

MINISTRY OF EDUCATION

SERVICE MANAGERS' COLLECTIVE AGREEMENT

2010 – 2013

**Ministry of Education**  
**Service Managers' Collective Agreement**  
**16 December 2010 to 15 December 2013**

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## **PART 1 COVERAGE AND SCOPE**

### **1.1 Parties to this Agreement**

The parties to this Collective Agreement are the Chief Executive of the Ministry of Education and NZEI Te Riu Roa.

### **1.2 Coverage**

This Agreement covers all GSE service managers employed by the Ministry of Education.

### **1.3 Term of agreement**

This agreement shall be effective from 16 December 2010, and, subject to section 53 of the Employment Relations Act, shall remain in force until 15 December 2013.

### **1.4 Variation**

The parties may vary this Agreement at any time by written agreement between NZEI and the Chief Executive of the Ministry of Education.

### **1.5 Definitions**

For the purposes of this Agreement:

- (a) NZEI or the Union shall mean the New Zealand Educational Institute Te Riu Roa (Inc).
- (b) Employer shall mean the Chief Executive of the Ministry of Education.
- (c) GSE shall mean the Ministry of Education - Special Education.
- (d) The Ministry shall mean the Ministry of Education.

### **1.6 EEO**

In accordance with the provisions of the State Sector Act 1988 and other Government policy directives, the Ministry is committed to promoting, developing and monitoring equal employment opportunities and programmes.

### **1.7 NZEI/Ministry Relationship**

The parties to this agreement recognise the value of a relationship in which the Ministry and the union participate constructively in working to achieve outcomes in a way that best meets the objectives of the parties. This approach has been facilitated by the Relationship Agreement and the Delegates/ Worksite Representatives Protocol.

## **PART 2 GENERAL PROVISIONS**

### **2.1 Responsibilities of the Employer and Employees**

2.1.1 During an employee's employment, the Ministry agrees to:

- (a) be a good employer (as defined by the State Sector Act 1988) in all dealings with the employee; and
- (b) provide adequate training, resources, information and, where necessary, the delegated authority to enable the employee to undertake the functions and responsibilities of the position.

2.1.2 During an employee's employment the employee agrees to:

- (a) Carry out the duties of the position using all reasonable skill and diligence and in accordance with the professional standards for the performance of such work.
- (b) Comply with all reasonable instructions given by the Ministry and satisfy any performance standards agreed by the employee and the Ministry.
- (c) Comply with all the rules, regulations, policies, procedures and compliance standards, including the Ministry's Code of Conduct (incorporating the provisions of the Public Service Code of Conduct), as notified to the employee by the Ministry. The Ministry may amend these rules, regulations, policies, procedures and compliance standards from time to time and shall notify the Union and employees of any such changes.
- (d) Take all reasonable steps to become familiar with any relevant legislation relating to the duties of the position.

### **2.2 Categories of Employment**

2.2.1 Permanent Employees

Unless otherwise specified, employment will be ongoing (for an indefinite period) unless terminated in accordance with the provisions of this agreement.

2.2.2 Fixed Term Employees

Where the employer has genuine reasons for a fixed term agreement the employee and employer may agree that the employment of the employee will end:

- a. on a specified date;
- b. on the occurrence of a specified event; or
- c. at the conclusion of a specified project.

2.2.3 Part-time Employees

Where an employee is employed on a part-time basis, their conditions of employment will be the same as for a full-time employee except that:

- (a) salary and non-reimbursing allowances will be paid on a pro-rata basis;
- (b) leave will be paid in accordance with the Holidays Act.

### **2.3 Service**

- 2.3.1 Except where otherwise specified Service shall mean continuous uninterrupted service with the Ministry (including the Specialist Education Service) except that the Chief Executive may recognise prior service with other departments of the Public Service and education sector as continuous service, provided that the employee joined the Ministry of Education within one month of leaving the service of the other organisation, and no severance payment was made.
- 2.3.2 Where an employee who has resigned from a permanent position to care for their pre-school child(ren) is re-employed under coverage of this Agreement, and providing the employee has not undertaken other substantive employment (including self-employment) during this period, the absence will interrupt but not break service.

### **2.4 Termination of Employment**

- 2.4.1 Employment may be terminated by either party on giving one month's notice in writing but this period may be varied by mutual agreement. The Ministry may make payment of one month's pay in lieu of notice.
- 2.4.2 Where an employee terminates employment without the requisite notice under clause 2.4.1, the Ministry may deduct from any outstanding leave owing, if any, or any other sum owing to the employee by the Ministry an amount of pay equivalent to the shortfall in the required period of notice.
- 2.4.3 If an employee is employed under this agreement for a fixed term to fill the position of another employee on parental leave or on temporary re-assignment to another position and that person returns to work in that position prior to the expiry of the fixed term agreement then the Ministry may terminate the fixed term employee's employment by giving the employee one month's written notice or payment in lieu of notice. The employee will not be entitled to be paid compensation for redundancy in such circumstances.
- 2.4.4 The Ministry may terminate an employee's employment without notice in the case of serious misconduct.
- 2.4.5 Where agreement has been reached by the employer and employee that the employee will take early retirement on medical grounds, the employee shall be paid 65 days salary or such higher amount as the Ministry considers appropriate in the circumstances.
- 2.4.6 Where the circumstances warrant it, the Ministry may, in consultation with the employee, consider the possibility of termination on medical grounds.
- 2.4.7 If an employee is absent from work for more than five continuous working days, and has not made reasonable efforts to notify the Ministry, then the employee shall be deemed to have terminated the employee's employment, without notice, by reason of abandonment. The Ministry shall not be required to notify the employee if the employee's employment is deemed to have been

terminated. The Ministry shall make reasonable efforts to contact the employee prior to the expiry of the five working days referred to above.

