

KINDERGARTEN TEACHERS, HEAD TEACHERS AND SENIOR TEACHERS' COLLECTIVE AGREEMENT 2009-2011 AS VARIED 22ND FEBRUARY 2011

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PART ONE: GENERAL

1.1 PARTIES TO THE AGREEMENT

The parties to this agreement shall be the Secretary for Education acting under delegation from the State Services Commissioner made pursuant to section 23 of the State Sector Act 1988 and acting in accordance with section 74(5) of the State Sector Act 1988 (herein known as “the Ministry” or “the Secretary “); and

New Zealand Educational Institute Te Riu Roa (herein known as “the Union” or “NZEI Te Riu Roa”).

1.2 APPLICATION OF THE AGREEMENT

This agreement shall be binding on the parties to it and:

Each teacher as defined in the coverage clause (herein known as “the employee”), who is employed by a Kindergarten Association and who is a member or becomes a member of NZEI Te Riu Roa;

Each Kindergarten Association that controls a free kindergarten within the meaning of section 120 of the Education Act 1989 that employs a teacher who is bound or entitled to be bound by this agreement (herein known as the “employer” or “Association”).

1.3 COVERAGE

The parties agree that the terms and conditions of this collective agreement cover kindergarten base scale teachers, head teachers and senior teachers (as those terms are defined in this agreement) who are employed by free kindergarten associations as per section 120 of the Education Act 1989.

New employees of associations bound by this agreement whose work is within the coverage clause of this agreement, shall, in accordance with the Employment Relations Act 2000, be advised of the existence of this collective agreement and be offered the opportunity to join NZEI Te Riu Roa and become bound by this collective agreement.

1.4 TERM OF AGREEMENT

This agreement shall come into force on 1 March 2009 and shall expire on 28 February 2011, except as provided for under section 53 of the Employment Relations Act 2000.

1.5 VARIATIONS

The parties agree that the terms and conditions of this agreement may be varied by written agreement between NZEI Te Riu Roa on behalf of its members, and the Secretary for Education, acting under delegation from the State Services Commissioner made pursuant to section 23 of the State Sector Act 1988, in consultation with the employers bound by the agreement.

1.6 DEFINITIONS

In this agreement, unless the context otherwise requires:

- (a) **Teacher** means a trained teacher registered by the New Zealand Teachers Council Te Pouherenga Kaiako o Aotearoa and holding a Diploma of Teaching (Early Childhood Education), the New Zealand Free Kindergarten Union Diploma or another early childhood teaching qualification recognised by the New Zealand Qualifications Authority (NZQA) as being equivalent and who is employed on teaching duties in a recognised free kindergarten.
- (b) **Base Scale Teacher** means a teacher who is not a head teacher or a senior teacher.
- (c) **Head Teacher** means a teacher who is not a base scale teacher and who is in charge of a kindergarten, and who is not a senior teacher.
- (d) **Senior Teacher** means a teacher who is employed as a senior teacher to carry out professional support and guidance, administrative and management roles under delegation from their employer. Such delegations shall be determined by the employer in agreement with the employee(s) and in accordance with the employee(s) job description.
- (e) **Full-time Employee** means a teacher who is appointed to a position for which the total hours of work should, as far as practicable, not exceed 40 hours per week, worked from Monday to Friday inclusive.
- (f) **Part-time Employee** means a teacher who is appointed to a position for which the total hours of work are less than 40 hours per week, worked between Monday and Friday.
- (g) **Hours of Work** means the total hours required for employees to properly fulfil the duties and responsibilities connected with their employment, inclusive of child-contact time and professional time as per clause 2.6.
- (h) **Long-term Reliever** means a teacher who is a fixed term employee who relieves in a position for which the tenure at the time of appointment is known to be more than 6 weeks.
- (i) **Short-term Reliever** means a teacher who is a fixed term employee who relieves in a position for which the tenure at the time of appointment is known to be not more than 6 weeks and includes relievers employed on a day-to-day basis.
- (j) **Kindergarten** means a recognised kindergarten and includes mobile kindergartens within the meaning of section 120 of the Education Act 1989.
- (k) **Kindergarten Session:** a kindergarten that operates sessionally and holds a sessional licence; or operates two separate periods in a day separated by a break with no children; and/or has one period in a day operating to the teacher:child ratio of a sessional licence three or more days a week.

- (l) **Kindergarten Day:** a kindergarten that holds an all day licence, operating to the teacher:child ratio of an all-day licence and does not operate sessionally as defined under kindergarten session.
- (m) **Child Contact Time:** is time spent directly engaged with a child or group of children (including pedagogical observation) when the kindergarten is open for instruction.
- (n) **Professional Time:** is time spent undertaking responsibilities other than child contact within a teacher's normal hours of work.
- (o) **Head Teacher Professional Time:** is time when the head teacher is released from normal child-contact duties, when the kindergarten is open for instruction, in order for them to undertake responsibilities related to the head teacher's role as professional leader. The head teacher will use this time to develop strong professional leadership skills, to support the teaching team and improve the quality of teaching and learning.

1.7 DECLARATION PURSUANT TO THE STATE SECTOR ACT

- 1.7.1 Pursuant to section 75(1) of the State Sector Act 1988 the Secretary for Education acting pursuant to the delegated authority of the State Services Commissioner has declared that all of the conditions contained in this collective agreement are actual conditions of employment.
- 1.7.2 Provided that the Secretary for Education may from time to time give approval to the terms and conditions being treated as minimum rates where there is agreement to this between the employer and employee and where such terms are not inconsistent with the terms and conditions of this collective agreement.

1.8 SENIOR TEACHERS

- (a) The provisions in this agreement apply in their entirety except where senior teachers who were members of NZEI Te Riu Roa at 24 November 2000 and who had benefits not otherwise provided for under the provisions of this agreement, including the personal use of an association's vehicle, shall retain these benefits. The parties agree that such arrangements were made between the employer and employee in good faith and may be changed in accordance with association policy.
- (b) The following provisions shall not apply to senior teachers:
 - 2.6: Hours of Work
 - 3.1: Salary Scales
 - 3.3: Operation of the Salary Scales
 - 4.2: Annual Leave
 - 5.1: Expenses incurred in the Use of Private Vehicles
 - 5.2: Meal Allowance
 - 5.3: Relieving Allowance

Alternative provisions applicable to senior teachers are found in Part 8.

PART TWO: TERMS OF EMPLOYMENT

2.1 GOOD EMPLOYER PRACTICE / EQUAL EMPLOYMENT OPPORTUNITIES

Attention is drawn to s.77A of the State Sector Act 1988 which outlines the responsibilities of the employer with regard to the operation of a personnel policy that complies with the principles of being a good employer and the equal employment opportunity responsibilities of the employer. These responsibilities include:

- (i) Good and safe working conditions;
- (ii) Equal employment opportunities;
- (iii) Recognition of the aims and aspirations and employment requirements of Māori people;
- (iv) Opportunities for the enhancement of the abilities of individual employees;
- (v) Recognition of the aims and aspirations and the cultural differences of ethnic or minority groups;
- (vi) Recognition of the employment requirements of women; and
- (vii) Recognition of the employment requirements of persons with disabilities.

2.2 APPOINTMENTS

- (a) Attention is drawn to the State Sector Act 1988 insofar as it provides that the employer shall, wherever practicable, notify the vacancy in a manner sufficient to enable suitably qualified persons to apply for the position and the person best suited to the position shall be appointed.
- (b) Equal employment opportunities principles shall be applied and demonstrated in appointments procedures. The intent of these principles is to provide equal access and consideration and equal encouragement in areas of recruitment, selection, promotion and career development. These principles are to be applied to enable people to pursue their careers without their chances being reduced by factors which are irrelevant to the requirements of the position under consideration. In particular, the employer will have regard to the experience, qualifications and abilities relevant to the position, and such other relevant matters as the employer determines.
- (c) All part-time and full-time positions shall be permanent unless identified as fixed term positions in accordance with 2.2(d).
- (d)
 - (i) An employee and an employer may agree that the employment of the employee will end:
 - at the close of a specified date or period; or
 - on the occurrence of a specified event; or
 - at the conclusion of a specified project.

- (ii) Before an employee and employer agree that the employment of the employee will end in a way specified in 2.2(d)(i) the employer must:
 - have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way; and
 - advise the employee of when or how his or her employment will end and the reasons for his or her employment ending in that way.
- (iii) The following reasons are not genuine reasons for the purpose of 2.2(d)(ii):
 - to exclude or limit the rights of the employee under the Employment Relations Act 2000;
 - to establish the suitability of the employee for permanent employment.
- (iv) Fixed term employees other than relievers, as defined under 1.6, are referred to and treated as relievers for the purposes of this Agreement.
- (e) Teachers taking up a senior teacher position shall not be entitled to leave of absence from their existing position, unless the employer determines otherwise.
- (f) Employees appointed to another position within an association are not considered to be new employees.
- (g) On appointment to a position, all employees shall receive a letter of appointment specifying their salary and total hours of work, including maximum contact hours and professional time.

2.3 TRANSFERS

- (a) Where relieving, secondment, redeployment or redundancy are not applicable an employer may transfer an employee to a vacancy which has not been advertised, provided that the employee has agreed to the transfer and is suitable for the position.
- (b) Where an employee agrees to transfer to a permanent position in another location which necessitates the removal of the employee's household, the employer shall reimburse actual and reasonable costs arising from the removal of the employee's family and household under such conditions as the employer may determine.

2.4 JOB SHARING

- (a) The employer will decide whether a position is suitable for job sharing. If so, any two employees may jointly apply for a position and will be considered for joint suitability.

- (b) If one of the joint holders subsequently resigns or retires, the remaining job share participant may approach the employer with a new suitable job share partner or transfer to the vacancy arising in respect of the balance of the position thereby becoming full-time. In the event that the remaining job share participant elects to resign as a result of the end of the job share, no redundancy shall be payable.

Except that the provisions in place for the job share arrangement of employees employed in job share positions at 2 October 2000 shall be those applicable immediately prior to that date.

- (c) Salaries will be paid on a pro-rata basis. Annual increments shall be payable on the same basis as for full-time employees. Employees shall be entitled to public holidays, annual holidays, sick leave and other leave (on the same basis as permanently appointed full-time employees) but will be paid on a pro-rata basis.

2.5 HEALTH AND SAFETY

- (a) Where an employee's health and safety are shown to be significantly at risk through the course of their duties, the employer shall, in consultation with the appropriate health and safety authorities, take such steps as are necessary to provide protection for the employee.
- (b) The employer shall ensure safe working practices and appropriate hygiene measures are in place to reduce the risk of infection by contagious disease. Where there is significantly increased risk, the situation shall be assessed on an individual basis and pre-exposure immunisation made available as advised by the Ministry of Health.
- (c) Employers shall take all practical steps to ensure a safe working environment for employees. Employees also have a role in ensuring their own health and safety and that of people around them as described in the Health and Safety in Employment Act 1992.

2.6 HOURS OF WORK

- (a) The hours for which an employee is employed each week in excess of child-contact time shall be considered professional time.

Employees shall work such hours as are reasonably required of them to properly fulfil the duties and responsibilities connected with their employment, whether or not such hours exceed the total hours of work as set out in their letter of appointment.

- (b) From the date of settlement, except as provided for under clause 2.7, no employee shall have her/his hours of work recalculated through the operation of this clause.

The hours of work as they relate to employees in Kindergarten Session and Kindergarten Day operations are those described in 2.6(b) 1 and 2.6(b) 2 respectively:

(1) Kindergarten Session

Where a kindergarten operates sessionally as defined under the clause 1.6(k):

- 1.1 The maximum child-contact hours for full-time employees shall be no more than 26 hours per week, and less than 26 hours per week for part-time employees. These hours may vary from week to week provided that when averaged over a four-week period they do not exceed the maximum.
- 1.2 From the beginning of 2008 (or earlier at the discretion of the employer) head teachers shall be entitled to eight hours quarterly, designated as head teacher professional time, to be used as described in clause 1.6(o). This time will be taken at a time agreed with the employer when the kindergarten is open for instruction. The head teacher professional time can be accumulated up to 32 hours per calendar year.
- 1.3 In addition to annual leave and public holidays, employees shall be entitled to term breaks of a minimum of 15 days (or three of the employees ordinary working weeks) per annum. These term breaks shall be considered professional time as per clause 1.6(n). Term breaks shall be at times when the kindergarten is closed for instruction which will generally coincide during the year with the term breaks in primary schools.
- 1.4 An employee shall not normally be required to attend the kindergarten or elsewhere during the term breaks. There may, however, be occasions during term breaks (professional time) when an employee is required by the employer to attend the kindergarten, or elsewhere, to carry out duties and responsibilities connected with their employment including:
 - (a) planning and preparation
 - (b) professional learning and development
 - (c) administrationexcept where those duties have already been satisfactorily completed by an employee.
- 1.5 An employee may apply to not attend the kindergarten or elsewhere during term breaks when required to do so under 2.6(b) 1.4 and 2.6(b) 1.6. The employer shall take the individual needs of the employee into account when making a decision.
- 1.6 The employer shall give at least two months' notice to employees where all employees are required to attend a kindergarten, or elsewhere, at specific times during term breaks, to carry out duties and responsibilities connected with their employment. In all other situations the employer shall endeavour to give reasonable notice to the employees affected.

- 1.7 Employees shall be paid during times when the kindergarten is closed for instruction even when they are not on annual leave and are not required by the employer under 2.6(b) 1.4 or 2.6(b) 1.6 to attend a kindergarten or elsewhere to carry out duties and responsibilities connected with their employment.

(2) Kindergarten Day

- 2.1 Where a kindergarten operates as described under clause 1.6(l) and is open for instruction for up to and including 32.5 hours per week clause 2.6(b) 2.3 and its sub-clauses shall apply.

- 2.2 Where a kindergarten operates as described under clause 1.6(l) and is open for instruction for more than 32.5 hours per week clause 2.6(b) 2.4 and its sub-clauses shall apply.

- 2.3 Where a kindergarten is open for instruction for up to and including 32.5 hours per week and operates as described by clause 1.6(l):

- 2.3.1 The maximum child-contact hours for full-time employees shall be no more than 30 hours per week, and less than 30 hours per week for part-time employees. These hours may vary from week to week provided that when averaged over a four-week period they do not exceed the maximum.

- 2.3.2 From the beginning of 2008 (or earlier at the discretion of the employer) head teachers shall be entitled to eight hours quarterly, designated as head teacher professional time, to be used as described in clause 1.6(o). This time will be taken at a time agreed with the employer when the kindergarten is open for instruction. The head teacher professional time can be accumulated up to 32 hours per calendar year.

