otherwise approved by the council.

6.1.2 An employee who is ill or is injured during a period of leave granted under this Division, may be granted personal leave in accordance with the requirements of Division 2 of this Part and an equivalent period of annual or additional paid leave will be re-credited.

6.1.3 Public holidays that fall within a period of annual leave will not be included as part of the annual leave.

Division 2 – Personal Leave (Illness or injury)

6.2.1 For the purposes of this Division and Division 3:

- (1) Personal leave is available to an employee, when they are absent:
 - (a) due to personal illness or injury; or
 - (b) for the purposes of caring for an immediate family or household member who is sick or injured and requires the employee's care or support or who requires care or support due to an unexpected emergency including the circumstances set out in clause 6.17.3(2).
- (2) An employee is entitled to 114 hours personal leave on full pay on commencement of employment and 114 hours personal leave on full pay for each year of full-time service thereafter which accrues progressively from the commencement of employment and is cumulative. Provided that:
 - (a) in the first year of employment an employee, who exhausts their personal leave credits, may access personal leave credits which would later accrue up to a maximum of 114 hours;
 - (b) an employee employed for one or more fixed periods will not accrue more than 114 hours personal leave in any year.

- (3) If approved by the council, an employee who has prior service recognised under Division 14 of this Part may also have that service included for personal leave purposes. Provided that:
 - (a) any personal leave taken during the period of recognised service is deducted;
 - (b) prior casual or sessional service shall not be included, but shall not break continuity of employment.
- 6.2.2 (1) Subject to clause 6.2.9 an employee who is unfit for duty due to personal illness or injury will be granted personal leave.
- (2) All personal leave for personal illness or injury granted under this Division will be deducted from the accumulated personal leave entitlement credited under clause 6.2.1.
- (3) To determine the net personal leave entitlement of an employee, all personal leave with pay granted during their service is deducted from the amounts credited under clause 6.2.1 and the period remaining is the net amount of the employee's personal leave credit.
- 6.2.3 An employee granted personal leave on half pay or without pay will be restored to full pay from the day they actually resume duty.
- 6.2.4 Service for personal leave does not include any period of leave without pay in excess of one month in any year unless otherwise approved by the council. Provided that if an employee resigns to contest a Victorian or Commonwealth Parliamentary Election and is re-appointed pursuant to the *Public Administration Act 2004* (Vic), the period between the resignation and re-appointment is treated as continuous service.
- 6.2.5 Notwithstanding anything contained in this Part, an employee may elect in writing to have the whole or any portion of personal leave on full pay standing to their credit converted to personal leave on half pay. The basis of the conversion is that one hour on full pay equals two hours on half pay.
- 6.2.6 Subject to clause 6.10.11, an employee is not entitled to personal leave for personal illness or injury on account only of being pregnant but nothing in this clause prevents such an employee being entitled to personal leave for an illness resulting from pregnancy or childbirth.
- 6.2.7 An employee is not entitled to personal leave with pay for any absence (due to illness or injury) that occurs while the employee is absent on leave without pay.
- 6.2.8 A public holiday that occurs during a period of personal leave does not form part of that leave.

- 6.2.9 (1) (a) Applications for personal leave must be supported by a required document.
- (b) A required document in respect of personal leave for injury or illness must state that the employee is unfit for duty for the period of leave.
- (c) A required document in respect of personal leave for carer's purposes must state that the immediate family or household member requiring care or support is suffering from an illness or injury which requires care or support by another or requires care or support due to an unexpected emergency.
- (2) Notwithstanding subclause (1), and unless otherwise determined by the council:
- (a) Subject to subclauses (2)(b) and 2(c), up to 38 hours' personal leave may be granted in any one year without production of a required document subject to any one continuous absence without a required document not exceeding three days.
- (b) The council may require an application for personal leave to be supported by a required document where:
- (i) the absence occurs immediately before or after a school vacation period, long service leave absence or a public holiday; and/or
- (ii) the council has occasion to doubt the authenticity of an illness or injury or the reason for absence.
- (c) The total amount of personal leave granted under this clause and clause 6.3.2(1)(d) without production of a required document must not exceed 38 hours in aggregate in any one year.
- (3) Unless otherwise approved by the council where personal leave for personal illness or injury is granted without the production of a required document in circumstances not covered by subclause (2) such leave will be without pay.
- 6.2.10 (1) Where an employee has been absent through illness or injury for 13 continuous weeks, the grant of further personal leave is subject to the employee being examined by a medical practitioner approved by the Secretary.
- (2) If any employee is absent from duty on account of illness or injury, and such absence has extended beyond 13 continuous weeks, that employee is not permitted to return to duty unless and until a medical practitioner approved by the Secretary has certified that they are fit to resume work.
- (3) (a) Where an employee resumes or intends to resume duty after a lesser period than 13 weeks' continuous absence due to illness or injury and the council is of the opinion that the employee is not fit to resume duty; or

- (b) if the council has reason to believe that an employee's state of health may make the employee a risk to the health, safety or welfare of themselves or other employees or persons at the workplace including students,

the council may direct the employee to absent themselves from duty on personal leave, with or without pay, until the employee is examined by a medical practitioner approved by the Secretary.

- (4) A direction by the council under subclause (3) must:

- (a) state the reason(s) for the direction; and

- (b) not be for a period of more than 10 working days. Provided that where the employee unreasonably refuses to attend a medical examination under subclause (3), the council may direct the employee to absent themselves from duty on personal leave, with or without pay, until the employee attends the medical examination or the council is otherwise satisfied that the employee is fit to resume duty.

- (5) If the examination under subclause (3) discloses that the employee:

- (i) is unfit for duty, the employee will be granted such further personal leave as the medical report indicates is necessary; or

- (ii) is fit for duty, the personal leave debited as a result of a direction under subclause (3) will be restored and the employee repaid any salary or wages lost as a result of a direction under subclause (3).

6.2.11 Personal leave with pay will not be granted if an employee is absent from duty without sufficient cause. Where the council has occasion to doubt the cause of an illness or injury or the reason for absence, the council may refer any required document to a medical practitioner approved by the Secretary for report.

6.2.12 An employee may utilise personal leave credits accrued in accordance with clause 6.2.1 on a pro rata basis to make up the difference between payments made by the Transport Accident Commission and their full pay.

6.2.13 The provisions of this Division, so far as they are applicable, apply to leave under the provisions of Divisions 3, 4, 5 and 6 of this Part.

Division 3 – Personal Leave (Carers)

6.3.1 (1) For the purposes of Divisions 3 and 7 of this Part "**immediate family**" includes:

- (a) spouse or former spouse, de facto partner or former de facto partner, child (including an adult child), parent, grandparent, grandchild or sibling of the employee; or
- (b) child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner (or former spouse or de facto partner).

Subclauses (a) and (b) include step-relations (such as step-parents and step-children) as well as adoptive relations.

- (2) Subject to clause 6.3.2 an employee who is required to provide care or support for a member(s) of their immediate family or household who is sick or injured or who requires care or support due to an unexpected emergency will be granted personal leave to care for an immediate family or household member.
- (3) In any year where an employee has exhausted their personal leave credits, the employee will be granted further personal leave to care for an immediate family or household member with pay up to a maximum of 22.8 hours.
- (4) Subject to subclause (3), personal leave to care for an immediate family or household member will be deducted from the employee's personal leave credits accrued in accordance with clause 6.2.1.

6.3.2 (1) Applications for personal leave to care for an immediate family or household member must be supported by a required document. Provided that:

- (a) subject to subclauses (1)(b) and (1)(d), up to 38 hours personal leave to care for an immediate family or household member may be granted in any one year without production of a required document subject to any one continuous absence without a required document not exceeding three days;
 - (b) notwithstanding subclause (1)(a), the council may require a required document to be furnished for any absence;
 - (c) where a required document is required it must state that the person requiring care and support is suffering from an illness or injury which requires care by another or requires care or support due to an unexpected emergency;
 - (d) the total amount of personal leave granted under this clause and clause 6.2.9(2) without production of a required document must not exceed 38 hours in aggregate in any one year.
- (2) Unless otherwise approved by the council where personal leave to care for an immediate family or household member is granted without the production of a required document in circumstances not covered by subclause (1) such leave will be without pay.