**2.5 Disciplinary Action**

The parties agree that all complaints and disciplinary actions are resolved in a timely manner and in accordance with Ministry of Education policy. The parties acknowledge the principles around dealing with employment relationships problems outlined in Part 7 of this Agreement.

**2.6 Savings**

Except as otherwise provided in this Agreement (including the Terms of Settlement), those staff who had individual conditions of employment that are additional and not inconsistent with the conditions set out in this Agreement shall continue to have these conditions.

## **PART 3 REMUNERATION & HOURS OF WORK**

### **3.1 Hours of Work**

- 3.1.1 An employee shall work such hours as may be reasonably necessary to fulfil the duties and responsibilities of the position whether or not such hours exceed 40 hours per week. Hours of work for part-time employees shall be as agreed and specified.
- 3.1.2 There is no entitlement to overtime or other compensation for work in excess of 40 hours per week. However time off in lieu (TOIL) may be agreed between the employee and their manager in accordance with Ministry policy.

### **3.2 Remuneration**

- 3.2.1 The following remuneration scale will apply to Service Managers with effect 16 December 2010.

<b>Step</b>	<b>Effective from 16 December 2010</b>	<b>Effective from 15 December 2011</b>	<b>Effective from 15 December 2012</b>
5	92,332	93,717	95,123
4	89,643	90,988	92,353
3	85,160	86,437	87,734
2	80,679	81,889	83,117
1	76,197	77,340	78,500

- 3.2.2 If a Service Manager is a member of the Government Superannuation Fund(GSF) a proxy for the employer contribution will form part of their remuneration.

The formula is:

1 July 2008 proxy:	5%,
1 April 2009 proxy:	4%,
1 April 2010 proxy:	3%,
1 April 2011 proxy:	2%.

The base salary for Service Managers who are members of GSF will be the rate for their step divided by:

From 1 July 2008	-	1.05
From 1 April 2009	-	1.04
From 1 April 2010	-	1.03
From 1 April 2011	-	1.02

### **3.3 Placement on scale on Initial Appointment and Movement within scale**

- 3.3.1 The employer will, on appointment, determine the salary level to be paid to new employees, taking into account the following factors:
- previous work or other relevant experience; and
  - relevant educational or other qualifications; and
  - the ease or difficulty in recruiting the specific skills and/or experience required for this position
- 3.3.2 Newly appointed Service Managers can be placed on the salary scale up to Step 5 taking into account the above factors. Placement onto Step 6 will require approval of the Deputy Secretary.

- 3.3.3. All new appointees will have a six month performance review, and may be eligible to move to a higher step on the remuneration scale on the basis of the outcome of this review. Following the six month review the employee will line up with the Ministry's annual performance review effective 1 July each year.
- 3.3.4 Progression to the next available step in the salary scale will be as at 1 July each year subject to their having met their agreed performance expectations including the activities agreed in the Individual Development Plan, as set through the Ministry's performance management and development system.
- 3.3.5 The salary for an individual employee will not be reduced by reason of the operation of the remuneration scale or annual performance review process.
- 3.3.6 Following the outcome of the performance review, an employee may request a review of the manager's decision. Any request for a review should be raised and dealt with in a timely manner by the employee and their immediate manager. Where agreement cannot be reached at this level, the request should be escalated to the Deputy Secretary for a decision.

#### **3.4 Higher Duties Allowance**

Where an employee agrees to undertake some or all of the responsibilities of a district manager or other higher position consideration may be given to some payment having regard to the extent of the responsibilities to be assumed, the period for which the responsibilities will be undertaken and the developmental benefit that such opportunities provide. The rate of any payment will be agreed with the employee in accordance with Ministry policy.

#### **3.5 Reimbursement of Expenses**

- 3.5.1 An employee will be reimbursed on the production of receipts for any actual and reasonable expenses incurred in carrying out work, including where these expenses are a legal requirement of the work being undertaken, provided that an employee's manager has given prior approval for these expenses to be incurred.
- 3.5.2 Where their manager has approved an employee using their private vehicle for Ministry business, the employee may be reimbursed in accordance with the IRD mileage rates.
- 3.5.3 In accordance with ministry policy, at the discretion of the responsible manager, the Ministry may provide full or partial cover for non-recoverable excess to a maximum of \$1,000 and reduction of "no claim" rebate to a maximum of \$500 where an employee has an motor vehicle accident using their private motor vehicle on official business and this use has been approved by their manager.

#### **3.6 Te reo Māori me ōna tikanga**

- 3.6.1 The Ministry values both Māori language and Tikanga skills and abilities. To support the strengths and benefits this brings the Ministry has, in consultation with the PSA, NZEI and staff developed a policy which provides the appropriate tools to measure and reward employees who bring these skills to their job.