- 2.3.3 In addition to annual leave and public holidays, employees shall be entitled to a minimum of 15 days (or three of the employees ordinary working weeks) professional time per annum when they shall not normally be required by the employer to attend the kindergarten or elsewhere. There may, however, be occasions during this time when an employee is required by the employer to attend the kindergarten or elsewhere to carry out duties and responsibilities connected with their employment including the following professional tasks:

- (a) planning and preparation
- (b) professional learning and development
- (c) administration

except where the duties have been satisfactorily completed by the employee.

This professional time may be when the kindergarten is open or closed for instruction and shall be timetabled by the employer. (In cases where the kindergarten does not close for instruction the employer shall consult the employee in timetabling the professional time.)

Note: *This professional time is in addition to the professional time provided as part of the total hours of work per week.*

- 2.3.4 An employee may apply to not attend the kindergarten or elsewhere when required to do so under 2.6(b) 2.3.3 and 2.6(b) 2.3.5. The employer shall take the individual needs of the employee into account when making a decision.
- 2.3.5 The employer shall give at least two months' notice to employees where all employees are required to attend a kindergarten, or elsewhere, for the purposes of professional time as described in 2.6(b) 2.3.3. In all other situations the employer shall endeavour to give reasonable notice to the employees affected.
- 2.3.6 Employees shall be paid during these times even when they are not on annual leave and are not required by the employer under 2.6(b)2.3.3 and 2.6(b)2.3.5 to attend a kindergarten or elsewhere to carry out duties and responsibilities connected with their employment.
- 2.4 Where a kindergarten is open for instruction for more than 32.5 hours per week and operates as described by clause 1.6(l):
- 2.4.1 The maximum child-contact hours for full-time base scale employees shall be no more than 35 hours per week, and less than 35 hours per week for part-time base scale employees. These hours may vary from week to week provided that when averaged over a four-week period they do not exceed the maximum.
- 2.4.2 The maximum child-contact hours for full-time head teachers shall be no more than 30 hours per week, and less than 30 hours per week for part-time head teachers. These hours may vary from week to week provided that when averaged over a four-week period they do not exceed the maximum.
- 2.4.3 All employees shall be entitled to a minimum of seven days per annum which shall be designated as professional time when the kindergarten is open for instruction, primarily for the purposes of professional learning and development. There may be times, at the request of the employee, when this time is used for planning and preparation or administration.

Note: *this professional time is in addition to the professional time provided as part of the total hours of work.*

(c) **Refreshments and Lunch Breaks**

- (i) Refreshments:
 - (a) Each employee shall be entitled to take refreshments during the day when working in child contact.
 - (b) Each employee working more than six child-contact hours per day, shall be entitled to two paid refreshment breaks per day of no less than 10 minutes;
- (ii) Lunch breaks (unpaid):
 - (a) Where a kindergarten is open for instruction for two separate periods of time in the same day separated by a break where no children attend, the employer shall ensure there is no less than 45 minutes between child contact sessions, during which time employees shall take their lunch break;
 - (b) Where a kindergarten is open for instruction for more than four and up to 6.5 continuous hours on any day, each employee working five hours or more shall be entitled to a lunch break of 30 minutes, which may be increased by mutual agreement;
 - (c) Where a kindergarten that is open for instruction for more than 6.5 continuous hours on any day each employee working five hours or more shall be entitled to a lunch break of one hour, which may be decreased to no less than 30 minutes by mutual agreement;
 - (d) No employee shall be required to work more than five hours without a meal break;
- (iii) No child shall be left unattended during refreshments and lunch breaks.

Note: Attention is drawn to the Employment Relations (Infant Feeding and Other Matters) Amendment Act 2008

2.7 Changes to Hours of Operation

(a) **Principles of Change**

The parties bound by this agreement, as outlined in clauses 1.1 and 1.2 of the agreement, recognise and agree that:

- (i) The process of change is ongoing;
This may be brought about by changes in the operating environment of the Early Childhood Education sector, changing community needs, or by the organisation continually looking for ways by which improvement to quality and delivery of service may be achieved.
- (ii) There are positive ways in which the process of change can be approached and utilised to the benefit of all;
Planning, prior to and during change, is recognised as an important part of any managed approach.
- (iii) Effective and successful changes to the organisation require the involvement of employees. This includes timely and appropriate consultation.

(b) Consultation

- (i) Where the decision to consider change is made, the employer will provide employees with a genuine opportunity to be involved, recognising the right of the employer to plan, manage, organise and finally decide on the operations of the association.
- (ii) The employer will initiate consultation in writing to the affected employees and the NZEI Te Riu Roa Field Office (copied to the National Secretary) no less than six weeks prior to the proposed implementation date.
- (iii) In the course of consultation, the employer and affected employees and their union representatives will discuss key components that the change will impact on. This includes, but is not limited to, use of professional time, child-contact for part-time employees, support, and change management support for the individual, the team, the association and the community.
- (iv) Without limiting the extent of consultation, issues for consideration shall also include whether proposed changes:
 - (i) Promote structural and process quality education for children;
 - (ii) Are fair and reasonable for full-time and part-time employees;
 - (iii) Meet the needs of families, whānau and community; and
 - (iv) Meet the needs of the association.

(c) Confirmation of Change

Once the employer has determined the final operating model of a kindergarten, the employees shall be notified in writing of the change to be implemented, including the date of implementation, and relevant details of changes to the organisation of their work.

(d) Transfer

During the consultation process or following notification of the change but prior to implementation of the change and on request from an employee, the employer may at its sole discretion consider offering to transfer an employee to a different position within the Association using the provisions of clause 2.3.

2.8 CONSULTATION ON THE ESTABLISHMENT OF A NEW KINDERGARTEN

If a Free Kindergarten Association intends to establish a new free kindergarten, the Association will initiate consultation in writing to NZEI Te Riu Roa Field Office (copied to the National Secretary) no less than six weeks prior to the proposed opening date.

2.9 CONSULTATION ABOUT CHANGE TO CHILD-CONTACT WITHIN A PART-TIME POSITION

Where an employer wishes to change the proportion of child-contact hours within a part-time position, the employer shall consult with the affected employee(s) and the union in the context of what is fair and reasonable for the employee(s).

2.10 TERMINATION OF EMPLOYMENT

In the case of all permanent employees a minimum of one month's notice of termination of employment shall be given by either the employer or the employee unless otherwise agreed. The employer and employee may agree to payment in lieu of notice. However, nothing in this clause shall prevent dismissal without notice for serious misconduct.

2.11 ACCESS

In accordance with the Employment Relations Act 2000, a representative of the union shall be entitled to enter a workplace at all reasonable times for purposes related to the employment of its members and to the union's business. The representative will exercise this right in a reasonable way, having regard to the normal operations of the workplace and will comply with any reasonable procedures and requirements relating to health and safety or security.

2.12 DEDUCTIONS

- (a) With the consent of individual union members, the employer shall arrange for the deduction of union fees for all union members covered by this agreement.
- (b) Union fees deducted from a member's salary or wages must be paid to the union in accordance with any arrangement agreed with the union.
- (c) The employer may deduct and retain up to 2.5 percent of the aggregate sum of the amount deducted as an administration fee / commission for the service on the following terms:
 - (i) that union fees be paid to the union on a fortnightly basis accompanied by a schedule of members for whom the deduction has been made; and
 - (ii) that the administration fee / commission be charged at the time deductions are made.

2.13 UNION MEETINGS

- (a) Every teacher covered by this agreement will be allowed to attend at least two union meetings (each of a maximum of two hours duration) each year on ordinary pay. As kindergartens operate non-child contact sessions such meetings shall occur, as far as practicable, during these sessions.
- (b) The union shall give the employer at least 14 days' notice of the date and time of any meeting to which 2.13(a) applies.
- (c) The union shall make such arrangements with the employer as may be necessary to ensure that the employer's business is maintained during any union meeting including, where appropriate, an arrangement for sufficient union members to remain available during the meeting to enable the employer's operations to continue.

- (d) Work shall resume as soon as practicable after the meeting, but the employer shall not be obliged to pay any union member for a period greater than two hours in respect of any meeting.
- (e) Only union members who actually attend a union meeting shall be entitled to pay in respect of that meeting and to that end the union shall supply the employer with a list of members who attended and shall advise of the time the meeting finished.

2.14 UNION RIGHTS

- (a) The employer shall make available notice board space in an agreed place for the display of NZEI Te Riu Roa notices.
- (b) (i) Employment relations education leave of up to 5 days per year shall be available to union members as follows.

Full-time equivalent eligible employees as at the specified date in a year	Maximum number of days of employment relations education leave that union entitled to allocate
1 – 5	3
6 – 50	55
51 – 280	1 day for every 8 full-time equivalent eligible employees or part of that number
281 or more	35 days plus 5 days for every 100 full-time equivalent eligible employees or part of that number that exceeds 280

- (ii) The Union is required to notify the association in writing of the maximum number of days of employment relations education leave and the basis of calculation of this maximum within one month of 1 March each year.
- (iii) The Union may not allocate leave until such time as that notice has been provided. In accordance with section 75(4) of the Employment Relations Act 2000, the maximum number of days' leave the union may allocate in that year will reduce by one-twelfth for each complete month that the notice in 2.14(b) (ii) is not provided.
- (iv) Where the Union allocates employment relations education leave to an eligible teacher, the Union shall provide the employer with a copy of the notice to the teacher advising:
 - that the union has allocated leave to the teacher;
 - the number of days leave (up to a maximum of 5 days per year) allocated to the individual teacher;
 - that the teacher must take the leave by the end of the year in which it is allocated; and
 - the terms or effects of sections 78 and 79 of the Employment Relations Act 2000.

- (v) In accordance with section 78 of the Employment Relations Act 2000, where a teacher proposes to take the leave allocated to them, the teacher must tell their employer no later than 14 days before the first day of such leave:
 - that they propose to take the leave;
 - the dates on which they propose to take the leave; and
 - the employment relations education that the employee proposes to undertake during that leave.
- (vi) The employer may refuse to allow a teacher to take the leave where the notice requirements in 2.14(b) (v) have not been met or, if the employer is satisfied, on reasonable grounds, that the teacher taking leave on the dates notified would unreasonably disrupt the employer's business.
- (c) The employer acknowledges the responsibility of any employee who is appointed NZEI Te Riu Roa advocate / counsellor, executive member, regional representative of Early Childhood National Caucus or worksite representative.

2.15 REDEPLOYMENT

- (a) When it is known that a kindergarten may close or that the number of staff may be reduced, and where natural attrition will not achieve the required decrease in positions, the employee(s) shall be given at least three months' notice in writing and redeployment options shall be explored in consultation with the union. Subject to the requirements of the State Sector Act 1988, the employer will, in consultation with the union, identify any available or impending vacancies for which the employee may wish to be considered.
- (b) During the notice period both the employer and the employee shall make reasonable efforts to locate suitable alternative employment in a free kindergarten for the employee (or association in the case of senior teachers). In the event that a reasonable offer of employment is made, the employer's responsibilities under these provisions shall be fulfilled.
- (c) The offer of a position:
 - (i) in the same location or within reasonable commuting distance;
 - (ii) with substantially similar terms and conditions of employment;
 - and
 - (iii) with comparable duties and responsibilities

shall constitute a reasonable offer for the purposes of this provision.
- (d) The employer shall provide reasonable paid leave to attend job interviews.
- (e) The employer and any affected employee and the union may, with the concurrence of the Secretary for Education, agree in writing to an alternative arrangement to the provisions contained in this clause.

- (f) The provisions of this clause shall apply in the event of the contracting out of any work of employees covered by this agreement or in the event of the sale or transfer of ownership of all or part of the business.

2.16 REDUNDANCY

- (a) Where a reasonable offer of employment under 2.15 is not made by the time of the expiry of the notice period or no alternative arrangements have been agreed, the employer shall give the union and the affected employee(s) one month's notice of redundancy.
- (b) Notice of redundancy shall include the number of employees affected, the location and reasons for the dis-establishment of the position(s).
- (c) Employees shall be entitled to redundancy compensation based on average gross weekly earnings as follows:

six weeks' pay for the first 12 months or part year of service as a teacher, head teacher or senior teacher and thereafter two weeks' pay for every year or part year of service to a maximum of 30 weeks.
- (d) Employees shall be entitled to all holiday pay and salary owing.
- (e) The employer shall provide reasonable paid leave to attend job interviews.
- (f) Where a needs analysis requires a part reduction in hours for a permanent employee, and no other suitable position is available in accordance 2.15(c) a partial redundancy payment shall be made based on the proportion of the position reduced.

2.17 RETIREMENT SAVINGS SCHEME

- (a) Employees shall be entitled to access the State Sector Retirement Savings Scheme (SSRSS) in accordance with the terms of that scheme.
- (b) The scheme provides for a matching government contribution of up to 3.0% of a teacher's gross salary (as defined in the scheme).
- (c) Those employees already in receipt of an employer or government contribution to their retirement savings or superannuation scheme, including those employees belonging to the GSF scheme, are not entitled to receive the government contribution described in 2.17(b).

2.18 EQUAL OPPORTUNITIES AND PAY AND EMPLOYMENT EQUITY PROVISIONS

The employers are committed to promoting, developing and monitoring equal employment opportunities and programmes in free kindergartens as defined by section 120 of the Education Act 1989.

Attention is drawn to the Equal Employment Opportunities provision of the State Sector Act 1988 as they apply to Free Kindergarten Associations. This requires the employer to:

- (i) Each year develop and publish an equal opportunities programme for the Association;
- (ii) Ensure in each year that the equal employment opportunities programme for that year is complied with throughout the Association;
- (iii) Include in the annual report of the Association
 - (a) A summary of the equal employment opportunities programme for the year to which the report relates; and
 - (b) An account of the extent to which the Association was able to meet, during the year to which the report relates, the equal employment opportunities programme for that year.

An equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect to the employment of any person or group of persons.

The parties and those bound by this collective agreement agree with the Government's aspiration in the Pay and Employment Equity Plan of Action that remuneration, job choice and job opportunities in the state education sector should not be affected by gender.

A tripartite group will engage over the application of Pay and Employment Equity tools and processes as they become available and in consultation with the Pay and Employment Equity Unit of the Department of Labour. The group will develop a response plan for any inequities found as part of this process.