- 6.3.3 (1) Subject to clause 6.3.3(2), a casual or sessional employee is entitled to not be available to attend work, or to leave work:
- (a) if they need to care for members of their immediate family or household who are sick or injured and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or
 - (b) upon the death in Australia of an immediate family or household member.
- (2) The council and the employee will agree on the period for which the employee is entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 72 hours (ie three days) per occasion. The casual or sessional employee is not entitled to any payment for the period of non-attendance.
- (3) The council must not fail to re-engage a casual or sessional employee because the employee accessed the entitlements provided for in this clause. The rights of the council to engage or not to engage a casual or sessional employee are otherwise not affected.
- 6.3.4 An employee is not entitled to personal leave (carers) with pay for any absence (due to the provision of care or support for an immediate family or household member) that occurs while the employee is absent on leave without pay.
- 6.3.5 A public holiday that occurs during a period of personal leave (carers) does not form part of that leave.

Division 4 – Infectious Diseases Leave

- 6.4.1 An employee who has contracted an illness that is likely to be a direct result of exposure to an infectious disease prescribed under the regulations of the *Public Health and Wellbeing Act 2008* (Vic) during the course of the employee's duties, may be granted up to six months leave with full pay without deduction from the employee's personal leave credits for the period the employee is unfit for duty. On resumption of duty, any employee who has less than 114 hours (15 days for a full-time employee) of personal leave will be entitled to access not less than 114 hours (15 days for a full-time employee) of personal leave.
- 6.4.2 To access leave under clause 6.4.1, the employee must provide a certificate from a medical practitioner approved by the Secretary stating that the employee has contracted an illness that is likely to be a direct result of exposure to an infectious disease prescribed under the regulations of the *Public Health and Wellbeing Act 2008* (Vic) during the course of the employee's duties.
- 6.4.3 If an employee's duties expose the employee to the risk of contracting an infectious disease and a medical practitioner approved by the Secretary certifies that by reason

of contact with a person suffering from an infectious disease and through the operation of restrictions imposed by law in respect of such disease, an employee is not permitted to attend their usual workplace and where working remotely is not reasonable, practicable and appropriate, the employee will be granted leave with full pay without deduction from personal leave. The period of leave granted under this subclause will not extend beyond the earliest date at which it would be practicable for the employee to return to work having regard to the restrictions imposed by law.

Division 5 – Accident Compensation Leave

- 6.5.1 If an employee sustains personal injury in circumstances where the employee is entitled to receive weekly payments in respect of that injury under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) such employee will, apart from any personal leave which may be standing to their credit, be granted leave on full pay, less the amount paid by way of weekly compensation under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) during the period of incapacity.
- 6.5.2 Except where the Secretary approves, no leave will be granted under this Division which is:
- (1) in excess of a continuous period of 52 weeks inclusive of any other leave which may be granted with pay; or
 - (2) in excess of an aggregate of 52 weeks in respect of a particular injury or incapacity.
- 6.5.3 An employee is not entitled to personal leave with pay during any period they are in receipt of weekly compensation payments under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

Division 6 – War Service Sick Leave

- 6.6.1 For the purposes of this subclause "**accepted war-caused disability**" means accepted by the Department of Veterans' Affairs as being a war-caused disability.
- 6.6.2 An employee who has an accepted war-caused disability, will, apart from any personal leave which may be standing to their credit, be credited with 114 hours war service sick leave in respect of each year of service from and inclusive of 1 August 1962 up to a maximum credit of 760 hours.
- 6.6.3 Where the council is satisfied that the illness of an employee with at least six months' service is directly related to, or is aggravated by, an accepted war-caused disability that employee will be granted war service sick leave to the extent credited in accordance with clause 6.6.2.

Division 7 – Bereavement Leave

- 6.7.1 Leave on full pay of up to three days may be granted to any employee on account of the death of a member of the employee's immediate family or household. Bereavement leave on full pay of up to three days may be granted in other cases where, in the opinion of the council, special circumstances exist.
- 6.7.2 Leave, with or without pay, in excess of that specified in clause 6.7.1 may be granted if the council is satisfied that three days is inadequate.

Division 8 – Leave for Jury Service

- 6.8.1 An employee required to appear and serve as a juror under the **Juries Act 2000** is entitled to leave with pay for the period during which their attendance at court is required.

Division 9 – Defence Reserve Leave

- 6.9.1 Leave may be granted for Defence Reserve service up to a maximum period of 78 weeks continuous Defence Reserve service.
- 6.9.2 An employee required to complete Defence Reserve service will consult with the council regarding the proposed timing of the Defence Reserve service and will give the council as much notice as is possible of the time when the service will take place.
- 6.9.3 Where the base salary, excluding allowances, received by the employee from the Australian Defence Force in respect of Defence Reserve service during their ordinary hours of work is below the employee's substantive salary, the employee will, unless exceptional circumstances arise, be paid such amount to bring the employee's total emolument up to the employee's substantive salary for the period of Defence Reserve service.

Division 10 – Parental Absence

- 6.10.1 An employee is entitled to be absent from duty for up to a total of seven years following, or in conjunction, with the birth of one or more children or being granted parental responsibility of one or more children in the circumstances set out in clause 6.12.1 comprising one or more of the following forms of leave:

- (1) Maternity leave;
- (2) Other paid parental leave;
- (3) Partner leave;

- (4) Long service leave;
- (5) Paid leave accrued by education support class employees under clauses 6.1.1(1)(a) or (b);
- (6) Family leave without pay being that portion of a parental absence not covered by paid leave.

6.10.2 Any period of long service leave granted during a parental absence will extend the maximum period of parental absence available under clause 6.10.1.

6.10.3 Subject to clause 6.10.4, a parental absence may commence at any time after an employee submits satisfactory medical evidence that she is pregnant (but not later than the date of birth) or, in any other case, at any time from six weeks prior to the birth, adoption or otherwise being granted parental responsibility of the child.

6.10.4 Unless otherwise approved by the council, an employee who is pregnant is required to absent herself from duty for the period:

- (1) six weeks before the expected date of birth until six weeks after the actual date of birth; or
- (2) six weeks from the actual date of birth where this occurs before the expected date of birth.

6.10.5 An employee is permitted to attend for duty during any part of the period stated in clause 6.10.4 provided that:

- (1) the employee will be fit to perform their normal duties for the relevant period (proof of which is to be by medical certificate supplied by the employee); and
- (2) the attendance sought by the employee is at a time employees ordinarily attend for duty.

6.10.6 A particular parental absence cannot extend beyond the seventh birthday of the child for whom the absence has been granted provided that:

- (1) the absence may be extended if this is necessary to permit resumption on the first school day of the following term;
- (2) the council may allow a further parental absence in the event of any subsequent birth, adoption or otherwise being granted parental responsibility of another child or children in the circumstances set out in clause 6.12.1;

- (3) a parental absence in respect of an adopted child can be extended beyond the seventh birthday of the adopted child up to a maximum of seven years or the sixteenth birthday of the adopted child whichever occurs first.

6.10.7 Excluding leave granted under Divisions 12 and 13 of this Part, only one parental absence may be approved for a particular child (or children in respect of a multiple birth) which must be a continuous absence. Provided that where two employees are eligible to be absent under this clause in conjunction with the birth or adoption of the same child (or children in respect of a multiple birth):

- (1) each employee is entitled to a parental absence of seven years;
- (2) only one parental absence may be taken per employee per child (or children in respect of a multiple birth);
- (3) excluding leave granted under Divisions 12 and 13 of this Part, or unpaid concurrent leave of eight weeks in accordance with the National Employment Standards, both employees may not be absent at the same time and the absences must be contiguous.

6.10.8 An employee may return to duty after a parental absence:

- (1) on the expiration of leave granted under either Divisions 11 or 12 of this Part if written notice of intention to return is given to this effect prior to commencement of the absence; or
- (2) on the first day of any term if written notice of intention to return is given by 1 October in the year preceding the intended date of return; or
- (3) at such other time as the council approves provided that applications on compassionate or hardship grounds will not be unreasonably refused.