## **PART 4 LEAVE**

### **Service Recognition**

- 4.1.1 With the coming into effect of the public service common leave provisions the employer will recognise prior service from 13 May 2003 with other departments of the Public Service (as specified in the First Schedule of the State Sector Act 1988), and with any Crown Entity (excluding District Health Boards and the Education service as defined in the State Sector Act 1988 (e.g. School Boards of Trustees and tertiary Education Institutions)), for the purpose of calculating continuous service for leave entitlements.
- 4.1.2 Leave for which continuous service is recognised is long service, sick and care for dependents and parental leave.
- 4.1.3 For the purposes of recognising service the employee will be required to provide evidence of prior service. The employer will maintain a record of this prior service for the purposes of calculating leave entitlements.

### **4.2 Annual Leave**

- 4.2.1 Where employment is ongoing or for a continuous period of more than one year, an employee shall be entitled to 5 (five) weeks' annual leave per year.
- 4.2.2 Annual leave for all employees will be paid in accordance with the Holidays Act.
- 4.2.3 The time at which annual leave can be taken will be determined by agreement or, failing agreement, by the Ministry in consultation with the employee, taking into account the operational requirements of the Ministry and the employee's own preferences.

### **4.3 Public Holidays**

- 4.3.1 In accordance with the Holidays Act 2003, the following days shall be observed as public holidays:
- (a) Christmas Day
  - (b) Boxing Day
  - (c) New Year's Day
  - (d) 2 January
  - (e) Waitangi Day
  - (f) Good Friday
  - (g) Easter Monday
  - (h) ANZAC Day
  - (i) the birthday of the reigning Sovereign (observed on the first Monday in June)
  - (j) Labour Day (being the fourth Monday in October)
  - (k) the day of the anniversary of a province or the day locally observed as that day
- 4.3.2 An employee who works on or any part of a public holiday in accordance with an employer's request shall be paid at least the portion of the employee's relevant daily pay plus half that rate again. The employee shall also be entitled to an alternative holiday as provided for in s56 of the Holidays Act for any part of a public holiday worked.

#### **4.4 Sick Leave**

4.4.1 Sick leave is paid leave which may be taken when an employee, an employee's partner or any dependent child or other dependent is sick, subject to the provisions of this clause. Where an employee's sick leave entitlement immediately prior to this settlement was based on old public service model these provisions (outlined in schedule 1) shall continue to apply.

4.4.2 An employee shall be entitled to sick leave with pay as follows:

<b>Period of Employment</b>	<b>Leave Entitlement</b>
Up to 6 months	5 working days apportioned pro rata for the period of employment
Each consecutive 6 months up to the completion of two years	5 working days
After two years of employment	15 days per annum thereafter

4.4.3 Unused sick leave may be accumulated up to a maximum of 260 days.

#### **4.5 Bereavement Leave**

4.5.1 Bereavement leave is to pay respects to a deceased person with whom an employee had a close association by reason of personal or family ties, or to fulfil an obligation because of particular cultural requirements such as attendance at part or all of a Tangihanga (or its equivalent). An employee may take bereavement leave subject to the following provisions.

4.5.2 In circumstances not covered by Clauses 4.5.1, bereavement leave shall be taken as leave without pay.

4.5.3 The period of the bereavement leave will be agreed between an employee and an employee's manager.

4.5.4 These provisions do not limit the bereavement leave entitlements under the Holidays Act.

#### **4.6 Parental Leave**

4.6.1 If an employee has been employed continuously by the Ministry for a period of at least one year at the prospective date of commencing parental leave then the employee is entitled to parental leave without pay for up to 12 months.

4.6.2 If an employee has been employed continuously by the Ministry for a period of at least six months at the prospective date of commencing parental leave then the employee is entitled to parental leave without pay for up to 6 months.

4.6.3 If an employee intends taking parental leave the employee is required to give at least one month's notice in writing.

4.6.4 If:

- (a) an employee is entitled to parental leave of up to 12 months, and
- (b) the employee takes the leave and then returns to work before or at the expiration of the leave, and
- (c) the employee then completes a further one month's service,

then the employee will qualify for a payment of 30 working days (or the actual number of days of leave taken where this is less than 30) leave on pay. The calculation of this payment is specified in the Ministry's policy on Parental Leave.

#### **4.7 Long Service Leave**

Employees who have completed 10 years continuous service (excluding any recognised teaching service) will be granted two weeks long service leave. Thereafter, employees shall be entitled to one whole week after every five years continuous service. Each period of service leave must be taken in one period and must be taken before the next entitlement falls due or be forfeited. Reduced hours or part-time employees are to receive a pro rata reduction of pay but not of time during long service leave. The Ministry may agree to cashing up this leave upon application from an employee.

#### **4.8 Special Leave With or Without Pay**

- 4.8.1 An employee may be granted special leave either on full pay, on part-payment of salary or without pay. Each application will be considered on a case-by-case basis taking into account the operational requirements of the Ministry, the reason for the leave and the employee's length of service. Leave without pay interrupts but does not break service.

#### **4.9 Voluntary Military Service**

Leave of absence will be granted to employees to undertake military training in accordance with the Volunteers Employment Protection Act 1973 (including any amendments or replacement).

- a) An employee shall be entitled to paid time of up to twelve weeks for initial training and up to four weeks each year thereafter will be provided.
- b) An employee will refund to the employer the lesser amount of either salary or military pay.
- c) Additional leave without pay of up to twelve months will be made available to employees undertaking peacekeeping duties.