2.19 CONTINUITY OF EMPLOYMENT IN RESTRUCTURING

- (a) For the purpose of this provision restructuring, in relation to a Kindergarten Association's business:
 - (i) means:
 - entering into a contract or arrangement under which the Kindergarten Association's business (or part of it) is undertaken for the Kindergarten Association by another person; or
 - selling or transferring the Kindergarten Association's business (or part of it) to another person; but
 - (ii) to avoid doubt does not include:
 - the termination of a contract or arrangement under which the Kindergarten Association carries out work on behalf of another person or organisation.
- (b) Where it is proposed that the Kindergarten Association be restructured and, as a result of that restructuring, the work being performed by any affected employees of the Kindergarten Association would be performed by a new employer, then:

- (i) in accordance with the principles outlined in 2.7(a) the Kindergarten Association will inform the NZEI at the earliest opportunity, and as soon as is practicable will provide the NZEI with copies of the information outlined in b(ii) below;
 - (ii) within a reasonable period prior to the restructuring taking effect the Kindergarten Association will notify the new employer of the number of affected employees and, in relation to each affected employee, provide details of;
 - the work currently being performed by those employees; and
 - details of their terms and conditions of employment (including their total remuneration, length of service and any accrued benefits or entitlements).
 - (iii) the Kindergarten Association will arrange to meet with the new employer to negotiate:
 - the number and type of positions in respect of which the affected employees may be offered employment with the new employer;
 - the terms and conditions of employment on which the affected employees may be offered employment on those conditions (including whether the affected employees will transfer to the new employer on the same terms and conditions of employment and if those terms and conditions will be included in a collective agreement);
 - the arrangements, if required, for the transfer of any existing superannuation scheme benefits or entitlements and any other accrued benefits and entitlements in relation to those affected employees who may be offered employment by the new employer;
 - the arrangements, if required, for when and how offers of employment are to be made to the affected employees and the mode of acceptance.
 - (iv) the Kindergarten Association will also endeavour to arrange a meeting between the new employer and the NZEI as soon as practicable prior to the restructuring taking place;
 - (v) The Kindergarten Association will keep the NZEI informed regarding negotiations with the new employer in respect of the matters contained in b (iii) above.
- (c) The Redeployment (2.15) and Redundancy (2.16) provisions of this Agreement will apply to an affected employee who either:
- is not offered employment by the new employer; or
 - chooses not to accept an offer of employment from the new employer;

provided that any affected employee who declines an offer of employment in an equivalent position with the new employer **shall not be** entitled to redundancy compensation (2.16).

- (d) An employee who intends to decline an offer of equivalent employment should discuss with the Kindergarten Association the alternate options that might be available under the Redeployment (2.15) or Redundancy (2.16) provisions prior to formally making that decision.
- (e) For the purposes of this clause **employment in an equivalent position** means employment in a position that:
- is substantially the same as the employee's previous position; and
 - is in the same general locality; and
 - is on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy and superannuation conditions); and
 - is on terms that treat the period of service with the Kindergarten Association (and any other period of service recognised by the Kindergarten Association as continuous service) as if it were continuous service with the new employer.

PART THREE: REMUNERATION

3.1 SALARY SCALES

- (a) In the settlement of the Kindergarten Teachers, Head Teachers and Senior Teachers' Collective Agreement 2000-2002 the parties committed themselves to the implementation of pay parity for kindergarten teachers. Head teacher salaries were benchmarked to the base salary (excluding the roll-based supplementary component) of a primary U1 teaching principal. Base scale teacher salaries were benchmarked to the salaries of base scale primary teachers holding qualifications in the corresponding qualification groups and who had the same length of recognised service for salary purposes under their respective agreements.
- (b) The salary scales for base scale teachers are as follows:
- for base scale teachers holding a P1 qualification – equivalent to steps 3-10 in the Primary Teachers' Collective Agreement;
 - for base scale teachers holding a P2 qualification – equivalent to steps 4-11 in the Primary Teachers' Collective Agreement;
 - for base scale teachers holding a P3 qualification – equivalent to steps 6-13 in the Primary Teachers' Collective Agreement; and
 - for base scale teachers holding a P3+ qualification – equivalent to steps 7-14 in the Primary Teachers' Collective Agreement.
- (c) Subject to 3.2, the following salary rates apply:

(i) Scale K1 Base-scale Teachers

Step	Base Scale Notations	1 July 2009	With effect from 1 December 2010
1	P1 entry	33,914	34,847
2	P2 entry	36,523	37,527
3		40,434	41,546
4	P3 entry	44,348	45,568
5	P3+ entry	45,653	46,908
6		47,610	48,919
7		50,217	51,598
8	P1 max	54,132	55,621
9	P2 max	58,044	59,640
10		63,392	65,135
11	P3 max	65,609	67,413
12	P3+ max	68,980	70,877

Please Note: *the provisions of clause 3.3 – Salary on Appointment apply*

(ii) K2 Head Teachers

K2	1 July 2009	With effect from 1 December 2010
	71,088	73,043

3.2 Unified Pay Scale

- (a) The purpose of this clause is to enable any increase(s) in the base scale salaries or any payments made across-the-board (but excluding specific individual allowances) in the Primary Teachers' Collective Agreement to apply and be paid to teachers, head teachers and senior teachers bound by this agreement on the basis outlined below and employed by kindergarten associations.
- (b) With effect from 1 March 2009, subject to the process set out in sub-clause (e) the salary rates and additional payments made across-the-board for kindergarten base scale teachers specified in this agreement will be the same as the salary rates and additional payments made across-the-board to base scale primary teachers under the Primary Teachers' Collective Agreement. This clause applies to any increases to salary rates agreed to in the Primary Teachers' Collective Agreement that may occur and/or are effective between 1 March 2009 and 28 February 2011. After 28 February 2011 this clause will cease to apply and shall have no effect.
- (c) Where the top of the kindergarten teachers' base scale salary increases as a result of the operation of these provisions, the salary rates of head teachers and senior teachers shall be increased by the same percentage amount (in the case of a percentage increase) or by the same dollar amount (in the case of a dollar amount increase) with the same effective date as in the Primary Teachers' Collective Agreement.
- (d) The parties agree that any increases that are applied to the kindergarten teachers' base scale salary rates or any payments made across-the-board in the terms outlined in this clause, are subject to the same terms and conditions attached to the increases contained in the Primary Teachers' Collective Agreement and the Primary Teachers' Collective Agreement terms of settlement, insofar as those terms and conditions are determined by the Secretary for Education, after consultation with the National Secretary of NZEI Te Riu Roa in accordance with 3.2 (e) below, to be applicable to the Kindergarten Teachers, Head Teachers and Senior Teachers' Collective Agreement.
- (e) The Secretary for Education shall, within one month of the ratification of the Primary Teachers' Collective Agreement, notify the National Secretary of NZEI Te Riu Roa of his or her determination under this clause as to the applicable terms and conditions attached to any increases provided under the provisions of this clause. A copy of this notification shall be advised to kindergarten associations at the same time. NZEI Te Riu Roa, acting on behalf of the employees shall, within one month of receiving such notice, advise the Secretary for Education whether NZEI Te Riu Roa accepts the offer. The parties agree that upon receipt of NZEI Te Riu Roa's acceptance of the offer, the kindergarten agreement shall be deemed to be varied pursuant to clause 1.5 in the terms outlined in the offer.

- (f) Kindergarten associations will be notified of any variations to the Kindergarten Teachers, Head Teachers and Senior Teachers' Collective Agreement made pursuant to this clause on receipt of the acceptance by NZEI Te Riu Roa.

3.3 OPERATION OF THE SALARY SCALES

(a) Service Recognition

- (i) Service within New Zealand as a trained kindergarten teacher in a teaching capacity in a licensed early childhood centre or the Early Childhood Service of the Correspondence School or as a senior teacher in the kindergarten service shall be recognised for salary purposes.
- (ii) Service as a qualified registered teacher employed in a teaching position within a New Zealand state or state integrated primary, special, area or secondary school (including Kaupapa Maori education) shall be recognised for salary purposes for teachers entering the service after the settlement of this collective agreement. Recognition of this teaching service shall be recognised only on initial entry to the Kindergarten Service. No teacher covered by this agreement on 5 February 2006 shall have their service recalculated as a result of the operation of this clause.
- (iii) Service of qualified registered relieving teachers employed continuously for six weeks or more shall be recognised for salary purposes.

(b) Previous Relevant Work Experience

- (i) In addition to service recognised under 3.3(a), the employer shall recognise previous paid work experience that is directly relevant to the teacher's duties and responsibilities and which has occurred within 10 years of the application for credit, subject to the provisions of this clause.
- (ii) Any previous relevant paid work experience recognised under this clause shall be credited as half-service up to a maximum of 2 steps. Half credit shall mean that each year (or part thereof) will count as six months (or part thereof) of service for salary purposes. A special case may be made by a teacher to the employer to have crediting of relevant paid work experience in excess of the maximum considered.
- (iii) Previous relevant paid work experience means professional employment using knowledge of the education service, and/or teaching skills including:
- Voluntary Service Abroad - providing service was in a teaching position while the teacher held a teaching certificate;
 - Teacher education lecturers and community education tutors - providing service was in a teaching position while the teacher held a teaching certificate;
 - Kaiarahi i te Reo;
 - Teacher Aides / Kaiawhina;

- Public sector employment with education focus, e.g., Ministry of Education, Early Childhood Development or other Crown Education Agencies;
- Education officer in Government and non-Government organisations;
- Special Education;
- Social worker employed by DSW or Board of Trustees;
- Professional officer of NZEI/PPTA/TTANZ;
- Librarian;
- Museum, Art Gallery, Zoo education officers;
- Untrained employees in teaching positions in licensed early childhood education centres including kindergartens and nga kōhanga reo; and
- Family day care co-ordinators in licensed home based early childhood education services.

- (iv) Application shall be made by the teacher as soon as practicable following appointment, but in any event within 3 months of their appointment. The teacher shall, at the time of application, provide evidence to the satisfaction of the employer of previous relevant paid work experience before any such service will be considered for recognition under this clause.
- (v) Previous relevant paid work experience in a less than full-time position shall be credited, where recognised, as a proportion of full-time employment based on a 40 hour week. Where service recognition is claimed for previous relevant paid work experience undertaken on a part-time basis, the evidence of such service must include details of the hours worked.
- (vi) No teacher covered by this agreement on 2 July 2002 shall have their service prior to this date recalculated as a result of the operation of this clause.
- (vii) Where a teacher who has previous relevant paid work experience recognised by one association commences employment with another association, that teacher shall be entitled to retain that service credit but shall not have any further service recognised under this clause.

(c) Appointment to a Lower Salary Scale

A teacher who takes a position in a lower salary scale shall receive credit in that scale for service in any higher scale.

(d) Salary on Appointment

- (i) On appointment or reappointment, a teacher shall be paid on the appropriate salary scale and step having regard to qualification group classification and any service recognised for salary purposes, including previous relevant work experience as per 3.3(b).

- (ii) A teacher who has completed training and has no service recognised for salary purposes shall, on first appointment, be paid a salary during the first year of service at the first step of the relevant qualification grouping.
- (iii) A base scale teacher who, on appointment holds a qualification classified as Q4 or Q5 in the Primary Teachers' Collective Agreement 2004-2007 shall commence at step six or step seven respectively of the teachers' base salary scale. For the purposes of this clause:
 - Q4 denotes teachers with a four year post graduate honours degree (excluding a four-year honours degree of teaching) or two bachelor degrees, or a masters degree of teaching or overseas equivalent qualifications recognised by the NZQA at that level; and
 - Q5 denotes teachers with a five year Masters degree or recognised equivalent, or PhD or overseas equivalent qualifications recognised by the NZQA at that level.

(e) Qualification Groups

- (i) An employee placed on the salary scale shall be registered and hold an early childhood teaching qualification.
- (ii) An employee shall be classified as P1 on the relevant scale if that employee has the qualifications recognised for a trained teacher.
- (iii) An employee shall be classified as P2 on the relevant scale if, in addition to having the qualifications recognised for a trained teacher, that employee also holds a Higher Diploma of Teaching or two-thirds of a recognised degree (except a three year pre-service teaching degree).
- (iv) An employee shall be classified as P3 on the relevant scale if, in addition to having the qualifications recognised for a teacher, that employee is awarded He Tohu Matauranga Māori, or holds an Advanced Diploma of Teaching or a recognised three year pre-service teaching degree.
- (v) **P3+ qualification group definition**

Salary on appointment

P3+ entry is the entry point for the teacher who holds;

- a bachelor degree together with a recognised teaching qualification (eg Diploma of Teaching (ECE)) or;
- a four year bachelor of education degree or;
- a four year honours degree of teaching or;
- a degree completed conjointly with a bachelor degree of teaching or;
- a bachelor degree of teaching together with a relevant 120 credit specialist graduate or post-graduate qualification assessed at level 7 (or higher) on the National Qualifications Framework or equivalent or;

- a Diploma of Teaching (ECE) plus an Advanced Diploma of Teaching together with a relevant 120 credit specialist graduate or post-graduate qualification assessed at level 7 (or higher) on the National Qualifications Framework or;
- a Bachelor degree of teaching, together with a level 7, 120 credit graduate or post graduate diploma of teaching (ECE).

(f) Improved Qualifications

- (i) Teachers who improve their qualification(s) shall, on the effective date of improving the qualification(s), move to the step in the appropriate scale corresponding to their current salary rate in the lower scale. Where their current salary rate is lower than the step 1 rate for the new (improved) qualification group scale, they shall be placed on step 1 of that scale. The effective date of improvement of qualification(s) to a higher group in this situation is:
- where qualifications are improved at the end of the academic year – the commencing date of the first term of the following year; or
 - where qualifications are improved during an academic year – the date of official results.
- (ii) Teachers who have been on the top step of the salary scale for their qualification group for one or more years' service for salary purposes and who subsequently improve their qualification(s) shall, in addition to the translation described in 3.3(f) (i), be entitled to progress one salary step in their new salary scale from the effective date of improving their qualification(s). The effective date of improving qualification(s) to the higher salary group is the date of official notification from the relevant tertiary provider of achievement of the qualification. This date shall become their new anniversary date for salary progression purposes.
- (iii) Teachers shall be entitled to progress annually to the top step of the new scale on their increment date providing they meet the requirements for progression. No recalculation of service will occur because a teacher has improved their qualification(s).

(g) Progression

- (i) For the purposes of determining annual progression from one step to the next, each teacher's performance will be assessed annually against a set of national professional standards for kindergarten teachers. These professional standards are set out in Appendix C.
- (ii) When setting performance expectations and development objective(s) with individual teachers for the coming year, the appropriate professional standards against which the teacher is to be assessed should be confirmed between the teacher and the employer.
- (iii) For each teacher to progress annually to their next salary step they will need to demonstrate that they meet the appropriate professional standards.

(h) Deferred Progression

- (i) Where a teacher has not met the appropriate professional standards throughout the assessment period the employer may defer salary progression.
- (ii) Where progression has been deferred, the employer shall determine a timeframe (in consultation with the teacher) within which the teacher shall have the opportunity to demonstrate the improved performance required to meet the appropriate standards.
- (iii) If it is agreed that the teacher has demonstrated within this timeframe that they are meeting the appropriate standards they will progress to the next step from the date of this second assessment. This date will become the teacher's new anniversary date for the purposes of pay progression.
- (iv) Where a teacher is unable to attain the standards within the specified timeframe, the teacher will be required to undergo competency procedures as set out in 6.3.