6.10.9 (1) An employee with a child under school age may request to return to duty following a parental absence on a part-time basis until the child reaches school age to assist the employee in reconciling work and parental responsibilities.

- (2) The council will consider the request under subclause (1) having regard to the employee's circumstances and the operational needs of the school, and may only refuse the request on reasonable grounds.

- (3) An employee who returns to duty on a part-time basis under this clause will revert to the time fraction the employee was working immediately prior to the commencement of the employee's first period of parental absence when the last of the employee's children reaches school age.

6.10.10 (1) Where an employee is pregnant and, in the opinion of a registered medical practitioner approved by the Secretary, 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 council will, if an appropriate position is available, temporarily transfer the employee to a safe job on the conditions attaching to that position for such period as is certified necessary by a registered medical practitioner.

- (2) An employee temporarily transferred to a safe job under subclause (1) of this clause is entitled to be paid not less than her substantive salary immediately prior to the temporary transfer.
- (3) If temporary transfer to a safe job is not practicable, the employee may elect, or the council may require the employee, to be absent on leave for such period as is certified necessary by a registered medical practitioner.

6.10.11 (1) An employee who is pregnant may access paid leave to a maximum of 38 hours to attend routine medical appointments associated with that pregnancy, provided that the employee:

- (a) provides a medical certificate stating that the employee is pregnant;
- (b) provides a certificate of attendance for each appointment; and
- (c) schedules appointments, where possible, at times that minimise the requirement to engage replacement staff for the period of the absence.

(2) An employee whose spouse is pregnant may access paid leave to a maximum of 15.2 hours for the period of the pregnancy to enable their attendance at routine medical appointments associated with the pregnancy, provided that:

- (a) the employee provides a medical certificate stating that the employee's spouse is pregnant;
- (b) the employee provides a certificate of attendance for each appointment; and
- (c) appointments are scheduled, where possible, at times that minimise the requirement to engage replacement staff for the period of the absence.

6.10.12 Notwithstanding clause 6.10.1, where the pregnancy of an employee terminates or results in a stillborn birth after more than 12 weeks, the employee will be entitled to an absence of six months following the termination, inclusive of any period of maternity leave, or such longer period as may be medically certified.

Division 11 – Maternity Leave

6.11.1 An employee is entitled to maternity leave with or without pay for a continuous period of 16 weeks commencing from the date the employee commenced an absence from duty under clause 6.10.4. Where the pregnancy of an employee terminates more than twenty weeks before the expected date of birth, the employee has no entitlement to leave under this Division but may be eligible for personal leave under clause 6.2.6.

6.11.2 (1) An employee is eligible for paid maternity leave if the employee has had 26 or more weeks qualifying service within the 52 weeks immediately preceding the date the employee absented herself from duty under clause 6.10.4. The period during which an employee attends for duty within the periods stated in clauses 6.10.4(1) and (2) will not be included as part of the 26 weeks qualifying service.

(2) An employee may elect to extend the maternity leave period set out in clause 6.11.1 up to 28 weeks and receive half pay during the extended maternity leave period (if the absence is 28 weeks) or a combination of half pay and full pay (if the absence is greater than 14 weeks but less than 28 weeks). Unless otherwise agreed an employee is required to provide written notice of the intention to take some or all of their paid maternity leave at half pay prior to commencing leave.

6.11.3 For the purposes of clause 6.11.2 qualifying service means:

- (1) any duty as an employee other than any period of employment on a casual or sessional basis;
- (2) any leave with pay approved by the council;
- (3) any leave without pay approved by the council to count as qualifying service;
- (4) any other service approved by the council to count as qualifying service.

6.11.4 While on maternity leave with pay an employee will be paid at:

- (1) the time fraction which she was working immediately before commencing maternity leave; or
- (2) the time fraction immediately prior to commencing long service leave, if the employee ceases long service leave on half pay immediately before commencing the parental absence under clause 6.10.3; or
- (3) if the employee has made an election under sub clause 6.11.2(2), half the amount the employee would have been paid if no election had been made under sub clause 6.11.2(2).

6.11.5 An employee who is eligible for paid leave under this Division and Division 5 of this Part in respect of a maternity leave absence is entitled to maternity leave with pay in accordance with this Division less the amount paid by way of weekly compensation under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) and has

no further entitlement to leave under Division 5 of this Part during the maternity leave period.

Division 12 – Other Paid Parental Leave

6.12.1 (1) An employee who is granted parental responsibility and is the primary caregiver of a child:

- (a) following the adoption of a child;
- (b) under a surrogacy arrangement;
- (c) through a permanent care order; or
- (d) in such other circumstances approved by the council where that employee is not otherwise entitled to paid parental leave under this clause;

will be entitled, on submitting evidence of the date of placement of the child or the date the employee is granted parental responsibility, to paid leave for 16 weeks commencing not more than six weeks prior to that date. The conditions for granting and payment of leave under this Division are the same as are specified in Division 11 of this Part.

6.12.2 Where no legal adoption ensues or no action is taken to register the baby's birth if required under state/territory law, the employee has no further entitlement to leave under this Division.

6.12.3 Where two employees apply for leave under this Division in respect of the same child (or children, as the case may be) each employee is entitled to leave with pay for eight weeks commencing on the date of placement of the child or the date the employees are granted parental responsibility of the child (or children, as the case may be).

6.12.4 (1) An employee who provides short-term foster or kinship care as the primary caregiver to a child who cannot live with their parents as a result of an eligible child protection intervention is entitled to up to two days' paid leave on up to five occasions per child following the placement of the child with the employee.

(2) For the purposes of clause 6.12.4(1):

(a) 'Foster and kinship care' includes:

- (i) Foster Caring, which is the temporary care of a child of up to 18 years of age on a short-term basis by an employee who is an accredited foster carer;

- (ii) Kinship Care, which is temporary care provided by an employee who is a relative or a member of the child's social network when the child cannot live with their parents;
 - (iii) Aboriginal Kinship Care, which is temporary care provided by an employee who is a relative or friend of an Aboriginal child who cannot live with their parents, where Aboriginal family and community and Aboriginal culture are valued as central to the child's safety, stability and development; and
 - (b) 'Eligible child protection interventions' include emergency respite and short-term or long-term placements on a non-permanent basis, as issued by the Victorian Department of Health and Human Services, the Children's Court or other similar federal, state or judicial authority.
- (3) An employee who is eligible for paid leave under this Division 12 and Division 13 is entitled to leave under this Division 12 and will have no further entitlement to leave under Division 13.

6.12.5 An employee who is eligible for paid leave under this Division and Division 5 of this Part at the same time is entitled to paid leave in accordance with this Division less the amount paid by way of weekly compensation under the *Workplace Injury Rehabilitation and Compensation Act 2013* and has no further entitlement to leave under Division 5 of this Part during that period.

6.12.6 In circumstances not covered by this Division, the council may grant leave to an employee under this Division where the employee has the daily care and control of a child following:

- (1) the adoption by the employee of a child who is a relative of the employee; or
- (2) the employee becoming the legal guardian of a child.

Division 13 – Partner Leave

6.13.1 An employee who submits satisfactory evidence that they have accepted parental responsibility for a child (or children in respect of a multiple birth) but is not the primary caregiver will be granted leave with pay, at the rate the employee would have received but for the absence on partner leave, for up to 152 hours (20 days in respect of a full-time employee), to care for such child (or children in respect of a multiple birth) and/or primary caregiver of the child. Partner leave can be taken in separate periods within that timeframe.

6.13.2 Unless otherwise approved by the council, partner leave must be taken in the period commencing one week before the expected date of birth of the child (or children in respect of a multiple birth) and concluding six weeks after the actual date of birth.