#### **4.10 Study Leave**

- 4.10.1 An employee may be granted leave to undertake a programme of study as agreed with the employer. Support for study leave may include paid or unpaid leave for attendance at lectures, tutorials, workshops and attendance and preparation for examinations or assessments; contribution to course fees, or use of work facilities.
- 4.10.2 In determining the support for study, the employer in consultation with the employee, will take into account:
- a) The time commitment required and the workload of the employee
  - b) Programme requirements such as attendance at lectures or workshops, residential modules, on the job or practical experience, examinations and assessments.
  - c) Additional support available such as use of work facilities and technology

- d) The impact of the leave on the work of the organisation and on the workload of the employee and others
- e) Affordability of providing the support to the employee.

#### 4.11 **Employment Relations Education Leave**

- 4.11.1 Sections 73 and 74 of the Employment Relations Act 2000 set out the minimum union entitlement to the allocation of employment relations education leave (EREL)
- 4.11.2 The Act provides for an amount of EREL based on union membership. To this end the NZEI agrees to provide the Ministry with an updated list of members employed by the Ministry so that the annual allocation of EREL may be calculated and advised. The notification will be made directly to the Ministry by 31 March each year.
- 4.11.3 The parties may agree any additional days over and above the minimum.

## **PART 5 ORGANISATIONAL CHANGE**

### **5.1 Principles**

- 5.1.1 The parties to this agreement recognise the serious consequences that the loss of employment can have on individual employees and propose to minimise this as far as possible by using the provisions of this agreement to keep as many employees as possible in employment.
- 5.1.2 The NZEI recognises the right of management to plan, manage, organise and finally decide on the operations and policies of the Ministry.
- 5.1.3 The aim of these surplus staffing provisions will be to reach agreement on any proposal for change and make recommendations to management, who will endeavour to take the views into account as far as possible before making final decisions.
- 5.1.4 These provisions relate to employees who are or may be affected by a restructuring situation. They will apply to all employees who have an ongoing expectation of employment. They will not apply to employees engaged as fixed-term employees (as defined in Part 2, clause 2.2.2 of this agreement) who have reached the expiry of their agreement.
- 5.1.5 Counselling for an affected employee(s) and their families will be made available if necessary.

### **5.2 Advice and Consultation**

The NZEI will be advised by the Chief Executive of any review which is likely to result in significant changes to the organisational structure, staffing or work practices affecting employees. The Chief Executive will provide the NZEI with an opportunity to be involved in the review. Where the decision to make a change or to undertake a review is beyond the control of the Chief Executive this notification will be made as soon as possible after the decision is announced.

### **5.3 Identification of Affected Staff**

When, as a result of the review referred to above and at the conclusion of the consultative process, the Chief Executive requires a reduction in the number of employees; or employees can no longer be employed in their current position, at their current grade (pay band) or work location (i.e. the terms of appointment to their present position are altered) affected staff will be identified to the NZEI and every attempt will be made to accommodate those staff and the following provisions will apply.

### **5.4 Managed Attrition**

- 5.4.1 Attrition means that as people leave their jobs because they retire, resign, transfer, die or are promoted then they may not be replaced. In addition or alternatively, there may be a partial or complete freeze on recruiting new employees or on promotions.
- 5.4.2 Within the context of a process of organisational change the Chief Executive may operate a policy of managed attrition either within a particular affected work situation or across the wider organisation.

- 5.4.3 Where the Chief Executive determines that a freeze on appointments or promotions is necessary the NZEI will be consulted as to how the freeze would apply.
- 5.4.4 The parties recognise that attrition can have an effect on employees and their ability to meet Ministry objectives. The policy will be regularly reviewed by the Chief Executive to address organisational, operational or training issues.

## **5.5 Reconfirmation and Reassignment**

- 5.5.1 The Chief Executive may, following consultation and agreement with the NZEI (which will not be unreasonably withheld), either reconfirm in the same or similar position, or reassign to an alternative position for which they are suitable, those employees affected by a review.
- 5.5.2 This will include placement to a suitable position in an existing agency or in a new structure or agency established as part of the restructuring, or the offer of employment by the person or organisation acquiring the business, or the part being sold or transferred.
- 5.5.3 Where reconfirmation or reassignment within the Ministry takes place the provisions in 5.6 and 5.7 below will apply.

## **5.6 Reconfirmed in Position**

- 5.6.1 The parties agree that use of the reconfirmation provisions will be maximised in terms of placements to a suitable position within the Ministry. The following principles will apply:
- (a) Where there is one employee who is a clear candidate for that position and the criteria below are met, then that employee is to be confirmed in it.
  - (b) The criteria for reconfirmation shall be as follows:
    - (i) The new job description is the same (or very nearly the same) as what the employee currently does;
    - (ii) The salary for the new position is the same;
    - (iii) The new position has terms and conditions of employment (including career prospects) agreed with the NZEI which are no less favourable;
    - (iv) The location of the new position is the same (note: this need not necessarily mean the same building and/or the same street).

In those situations where there is more than one clear candidate the position will be advertised, with appointment made as per normal Ministry appointment procedures;

- (c) Proposed reconfirmations will be advised to all affected employees to enable them to assess whether they meet the criteria, for those employees who meet the criteria and do not wish to be reconfirmed the only option available will be leave without pay.
- (d) Job descriptions (current and proposed) shall be available to those employees who are to be reconfirmed at the time that the reconfirmation list is published.

- (e) The NZEI may propose that an employee be reconfirmed where that employee believes their current job is sufficiently similar to a new job.