(i) Local review process

- (i) Where a teacher disagrees with the employer's decision to defer their salary increment under the provisions of 3.3(h) the teacher may, within 14 days of being notified of the deferral, seek a review of that decision by notifying the employer in writing. The teacher may be represented during the process.
- (ii) A reviewer shall be a person nominated by the association and acceptable to the teacher. The reviewer may be another staff member but should not be someone connected with the original decision to defer progression. In the event that agreement cannot be reached on a reviewer within a reasonable time the employer shall determine who the reviewer will be.
- (iii) The reviewer will give the teacher and the employer fair opportunity to make representations.
- (iv) The reviewer shall make recommendations to the employer within 30 days of receiving the teacher's application for review.
- (v) The employer shall make a final decision within 14 days of receiving the recommendation.
- (vi) Where requested, the teacher shall have access to the information about him/herself provided to the employer by the reviewer.
- (vii) Nothing in this clause prevents the teacher from taking a personal grievance in accordance with Part 7 of this Agreement.

Note: *In cases of very small associations it may be necessary to develop a reciprocal arrangement with a neighbouring association.*

(j) Calculation of Part-time Employees' Salary

- (i) A part-time employee's salary shall be paid at one-fortieth of the applicable full-time weekly salary for each hour of work as defined as by the hours of work clause 1.6(g).
- (ii) On completion of 2080 hours of work, (the same numbers of hours as are worked by a full-time teacher in a year), a part-time employee shall be eligible to progress to the next step of the relevant salary scale.

(k) Long-term Relievers

Long-term relieving teachers shall be paid according to the applicable salary scale and qualification group.

(l) Short-term Relievers

- (i) Short-term relieving base scale teachers shall be paid a daily rate of $1/210^{\text{th}}$ (inclusive of 12% holiday pay) of the appropriate annual salary, or an hourly rate of $1/8^{\text{th}}$ of the daily rate (inclusive of 12% holiday pay). The rate payable shall take into account relevant qualifications and any previously recognised service, provided that the maximum daily rate does not exceed $1/210^{\text{th}}$ of step 8 of the teachers' base scale salary (the top step of the P1 scale).
- (ii) Assistance towards payment of travelling expenses may be granted at the employer's discretion.

- (m)** Notwithstanding 3.3(k) and (l), where a reliever is employed in a particular position as a short-term reliever but the employment lasts longer than six weeks, then the reliever shall, from the point at which employment exceeds this threshold, become a long-term reliever and shall receive the terms and conditions applicable to long-term relievers. No recalculation or recovery of entitlements (including pay) shall occur because of such a change in status.

(n) Relievers

- (i) A teacher employed in a relieving capacity for 12 months or more in a position for which the salary scale is higher than Scale K1 shall have that service recognised for salary purposes on appointment to a permanent position on the higher scale.
- (ii) A teacher who is employed in a relieving capacity in a position for which the salary scale is higher than Scale K1 shall be paid the rate which would be payable to the teacher if permanently appointed to that position, subject to the following conditions:
 - (A) the teacher must perform the extra duties and undertake the responsibilities of the higher position for a qualifying period of five consecutive working days on each occasion that the higher duties are performed;

- (B) although not counting as part of the qualifying period, term breaks and leave do not interrupt the qualifying period if the teacher goes back to the higher position immediately after the term break or the leave.

3.4 RECOGNISED QUALIFICATIONS

- (a) In accordance with 3.3(e) of this agreement, the qualifications recognised for salary purposes are those appearing on 1988 Department of Education Kindergarten Teachers' Qualification Chart, or appearing on the list of additional qualifications since recognised. The chart and associated list of additional qualifications appears as Appendix A of this agreement.
- (b) The list of additional qualifications will be updated each time the agreement is renegotiated. Qualifications not appearing in the published agreement, but which are approved in the interim by the Secretary for Education, will also be recognised for salary purposes. These will be made available on a regular basis to NZEI Te Riu Roa.
- (c) Employees are assessed on the highest qualification held.
- (d) Overseas qualifications are assessed by the New Zealand Qualifications Authority to the nearest New Zealand equivalent qualifications.

3.5 PAYMENT OF SALARIES

- (a)
 - (i) The fortnightly rate payable to permanent full-time, permanent part-time and long-term relieving teachers shall be equivalent to the annual salary divided by 26.071.
 - (ii) The daily rate payable shall be equivalent to 1/10 of the fortnightly rate.

- (b) **Method of Payment**

Salaries shall be paid fortnightly by direct credit to the employee's nominated bank account.

3.6 LEAVE WITHOUT PAY

- (a) Where an employee has been granted leave without pay by the employer, the employer shall either:
 - (i) deduct the leave without pay from the employee's current pay period, or where it is not practicable to do so, the employer shall deduct the leave without pay from the employee's next pay period; or
 - (ii) deduct the leave without pay from the employee's subsequent pay periods in such a manner as may be agreed between the parties.

- (b) Nothing in this clause shall prevent the employer from pursuing any other remedies available in law to recover outstanding amounts owed to the employer. The employer should, however, endeavour to ensure that the employee is not caused undue hardship as a result of any such recovery.
- (c) Leave without pay will be debited on the basis of working days of absence.
- (d) Leave without pay in excess of five working days shall reduce the period of paid teaching service accordingly for salary purposes.

3.7 RECOVERY OF OVERPAYMENTS

- (a) It is the responsibility of both the employer and the employee to ensure that payments are correct.
- (b) Where an overpayment does occur, the recovery of the overpayment shall be in a manner agreed between the employer and the employee concerned or, where the overpayment arose as a result of a previous period of employment, between the former employer and the employee concerned.
- (c) Nothing in this clause shall prevent the employer from pursuing any other remedies available in law to recover overpayments. The employer should, however, endeavour to ensure that the employee is not caused undue hardship as a result of any such recovery.

3.8 TUTOR TEACHER ALLOWANCE

- 3.8.1 A tutor teacher is a teacher who has met the fully registered or experienced kindergarten teacher professional standards and is designated as being responsible for providing an advice and guidance programme to a provisionally registered teacher working towards full registration. The responsibilities of the tutor teacher include assisting the provisionally registered teacher to meet the registration requirements.
- 3.8.2
 - (a) From 1 July 2006 the Tutor Teacher Allowance of \$600 per annum is payable to a designated tutor teacher while they are responsible for a permanently appointed provisionally registered teacher, or teachers provided that the total combined hours of the provisionally registered teachers are at least 0.8;
 - (b) From 1 October 2007 the Tutor Teacher Allowance of \$600 per annum is payable to a designated tutor teacher while they are responsible for a provisionally registered teacher, or teachers, who are permanently employed or employed to fixed term positions of at least ten consecutive weeks provided that the total combined hours of the provisionally registered teachers are at least 0.8.
- 3.8.3 A tutor teacher may be responsible for tutoring more than one provisionally registered teacher concurrently, but shall only receive one payment of the allowance.

- 3.8.4 Only one teacher may be designated as being responsible for tutoring any provisionally registered teacher at any one time.
- 3.8.5 The designation of tutor teacher shall be for no more than one calendar year on each occasion.
- 3.8.6 Where the provisionally registered teacher is employed for part of a year, the allowance shall be paid to the tutor teacher for that part of the year only.
- 3.8.7 Senior teachers are not entitled to the allowance.
- 3.8.8 The tutor teacher and the provisionally registered teacher engaged in the advice and guidance programme will receive paid release time.

PART FOUR: HOLIDAYS AND LEAVE PROVISIONS

4.1 PUBLIC HOLIDAYS

- (a) The following paid holidays shall apply to employees covered by this agreement: Christmas Day, Boxing Day, New Year's Day, the second day of January, Good Friday, Easter Monday, ANZAC Day, Labour Day, the birthday of the reigning Sovereign, Waitangi Day and the provincial anniversary day.
- (b) Where an employee is required by their employer to work on a Public Holiday they shall be entitled to be paid in accordance with s.50 of the Holidays Act 2003.

4.2 ANNUAL LEAVE

The overall objective of Part 4 of this agreement as it relates to Annual Holidays, together with 2.6, is to ensure that employees receive a full years' salary for each full year of employment.

- (a) In addition to public holidays, employees shall be entitled to six weeks paid annual holidays in respect of each completed year of service.
- (b) Employees shall be entitled to one day's paid holiday to be taken between Christmas and New Year in addition to the annual leave entitlement.
- (c) Subject to the specific provisions of this agreement, the provisions of the Holidays Act 2003 shall apply.
- (d) Employees agree to take their annual leave in advance of the entitlement falling due, except where there is agreement between the employer and employee to do otherwise.
- (e) Employees shall take annual leave when the kindergarten is closed for instruction except where there is agreement between the employer and employee to do otherwise. Any annual leave unable to be taken when the kindergarten is closed for instruction shall be taken by agreement.
- (f) Subject to the above: where agreement between the employer and employee cannot be reached, the employer may direct the employee to take annual holidays upon not less than 14 days notice; the employer shall not unreasonably withhold consent to an employee's request to take annual holidays.
- (g) Employees who are absent on leave without pay in excess of five working days in any 12 months preceding their annual leave anniversary date shall have deducted from the following period of annual leave, one half day's pay for every four day's leave without pay. Where the employee's annual leave has been exhausted, one half day's pay shall be deducted from their term break leave entitlement (see 2.6) for every four day's leave without pay.

Provided that no deductions will be made for any days where employees are required to attend the kindergarten or elsewhere during a term break.

- (h) For the purposes of calculating the entitlement to annual leave, professional time (which includes term breaks) or the entitlement to be paid when the kindergarten is closed for instruction pursuant to 2.6 of this agreement:
 - (i) in the case of a resignation, the termination date of the employee shall be the date that the employee nominates as being the last date that the employee will be available to attend the kindergarten or elsewhere to carry out duties and responsibilities connected with that employee's employment
 - (ii) in the case of termination by the employer, the termination date of the employee shall be the date specified by the employer in the notice of termination in accordance with 2.10.
- (i) Where an employee ceases employment before taking any annual leave, the employer shall pay to such employee a sum equivalent to 12 percent of their gross earnings for the period when no annual leave was taken.
- (j) Where an employee's employment terminates on the last working day before a public holiday, the employee shall be entitled to be paid for the public holiday concerned.
- (k) Where an employee ceases employment before taking the proportion of their full entitlement of annual leave for the period that they were employed, the employer shall pay to such employees upon termination, the balance of the proportion of annual leave outstanding at the date of termination.
- (l) Where an employee ceases employment and has received an annual leave payment in excess of their entitlement, the employer shall not pursue any recovery action for that sum.

4.3 SICK LEAVE

- (a) Permanent full-time, part-time and long-term relieving employees shall be entitled to paid sick leave in accordance with the provisions specified below. Transitional provisions applying to employees employed as at 17 February 1995 are specified in 4.3(l).

- (b) **Minimum Entitlement**

Except as provided for in 4.3(l) an employee who works for the employer for the period of more than six months shall be entitled to five days' paid sick leave in each ensuing 12 month period on account of illness or injury of the employee.

(c) **Additional Entitlement**

- (i) Except as provided for in 4.3(l) , in addition to the minimum entitlement specified in 4.3(b), the following sick leave shall be granted:

Period of Service	Additional Days for Each Period
Up to 1 year	10
Over 1 year up to 5 years	14
Over 5 years up to 10 years	20
Over 10 years up to 20 years	15
Over 20 years up to 30 years	20
Over 30 years	27

- (ii) In exceptional circumstances the employer may grant sick leave with pay in anticipation of future entitlements under 4.3(c) (i) provided that no extension may be granted beyond 106 days. Where the employee has anticipated sick leave, the necessary adjustment will be made to the employee's final pay should the employee's employment be terminated before the next sick leave entitlement falls due, unless the employer determines otherwise.
- (d) Any sick leave entitlement granted under 4.3(b) and (c) which is not used can be accumulated for subsequent use up to a maximum of 180 days, except that employees with an accumulated sick leave entitlement in excess of 180 days as at 17 February 1995 shall retain that entitlement.
- (e) (i) Any sick leave entitlement shall be debited on the basis of working days of absence.
- (ii) Part-time teachers will have sick leave debited only for days normally worked.
- (f) Discontinuous service with the same employer may be recognised for sick leave purposes.
- (g) When sick leave of five days or more is taken, a medical certificate from a registered medical or dental practitioner must be produced at the employee's expense if the employer so requires. Where it is considered warranted, the employer may require an employee to produce a medical certificate or other evidence satisfactory to the employer when less than five days' sick leave is taken.
- (h) **Disregarded Sick Leave**
- Sick leave not exceeding an overall aggregate of two years may be granted by the employer in circumstances where an illness can be traced directly to the conditions or circumstances under which the employee is working, or where an injury suffered by the employee in the discharge of duties occurred through no fault of the employee, and where payment has not been made by the Accident Rehabilitation and Compensation Insurance Corporation. Leave granted under this sub-clause will not be debited from the employee's sick leave entitlement.

(i) **Service Recognition**

- (i) For the purposes of calculating additional entitlement to sick leave, the employer shall recognise service as a teacher in a licensed early childhood centre, as a senior teacher with a kindergarten association, service in a teaching capacity in the Early Childhood Service of the Correspondence School, in a teaching capacity elsewhere in the education service, or as an officer in the state services as defined in the State Sector Act 1988, or in any amendment passed in substitution for that Act.
- (ii) For the purposes of calculating additional entitlement to sick leave, part-time teaching service is assessed on the basis that eighty hours equals one-month's service or 1,000 equals one-year's service. Where part-time service consists of 20 or more child contact hours per week it may be credited as full-time service.
- (iii) Notwithstanding the above, employees who were employed as at 19 October 1992 shall continue to have all periods of service previously recognised for sick leave purposes credited for sick leave purposes.

(j) **Change of Employer**

- (i) Where an employee commences employment with another kindergarten association, or where an employee comes from employment with the Early Childhood Service of the Correspondence School, the employee shall be entitled to transfer 50 days accumulated sick leave, plus half of the additional accumulated sick leave between 50 and 100 days up to a maximum of 75 days.
- (ii) The employee's entry point into the table in 4.3(c) shall be on the basis of their previous recognised service as per 4.3(i).
- (iii) An employer may agree to transfer accumulated sick leave entitlements in excess of the amount specified in 4.3(j) (i).

(k) **Domestic Leave**

The employer shall grant sick leave in accordance with this clause when the employee is absent from work to attend a member of the employee's family/whanau, who through illness, is dependent upon the employee. Such leave shall be debited against the employee's entitlement under either 4.3(b) or (c). For the avoidance of doubt, the employee's family / whanau shall include the employee's spouse or partner, a dependent child or dependent parent of the employee or of the employee's spouse or partner or any relative or person who is demonstrated to have a dependency on the employee.