- 6.13.3 An employee who is eligible for paid leave under this Division and Division 5 of this Part in respect of a partner leave absence is entitled to partner leave with pay in accordance with this clause less the amount paid by way of weekly compensation under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) and has no further entitlement to leave under Division 5 of this Part during the partner leave period.
- 6.13.4 An employee is not eligible for paid leave under this Division if that employee is also eligible for leave under Divisions 11 or 12 of this Part in respect of the same child (or children in respect of a multiple birth).

Division 14 – Long Service Leave

- 6.14.1 An employee is entitled to long service leave accruing at the rate of 495.6967 hours after ten years' full-time service and at the rate of 247.84835 hours for each completed five years of service thereafter.
- 6.14.2 (1) Notwithstanding clause 6.14.1, an employee may access their long service leave entitlements on a pro rata basis after seven years' service and may apply for pay in lieu of the pro rata entitlement on termination of employment.
- (2) Long service leave may be approved for any period not exceeding the long service leave credits available to an employee.
- (3) An employee may apply to commute a portion of long service leave credits to salary. Except where otherwise approved by the council in special circumstances such as financial hardship, commutation of long service leave credits to salary will only be available in conjunction with a long service leave absence of 228 hours (six weeks) or more.
- (4) An employee may elect to utilise some or all of their long service leave entitlement at half pay.
- 6.14.3 (1) Applications for long service leave must be in writing and must specify:
- (a) the period of leave being sought;
 - (b) whether the leave is to be on full pay or half pay; and
 - (c) whether, in conjunction with the long service leave absence of six weeks or longer, a portion of long service credit is sought to be commuted.
- (2) Unless otherwise approved by the council, applications for long service leave must be lodged no later than two terms before the intended commencement of leave.

- (3) An employee may apply for long service leave in accordance with this Division whether or not they have completed the qualifying period. Provided that leave will only be granted for periods after the completion of the qualifying period specified in clause 6.14.2.
- 6.14.4 Unless otherwise approved by the council, an employee absent on approved long service leave is not permitted to resume duty until the expiration of the approved long service leave period.
- 6.14.5 An employee who is ill or is injured during a period of long service leave may be granted personal leave in accordance with the requirements of Division 2 of this Part and an equivalent period of long service leave will be re-credited or, where approved by the council, the period of long service leave extended by the amount of personal leave approved.
- 6.14.6 Public holidays which occur during a period of long service leave do not form part of the long service leave.
- 6.14.7 An employee whose application for long service leave has been refused may seek a review of that decision in accordance with Part 5 of this Order.
- 6.14.8 In computing an employee's entitlement to long service leave, the following is included:
- (1) subject to clause 6.14.9 the aggregate of the employee's service, including absences on annual leave, on personal leave with pay, or on any other leave with pay for which provision is made in this Order;
 - (2) any employment with a school provided the break between the prior service and employment at a school is not greater than 12 months;
 - (3) any employment with the Commonwealth or any State or Territory of the Commonwealth or any statutory body constituted under the law of the Commonwealth or a State or Territory of the Commonwealth, provided that:
 - (a) the service occurred while the government body is incorporated by an Act of Parliament;
 - (b) the service occurred while the government body is subject to direct government control; and
 - (c) eligible service which precedes a break of greater than 12 months shall not be included.
 - (4) any employment with a school or the Department that ceased due to retirement occasioned by ill health;

- (5) any employment with a school or the Department that ceased due to retrenchment, providing the break between the cessation of employment and employment with a school is not greater than five years;
- (6) any leave without pay that has been approved to count as service for long service leave purposes;
- (7) any period of war service in the Armed Forces of the Commonwealth of Australia which ended not more than five years before commencing employment with a school; and
- (8) any other service approved by the council.

6.14.9 In computing an employee's entitlement to long service leave, the following is not included:

- (1) unless otherwise stated in this Order, any period of leave without pay;
- (2) with the exception of service under subclauses 6.14.8(4), (5) and (7), any service which precedes a break in eligible service of greater than 12 months; and
- (3) unless otherwise determined by the council or the employee was re-employed within a period of three months after the dismissal, any prior service from which the employee was dismissed for misconduct or any cause that was within their control.

6.14.10 (1) In addition to credits to which an employee is entitled under clauses 6.14.1 and 6.14.8, to the extent approved by the Secretary, credit may also be given for employment with those organisations approved by the Secretary. Provided that such credit is reduced by the amount of long service leave the employee has already used or been paid in lieu.

- (2) In determining whether an organisation or body is approved under subclause (1) the Secretary will have regard to the following:
 - (a) the legislation (if any) under which the organisation was constituted;
 - (b) the relationship between the organisation and Government (if any) for which the organisation was established.

6.14.11 Service as an emergency or casual teacher may be included as service for long service leave purposes as follows:

- (1) service prior to 25 May 1981 may be included for calculation of credit and continuity of service purposes;

- (2) service on or after 25 May 1981 does not count towards the long service leave credit but may be included as service for continuity purposes.
- 6.14.12 (1) An employee granted long service leave with full pay will be paid during such leave at the employee's normal rate of pay.
- (2) Except where otherwise determined by the Secretary, allowances payable under this Order which meet the following criteria are payable during long service leave:
- (a) the allowance is of a continuing and ongoing nature; and
 - (b) the employee has been in receipt of the allowance for a continuous period of 12 months immediately prior to the commencement of the leave; and
 - (c) the employee would have continued to receive the allowance but for their absence on leave.
- 6.14.13 If an employee is granted long service leave on half pay, the employee will be paid during such leave half of what they would have been paid if the leave had been granted with full pay.
- 6.14.14 (1) If an employee:
- (a) is not paid in lieu of long service leave on ceasing any period of employment; and
 - (b) is subsequently re-employed under Part 2.3 of the Act; and
 - (c) the prior employment is recognised for long service leave purposes under clause 6.14.8
- any entitlement under clauses 6.14.12 or 6.14.13 will be based on the employee's salary at the date from which leave is taken or from which pay in lieu of long service leave is due, as the case may be.
- (2) In the circumstances set out in subclause (1) of this clause, any entitlement under clauses 6.14.12 or 6.14.13 will be calculated as if there were two separate periods of service, if the employee would thereby receive a greater sum of money.

Division 15 – Sabbatical Leave

- 6.15.1 The council may grant an employee sabbatical leave on 80% of salary subject to the employee agreeing to have his/her annual salary reduced by 20% for the relevant work

period, and the employee entering an agreement with the council covering the terms and conditions of the sabbatical leave.

6.15.2 Sabbatical leave will be granted in accordance with guidelines determined by the Secretary and will, unless otherwise agreed, be taken immediately following the completion of the relevant work period during which salary was reduced under clause 6.15.1.

6.15.3 Unless otherwise determined by the council, sabbatical leave does count as service for all purposes including continuity of service.

6.15.4 Unless otherwise determined by the council:

- (1) employees who are granted leave under this Division cannot resume duty earlier than the expiration of the period of sabbatical leave;
- (2) notwithstanding subclause (1) of this clause, the council may authorise an employee to resume duty earlier than the expiration of the period of sabbatical leave in circumstances where the early resumption can be accommodated having regard to the educational and operational requirements of the school.

Division 16 – Spouse Leave

6.16.1 Leave without pay from three months to 12 months will be granted once every three years to an employee whose spouse, as a consequence of pursuing their occupation, is required to shift residence interstate or overseas.

6.16.2 Leave without pay from three months to 12 months may be granted once every three years to an employee:

- (1) whose spouse is travelling interstate or overseas; or
- (2) whose spouse is transferred within Victoria where no employment in the teaching service can be offered to the employee at the new location; or
- (3) whose spouse is also an employee and is granted long service leave, provided that spouse leave may be granted for the period of long service leave granted.

6.16.3 Unless otherwise approved by the council, employees granted leave under clauses 6.16.1, 6.16.2(1) or (2) must resume duty at the start of the school term following the expiration of the spouse leave.

6.16.4 Notwithstanding clauses 6.16.1 and 6.16.2, the council may approve such other period of leave as the council considers appropriate and may approve more than one grant of leave in any three year period.

6.16.5 Unless otherwise approved by the council, leave without pay granted under clauses 6.16.1 and 6.16.2 will not count as service for any purpose but does not break the continuity of an employee's service.