## **5.7 Reassignment**

5.7.1 Following reconfirmation, and where under 5.5 above, agreement has been reached between the Chief Executive and the NZEI on reassignment, if there are positions still vacant, then the Chief Executive and the NZEI will meet to assess the skills of all those employees still left without a position, and to reach agreement on the process for appointment to new positions.

- (a) In determining the parameters for reassignment the Chief Executive and the NZEI will deal with cases on an individual basis, with a view to placing as many employees as possible by matching individual skills with positions which require similar skills. Interviews may be held to determine the level of skill. This exercise may involve individuals undertaking some on-the-job training or attending training courses. Such training needs will be identified prior to the individual being reassigned.
- (b) Employees to be reassigned under this process shall be consulted prior to any appointment being made.
- (c) Where a suitable reassignment is offered and this offer is not accepted the employee will not be surplus and the provisions relating to surplus staff will not be available. A suitable position shall mean a position, at a similar responsibility level, in which an employee can adequately perform the duties with their current skills and knowledge and;
  - (i) the offered employment is within a reasonable commuting distance from their home; and
  - (ii) the salary and conditions are no less favourable; and
  - (iii) the duties and responsibilities are comparable.
- (d) Where a suitable reassignment is offered at a lower salary, an equalisation allowance will be paid to preserve the salary of the employee at the rate paid in the old job at the time of reassignment. In these circumstances, the employee may decline the reassignment offer and retain access to the surplus staffing provisions of this agreement.

The salary can be preserved in the following ways:

- (i) A lump sum to make up for the loss of basic pay for the next two years (this is not abated by any subsequent salary increases); or
  - (ii) An ongoing allowance equivalent to the difference between the present salary and the new salary. (This is abated by any subsequent salary increases.)
- (e) Where the new job is at a location outside the local district, assistance with transfer expenses shall be provided on the basis that the employee should not suffer financial loss in respect of expenses

incurred as a result of transfer. In these circumstances, the employee may decline the reassignment offer and retain access to the surplus staffing provisions of this agreement.

A decision will be made by the Chief Executive on the provisions to be applied in each particular case. A package from the range of items listed below may be selected. (The range of items is not exclusive and the level of compensation for an item may be varied).

Items

- (i) Reimbursement of fares and accommodation expenses for the journey to the new location.
- (ii) Assistance with living expenses for up to three months, but on a decreasing basis for employees who move to the new location but whose dependants are still at the former location.
- (iii) Reimbursement of accommodation expenses, initially for up to seven days at the new location, with further assistance on a subsidy basis for up to a maximum of three months before permanent housing is available at the new location.
- (iv) Reimbursement of land agent's commission and legal fees where the employee sells their house and/or buys another house at the new location.
- (v) A variable grant for employees on moving to the new location up to a maximum of the equivalent of one month's salary.
- (vi) A variable grant for employees after a predetermined number of years at a location, with a maximum grant up to the equivalent of three months' salary, provided the grant does not exceed the equivalent of one month's salary for each year of the qualifying period.
- (vii) Reimbursement of additional actual and reasonable child care expenses, including travel costs, for one year.

Where the new job is within the same local area and extra travelling costs are involved, actual additional travelling expenses equivalent to travelling by public transport shall be reimbursed for up to 12 months;

Where the new job is within the same local area and the extra travelling time one-way to the new place of work by public transport is more than 30 minutes, transfer expenses as in 5.7(e) apply if there is a reduction in travelling time by public transport of 30 minutes from the new domicile to the new place of work.

Where employees are to be relocated at least 3 months' notice shall be given to employees, provided that in any situation a lesser period of notice may be mutually agreed between the NZEI and the Chief Executive where the circumstances warrant it (and agreement shall not be unreasonably withheld).

## **5.8 Surplus Staff**

### **5.8.1 All affected staff who:**

- are not placed by reconfirmation; and
- who have not been offered a suitable reassignment; or
- who have declined an offer of reassignment at a different location or at lesser terms and conditions;

are surplus and the following applies:

- (a) **Notification of Surplus**  
The Chief Executive will notify the NZEI and the surplus staff a minimum of one month prior to the date that the surplus is required to be discharged. When circumstances warrant this date may be varied by agreement between the parties.

At that time the following information shall be made available to the National Office of the NZEI with a copy to the appropriate Regional Office:

- (i) the location(s) of surplus
  - (ii) the total number of surplus employees
  - (iii) the positions, names and ages of the surplus employees.
- The NZEI will be supplied with additional information on request.

- (b) **Redeployment**  
The Chief Executive may, following consultation and agreement with the NZEI, ask employees to complete a curriculum vitae seeking redeployment within the Ministry or within other Public Service departments or other state sector agencies or organisations. The same provisions will apply as for reassignment. Time off may be made available for job seeking. Assistance will be given to prepare curricula vitae.

- (c) **Details of Conditions and Options**  
During this period the NZEI and the Chief Executive will meet to reach agreement on the options which are appropriate to the circumstances and will be available to surplus employees.

The following options may be available.

- Leave Without Pay
- Retraining
- Redeployment/Job Search
- Redundancy Compensation (case by case basis).

How the options may be used, other options which the parties may agree to, and the types and levels of financial assistance, will be negotiated on a case by case basis between the Chief Executive and the NZEI.

## **5.9 Leave without Pay**

There is provision for special leave without pay within a defined period without automatic right of re-engagement (this excludes parental or sick leave). This may include an opportunity for training.