(l) **Transitional Provisions**

Employees employed as at 19 October 1992 are not entitled to an additional allocation of days under 4.3(c) until they move into the next period of service under that sub-clause. Such employees shall not be entitled to the minimum of five days sick leave specified in 4.3(b) until they are eligible to move into the next entitlement period under 4.3(c) unless they have exhausted their sick leave entitlement. Those employees who exhaust their sick leave entitlement or who transfer with fewer than five days sick leave shall be granted sick leave in accordance with the provisions of the Holidays Act 2003 until they move into their next period of service under 4.3 (c).

- (m) These provisions shall be inclusive of and not in addition to the provisions of the Holidays Act 2003.

Note: For short term relievers the sick leave provisions of the Holidays Act 2003 shall apply.

4.4 BEREAVEMENT / TANGIHANGA LEAVE

- (a) An employee shall be granted bereavement leave with pay to discharge their obligation and/or pay their respects to a deceased person with whom they have had a close association. Such obligations may exist because of blood or family ties or because of particular cultural requirements such as attendance at all or part of a Tangihanga (or its equivalent).
- (b) In granting time off therefore, and for how long, the employer must administer these provisions in a culturally sensitive manner, taking into account the following points:
- (i) the closeness of the association between the employee and the deceased. (Note: This association need not be a blood relationship);
 - (ii) whether the employee has to take significant responsibility for any or all of the arrangements to do with the ceremonies resulting from the death;
 - (iii) the amount of time needed to discharge properly any responsibilities or obligations;
 - (iv) reasonable travelling time should be allowed, but for cases involving overseas travel that may not be the full period of travel;
 - (v) a decision must be made as quickly as possible so that the employee is given the maximum time possible to make any arrangements necessary. In most cases the necessary approval will be given immediately, but may be given retrospectively where necessary;
 - (vi) if paid leave is not appropriate then leave without pay should be granted, but as a last resort.

- (c) In operating provisions of (a) and (b) above, the employer shall recognise at least the minimum entitlements provided under statute.

4.5 PARENTAL LEAVE

Attention is drawn to the Parental Leave and Employment Protection Act 1987 (including paternity leave). The provisions of this Act shall apply to all employees. This includes entitlements for both partners to share the provisions of the Act.

The following additional provisions shall apply specifically to female employees:

(1) Maternity Leave

- (a) Permanent full-time teachers, permanent part-time teachers and long-term relieving teachers: An employee who is pregnant is entitled to maternity leave without pay, and protection of employment.

Leave may commence at any time during the pregnancy subject to the employee giving the employer one month's notice in writing, supported by a medical certificate. A shorter period of notice shall be accepted on the recommendation of a medical practitioner.

- (i) A female employee with 12 months or more service, but excluding any periods of teacher's college or university training, shall be entitled to up to 12 months' leave from the date of birth, and may be granted up to 12 months' additional leave at the discretion of the employer.
- (ii) A female employee with less than 12 months' service shall be entitled to six months' leave and may be granted up to six months' additional leave at the discretion of the employer.
- (iii) A female employee intending to legally adopt a child under the age of 12 months subject to satisfactory evidence shall be entitled to maternity leave from the date of assuming responsibility for the child as if 4.5(1)(a)(i) or (ii) above applied. The requirement of one month's notice does not apply.
- (iv) The employee's position shall be held open for the duration of maternity leave. If a relieving teacher is employed it will be a condition of the relieving appointment that it will be terminated by the employer concerned within one month from the date that the permanent incumbent is to return to work. Such date to be set in agreement with the employer. Advertised relieving vacancies will be tagged accordingly.

(2) Maternity Grant

(a) Where a permanent full-time, permanent part-time, or long term relieving female employee exercises her entitlement to parental leave and subsequently returns to work before or upon the expiry of that leave, that employee shall be paid at that time a maternity grant as specified in 4.2(b) at the rate of one week for each week of employment for the first six weeks. An employer may agree to pay such grant on departure for the leave or prior to return.

(b) Amount

The amount of the grant is calculated on the basis of six weeks' full salary at the rate applicable to the employee at the date of birth (or placement in the case of adoption) to the position from which the teacher was granted leave. However, a woman who works less than full normal hours for a short period only, prior to her taking parental leave, may have her case for full payment considered by the employer. When a teacher is absent on parental leave for less than six weeks (30 working days), the full grant equivalent to six weeks' salary is still payable. The maternity grant is not reduced because salary is received.

Note: "Birth" means the birth of a child, whether live or still born, within the meaning of the Births, Deaths and Marriages Registration Act 1995.

4.6 COURT LEAVE

An employee shall be entitled to paid leave for court service, provided that the employer shall be entitled to receive payment of any juror or witness fee from the employee.

4.7 SPECIAL PURPOSE LEAVE

(a) The employer may grant leave with or without pay to a permanent full-time, permanent part-time or long-term relieving employee in accordance with the employer's leave policy. Such leave shall not be unreasonably withheld. In granting such leave, the employer may make provision for any necessary travelling time.

(b) Policy on special leave for family reasons shall recognise the following definition of family:

The employee's spouse / partner, children, parents, or near relatives, which shall include grandparents, parents-in-law, sons-in-law and daughters-in-law, grandchildren, kaumatua, kuia, mokopuna, whangai / foster child and matua whangai / foster parent.

Note: *Kaumatua / Kuia in the context of this provision means respected elder of the kin group or one who has close links with the kin group. The terms do not exist beyond those degrees of relationship*

PART FIVE: REIMBURSING ALLOWANCES

5.1 EXPENSES INCURRED IN THE USE OF PRIVATE VEHICLES

As determined by the employer, reimbursement of the equivalent public transport fare or a motor vehicle allowance of 58 cents per kilometre shall be paid to employees in the following circumstances:

- (a) the necessary transportation of a child due to sickness, accident or when left at the kindergarten after a session;
- (b) attendance at meetings or on association business as required by the employer.

5.2 MEAL ALLOWANCE

The employer shall reimburse the actual and reasonable expenses incurred by the employee where the employer requires an employee's attendance at a meeting that prevents the employee returning home for the evening meal.

5.3 RELIEVING ALLOWANCE

An employee required to perform relieving duty which necessitates absence from home overnight shall be paid actual and reasonable expenses on submission of the appropriate receipts or vouchers.

5.4 HIGHER DUTIES ALLOWANCE

- (a) A permanent employee who relieves in a position on a higher salary scale shall be paid an allowance at the rate representing the difference between the employee's current salary and the rate which would be payable to the employee if permanently appointed to that position. This is subject to the employee carrying out the full duties and responsibilities for a minimum qualifying period of five consecutive working days and subject to such conditions as the employer may approve. Payment of the allowance will be backdated to include the previous five days. These conditions must be met on each occasion that the higher duties are performed.
- (b) Where an employer requires the period of higher duties to span a term break, the higher duties allowance shall continue to be paid during that term break.

5.5 SECONDMENT ALLOWANCE

- (a) A permanent employee who is seconded to relieve in a position elsewhere shall be paid for the period concerned an allowance at the rate of \$2,500 per annum on such terms as the employer may prescribe.
- (b) Where a permanent employee is seconded to relieve in a position which is on a higher salary scale, the employee shall be paid a higher duties allowance or the secondment allowance whichever is the greater.

5.6 EXPENSES INCURRED IN THE ATTENDANCE AT COURSES

- (a) Where an employee attends a retraining course or any other course related to that employee's employment, the employer shall reimburse actual and reasonable expenses incurred by the employee, subject to the prior approval of these expenses by the employer.
- (b) Where attendance at courses is required by the employer, actual and reasonable expenses shall be met by the employer including travel costs and course fees.

For the purposes of this clause:

- (i) travel costs are set out in 5.1 of this agreement;
- (ii) employees will "car pool" where practicable; and
- (iii) where the employer arranges a course and employees choose to attend the course in a different location and/or at a higher cost, employees shall receive those expenses that would have been incurred in attending the course arranged by the employer.

PART SIX: COMPLAINTS, COMPETENCY AND DISCIPLINE

6.1 GENERAL PRINCIPLES

The following principles shall be used in addressing complaints against teachers and matters of discipline and competence to ensure that such matters can, in the interests of the parties, be fully and fairly addressed. Many complaints will be able to be resolved by discussion between the employer and the teacher concerned without the need to take the matter any further. Employers should, wherever appropriate, seek to resolve complaints in this manner in the first instance. Questions of competence, conduct and/or discipline should be handled in a manner which as far as possible protects the mana and dignity of the teacher concerned. Teachers may seek whanau, family, professional and/or NZEI support in relation to such matters.

6.2 NGÄ KÖRERO ME NGÄ TIKANGA

- (a) Me whakamārama atu ki te kaiwhakaako i ngā raruraru kua puta noa. Mehemea he pai ki te kaimahi rāua tahi ko tona tumuaki, i te āhua o te amuamu, e āhei ana ki te whakahaere tonutia ngā whakaritenga i raro i ngā tikanga Māori.
- (b) Anei ra ētahi momo tikanga hei kōwhiringa mā rātou:
 - he huihuinga kei te marae;
 - he whakawhiti kōrero kanohi ki te kanohi;
 - ka hui mai te whānau hei tuarā mō te katoa; ā
 - ka hui mai ngā kaumātua kuia hei arahi hei tohutohu i ā rātou katoa;
- (c) Mēnā ka whakaaetia te kaimahi rāua ko tōna tumuaki o rāua kaihautū rānei, kia oti pai ai te kaupapa, mā rāua mā ngā kaihautu rānei e hainatia ngā whakaaetanga i tūhia. Makaia atu tētahi kape o ngā whakaaetanga nei ki te kōnae o te kaimahi.
- (d) He māmā noa iho ēnei whakawhiringa mehemea hiahia ana tētahi taha kia waiho tārewa ake ngā tikanga Māori kia huri ke ia ki ētahi (te katoa rānei) o ngā whakaritenga, arā te waahi ono. Engari, mehemea ka huri kē atu i ngā tikanga Māori, ehara tērā i te tino raruraru kia oti hē rawa ngā whakaritenga katoa. Ina hoki ka tahuri mai tētahi taha ki ēnei ki te waahi ono, me tuhituhi hei whakamārama ki tērā atu taha.

6.2 DISCUSSIONS IN A MĀORI CONTEXT

- (a) The teacher must be advised of the specific matter(s) causing concern. The teacher and the employer may, depending on the nature of the complaint, agree to attempt to deal with a complaint by it being heard in a Māori context and manner.
- (b) A Māori context and manner relates to the following:
 - meetings can be held on marae;
 - there is face to face engagement;
 - there can be whanau support for all involved; and
 - guidance and advice is often provided by kaumatua and kuia for all involved.

- (c) Should the teacher and employer, or their representatives on their behalf, agree to a resolution of the matter then this shall be recorded in writing and signed by both parties and/or their representatives on their behalf. A copy of the agreement will be placed on the teacher's personal file.
- (d) This is a discretionary option and either party may withdraw at any time, and nothing in this section prevents the employer or the employee deciding at any time that any or all of the procedures in Part 6 will be used. Where either party decides to withdraw from this process such a decision will not of itself give rise to any claim of procedural deficiency or unfairness. The decision to withdraw from this process and/or for the employer to use any or all the procedures in Part 6 will be notified in writing to the other party.

6.3 COMPETENCY

- (a) Where there are matters of competency which are causing concern in respect of any teacher (for example failing to meet the appropriate professional standards), the employer shall put in place appropriate assistance and professional guidance to assist that teacher. This may include obtaining at the employer's expense, a report from a mutually agreed registered medical practitioner or other professional where appropriate.
- (b) When this assistance and guidance has not remedied the situation, the following provisions should govern the action to be taken:
 - (i) The teacher must be advised in writing of:
 - the specific matter(s) causing concern;
 - the corrective action(s) required to address the matter(s);
 - the timeframe within which this action(s) must be undertaken and the competency matter(s) addressed; and
 - their right to seek representation at any stage.
 - (ii) The timeframe in 6.3(b) (i) should be determined by the employer, or delegated person, and be relevant to the matter(s) causing concern. In setting this timeframe the employer may take into account previous opportunities given to the teacher to address the competency matter(s) causing concern (such as provided for under the deferred progression provisions of this Agreement).
 - (iii) The process and results of any evaluation are to be recorded in writing, sighted and signed by the teacher.
 - (iv) A copy of any written report made to the employer or to the New Zealand Teachers Council Te Pouherenga Kaiako o Aotearoa made by the person or persons undertaking the evaluation shall be given to the teacher.
 - (v) No action shall be taken on a report until the teacher has had a reasonable time to comment (in writing or orally or both).

- (vi) If the above steps (i-v) fail to resolve the matter of concern, the employer may, where justified, dismiss the teacher without the need to follow the provisions of 6.4.

6.4 DISCIPLINE

- (a) In any disciplinary action the following procedures shall be observed:
 - (i) The teacher must be advised by the employer of their right to request assistance, including union assistance, and/or representation at any stage;
 - (ii) The teacher must be advised in writing of the specific problem and be given a reasonable opportunity to provide an explanation;
 - (iii) Before any substantive disciplinary action is taken, an appropriate investigation is to be undertaken by the employer;
 - (iv) The response of the teacher must be considered before a decision is made;
 - (v) The teacher must be, if appropriate in the circumstances, advised of any improvement required, given reasonable opportunity and assistance to change, and advised of the consequences if the problem continues; and
 - (vi) The notification of the problem, process used and results of any action are to be recorded in writing and signed by the teacher as having been seen.

6.5 SUSPENSION

- (a) If an allegation is deemed sufficiently serious a teacher may be either suspended with or without pay, or transferred temporarily to other duties.
- (b) The employer shall not suspend a teacher without first allowing the teacher a reasonable opportunity to make submissions about the allegations and whether suspension is appropriate. However, where the employer is satisfied the welfare and safety of any kindergarten child or another kindergarten employee warrants it, immediate suspension may occur.
- (c) The employer shall use its best endeavours to ensure that the period of suspension is kept to the minimum possible time consistent with ensuring that the allegations are properly investigated.
- (d) If the allegation that led to suspension is without substance the teacher shall be reinstated effective from the date of suspension.

6.6 INSTANT DISMISSAL

Nothing in sections 6.2, 6.4 or 6.5 prevents dismissal without notice in the case of serious misconduct.

PART SEVEN: PERSONAL GRIEVANCE AND DISPUTES PROCEDURES

Personal grievances and disputes shall be addressed in accordance with the provisions of Part 9 of the Employment Relations Act 2000.

The following is a plain language explanation of the employment relationship problem resolution services.

What is an employment relationship problem?

It is a problem between employee and employer. For example, it might be a personal grievance or a dispute about a provision in an employment agreement.

Resolving an Employment Relationship Problem

The employee and employer should first make a reasonable effort to discuss the problem and settle it by mutual agreement. (If it's a personal grievance, it **must** first be raised with the employer **within 90 days** - Personal Grievances are explained further below).

An employee (or employer) has the right to be represented at any stage. When a problem arises, union members should contact their local NZEI Te Riu Roa field officer for advice and representation.