Division 17 - Family violence leave

6.17.1 In this Division unless otherwise specified, "**family violence**" includes physical, sexual, financial, verbal or emotional abuse by a family member as defined by the *Family Violence Protection Act 2008* (Vic).

6.17.2 Leave for family violence purposes is available to employees, other than casual employees, who are experiencing family violence to allow them to be absent from the workplace to attend counselling appointments, legal proceedings and other activities related to, and as a consequence of, family violence.

6.17.3 (1) An employee experiencing family violence may access up to 152 hours (20 days for a full-time employee) per year of paid special leave for medical appointments, legal proceedings and other activities related to family violence (this leave is not cumulative but if the leave is exhausted consideration will be given to providing additional leave). This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day and can be taken without prior approval.

(2) An employee who supports a person experiencing family violence may utilise their personal leave (carer's) entitlement to accompany them to court, to hospital, or to care for children. The Secretary may require evidence consistent with clause 6.17.5(1) from an employee seeking to utilise their personal leave (carer's) entitlement.

6.17.4 Casual employees are entitled to access leave without pay for family violence purposes.

6.17.5 (1) Applications for family violence leave should be supported with evidence of family violence in the form of a document issued by the Police Service, a Court, a registered health practitioner, a Family Violence Support Service, a district nurse, a maternal and health care nurse or a Lawyer. A signed statutory declaration can also be offered as evidence.

(2) All personal information concerning family violence will be kept confidential in line with the Secretary's policies and relevant legislation. No information will be kept on an employee's personnel file without their express written permission.

6.17.6 Leave, with or without pay, in excess of that specified in clause 6.17.3 may be granted to an employee if the Secretary is satisfied that the employee's circumstances warrant the grant of more than 152 hours (20 days for a full-time employee) leave in any particular year.

Division 18 – Cultural and Ceremonial leave

6.18.1 For the purposes of this Division “**extended family**” has a meaning that recognises that extended families exist within Aboriginal and/or Torres Strait Islander society and obligations of Aboriginal and/or Torres Strait Islander employees may exist regardless of the existence of a bloodline relationship or not. Family also extends to cover relationships where there is a close association, which need not be a blood relationship.

NAIDOC Week Leave

- 6.18.2 (1) An Aboriginal and/or Torres Strait Islander employee is entitled to one day of paid leave per calendar year to participate in National Aboriginal and Islander Day Observance Committee (**NAIDOC**) week activities and events.
- (2) NAIDOC week leave will not accrue from year to year and is not paid out on termination of employment.

Leave to Attend Aboriginal Community Meetings

6.18.3 The council may approve attendance during working hours by an Aboriginal and/or Torres Strait Islander employee at any Aboriginal community meetings, except the Annual General Meetings of Aboriginal community organisations at which the election of office bearers will occur.

Leave to Attend Annual General Meetings of Aboriginal Community Organisations

6.18.4 The council may grant an Aboriginal or Torres Strait Islander employee accrued long service leave or other leave to attend Annual General Meetings of Aboriginal community organisations at which the election of office bearers will occur.

Ceremonial Leave

- 6.18.5 (1) Ceremonial leave will be granted to an Aboriginal and/or Torres Strait Islander employee for ceremonial purposes:
- (a) connected with the death of a member of the immediate family or extended family (provided that no employee shall have an existing entitlement reduced as a result of this clause); or
 - (b) for other ceremonial obligations.
- (2) Where leave is taken for the purposes outlined in this subclause, up to three days in each year of employment will be with pay. Paid leave will not accrue from year to year and is not paid out on termination of employment.

- (3) Leave granted under this clause is in addition to bereavement leave.
- (4) Where paid leave granted under this clause is not sufficient the employee may access any accrued long service leave, outstanding time in lieu, or unpaid leave in accordance with the requirements of those entitlements.

Leave to Participate in the First Peoples' Assembly of Victoria

- 6.18.6 (1) An employee who is a member of the First Peoples' Assembly of Victoria is entitled to up to 10 days' paid leave per calendar year to fulfil their official functions during their term of office.
- (2) Leave will be available to attend sessions of the First Peoples' Assembly of Victoria, participate in constituent consultation relevant to their role or for any other ancillary purpose as agreed with the council.
 - (3) Where in any calendar year an employee exhausts their entitlement under this clause the council may grant further paid or unpaid leave to support the employee's representative functions.
 - (4) The employee may also utilise flexible working arrangements, in addition to leave provided in this clause, to help support their representative functions, with the agreement of the council.
 - (5) Leave under this clause will not accrue from year to year and is not paid out on termination of employment.

Division 19 – Other Leave

6.19.1 The council may, on the application of an employee, grant leave without pay for any purpose.

6.19.2 Leave without pay granted under this Division will not ordinarily be granted for continuous periods in excess of 12 months, provided that the council may approve or extend leave without pay up to a maximum continuous period of three years if the council considers it warranted having regard to the reason for leave.

6.19.3 In determining applications for leave without pay under this Division, the council will have regard to the following matters:

- (1) the length of service of the employee;
- (2) the reason for leave;
- (3) the availability of suitable replacement staff; and

(4) any other factor considered relevant by the council.

6.19.4 Unless otherwise approved by the council, leave without pay granted under clause 6.19.1 does not count as service but will be included as service for continuity purposes under this Order.

6.19.5 An employee is entitled to a period of up to 52 weeks' continuous unpaid grandparent leave in respect of the birth or adoption of a grandchild of the employee in order to provide care and assistance to the parent or grandchild and may use any annual leave or long service leave entitlements at full or half pay which they have accrued.

Division 20 – General

6.20.1 Subject to this Part and unless otherwise approved by the council:

- (1) An employee who is granted leave under this Order cannot resume duty earlier than the expiration of the period of approved leave.
- (2) Notwithstanding subclause (1) of this clause, the council may authorise an employee to resume duty earlier than the expiration of the period of approved leave in circumstances where the early resumption can be accommodated having regard to the educational and operational requirements of the school.
- (3) Notwithstanding subclause (1) of this clause, the council may at any time cancel leave approved under this Order and direct that an employee resume duty.

PART 7 – PERSONAL AND TRAVELLING EXPENSES

- 7.1.1
- (1) Subject to this Part, an employee will be reimbursed their reasonable out of pocket expenses actually and necessarily incurred in the course of their authorised duties.
 - (2) The council must apply the rulings of the Commissioner of Taxation (Australian Taxation Office) relating to reasonable allowances in determining the maximum rates payable, unless otherwise approved by the Secretary.
 - (3) The amount of an expense will be considered reasonable where it does not exceed the relevant amounts set by the Australian Taxation Office as adjusted from time to time.
 - (4) For the purposes of this Part the council will determine the work location for an employee whose place of work is not fixed but is variable.

7.1.2 Allowable expenses include:

- (1) travelling, accommodation, meals and other incidental expenses associated with an overnight absence from home or part day duties away from the normal work location;
- (2) expenses incurred in using private mobile and home phones in accordance with clause 7.1.3; and
- (3) expenses incurred in using private vehicles in accordance with clause 7.1.4.

7.1.3 (1) An employee required to use their private mobile phone or home phone in the course of their employment will be reimbursed for work-related calls.

- (2) The employee must obtain the prior approval of the council before using their private mobile or home phone during the course of their employment.
- (3) Following use, the employee must submit an itemised statement of the calls made and their cost.

7.1.4 (1) An employee required to use their private motor vehicle in the course of their employment will be reimbursed for kilometre costs and any other motor vehicle reimbursement expenses incurred in the course of the employee's employment and authorised by the council.

- (2) The employee must obtain the prior approval of the council before using their private motor vehicle during the course of their employment.
- (3) Following use, the employee must submit a declaration stating the date, the purpose of the trip, the number of kilometres travelled and the type of vehicle used.
- (4) The rates payable in respect of motor kilometre costs will be the rates determined by the Australian Taxation Office from time to time.