## **5.10 Alternative to Severance for Contributors to Superannuation**

As an alternative to the redundancy compensation option, surplus staff who belong to GSF or NPF who are within 10 years of eligibility for National Superannuation and have 10 years total service may have their redundancy compensation paid and may use the payment to make up the actual GSF or NPF annuity payable. Service does not have to be continuous. The use of the payment will be arranged by the employee with the Superannuation Scheme provider, in accordance with the provisions of the superannuation scheme.

This alternative to severance, for contributors to superannuation, may be made available at any time to eligible employees not declared surplus if a surplus employee seeking redeployment replaces them.

### **5.11 Retraining**

Retraining is an efficient and worthwhile option for dealing with staffing surpluses. To this end the Chief Executive will, as far as she or he is able:

- (a) Identify particular skill shortages in the Education Service or elsewhere in the state services.
- (a) Assess where there are generally job opportunities in the Public Service and/or in the private sector.

When a staffing surplus is identified the Chief Executive (and the State Services Commission where appropriate) will consider the skills, training, etc of the employees who are surplus and will determine whether there are retraining opportunities for them for work either in the Public Service or the private sector.

If retraining opportunities are identified specific retraining programmes will be designed.

### **5.12 Redundancy formula for Service Managers previously designated as Service Managers (L)**

5.12.1 Where an employee is not placed in suitable alternative employment prior to the expiry of the notice period, then the employee shall be entitled to compensation as follows:

- (a) One month's notice of termination of employment or pay in lieu; and
- (b) For those employees appointed prior to or on 22 December 1992, one month's salary for each year of service, up to a maximum payment of six month's salary; or
- (c) For those employees appointed after 22 December 1992, 8% of ordinary pay for the preceding twelve months, plus 2% of ordinary pay for the preceding twelve months for each year of service minus one, up to a maximum of the equivalent of three month's salary at that time.

5.12.2 Redundancy compensation (excluding notice provisions) shall be payable to redundant employees with at least 12 month's current continuous service.

### **5.13 Redundancy formula for new Service Managers and Service Managers previously designated as Service Managers (M)**

5.13.1 Where an employee is not placed in suitable alternative employment prior to the expiry of the notice period in clause 5.8 the employee shall be entitled to one month's notice of termination or pay in lieu as per clause 2.4.1 and compensation for redundancy as follows:

- (a) 8 weeks' salary for the first complete year of continuous service with the Ministry plus
- (b) two weeks' salary for each subsequent completed year of continuous service with the Ministry.

- (c) The maximum gross amount payable for the above redundancy compensation is \$42,000 or six months' salary whichever is the higher. For the purpose of redundancy compensation calculations, salary includes any assigned value for employer contributions to the GSF if applicable.

#### **5.14 Continuity of Employment in Restructuring**

- a. For the purposes of this provision restructuring, in relation to the Ministry's business:
- (i) means:
- entering into a contract or arrangement under which the Ministry's business (or part of it) is undertaken for the Ministry by another person; or
  - selling or transferring the Ministry'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 Ministry carries out work on behalf of another person or organisation.
- b. Where it is proposed that the Ministry be restructured and, as a result of that restructuring, the work being performed by any affected employees of the Ministry, would be performed by a new employer, then:
- (i) in accordance with the principles outlined in 5.1 the Chief Executive 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 c(ii) below
- (ii) within a reasonable period prior to the restructuring taking effect the Ministry 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 Ministry 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 by the new employer;

- the terms and conditions of employment on which the affected employees may be offered employment in 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 Ministry 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 Chief Executive will keep the NZEI informed regarding negotiations with the new employer in respect of the matters contained in b(iii) above.

The surplus employee provisions (5.8 to 5.13) of this Agreement will apply to an affected employee who either:

- a. is not offered employment by the new employer; or
- b. 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 (5.12, 5.13)

An employee who intends to decline an offer of equivalent employment should discuss with the Ministry the alternate options that might be available under the surplus staffing provisions prior to formally making that decision.

For the purposes of this clause **employment in an equivalent position** means employment in a position that:

- a. is substantially the same as the employee's previous position; and
- b. is in the same general locality; and
- c. 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

- d. is on terms that treat the period of service with the Ministry (and any other period of service recognised by the Ministry as continuous service) as if it were continuous service with the new employer.

## **PART 6 UNION MATTERS**

### **6.1 Union Access**

Representatives of NZEI shall be entitled to enter the premises of the Ministry at all reasonable times for purposes related to the employment of members or for purposes related to the union's business or both. Such access shall be exercised at reasonable times and in a reasonable way. Representatives shall comply with existing health and safety and security procedures.

### **6.2 Union Deductions**

6.2.1 The employer, when requested in writing by the secretary of the union, shall, within one month after the receipt of such request supply to the union a list of the names of all employees coming within the scope of this agreement when in their employ (but such request shall not be made to the employer at intervals shorter than six months).

6.2.2 In accordance with authorities signed by individual employees the employer shall arrange for the deduction of union subscriptions for all union members covered by this agreement except in cases agreed to between the employer and the union.

6.2.3 The manner of deduction and remittance shall be determined by agreement with the national secretary of the union.

6.2.4 The employer shall on request undertake to provide each employee at the time of appointment with an application form for membership of the union.

6.2.5 Except as may be otherwise agreed, the commission payable by the Institute for this service shall not exceed 2.5 percent of the aggregate sum of the amount deducted.