Employers should contact an adviser / representative of choice.

Personal Grievances

A personal grievance is a particular type of employment relationship problem that normally must be raised with the employer within 90 days of the grievance arising.

An employee may have a personal grievance where:

- They have been dismissed without good reason, or the dismissal was not carried out properly;
- They have been treated unfairly;
- Their employment or a condition of their employment has been affected to their disadvantage by an unjustified action of their employer;
- They have experienced sexual or racial harassment, or have been discriminated against because of their involvement in a union or other employee organisation, or have suffered duress over membership or non-membership of a union or other employee organisation; or
- They have been discriminated against in terms of the prohibited grounds of discrimination under the Human Rights Act 1993.

Note: The full meaning of the terms personal grievance, discrimination, sexual harassment, racial harassment, and duress, shall be the meaning given by sections 103 to 110 inclusive of the Employment Relations Act 2000 only. For ease of access these are attached at the end of this agreement as Appendix B.

As with other employment relationship problems, the parties should always try to resolve a personal grievance through discussion.

Either party can refer a personal grievance to the Employment Relations Service of the Department of Labour for mediation assistance, or to the Employment Relations Authority.

If the problem relates to a type of discrimination that can be the subject of a complaint to the Human Rights Commission under the Human Rights Act 1993, the person can either take a personal grievance, or complain to the Human Rights Commission, but not both. If in doubt, advice should be sought before deciding.

Services Available

To help resolve employment relationship problems, the Department of Labour provides:

- **An Information Service**

This is free. It is available by contacting the Department of Labour or by phoning toll free 0800 20-90-20. The Department's Employment Relations Service internet address is www.ers.dol.govt.nz and can be contacted by e-mail at workplaceinfo@dol.govt.nz.

- **Mediation Service**

The Mediation Service is a free and independent service available through the Department of Labour. This service helps to resolve employment relationship problems and generally to promote the smooth conduct of employment relationships.

Mediation is a mutual problem solving process, with the aim of reaching an agreement, assisted by an independent third party.

If the parties can't reach a settlement they can ask the mediator, in writing, to make a final and binding decision.

A settlement reached through mediation and signed by the mediator at the request of the parties is final, binding and enforceable. Neither party can then take the matter any further and, either party can be made to comply with the agreed settlement by court order.

If the problem is unresolved through mediation either party may apply to have the matter dealt with by the Employment Relations Authority.

- **The Employment Relations Authority**

This Authority is an investigative body that operates in an informal way. It looks into the facts and makes a decision on the merits of the case and not on the legal technicalities.

Either an employer or an employee can refer an unresolved employment relationship problem to the Authority by filing the appropriate forms.

The Authority may call evidence, hold investigative meetings, or interview anyone involved. It can direct the parties to try mediation. If mediation is unsuitable or has not resolved the problem, the Authority will make a decision that is binding on all parties. Any party can contest the Authority's decision through the Employment Court.

Note: All employment relationship problems, including personal grievances and any disputes about the interpretation or application of this agreement, must be resolved under Parts 9 and 10 of the Employment Relations Act 2000.

Appendix B reproduces s103-110 of the Employment Relations Act 2000

PART EIGHT: SENIOR TEACHERS

This part of the agreement shall apply to senior teachers only

8.1 HOURS OF WORK

- (a) The normal hours of work should, as far as practicable, not exceed 40 hours per week to be worked from Monday to Friday inclusive.
- (b) There may, however, be occasions when employees are required to attend the workplace, or elsewhere, outside normal hours to fulfil the duties and responsibilities of the position or for other purposes connected with their employment. Reasonable time off in lieu may be granted in recognition of this.

8.2 SENIOR TEACHER APPRAISAL

- (a) The employer shall put in place appropriate procedures for professional performance appraisal developed in consultation with employees who are senior teachers.
- (b) The setting of performance expectations and development objective(s) and the appraisal of senior teachers will be based around a set of national professional standards.
- (c) When setting performance expectations and development objective(s) with individual senior teachers for the coming year, the appropriate professional standards against which the senior teacher is to be assessed should be confirmed between the senior teacher and the employer.

8.3 SALARY SCALES

- (a) In the settlement of the Kindergarten Teachers, Head Teachers and Senior Teachers' Collective Agreement 2000-2002 the parties committed themselves to the implementation of pay parity for kindergarten teachers. Senior teacher K3 and K4 salaries were benchmarked to the base salary (excluding the roll-based supplementary component) of a primary U2 and U3 principal respectively.
- (b) Subject to 3.2, the following salary rates apply:

(i) Scale K3 Senior Teachers

K3	1 July 2009	With effect from 1 December 2010
	80,545	82,760

(ii) Scale K4 Senior Teachers

K4	1 July 2009	With effect from 1 December 2010
	87,392	89,795

8.4 OPERATION OF THE SALARY SCALE

- (a) An employee shall be paid a salary on the K3 salary scale, unless the employee is appointed to a position where that employee is responsible for the management of other employees in the senior teacher team in which case that employee shall be paid the K4 salary rate.
- (b) A senior teacher, who at 2 October 2000 was employed in a sole responsibility position which has been recognised under the terms of the expired Kindergarten Senior Teachers' Collective Employment Contract as a K4 position, shall continue to be recognised as K4 for salary purposes.

8.5 ANNUAL LEAVE

- (a) In addition to public holidays, employees shall be entitled, at the end of each year of their employment by an employer, to six (6) weeks' paid annual leave.
- (b) Employees shall be entitled to one day's paid holiday to be taken between Christmas and New Year in addition to the annual leave entitlement.
- (c) Subject to the specific provisions of this agreement, the provisions of the Holidays Act 2003 shall apply.
- (d) Senior teachers may take annual leave at any time during the year following prior arrangement with the employer whose consent shall not be unreasonably withheld. The employer shall ensure that the employee is able to take a two-week period on uninterrupted leave annually.
- (e) Unused annual leave may accumulate from year to year to a maximum of twenty-five (25) days with the agreement of the employer.
- (f) Senior teachers who are absent on leave without pay in excess of five working days in any 12 months preceding their annual leave anniversary date shall have deducted from the following period of annual leave, one half day's pay for every four days' leave without pay.
- (g) Where an employee ceases employment before taking any annual leave, the employer shall pay to such employee a sum equivalent to 12 percent of their gross earnings for the period when no annual leave was taken.
- (h) Where an employee's employment terminates on the last working day before a public holiday, the employee shall be entitled to be paid for the public holiday concerned.
- (i) Where an employee ceases employment before taking the proportion of their full entitlement of annual leave for the period that they were employed, the employer shall pay to such employees upon termination, the balance of the proportion of annual leave outstanding at the date of termination.

8.6 PROFESSIONAL DEVELOPMENT

- (a) The parties recognise the importance of ongoing professional development for the role of senior teachers. The professional development needs of a senior teacher will be agreed in terms of the annual appraisal and/or on the identification by the employer or senior teacher of a particular professional development need or opportunity.
- (b) A senior teacher will be entitled to ten days of professional development time in each full year for which they are employed, reduced on a pro rata basis for periods of employment of less than a full year, subject to:
 - (i) the senior teacher submitting to the employer a proposal identifying the professional development need and the means proposed of addressing it;
 - (ii) the employer's approval not being unreasonably withheld; and
 - (iii) reasonable notice being given of the proposed programme and the timing which should have due regard to the employer's operational requirements.
- (c) The employer may reimburse related expenses.
- (d) Professional development time not used in any given year may, with the approval of the employer, be carried forward for a further six (6) months.
- (e) With the prior agreement of the employer, professional development time may be taken adjoining annual leave.

8.7 PROVISION OF VEHICLE OR REIMBURSEMENT OF EXPENSES INCURRED IN THE USE OF PRIVATE VEHICLES

- (i) **Provision of vehicle**

An employer may decide to provide a vehicle to senior teachers, where it considers the provision of a vehicle to be in the interests of the association. Use of the vehicle by the senior teacher shall be permitted for undertaking association work only, except as otherwise provided for by virtue of clause 1.8(a).
- (ii) **Reimbursement for expenses incurred in the use of private vehicles**

Motor vehicle allowance at a rate of 62c per km for a car and 18c per km for a motor cycle or equivalent public transport fares shall be reimbursed to employees required by the employer to use their own vehicles undertaking association work.

8.8 ACCOMMODATION AND MEAL ALLOWANCE

- (a) Where the employer requires the employee to undertake duties which necessitate the employee's absence from home overnight, the employer shall reimburse actual and reasonable expenses incurred by the employee on submission of the appropriate receipts or vouchers.
- (b) Where an employee's attendance at a meeting prevents the employee returning home for the evening meal, the employer shall reimburse actual and reasonable expenses incurred by the employee in purchasing a meal on submission of the appropriate receipts or vouchers.

APPENDIX A - KINDERGARTEN TEACHERS: QUALIFICATION GROUPS FOR SALARIES

(New Zealand Qualifications) This chart is for the kindergarten service.

Qualification Group	Arts	Science	Agriculture Science	Home Economics	Commercial	Music	Art	Physical Education	Technological	Teaching	Theological
P3	M.A Dip.Town Plan. (Ak) B.A. Hons. M.Phil. Dip.Arts (Otago) M.Ed. B.Ed.Hons M.A. (Applied) Recr.Admin B.A. B.Ed B.Ed.Studies (VUW) M.Soc.Sc B.Soc.Wk (Massey) B.Soc.Sc. Hons (Waikato) B.Soc.Sc. (Waikato)	M.Sc B.Sc.Hons Dip.Sci. (Otago) B.Tech. (Massey) B.Min.Tech. Hons (Otago) Dip.Sc. (Massey) Dip.ORS (VUW) B.V.Sc (Massey) B.Sc. B.Pharm. (Otago) Dip.Pharm. (CIT) Dip.Stats. (Ak) Dip.Comp. Maths (Ak) Dip.Math.Ed (Ak) B.Sc. (Tech.) (Waikato) B.Min.Tech (Otago) BHB (Ak)	M.Ag.Sc. B.Ag.Sc.Hons B.Ag.Sc B.Com (Ag.) Hons. (Lincoln) B.Agr.Sc. B.Hort.Sc. M.For.Sc. B.For.Sc.Hons Dip.Nat.Res (Lincoln) B.Ag. B.Agr. (Lincoln) B.Com. (Ag.) (Lincoln) B.Hort. Dip.Agr.Sc (Lincoln) Dip.Hort.Sc. (Lincoln)	M.H.Sc. B.H.Sc. Dip. H.Sc. Home Econ. Teachers Advanced Dip. exam BCAS	M.Com. LL.M. B.C.A. Hons B.M.S. Hons B.M.S 4-year Univ.degree Hons. in Com, Law, Econ. Dip. Arts in Com. (Otago) B.Com. BBS (Massey) BCA ACA LL.B ACIS. exam (1980) syllabus MPP (VUW) MMS Hons (Waikato) MMS (Waikato) NDBE	MUS.D. M.MUS B.MUS.Hons B.MUS Dip.MUS Dip.MUS (Wgtn Poly) F.T.L.L	MFA (Ak) BFA (Ak) Dip.FA Hons Dip.Ind.Dsgn. 4-year (Wgtn Poly) Dip FA Dip.Vis.Com 3-year (Wgtn Poly) Dip.Tex. Dsgn 3-year (Wgtn Poly) Dip. FA 3-year (Otago Poly) Dip.Vis.Com. Hons. 4-year (Wgtn Poly) Cert.Vis.Com 3-year (Wgtn Poly) Dip.Grah. Dsgn 3-year (Ak TI) Dip.Vis.Com 3-year (ChCh Poly)	B.Ph.Ed. (Otago) Dip.Ph.Ed. (Otago)	M.E B.E. B.Arch B.B.Sc (VUW) NZ Cert. in build.engine. quant.survey. draught.(all subjects) Adv.Tech. T.C. High. Tech. TC plus Adv. Tr. Cert. A.N.C.T Ed	Advanced Dip of Tchg.	M.Theology (Otago) B.Theology (Otago) B.D. (Otago) Post Bachelors degree
P2	$\frac{2}{3}$ or equiv. percent of degree Dip.Ed. (Waikato) F.T.C.L. (Speech) Dip.Speech Bd. (NZ) NZ Cert.Town Plan.	$\frac{2}{3}$ or equiv. percent of degree NZ Cert.Sc. C.O.P. Med. Lab.Tech. NZ Cert Comp.Tech. NZ Cert.Stats	$\frac{2}{3}$ or equiv. Percent of degree Nat.Di.Hort. (NZRIH) Dip. P. & R. (Lincoln)	$\frac{2}{3}$ or equiv. percent of degree Dip.H.Sc. Home Econ. Teachers Dip. exam. BCAS	$\frac{2}{3}$ or equiv. percent of degree ACA NZ Cert. Com. NZ Cert Data Processing A.I.B. (NZ)	$\frac{2}{3}$ or equiv. percent of degree Univ.Dip. L.R.S.M. L.T.C.L. L.Mus.T.C.L. G.M.T.D. Exec. Mus. 2-year (Wgtn Poly)	$\frac{2}{3}$ or equiv. percent of degree Dip. FA 2 nd Prof. Cert. Graph. Dsgn. 2-year (ChCh Poly) Cert.Graph. Des. 2-year (Ak TI)	$\frac{2}{3}$ or equiv. percent of degree $\frac{2}{3}$ Dip.Ph.Ed (Otago) 5 units of degree plus A.H.P.E.R.	$\frac{2}{3}$ or equiv. percent of degree Adv.Tr.Cert Higher Tech. T.C. Adv.Tech.T.C. approv. passes Craftsman reg. in plumb. Gasfit. Plumb. & Gasfit.	$\frac{2}{3}$ or equiv. percent of degree Higher Dip. of Tchg.	$\frac{2}{3}$ or equiv. percent of degree B.Theology (Otago)
P1										Kindergarten Dip. (FKU)	

NOTE: The basic qualification for kindergarten teaching is the New Zealand Kindergarten Diploma (Free Kindergarten Union). Teachers are assessed on the highest qualification held. Qualifications obtained overseas are assessed in relation to the nearest equivalent New Zealand qualifications. Advanced Trade Certificates are recognised in approved trades - Education Gazette 1 September 1987 refers.