7.1.5 (1) An employee will be entitled to the payment of a meal allowance at the rate determined by the Secretary provided that:

- (a) the employee is required to work overtime for a minimum period of two hours and takes a meal break of not less than 20 minutes; or
- (b) the employee is required to work overtime for a minimum period of two hours, without a meal break, provided the period of the overtime commences prior to 6:00 pm and finishes after 7:00 pm

- (2) Payment under this Division will not be made in circumstances where an employee is otherwise eligible for reimbursement for a meal under this Order or where a meal is provided.
 - (3) For the purposes of this Part "**overtime**" means any work totalling in excess of 76 hours in any one fortnightly period.
- 7.1.6 (1) If the council is satisfied that the amount of allowance otherwise payable in accordance with this Order is either in excess of or insufficient to meet the expenses which might reasonably have been incurred by an employee, the council may reduce or increase the amount of the allowance payable to the employee by such amount as the council considers reasonable in the circumstances.
- (2) In circumstances where an employee incurs an expense for which no provision is made in this Part, the council may authorise reimbursement of such expenses as are considered reasonable.

PART 7A – VACCINATION REQUIREMENTS FOR SPECIALIST SCHOOL FACILITIES

Division 1 Definitions

7A.1.1 In this Part, unless the contrary intention appears—

- (1) **“COVID-19 PCR test”** has the same meaning as it has in the Pandemic Orders in relation to workplace requirements;
- (2) **“COVID-19 RAT”** means a COVID-19 rapid antigen test;
- (3) **“COVID-19 status”** means any of the following:
 - (a) Being a diagnosed person as defined in the Pandemic Orders relating to quarantine, isolation and testing;
 - (b) Being a probable case as defined in the Pandemic Orders relating to quarantine, isolation and testing;
 - (c) Being a close contact as defined in the Pandemic Orders relating to quarantine, isolation and testing;
 - (d) Being an exposed person as defined in the Pandemic Orders relating to quarantine, isolation and testing;
 - (e) Being a social contact as defined in the Pandemic Orders relating to quarantine, isolation and testing;
 - (f) Being a symptomatic person in the community as defined in the Pandemic Orders relating to quarantine, isolation and testing; or
 - (g) Any requirement to self-isolate or self-quarantine provided for in the Pandemic Orders relating to quarantine, isolation and testing;
- (4) **“COVID-19 vaccine”** has the same meaning as in the Pandemic Orders in relation to workplace requirements;
- (5) **“excepted person”** has the same meaning as in the Pandemic Orders in relation to workplace requirements;
- (6) **“fully vaccinated”** has the same meaning as in the Pandemic Orders in relation to workplace requirements;
- (7) **“fully vaccinated (boosted)”** has the same meaning as in the Pandemic Orders in relation to workplace requirements;
- (8) **“infectious period”** has the same meaning as in the Pandemic Orders in relation to quarantine, isolation and testing;

- (9) **“Pandemic Orders in relation to quarantine, isolation and testing”** means the Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 10) and any successor Pandemic Orders made under the **Public Health and Wellbeing Act 2008** (Vic);
- (10) **“Pandemic Orders in relation to workplace requirements”** means the Pandemic (Workplace) Order 2022 (No. 10) and any successor Pandemic Orders made under the **Public Health and Wellbeing Act 2008** (Vic);
- (11) **“specialist school facility”** means a Government school which is a “specialist school facility” as defined in the Pandemic Orders in relation to workplace requirements;
- (12) **“vaccination information”** means information about a person’s vaccination status and includes information that is derived from a record of information that was made under, or in accordance with, the **Australian Immunisation Register Act 2015** (Cth);

Note: Vaccination information may be recorded in a variety of documents, such as a letter from a medical practitioner, a certificate of immunisation or an immunisation history statement obtained from the Australian Immunisation Register.

- (13) **“vaccination requirement”** means:
- (a) for persons who are aged under 18 years, that a person has provided vaccination information to the satisfaction of the Secretary in accordance with this Order showing that the person is either fully vaccinated or is an excepted person for the purposes of the Pandemic Orders in relation to workplace requirements as they apply to specialist school facilities; or
 - (b) for persons who are aged 18 years and over, that the person has provided vaccination information to the satisfaction of the Secretary in accordance with this Order showing that the person is either fully vaccinated (boosted) or is an excepted person for the purposes of the Pandemic Orders in relation to workplace requirements as they apply to specialist school facilities, or one or more exceptions under this Order apply.

Note: *If the provisions in the Pandemic Orders in relation to workplace requirements that concern the vaccination requirement for specialist school facilities cease to have effect, the vaccination requirement in this Order also ceases to have effect.*

Interpretation – Vaccination Requirement

- 7A.1.2 The council is authorised to use any information about an employee that is collected about their COVID-19 status or for the purposes of the vaccination requirement in this Order.

Division 2 – Vaccination Requirements for Specialist School Facilities

- 7A.2.1 Subject to the Act, a person is not eligible for employment by a council in a role that requires the person to work in a specialist school facility unless the council is satisfied that the person meets the vaccination requirement.
- 7A.2.2 An employee who does not meet the vaccination requirement must not enter, or remain on, the premises of a specialist school facility operated by the council for the purposes of working at that site.
- 7A.2.3 If, as a result of 7A.2.2, an employee cannot attend the premises of a site operated by the council for the purposes of their work for any period of time:
- (1) the employee may be granted leave without pay in accordance with clause 6.19.1 of this Order unless another type of leave has been applied for and approved; and
 - (2) in accordance with clause 6.19.4 of this Order, leave without pay granted under clause 6.19.1 of this Order does not count as service but will be included as service for continuity purposes under this Order.
- 7A.2.4 A principal must not allow an employee who does not meet the vaccination requirement to enter, or remain on, the premises of a specialist school facility operated by the council for the purposes of working at that site.
- 7A.2.5 Despite clause 7A.2.4, the principal may allow an employee who is not fully vaccinated (boosted) or an excepted person to enter, or remain on, the premises of a specialist school facility operated by the council for the purposes of working at that site if the employee is fully vaccinated and:
- (1) was a diagnosed person whose infectious period ended within the previous 4 months; or
 - (2) was a probable case whose infectious period ended within the previous 4 months.
- 7A.2.6 For the purposes of monitoring and ensuring compliance with the vaccination requirement, the duty of every employee at a specialist school facility is to report on their COVID-19 status, and any change to their COVID-19 status, within 24 hours of becoming aware of that status or change in status.

PART 8 – GENERAL

Division 1 – Merit, Equity and Employment Principles

8.1.1 In the administration of this Order the following principles must be observed:

- (1) Employment, transfer or promotion (except for action pursuant to Division 4 of Part 3 of this Order) to a position under Part 2.3 of the Act will be from individuals selected solely on the basis of relative ability, knowledge and skills linked to the duties of the position. This will be conducted in fair and open competition which ensures that all receive equal opportunity.
- (2) Selection procedures must ensure fair and equal consideration of all applicants solely on the merits of each applicant measured against specified selection criteria.
- (3) All employees will receive fair and equitable treatment without regard to age, breastfeeding, carer status, disability, employment activity, gender identity, industrial activity, lawful sexual activity, marital status, parental status, physical features, political belief or activity, pregnancy, race (including colour, nationality, ethnicity and ethnic origin), religious belief or activity, sex, sexual orientation, an expunged homosexual conviction or personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.
- (4) School strategic plans, policies and management plans will be reviewed regularly to ensure that they reflect the principles of equal employment opportunity and strategies for managing diversity as determined by the Secretary.
- (5) Employment equity strategies will be implemented to improve the representation of women, people with disabilities, Aboriginal and Torres Strait Islanders and people from non-English speaking backgrounds.
- (6) All employees will be assured of an harassment free work environment and access to a process for the investigation of complaints of discrimination and harassment in the workplace.

Division 2 – Selection

8.2.1 Selection for employment under Part 2.3 of the Act to a vacant position will be in accordance with procedures determined by the Secretary.

Division 3 – Delegation

- 8.3.1 The Secretary may delegate to any person employed in the administration or execution of the Act the Secretary's powers or functions under this Order.
- 8.3.2 The council may delegate to the principal of the school its powers or functions under this Order.