### **6.3 Union Meetings**

6.3.1 The employer shall allow each member of the NZEI a paid absence of up to two hours for any one meeting the Union may call in any calendar year, or an aggregate paid absence of up to four hours for any two or more meetings the NZEI may call in that same year provided that the paid absence in respect of any such meeting shall not exceed two hours.

6.3.2 In respect of every such meeting called the NZEI will consult with the employer about the date(s), time(s) and place(s) of such meeting(s) before giving notice at least 14 days prior to the date of such meeting(s).

6.3.3 NZEI members shall resume duty as soon as practicable after the meeting but the employer shall not be obliged to pay any NZEI member for a period greater than two hours in respect of any such meeting.

6.3.4 Only members of the NZEI who actually attend a meeting called in accordance with this clause shall be entitled to pay in respect of that meeting and to that end the NZEI shall supply the employer with a list

of members who attended and shall also advise the time of finishing the meeting.

## **PART 7 EMPLOYMENT RELATIONSHIP PROBLEMS**

### **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 and 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.

### **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.
- 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.

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 that 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](http://www.ers.dol.govt.nz) and can be contacted by e-mail at [workplaceinfo@dol.govt.nz](mailto:workplaceinfo@dol.govt.nz).

### *Mediation Service*

- The Mediation Service is a free and independent service available through the Department of Labour.
- The 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 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.

## **PART 8 SIGNATORIES**

Dated at Wellington this \_\_\_\_ day of February 2011

Karen Sewell  
for the Ministry of Education

Kevin Burrows  
for NZEI Te Riu Roa

## Schedule 1 - Grand-parented terms for Service Managers (L)

In addition to the terms of this collective, the following provisions are grand-parented for employees designated as Service Managers (L) employed at 26 June 2006.

### 1. Compassionate grant

- 1.1 A compassionate grant may be paid by employers to a partner, or if there is no partner, to the next of kin or the estate of an employee who dies while employed by the Ministry. Compassionate grants are calculated as a proportion of the annual rate of salary payable to the employee at the time of death as follows:

Length of Service	Proportion of Annual Salary Rate
20 years or more	one-eighth
10 years but less than 20 years	one-twelfth
Under 10 years	no grant payable

- 1.2 The following conditions apply to the payment of the grants:

- (a) No grant is payable if, as a result of death, payments under the accident compensation legislation to an equivalent or greater extent have been made.
- (b) Service must be continuous except that intervals of up to one year may be bridged and service aggregated, but the intervals do not count as service. If an interval exceeds one year, the qualifying service commences afresh after the interval.
- (c) Allowable service comprises service in:
- Specialist Education Services
  - State schools (including kindergartens) in New Zealand
  - New Zealand Government service
  - Teacher training which commenced in 1980 or earlier
  - Active military service
  - Service on the staff of New Zealand universities
  - Service as a teacher on an official government exchange or government sponsored scheme.
- (d) Service not recognised includes:
- Private school teacher
  - Full-time university study (unless on leave)
  - Overseas teaching service (other than service as a teacher on an official government exchange or sponsored scheme)
  - Teacher training which commenced in 1981 or later.
- (e) For the purpose of calculating the grant, salary means specified annual salary. Temporary allowances are excluded.
- (f) The grant is calculated to the nearest \$1.00.

## 2. Health & income protection insurance

The Ministry will ensure group health and income protection insurance schemes are available to employees on such conditions as determined by the insurers. In addition, employees who work 50% or more of full-time hours will have their premiums subsidised by the Ministry at a rate determined by the Chief Executive.

## 3 Flexible departure arrangements

As an alternative to the notice requirements of 2.4.1, flexible arrangements may be agreed to that will lead to the departure of a Ministry employee.

There will be a voluntary written agreement between the manager and employee (or agent) which will include:

- measures for the transition;
- review date(s) for the agreement;
- final departure date.

Once the provisions of the agreement have been met, the following payments shall be made as part of the final pay to the employee:

on completion of 10 years and up to 20 years' service	2 months' salary
on completion of 20 years and up to 30 years' service	4 months' salary
on completion of 30 or more years' service	6 months' salary

All service is calculated on the basis of a calendar year and must be continuous service with a satisfactory work record. Continuous service for this provision means current continuous service in the Ministry and/or the state service or parliamentary service. Other service may be considered at the discretion of the employer. Teaching service and service with teaching leave does not count. Any part-time service will be calculated on a pro-rata basis according to the record of service.

On the death of an employee and where a departure agreement exists the Secretary or delegated nominee may approve a cash grant in lieu of the exit provision payment to:

- (i) the surviving partner; or
- (ii) dependent children; or
- (iii) the estate of the deceased employee.

The grant is payable where the amount of exit payment that would have been due would result in a more favourable payment than the compassionate grant.

## 4 Sick Leave Provisions

*NB: In accordance with 4.3.1 the following provisions may also apply to employees designated as Service Managers (M) who had, at the date of settlement, retained this model of sick leave entitlement.*

4.1 The Chief Executive shall grant:

- (a) sick leave on pay up to the employee's entitlement as set out below;  
or
- (b) sick leave without pay on production of a medical certificate.