APPENDIX A (continued) - KINDERGARTEN TEACHERS: QUALIFICATIONS GROUPS FOR SALARIES SINCE 1988

Qualification Group	Arts	Science	Agriculture Science	Home Economics	Commercial	Music	Art	Physical Education	Technological	Teaching	Theological
P3	B.Arts (Maori) (EIT) B.Soc.Sc (HM) (AK CoE) B.Maori Perf.Arts (EIT) B.App.Arts (Nthld Poly) B. Arts (Ak IoT) B.Japanese Lang. (ChCh Poly) B.Media Arts (Waikato Poly) B.Maori Studies B.Maori Ed M.Indig.Stud M.Maori Stud B.Perf & ScreenArts (UNITEC)	B.Ed Sc (Cant) B. Health Sc (Nthld Poly) M.Ed.Sc (Cant) B.App.Sc (Open Poly of NZ) B.App.Sc (Open Poly of NZ) B. Soc.Practice (UNITEC) B. App.Sc (Ak IoT) B. App.Sc Dip.Guid.& Couns (Massey Univ) P.Grad Dip Guid & Couns (Massey Univ) Master Couns. (Univ Waik)	Dip.Envn.Mgt (Open Poly of NZ) B.App.Sc (Env. Health (Wgtn Poly)	B.Hospitality Mgmt. (CIT) B. Leisure Studies (Waik Univ) Master Leisure Studies (Univ Waik) BCAS Hons MCAS	B.Bus.Info (Wgtn Poly) B. Bus.Studies (EIT) B. Bus Mgmt (Nthld Poly) B.Bus.Stu. Hons (UNITEC) B.Intnl Comms. Hons (UNITEC) M.Bus Inf. (Wgtn Poly) B.Commerce (Nelson Poly) B.Bus. (Open Poly of NZ) B. Bus. (Manukau IoT) B.Bus.Studies (UNITEC) B.Bus.Comp.Sys(Ch Ch Poly) B.Business (Ak IoT) B. Comms Studies (Ak IoT) B. Bus.Ed (Wgtn Poly) B.Business (Waikato Univ) B.Brdcstg. Comms (ChCh Poly) B.Bus.Comp. (ChCh Poly)	B.MUS (Perf) (Wgtn Poly) Adv.Dip.M US (Wgtn Poly) Dip.MUS F.T.C.L	B.Graphic.Dsgn(Ak IoT) B.Spatial. Dsgn (Ak IoT) Dip.Vis.Arts& Dsgn (EIT) Dip.Fash.& Dsgn (CHCH & OTAGO POLY) Dip.Vis.Art (Nelson Poly) Dip.Vis.Art (Waiariki Poly) Dip.Craft Dsgn Maori (Waiariki Poly) Adv.Dip.Vis. Arts& Dsgn (Tairawhiti Poly) B.Vis.Arts (Manukau IoT) Dip. Ceramic Arts (Otago Poly) Dip.Craft Dsgn (OTAGO POLY) Adv.Dip.Textile Dsgn. (Wgtn Poly) B. Dsgn. (Adv.Dip.Fash.&Tech h.) (Wgtn Poly) Nat.Dip Craft Dsgn. (Whitireia Comm. Poly) B.Fine Arts (Wang. Reg. Comm. Poly) B.Graphic.Dsgn (Wang. Reg. Comm. Poly) Dip.Craft Dsgn (CHCH POLY) B.Fine Arts (Otago Poly) B. Dsgn (Wgtn Poly) B.Dsgn (UNITEC)	B.Const (Qnty Surv. (Wgtn Poly) B.Tech (Elec) (Wgtn Poly) B.Comp.Sys. (EIT) B. Appl.Inf.Sys (Nthld Poly) B.Info.Tech. (Nelson Poly) B.Tech. (Manukau IoT) B. Info.Tech. (Otago Poly) B. App.Info.Sys (Taranaki Poly) B. Tech. (UNITEC) B. App.Info.Sys (Manawatu Poly) B. App.Info.Sys (MANAWATU POLY) B.Info.Tech. (Waikato Poly) Adv.Dip. Info. Tech (CIT) B.Comp.Grap. Dsgn.Hons (Wang.Reg. Comm Poly) Grad.Dip. Info.Tech. in Ed. (Waikato Poly)	B.Ed.Tchg B.Tch.Lng B.Ed.Tchg Early Years (Massey) B.Ed.Tchg Early Childhood to Primary Year 3 (0-8 years) (Dunedin College of Education)		

APPENDIX A (continued) - KINDERGARTEN TEACHERS: QUALIFICATIONS GROUPS FOR SALARIES SINCE 1988

Qualification Group	Arts	Science	Agriculture Science	Home Economics	Commercial	Music	Art	Physical Education	Technological	Teaching	Theological
P2	2/3 or equiv. percent of degree	2/3 or equiv. percent of degree	2/3 or equiv. Percent of degree	2/3 or equiv. percent of degree	2/3 or equiv. percent of degree	2/3 or equiv. percent of degree	2/3 or equiv. percent of degree	2/3 or equiv. percent of degree	2/3 or equiv. percent of degree	2/3 or equiv. percent of degree (except a three year pre-service teaching degree)	2/3 or equiv. percent of degree
				Nat.Dip in Hosp.Mgmt (ChCh Poly/CIT)	NZ Dip. Of Bus. (Open Poly of NZ) Nat.Dip. of Bus. Comp. Nat.Dip. of Acct. (UNITEC) Nat.Dip of Bus. Studies (UNITEC) Nat.Dip. in Bus. Computing (Waikato Poly) Adv.Cert. of Prof. Photgphy. (ChCh Poly) Nat.Dip in Bus. Studies (Whitireia Comm. Poly) NZ Dip in Bus. Comp. (Whitireia Comm. Poly) Dip in Bus Comp. (Aoraki Poly) NZ Dip. In Bus. Studies (Aoraki Poly) Nat.Dip in Bus. Nat Dip in Journalism Nat Dip in Social Serv.	Dip.in Comm.Rock MUS (Whitireia Comm Poly)	Dip. App.Arts (formerly Dip. in Text. Fash.) (NTHLD POLY) Dip. in Fash. & Text. (Nelson Poly)Dip.Vis.Art & Dsgn (Tairawhiti Poly) Dip.Vis.Arts (MANUKAU IOT) Dip. Appl.Art & Dsgn (TARANAKI POLY) Dip of Fine Arts (Taranaki Poly)	Dip. in Sports Sci. & Mngmt (UNITEC)		Cert. in Chdn's Lit. Cert. in Schl. Mngmt.	
P1										Dip.Tchg*(ECE) Dip.Tchg. & Lng* Dip.Tchg (PIEC)* Equivalence awarded by NZQA	

NOTE: Teachers are assessed on the highest qualification held. Qualifications obtained overseas are assessed in relation to the nearest equivalent New Zealand qualification. Advanced Trade Certificates are cognised in approved trades – *Education Gazette* 1 September 1987 refers.
This chart lists the qualifications approved by the Secretary of Education in 1996 and 1997 and advised by Ministry of Education Circular 19 May 1999. (*Qualifications are those approved by the Teacher Registration Board for teacher registration.)
It is the intention of the parties to remove this Appendix from the next collective agreement.

APPENDIX B - SECTIONS 103-110 OF THE EMPLOYMENT RELATIONS ACT 2000

103 Personal Grievance

- (1) For the purposes of this Act, personal grievance means any grievance that an employee may have against the employee's employer or former employer because of a claim-
- (a) that the employee has been unjustifiably dismissed; or
 - (b) that the employee's employment, or 1 or more conditions of the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer; or
 - (c) that the employee has been discriminated against in the employee's employment; or
 - (d) that the employee has been sexually harassed in the employee's employment; or
 - (e) that the employee has been racially harassed in the employee's employment; or
 - (f) that the employee has been subject to duress in the employee's employment in relation to membership or non-membership of a union or employees organisation; or
 - (g) that the employee's employer has failed to comply with a requirement of Part 6A; or
 - (h) *[Repealed]*
- (2) For the purposes of this Part, a representative, in relation to an employer and in relation to an alleged personal grievance, means a person-
- (a) who is employed by that employer; and
 - (b) who either-
 - (i) has authority over the employee alleging the grievance; or
 - (ii) is in a position of authority over other employees in the workplace of the employee alleging the grievance.
- (3) In subsection (1) (b), unjustifiable action by the employer does not include an action deriving solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision of any employment agreement.

103A Test of justification

For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

104 Discrimination

- (1) For the purposes of section 103(1) (c), an employee is discriminated against in that employee's employment if the employee's employer or a representative of that employer, by reason directly or indirectly of any of the prohibited grounds of discrimination specified in section 105, or by reason directly or indirectly of that employee's refusal to do work under section 28A of the Health and Safety in Employment Act 1992, or involvement in the activities of a union in terms of section 107,-
 - (a) refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or
 - (b) dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or
 - (c) retires that employee, or requires or causes that employee to retire or resign.
- (2) For the purposes of this section, detriment includes anything that has a detrimental effect on the employee's employment, job performance, or job satisfaction.
- (3) This section is subject to the exceptions set out in section 106.

105 Prohibited Grounds of Discrimination for Purposes of Section 104

- (1) The prohibited grounds of discrimination referred to in section 104 are the prohibited grounds of discrimination set out in section 21(1) of the Human Rights Act 1993, namely-
 - (a) sex;
 - (b) marital status;
 - (c) religious belief;
 - (d) ethical belief;
 - (e) colour;
 - (f) race;
 - (g) ethnic or national origins;
 - (h) disability;
 - (i) age;
 - (j) political opinion;
 - (k) employment status;
 - (l) family status;
 - (m) sexual orientation.

- (2) The items listed in subsection (1) have the meanings (if any) given to them by section 21(1) of the Human Rights Act 1993.

106 Exceptions in Relation to Discrimination

- (1) Section 104 must be read subject to the following provisions of the Human Rights Act 1993 dealing with exceptions in relation to employment matters:

- (a) section 24 (which provides for an exception in relation to crews of ships and aircraft);
- (b) section 25 (which provides for an exception in relation to work involving national security);
- (c) section 26 (which provides for an exception in relation to work performed outside New Zealand);
- (d) section 27 (which provides for exceptions in relation to authenticity and privacy);
- (e) section 28 (which provides for exceptions for purposes of religion);
- (f) section 29 (which provides for exceptions in relation to disability);
- (g) section 30 (which provides for exceptions in relation to age);
- (h) section 31 (which provides for an exception in relation to employment of a political nature);
- (i) section 32 (which provides for an exception in relation to family status);
- (j) *[Repealed]*
- (k) section 34 (which relates to regular forces and Police);
- (l) section 35 (which provides a general qualification on exceptions);
- (m) section 70 (which relates to superannuation schemes).

- (2) For the purposes of subsection (1), sections 24 to 35 of the Human Rights Act 1993 must be read as if they referred to section 104 of this Act, rather than to section 22 of that Act. In particular,-

- (a) references in sections 24 to 29, 31, 32, and 33 of that Act to section 22 of that Act must be read as if they were references to section 104(1) of this Act; and
- (b) references in section 30 or section 34 of that Act-
 - (i) to section 22(1)(a) or 22(1)(b) of that Act must be read as if they were references to section 104(1)(a) of this Act; and
 - (ii) to section 22(1)(c) of that Act must be read as if they were references to section 104(1)(b) of this Act; and
 - (iii) to section 22(1)(d) of that Act must be read as if they were references to section 104(1)(c) of this Act.

- (3) Nothing in section 104 includes as discrimination-

- (a) anything done or omitted for any of the reasons set out in paragraph (a) or paragraph (b) of section 73(1) of the Human Rights Act 1993 (which relate to measures to ensure equality); or
- (b) preferential treatment granted by reason of any of the reasons set out in paragraph (a) or paragraph (b) of section 74 of the Human Rights Act 1993 (which relate to pregnancy, childbirth, or family responsibilities); or

- (c) retiring an employee or requiring or causing an employee to retire at a particular age that has effect by virtue of section 149(2) of the Human Rights Act 1993 (which is a savings provision in relation to retirement ages specified in certain employment contracts).

107 Definition of Involvement in Activities of Union for Purposes of Section 104

- (1) For the purposes of section 104, involvement in the activities of a union means that, within 12 months before the action complained of, the employee-
 - (a) was an officer of a union or part of a union, or was a member of the committee of management of a union or part of a union, or was otherwise an official or representative of a union or part of a union; or
 - (b) had acted as a negotiator or representative of employees in collective bargaining; or
 - (ba) had participated in a strike lawfully; or
 - (c) was involved in the formation or the proposed formation of a union; or
 - (d) had made or caused to be made a claim for some benefit of an employment agreement either for that employee or any other employee, or had supported any such claim, whether by giving evidence or otherwise; or
 - (e) had submitted another personal grievance to that employee's employer; or
 - (f) had been allocated, had applied to take, or had taken any employment relations education leave under this Act; or
 - (g) was a delegate of other employees in dealing with the employer on matters relating to the employment of those employees.
- (2) An employee who is representing employees under the Health and Safety in Employment Act 1992, whether as a health and safety representative (as the term is defined in that Act) or otherwise, is to be treated as if he or she were a delegate of other employees for the purposes of subsection (1)(g).

108 Sexual Harassment

- (1) For the purposes of sections 103(1)(d) and 123(d), an employee is sexually harassed in that employee's employment if that employee's employer or a representative of that employer-
 - (a) directly or indirectly makes a request of that employee for sexual intercourse, sexual contact, or other form of sexual activity that contains-
 - (i) an implied or overt promise of preferential treatment in that employee's employment; or
 - (ii) an implied or overt threat of detrimental treatment in that employee's employment; or
 - (iii) an implied or overt threat about the present or future employment status of that employee; or

- (b) by-
 - (i) the use of language (whether written or spoken) of a sexual nature; or
 - (ii) the use of visual material of a sexual nature; or
 - (iii) physical behaviour of a sexual nature,-

directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee (whether or not that is conveyed to the employer or representative) and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.

- (2) For the purposes of sections 103(1)(d) and 123(d), an employee is also sexually harassed in that employee's employment (whether by a co-employee or by a client or customer of the employer), if the circumstances described in section 117 have occurred.

109 Racial Harassment

- (1) For the purposes of sections 103(1) (e) and 123(d), an employee is racially harassed in the employee's employment if the employee's employer or a representative of that employer uses language (whether written or spoken), or visual material, or physical behaviour that directly or indirectly-
 - (a) expresses hostility against, or brings into contempt or ridicule, the employee on the ground of the race, colour, or ethnic or national origins of the employee; and
 - (b) is hurtful or offensive to the employee (whether or not that is conveyed to the employer or representative); and
 - (c) has, either by its nature or through repetition, a detrimental effect on the employee's employment, job performance, or job satisfaction.