Division 4 – Revocation and Transitional Arrangements

- 8.3.4 Ministerial Order No. 1039, made pursuant to sections 2.3.8, 5.10.4 and 5.10.5, and clause 8 of Schedule 6 of the Act, by the Minister for Education on 28 August 2017, is revoked.
- 8.3.5 Despite the revocation of Ministerial Order 1039, Ministerial Order 1039 as in force on the day immediately before the day on which this Order commences, applies to any application made to the Merit Protection Board under Ministerial Order 1039 before the day on which this Order commences, and any such application will be determined in accordance with Part 5 of Ministerial Order 1039. All applications made to the Merit Protection Board on and from the day on which this Order commences will be determined in accordance with Part 5 of this Order.

Dated this **eleventh** day of **October** 2022

Natalie Hutchins, MP
Minister for Education

SALARIES

SCHEDULE 1

1.1 Education support class employees will be paid the rates appropriate to their classification level and salary range as follows:

Classification & salary range		Effective from the first pay period on or after									
		24/12/21	1/01/22	1/07/22	1/01/23	1/07/23	1/01/24	1/07/24	1/01/25	1/01/25	
Level 2	Range 6										
	6-5	\$143,170	\$144,602	\$146,048	\$147,508	\$148,984	\$150,473	\$151,978	\$153,498	\$155,033	
	6-4	\$138,108	\$139,489	\$140,884	\$142,293	\$143,716	\$145,153	\$146,605	\$148,071	\$149,551	
	6-3	\$133,181	\$134,513	\$135,858	\$137,217	\$138,589	\$139,975	\$141,375	\$142,788	\$144,216	
	6-2	\$128,428	\$129,712	\$131,010	\$132,320	\$133,643	\$134,979	\$136,329	\$137,692	\$139,069	
	6-1	\$123,846	\$125,085	\$126,336	\$127,599	\$128,875	\$130,164	\$131,465	\$132,780	\$134,108	
Level 1	Range 5										
	5-6	\$123,799	\$125,037	\$126,288	\$127,551	\$128,826	\$130,114	\$131,415	\$132,730	\$134,057	
	5-5	\$119,831	\$121,030	\$122,240	\$123,462	\$124,697	\$125,944	\$127,203	\$128,476	\$129,760	
	5-4	\$115,864	\$117,022	\$118,192	\$119,374	\$120,568	\$121,774	\$122,991	\$124,221	\$125,464	
	5-3	\$112,106	\$113,227	\$114,360	\$115,503	\$116,658	\$117,825	\$119,003	\$120,193	\$121,395	
	5-2	\$108,472	\$109,557	\$110,653	\$111,759	\$112,877	\$114,006	\$115,146	\$116,297	\$117,460	
	5-1	\$104,956	\$106,005	\$107,066	\$108,136	\$109,218	\$110,310	\$111,413	\$112,527	\$113,652	
		Range 4									
		4-6	\$101,553	\$102,568	\$103,594	\$104,630	\$105,676	\$106,733	\$107,800	\$108,878	\$109,967
		4-5	\$98,262	\$99,245	\$100,237	\$101,239	\$102,252	\$103,274	\$104,307	\$105,350	\$106,404
		4-4	\$95,077	\$96,028	\$96,988	\$97,958	\$98,938	\$99,927	\$100,927	\$101,936	\$102,955
		4-3	\$91,996	\$92,916	\$93,845	\$94,784	\$95,732	\$96,689	\$97,656	\$98,632	\$99,619
		4-2	\$89,013	\$89,903	\$90,802	\$91,710	\$92,628	\$93,554	\$94,489	\$95,434	\$96,389
		4-1	\$86,129	\$86,990	\$87,860	\$88,738	\$89,626	\$90,522	\$91,427	\$92,342	\$93,265
		Range 3									
		3-6	\$82,499	\$83,324	\$84,157	\$84,999	\$85,849	\$86,708	\$87,575	\$88,450	\$89,335
		3-5	\$78,870	\$79,659	\$80,455	\$81,260	\$82,072	\$82,893	\$83,722	\$84,559	\$85,405
		3-4	\$75,086	\$75,836	\$76,595	\$77,361	\$78,134	\$78,916	\$79,705	\$80,502	\$81,307
		3-3	\$72,652	\$73,379	\$74,113	\$74,854	\$75,602	\$76,358	\$77,122	\$77,893	\$78,672
		3-2	\$70,308	\$71,011	\$71,721	\$72,439	\$73,163	\$73,895	\$74,634	\$75,380	\$76,134
		3-1	\$67,845	\$68,524	\$69,209	\$69,901	\$70,600	\$71,306	\$72,019	\$72,739	\$73,467
		Range 2									
		2-8	\$66,915	\$67,584	\$68,260	\$68,943	\$69,632	\$70,329	\$71,032	\$71,742	\$72,460
		2-7	\$64,911	\$65,560	\$66,215	\$66,878	\$67,546	\$68,222	\$68,904	\$69,593	\$70,289
		2-6	\$62,263	\$62,886	\$63,515	\$64,150	\$64,791	\$65,439	\$66,094	\$66,755	\$67,422
		2-5	\$60,266	\$60,868	\$61,477	\$62,092	\$62,713	\$63,340	\$63,973	\$64,613	\$65,259
		2-4	\$58,268	\$58,851	\$59,439	\$60,034	\$60,634	\$61,240	\$61,853	\$62,471	\$63,096
		2-3	\$56,270	\$56,833	\$57,401	\$57,975	\$58,555	\$59,141	\$59,732	\$60,330	\$60,933
		2-2	\$54,273	\$54,816	\$55,364	\$55,917	\$56,477	\$57,041	\$57,612	\$58,188	\$58,770
		2-1	\$52,250	\$52,773	\$53,301	\$53,834	\$54,372	\$54,916	\$55,465	\$56,019	\$56,580
	Range 1										
	1-2	\$49,730	\$50,227	\$50,730	\$51,237	\$51,749	\$52,267	\$52,789	\$53,317	\$53,850	
	1-1	\$47,672	\$48,149	\$48,630	\$49,117	\$49,608	\$50,104	\$50,605	\$51,111	\$51,622	

- 1.2 (1)** Casual relief teachers will be paid the following hourly rates (refer clause 2.4.2):

Hourly Rate	Effective from:
\$66.19	1 February 2022
\$66.85	1 July 2022
\$67.52	1 January 2023
\$68.20	1 July 2023
\$68.88	1 January 2024
\$69.57	1 July 2024
\$70.26	1 January 2025
\$70.97	1 July 2025

- (2) The payment calculated under subclause (1) of this clause will not exceed the following maximum payment on any day (refer clause 2.4.2):

Maximum Daily Rate	Effective from:
\$397.15	1 February 2022
\$401.12	1 July 2022
\$405.13	1 January 2023
\$409.18	1 July 2023
\$413.28	1 January 2024
\$417.41	1 July 2024
\$421.58	1 January 2025
\$425.80	1 July 2025

- 1.3** Language instructors will be paid the following sessional rates (refer clause 2.4.8):

Sessional hourly rate	Effective from:
\$61.96	1 February 2022
\$62.58	1 July 2022
\$63.21	1 January 2023
\$63.84	1 July 2023
\$64.48	1 January 2024
\$65.12	1 July 2024
\$65.77	1 January 2025
\$66.43	1 July 2025

ALLOWANCES**SCHEDULE 2**

2.1 Special Payment (refer clause 2.3.2):

Minimum annual amount of special payment	\$925
Maximum annual amount of special payment	\$10,000

2.2 Maximum salary loading allowance (refer: clause 2.3.4(1))

Year	Maximum
2022	\$1,402
2023	\$1,430
2024	\$1,459
2025	\$1,488

2.3 Remote school allowance (refer clause 2.3.5) per annum, payable on a fortnightly basis:

Remote category	Employee with dependants	Employee without dependants
A	\$475	\$304
B	\$280	\$183

2.4 First Aid Allowance (refer clause 2.3.6) per annum, payable on a fortnightly basis from the first pay period on or after:

Date	Allowance
1/01/2022	\$698
1/07/2022	\$705
1/01/2023	\$712
1/07/2023	\$720
1/01/2024	\$727
1/07/2024	\$734
1/01/2025	\$741

2.5 Intensive Care Allowance (refer clause 2.3.7) per annum, payable on a fortnightly basis from the first pay period on or after:

Date	Allowance
1/01/2022	\$405
1/07/2022	\$410
1/01/2023	\$414
1/07/2023	\$418
1/01/2024	\$422
1/07/2024	\$426
1/01/2025	\$430

TRANSLATION

SCHEDULE 3

- 3.1 On the date this Order commences, education support class employees at level 1 ranges 1 and 2 (other than those employees at range 1 who are participating in formal trainee or cadetship programs or targeted employment programs) will translate to the revised education support class classifications with effect from 2 January 2022 or the date their current period of employment commenced, whichever is the later, as follows:

Classification & subdivision prior to Order commencement	Classification & subdivision on Order commencement
Range 2	Range 2
2-5	2-8
2-4	2-7
2-3	2-6
2-2	2-5
2-1	2-4
Range 1	
1-5	2-3
1-4	2-2
1-3	2-1
1-2	2-1
1-1	2-1

- 3.2 Education support class employees at range 1 who are participating in formal trainee or cadetship programs or targeted employment programs will translate to the revised education support class classifications with effect from 2 January 2022 or the date their current period of employment commenced, whichever is the later, as follows:

Classification & subdivision prior to Order commencement	Classification & subdivision on Order commencement
Range 1	Range 1
1-2	1-2
1-1	1-1

UNSATISFACTORY PERFORMANCE PROCEDURES

SCHEDULE 4

- 4.1 The purpose of implementing unsatisfactory performance procedures is to improve an employee's performance to a satisfactory level. The process should be completed as early as possible within a maximum 13 week period or, where circumstances prevent conclusion within 13 weeks, as soon as possible thereafter.
- 4.2 The unsatisfactory performance procedures will be conducted in accordance with this schedule and any procedures determined by the council. Any procedures determined by the council must ensure that the employee:
- (1) is advised of their unsatisfactory performance;
 - (2) is advised that they may have a support person or representative of their choice attend any meetings;
 - (3) has the opportunity to respond; and
 - (4) is provided with a period of monitoring and support.
- 4.3 Where the council considers that an employee's performance is unsatisfactory the council may commence unsatisfactory performance procedures as follows:

Advice to employee

- (1) The council will advise the employee in writing:
 - (a) that their performance is unsatisfactory;
 - (b) the particular areas of unsatisfactory performance;
 - (c) the required standard of performance;
 - (d) the consequences of continued failure to meet the required standard of performance;
 - (e) that the employee has five working days (or such longer period as the council considers reasonable in the circumstances) to explain any reasons for unsatisfactory performance.
- (2) After consideration of the employee's response or failure to respond within the period set by the council under subclause (1)(e) of this clause, the council will notify the employee of the decision in writing that:
 - (a) performance is satisfactory and no further action will be taken; or

- (b) performance continues to be unsatisfactory and a support period will commence (being not less than ten working days) for the employee to improve their performance to the required standard. In this case the employee is to be advised that they may appeal the decision however an appeal will not delay the continuation of these procedures.

Support Period

- (3) Where the council has informed the employee under subclause (2)(b) of this clause that a support period will commence the Council will set the duration of the support period. Depending on the circumstances, the support period would normally be between two and eight weeks.
- (4) During the support period the employee's performance will be monitored regularly, including providing feedback, support and opportunities to discuss progress. It is important that an employee be given opportunity and appropriate support to improve their performance. Whilst support should be tailored to the specific needs of the individual it is provided in an overall context which recognises that individuals are ultimately responsible for their own performance.
- (5) The council will ensure that a written record of the support that is provided, including meeting records, is maintained and copies provided to the employee in a timely manner.
- (6) At the completion of the support period the council will assess the performance of the employee. Following the assessment the council will advise the employee in writing that:
 - (a) performance is satisfactory and no further action will be taken provided that the employee's performance continues to be at or above the required standard; or
 - (b) performance continues to be unsatisfactory and that the employee has five working days (or such longer period as the council considers reasonable in the circumstances) to explain any reasons for the continued unsatisfactory performance.

Decision

- (7) After consideration of the employee's response or failure to respond within the period set by the council under subclause (6)(b) of this clause, the council will notify the employee of the decision in writing that:
 - (a) no further action will be taken provided that the employee's performance continues to be at or above the required standard; or

- (b) performance continues to be unsatisfactory and a second support period will be put in place on the basis that the council considers that a realistic opportunity exists for the employee's performance to improve to a satisfactory standard during the second support period; or
- (c) performance continues to be unsatisfactory and the employee's employment will be terminated.

SCHEDULE 5

SUPPORTED WAGE SYSTEM

5.1 This Schedule defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this Order. In the context of this Schedule, the following definitions will apply:

- (1) **Supported wage system** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the *Supported Wage System in Open Employment Handbook* (as in force and amended from time to time).
- (2) **Accredited assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system.
- (3) **Disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.
- (4) **Assessment instrument** means the form provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

Eligibility Criteria

- 5.2**
- (1) This Schedule applies to employees who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Order, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
 - (2) This Schedule does not apply to any existing employee who has a claim against the council which is subject to the provisions of workers' compensation legislation or any provision of this Order relating to the rehabilitation of employees who are injured in the course of their employment.

- (3) This Schedule does not apply to the council in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the *Disability Services Act 1986*, or if a part only has received recognition, that part.

Supported Wage Rates

- 5.3** (1) Employees to whom this Schedule applies will be paid the applicable percentage of the minimum rate of pay prescribed by this Order for the class of work which the person is performing according to the following Schedule:

Assessed capacity	Minimum Order rate for class of work
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

- (2) Provided that, the minimum amount payable will be not less than \$90 per week or such greater amount as provided for in the Fair Work Commission's annual National Minimum Wage decision.
- (3) Where a person's assessed capacity is 10%, they will receive a high degree of assistance and support.

Assessment of Capacity

- 5.4** For the purpose of establishing the percentage of the Order rate to be paid to an employee under this Order, the productive capacity of the employee will be assessed in accordance with the supported wage system and documented in an assessment instrument by either:

- (1) The council and a union that has the right to represent the industrial interests of the employee, in consultation with the employee or, if desired by any of these;
- (2) The council and an accredited assessor from a panel agreed by the parties and the employee.

Lodgement of Assessment Instrument

- 5.5** (1) All assessment instruments, under this Schedule, including the appropriate percentage of the Order rate of pay, will be lodged by the council with the General Manager of the Fair Work Commission.
- (2) All assessment instruments will be agreed and signed by the parties to the assessment, provided that:
- (a) where a union is not a party to the assessment the General Manager of the Fair Work Commission will forward a copy of the assessment to that union; and
 - (b) unless that union lodges an objection with the General Manager of the Fair Work Commission, the assessment will take effect after ten working days.

Review of Assessment

- 5.6** The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review will be in accordance with the procedures for assessing capacity under the supported wage system.

Other Terms and Conditions of Employment

- 5.7** Where an assessment has been made, the applicable percentage will apply to the wage rate only. Employees covered by the provisions of the Schedule will be entitled to the same terms and conditions of employment as all other workers covered by this Order.

Workplace Adjustment

- 5.8** The council will take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

Trial Period

- 5.9** (1) In order for an adequate assessment of the employee's capacity to be made, the council may employ a person under the provisions of this Schedule for a trial period not exceeding twelve weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

- (2) During that trial period the assessment of capacity will be undertaken and the proposed wage rate for a continuing employment relationship will be determined.
- (3) The minimum amount payable to the employee during the trial period will be no less than \$90 per week or such greater amount as provided for in the Fair Work Commission's annual National Minimum Wage decision.
- (4) Work trials should include induction or training as appropriate to the job being trialled.
- (5) Where the council and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under 5.4 hereof.