<b>Sick Leave entitlement</b>	
Up to 3 months	7 days on full pay
Over 3 months and up to 6 months	14 days on full pay
Over 6 months and up to 9 months	31 days on full pay
Over 9 months and up to 5 years	46 days on full pay
Over 5 years and up to 10 years	92 days on full pay
Over 10 years and up to 20 years	183 days on full pay
Over 20 years and up to 30 years	275 days on full pay
Over 30 years	365 days on full pay

- (i) Sick leave is to be computed in consecutive days, not working days, but no deduction will be made for absences of less than two hours.
- (ii) The Chief Executive may decide that paid sick leave of any special nature of up to two years shall not be included in the aggregate of sick leave taken, but such leave is to be noted on the employee's leave record. Such leave may cover entering or waiting to enter a recognised tuberculosis institution, war injury, currently epidemic diseases as determined by Health officials, work injury or sickness not compensated by ACC.
- (iii) Where absence on sick leave, whether with or without pay extends beyond 5 consecutive days, employees must produce to the employer a medical certificate stating the probable period of absence.
- (iv) Where an employee absent on sick leave is suspected of being absent from duty without sufficient cause, the employee may be directed to submit to medical examination by a registered medical practitioner.  
  
The Chief Executive may issue the direction for the examination, nominate the medical officer and, if warranted, approve a refund of expenses incurred by an employee in complying with this provision.
- (v) When sickness occurs during annual leave the Chief Executive may permit the period of sickness to be debited against sick leave entitlement except where the sickness occurs during leave following termination of employment.
- (vi) The Chief Executive may permit employees to anticipate their next sick leave entitlement in accordance with the following table; or on any other basis that he/she considers appropriate.

Up to 5 years service	At 4 years, 9 months' service
Over 5 years and up to 10	At 9 years, 6 months' service
Over 10 years and up to 20	At 19 years' service
Over 20 and up to 30	At 28 years' service

Provided that the necessary adjustments will be made to final pay should an employee resign before the next entitlement falls due.

- (c) Attention is drawn to the minimum entitlement of the Holidays Act 2003.

#### 4.2 Sick Leave for Part-time Employees

For the purposes of crediting and debiting sick leave the following will apply:

- (a) Sick leave will be credited at the same rate as applies for permanent employees.
- (b) Irrespective of the hours worked on a particular day, each day of absence which would normally be worked, will be debited as one full day of sick leave.
- (c) Where an employee to whom this clause applies is absent on sick leave for two or more days and a non-work day(s) intervenes no deduction will be made for that non-work day(s).

## **Schedule 2 – Sick leave translations for new service managers appointed from field staff positions**

Where a current Ministry employee employed in a Field Staff position is appointed to a Service Manager role covered by this Agreement, they shall translate onto the service managers' sick leave provisions outlined in clause 4.3.1. Their current sick leave balance will be converted to the new sick leave scheme on the following basis:

$$SL^{new} = ((Service \times 2.5 \text{ days}) + 5) - (SL^{old} - SL^{bal})$$

where:

$SL^{new}$  = New sick leave balance

$SL^{old}$  = Sick leave entitlement under Part-time employees will be paid for annual leave in accordance with the Holidays Act. scheme

$SL^{bal}$  = Current sick leave balance under field staff sick leave provisions

Service = the number of three month periods (quarters) of service recognised for sick leave purposes rounded down to the nearest whole number.

Where this calculation results in an individual having a negative sick leave balance ( $SL^{new} < 0$ ), the individual will translate to a nil sick leave balance.

The employee's next entitlement under 4.3.1 will fall due 6 months after their appointment to the Service Manager position.

## Schedule 3 – Excerpts from terms of settlement 2008

### 1. Performance Management and Professional Development

The parties agree that the following process will occur in relation to Professional Development and Performance Management:

- a. Every Service Manager will work with their District Manager to develop a performance agreement and individual development plan.
- b. To support formal and experiential learning and reflection an individual development plan (IDP) will be used. The plan clearly shows the development goals sought, the key activities and goal progression. It also acts as a record of learning showing the learning event, the time and frequency of the event, the supplier, the cost and the source of the funding.
- c. The individual development plan in conjunction with the performance agreement will be formally reviewed twice a year. Progression to the next step on the salary scale will be determined by the achievement objectives detailed in the performance agreement and the IDP being met.

The performance rating scale will be as follows:

- 3 = overall performance expectations are achieved  
you met all performance objectives and individual development plan objectives
- 2 = some areas of performance fall below agreed expectations  
you did not meet all performance objectives and individual development plan objectives
- 1= it was not possible to achieve / you were prevented from meeting performance objectives and individual development plan objectives

Service Managers shall progress to the next available step in the scale as at 1 July of each year subject to their having met their agreed performance expectations set out in their performance agreement and individual development plan, at their most recent assessment (providing that their assessment occurred within the previous 12 months). Where a Service Manager has been prevented from attaining their agreed performance objectives for the year for work reasons beyond their immediate control, they shall still be entitled to consideration for progression. A District Manager will not unreasonably withhold progression.

The documents that will be used to support performance management and professional development are: Individual Development Plan (IDP) and Performance Agreement & Review – Service managers.

Further, the Ministry will develop and run a joint training programme with District Managers and Service Managers focussing on:

- roles and responsibilities in relation to the Service Manager Collective Agreement
- roles and responsibilities in relation to performance management and individual professional development including the use of the tools – IDP & Performance Agreement & Review documents.

Note: The documents “Individual Development Plan” & “Performance Agreement & Review – Service Managers” form part of these Terms of Settlement and are attached as an addendum.

**Addenda to Schedule 3**

1. Service Manager IDP
2. Service Manager Performance Agreement