110 Duress

- (1) For the purposes of section 103(1) (f), an employee is subject to duress in that employee's employment in relation to membership or non-membership of a union or employees organisation if that employee's employer or a representative of that employer directly or indirectly-
 - (a) makes membership of a union or employees organisation or of a particular union or employees organisation a condition to be fulfilled if that employee wishes to retain that employee's employment; or
 - (b) makes non-membership of a union or employees organisation or of a particular union or employees organisation a condition to be fulfilled if that employee wishes to retain that employee's employment; or
 - (c) exerts undue influence on that employee, or offers, or threatens to withhold or does withhold, any incentive or advantage to or from that employee, or threatens to or does impose any disadvantage on that employee, with intent to induce that employee-
 - (i) to become or remain a member of a union or employees organisation or a particular union or employees organisation; or
 - (ii) to cease to be a member of a union or employees organisation or a particular union or employees organisation; or

- (iii) not to become a member of a union or employees organisation or a particular union or employees organisation; or
 - (iv) in the case of an employee who is authorised to act on behalf of employees, not to act on their behalf or to cease to act on their behalf; or
 - (v) on account of the fact that the employee is, or, as the case may be, is not, a member of a union or employees organisation or of a particular union or employees organisation, to resign from or leave any employment; or
 - (vi) to participate in the formation of a union or employees organisation; or
 - (vii) not to participate in the formation of a union or employees organisation.
- (2) In this section and in section 103(1)(f), employees organisation means any group, society, association, or other collection of employees other than a union, however described and whether incorporated or not, that exists in whole or in part to further the employment interests of the employees belonging to it.

APPENDIX C – NATIONAL PROFESSIONAL STANDARDS FOR KINDERGARTEN TEACHERS, HEAD TEACHERS AND SENIOR TEACHERS

Beginning Teachers, Fully Registered Teachers and Experienced Teachers

<i>Beginning Teacher</i> (1-2 assessments)	<i>Fully Registered Teacher</i> (3-5 assessments)	<i>Experienced Teacher</i> (6+ assessments)
Beginning Teachers have not yet attained full registration. They are working with the advice and guidance towards gaining the expected skills and knowledge of the teacher.	Fully Registered Teachers have taught for at least two years, have attained full registration and display a high level of competence in the performance of their day-to-day teaching responsibilities.	Experienced Teachers are highly skilled teachers. They have a highly developed understanding of teaching and learning and are to support and provide assistance to teaching colleagues.
Learning and Teaching		
Understanding Te Whariki		
➤ have a sound knowledge of Te Whāriki and current learning, teaching and assessment theories	➤ are competent in the content of Te Whāriki	➤ demonstrate a high level of knowledge of Te Whāriki and of current learning teaching and assessment theories
Learning, Teaching and Assessment Theory		
	➤ demonstrate and discuss developments in current learning teaching and assessment theories	➤ demonstrate a commitment to their ongoing learning and teaching
Treaty of Waitangi		
➤ demonstrate understanding of the implications of the Treaty of Waitangi, te reo and tikanga Māori	➤ demonstrate knowledge of the Treaty of Waitangi, te reo and tikanga Māori	➤ demonstrate knowledge of the Treaty of Waitangi, te reo and tikanga Māori
Implementing Te Whariki		
➤ supports children to take an increasing role in their learning and care	➤ demonstrate appropriate curriculum assessment and evaluation practices that are consistent with the principles of Te Whāriki	➤ demonstrate expertise and refined approaches in all aspects of curriculum assessment and evaluation practices
Teaching and Learning Strategies (including use of resources and technology)		
➤ demonstrates flexibility and responsiveness ➤ provides encouragement, warmth and acceptance along with challenges for creative and complex thinking	➤ evaluate and reflect on teaching and learning with a view to improvement	➤ continually evaluate and reflect on their teaching and act on areas where it can be improved
Planning, Assessment and Evaluation		
➤ plans assesses and evaluates programmes based on children's strengths and interests with reflection on teaching and learning	➤ utilises assessment as a conscious practice of noticing, recognising and supporting documentation	

Learning Environment		
Positive Guidance		
➤ demonstrate an understanding of positive guidance strategies	➤ demonstrate effective positive guidance strategies	➤ demonstrate a high level of commitment to children's well-being and social competence
Engaging Children		
➤ develop effective practices in engagement of children's learning	➤ develop competent practices in facilitating children's engagement in learning	➤ demonstrate a wide range of approaches that facilitate all children's engagement in learning
Learning Environment		
➤ create and maintain a safe environment that is conducive to learning		➤ effectively facilitate challenging learning environments
Expectations		
➤ demonstrate expectations that value and promote learning	➤ establish high expectations that value and promote learning	➤ maintain high expectations of all children that value and promote learning
Respect and Understanding		
➤ establish positive relationships with children that respect their individuality, culture and place in their community	➤ maintain and promote positive relationships with children that respect their individuality, culture and place in their community	➤ maintain and promote positive relationships with children that respect their individuality, culture and place in their community
Communication		
Children, Colleagues, Whanau		
➤ demonstrate skills for effective communication	<ul style="list-style-type: none"> ➤ communicate clearly and accurately in either or both of the official languages of Aotearoa/New Zealand. ➤ communicate effectively with children, colleagues, family/whanau and caregivers. ➤ provide regular feedback that contributes to the child's learning pathway. ➤ involve parents/whanau in the kindergarten programme ➤ displays ethical and responsible behaviour 	<ul style="list-style-type: none"> ➤ demonstrate highly effective communication skills when interacting with children, colleagues or family/whanau ➤ demonstrates effective skills in responding to the aspirations of families/whanau and caregivers ➤ displays ethical and responsible behaviour

Support for and Co-operations with colleagues		
➤ co-operate with and seek support from colleagues	➤ establish and maintain effective working relationships with colleagues ➤ encourages others and participates in professional development	➤ support and provide effective assistance to colleagues in improving teaching and learning ➤ encourages others and participates in professional development
Contribution to wider kindergarten operations		
➤ to be involved in activities that contribute to the life of the kindergarten	➤ contribute to the life of the kindergarten, its community and the Association	➤ contribute towards the effective functioning of the total kindergarten's relationships with the Association and the wider community
Kindergarten Administration		
➤ develop sound knowledge and skills with support in relation to Association administrative requirements	➤ maintain accurate records in relation to Association administrative requirements	➤ sustain knowledge and skill in relation to Association administrative requirements

APPENDIX C (continued) – NATIONAL PROFESSIONAL STANDARDS FOR KINDERGARTEN TEACHERS, HEAD TEACHERS AND SENIOR TEACHERS

Head Teachers

Head teachers need to meet the following standards in addition to demonstrating the standards for experienced teachers.

Performance Dimension
Professional Leadership
<ul style="list-style-type: none"> ➤ fulfils the role of professional leader as outlined in their relevant job description ➤ demonstrates a thorough understanding of current approaches to effective teaching and learning across the curriculum ➤ understands and applies, where appropriate, current practices for effective leadership and management from both within and beyond education ➤ provides professional leadership to the kindergarten team by encouraging vision and innovation ➤ facilitates the development and implementation of practices that reflect the dual heritage of Aotearoa New Zealand within the kindergarten ➤ reflects on own performance appraisal and demonstrates a commitment to own ongoing learning ➤ participates in procedures and practices to maintain, affirm and improve team effectiveness ➤ motivates and supports the teaching team to improve the quality of teaching and learning ➤ display ethical and responsible behaviour
Relationship Management
<ul style="list-style-type: none"> ➤ identify, establish and foster relationships within and between the kindergarten and the wider community ➤ communicate effectively with a range of individuals and groups ➤ manage conflict effectively and work actively to achieve resolution
Operations and Management
<ul style="list-style-type: none"> ➤ comply with all relevant legislative requirements and with monitoring and reporting requirements ➤ effectively and efficiently use available financial resources and assets (within delegated areas of authority) to support kindergarten operations
Strategic Management
<ul style="list-style-type: none"> ➤ understand the implications of Aotearoa/New Zealand's changing cultural, social and economic context, and reflect these changes in the kindergarten ➤ establish and engage in processes of review that facilitate continual improvement ➤ initiate, plan and manage the kindergarten programme and practices to reflect a commitment to focusing the kindergarten on continual improvement

APPENDIX C (continued) – NATIONAL PROFESSIONAL STANDARDS FOR KINDERGARTEN TEACHERS, HEAD TEACHERS AND SENIOR TEACHERS

Senior Teachers

Performance Dimension
Professional Leadership
<ul style="list-style-type: none"> ➤ fulfils the role of professional leader as outlined in their job description ➤ demonstrates an extensive knowledge and understanding of current approaches to effective teaching and learning ➤ understand and apply where appropriate, current practices for effective leadership and management from both within and beyond education ➤ provide professional leadership and direction to the kindergarten teams by encouraging vision and innovation ➤ inspire, motivate and support teachers to continually improve the quality of teaching and learning ➤ reflect on own performance appraisal and demonstrate a commitment to own ongoing learning ➤ advocate for and support the facilitation, development and implementation of practices throughout the Kindergarten Association that reflect and incorporate te reo and tikanga Maori and the Treaty of Waitangi ➤ establish and engage in processes of review that facilitate continual improvement for the Association and its kindergartens ➤ display ethical and responsible behaviour
Strategic Leadership
<ul style="list-style-type: none"> ➤ understands the implications of Aotearoa New Zealand’s changing cultural, social and economic context, and advocates for responsive Association policies and practices ➤ contributes to the development of a shared vision for the future of the Association and reflects a commitment to focusing the Association on continuous improvement ➤ makes progress towards achieving the Association’s vision through effective management of available resources ➤ demonstrates an understanding of, and is responsive to, the aspirations and concerns of the kindergarten communities, the education sector and the wider education community
Professional Relationships
<ul style="list-style-type: none"> ➤ foster relationships with and between kindergartens and the Association ➤ identify, establish and facilitate relationships within and between the education sector and the wider community ➤ communicate effectively with a range of individuals and groups ➤ manage conflict effectively and work actively to achieve resolution
Operations and Management
<ul style="list-style-type: none"> ➤ contribute to the Association’s performance management policies, procedures and practices to maintain and improve teacher effectiveness ➤ comply with all relevant legislative requirements and with monitoring and reporting requirements ➤ use of available financial resources and assets to effectively and efficiently support Association operations

Appendix D - Terms of Settlement: Kindergarten Teachers, Head Teachers and Senior Teachers' Collective Agreement 2009-2011

This agreement sets out the full and final Terms of Settlement of the Kindergarten Teachers, Head Teachers and Senior Teachers' Collective Agreement 2009-2011. The agreement has been settled between the Ministry of Education and the New Zealand Educational Institute Te Riu Roa (NZEI) and shall be subject to ratification by NZEI members pursuant to section 51 of the Employment Relations Act 2000.

In settlement the parties agree to the following:

1. Renewal of the Unified Pay Scale

The current clause 3.2 (b) is replaced with:

With effect from 1 March 2009, subject to the process set out in sub-clause (e) the salary rates and additional payments made across-the-board for kindergarten base scale teachers specified in this agreement will be the same as the salary rates and additional payments made across-the-board to base scale primary teachers under the Primary Teachers' Collective Agreement. This clause applies to any increases to salary rates agreed to in the Primary Teachers' Collective Agreement that may occur and/or are effective between 1 March 2009 and 28 February 2011. After 28 February 2011 this clause will cease to apply and shall have no effect.

2. Increase collective agreement printed rates by four percent from 1 July 2009 as provided in the tables below:

The current clause 3.1 (c) (i) and (ii) is replaced with:

(c) Subject to 3.2, the following salary scales apply:

(iii) Scale K1 Base-scale Teachers

Step	Base Scale Notations	2 July 2008	With effect from 1 July 2009
1	P1 entry	32,610	33,914
2	P2 entry	35,118	36,523
3		38,879	40,434
4	P3 entry	42,642	44,348
5	P3+ entry	43,897	45,653
6		45,779	47,610
7		48,286	50,217
8	P1 max	52,050	54,132
9	P2 max	55,812	58,044
10		60,954	63,392
11	P3 max	63,086	65,609
12	P3+ max	66,327	68,980

Please Note: The provisions of clause 3.3 – Salary on appointment apply

(iv) K2 Head Teachers

K2	2 July 2008	With effect from 1 July 2009
	68,354	71,088

The current clause 8.3 (b) (i) and (ii) is replaced with:

(b) Subject to 3.2, the following rates apply:

(i) Scale K3 Senior Teachers

K3	2 July 2008	With effect from 1 July 2009
	77,447	80,545

(ii) Scale K4 Senior Teachers

K4	2 July 2008	With effect from 1 July 2009
	84,031	87,392

3. Term of the collective agreement

The current clause 1.4 is replaced with:

This agreement shall come into force on 1 March 2009 and shall expire on 28 February 2011, except as provided for under section 53 of the Employment Relations Act 2000.

4. Technical changes to the following clauses

- a. Refreshments and Lunch Breaks (clause 2.6 (c)) – add
Note: Attention is drawn to the Employment Relations (Infant Feeding and Other Matters) Amendment Act 2008
- b. Parental Leave (clause 4.5) – Introduction to read *Attention is drawn to the Parental Leave and Employment Protection Act 1987. The provisions of this Act shall apply to all employees (including paternity leave). This includes entitlements ...*
- c. Qualifications Groups (clause 3.3 (e)) – first sentence of 3.3 (e)(iv) to be moved to the beginning of the clause and renumbered 3.3 (e) (i) and all other subclauses to be renumbered. All references to the teaching qualifications to be endorsed with (ECE)
- d. Appendix A – add note that parties intend to remove Appendix in the next bargaining round
- e. Appendix B – update to match current wording of legislation

5. Further Work - Leadership Symposium

The parties and the kindergarten associations reaffirm their commitment to professional leadership as set out in the 2007 terms of settlement. NZEI, EC Leadership (ECL) and New Zealand Kindergartens (NZK) in conjunction with the Ministry of Education and other interested policy groups agree to further the work begun at the leadership symposium held in 2008 with particular regard to the recommendations made in the report from the symposium.

The NZEI, EC Leadership and NZK will share the costs where applicable.

6. Participation

The parties and the kindergarten associations acknowledge a joint commitment to supporting the government's goal to increase participation in early childhood education. The Ministry of Education will invite representatives of the Associations and the Union to an information sharing session during the term of this agreement.

7. Part-time Employees

It is acknowledged that during negotiations for this collective agreement the parties were unable to reach a shared position regarding the NZEI Te Riu Roa claim for part-time employees' pro-rata maximum child-contact time. Each party had comprehensively different views on this issue. The parties acknowledge the issues underpinning this claim and that it remains unresolved at this point.

The parties on signing this document acknowledge, subject to any subsequent agreed editorial changes, that this reflects the agreements reached in the settlement of the Kindergarten Teachers, Head Teachers and Senior Teachers' Collective Agreement 2009-2011.

Dated in Wellington this 20th day of May 2009.

Tanya Duncan
For the Ministry of Education

Jane Porter
for the NZEI – Te Riu Roa

SIGNATORIES

This agreement has been signed by the parties on the 19th day of June 2009.

New Zealand Educational Institute – NZEI Te Riu Roa on behalf of the employees by its duly authorised representatives:

Jane Porter
For the NZEI - Te Riu Roa

Fran Renton
For the NZEI - Te Riu Roa

Ministry of Education by its duly authorised representatives:

Tanya Duncan
For the Ministry of Education

Sarah Borrell
For the Ministry of Education