

**Ministry of Education
NZEI Te Riu Roa**

Collective Agreement

for

**EDUCATION SUPPORT WORKERS, BEHAVIOUR SUPPORT WORKERS AND
COMMUNICATION SUPPORT WORKERS**

6 July 2017 to 28 February 2018

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PART ONE
COVERAGE AND SCOPE

1.1 Parties

The parties to this Agreement shall be the New Zealand Educational Institute and the Secretary for the Ministry of Education.

1.2 Coverage

This Agreement shall be binding on every employee who is employed by the Ministry of Education as an education support worker, behaviour support worker or communication support worker who is or becomes a member of NZEI.

1.3 Term of Agreement

1.3.1 This Agreement shall come into force on 6 July 2017 and expire on 28 February 2018, except as provided for by section 53 of the Employment Relations Act 2000.

1.4 Definitions

1.4.1 **NZEI Te Riu Roa, Union or Institute** shall mean the New Zealand Educational Institute (Inc).

1.4.2 **Employer** - shall mean the Secretary for the Ministry of Education (the Secretary).

1.4.3 **Support worker** - shall mean any employee employed as an education support worker, behaviour support worker and/or communication support worker.

1.4.4 **Permanent employees** - shall mean employees who have been employed in a permanent capacity due to the ongoing nature of the role.

1.4.5 **Fixed term employees** - shall mean individuals employed in accordance with clause 3.7 for a fixed term because the position is related to a specified event or project or finite activity.

1.4.6 **Service** – shall mean continuous uninterrupted service with the Ministry (including the Specialist Education Service) except that the Secretary 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.

For permanent employees, service is not broken by:

- unpaid periods where schools or early childhood centres are not open for instruction;
- periods of leave with pay;
- periods of approved unpaid leave of up to one month granted in accordance with clause 7.6;
- a break in employment of less than one month.

For fixed term employees, service is not broken by:

- unpaid periods where the fixed term extends over a period where schools or early childhood centres are not open for instruction;
- periods of leave with pay;
- periods of approved unpaid leave of up to one month granted in accordance with clause 7.6;
- a break in employment of less than one month.

1.5 Problem Resolution

The parties will endeavour to resolve any problems identified with the operation of this Agreement as they arise.

1.6 Variation

The parties agree that the terms and conditions contained in this Agreement may be varied at any time by written agreement between NZEI Te Riu Roa and the Secretary for Education.

PART TWO
NZEI/MINISTRY OF EDUCATION 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 (signed on 16 February 2016).

PART THREE
GENERAL PROVISIONS

3.1 Hours of Work

- 3.1.1 Hours and days of work shall be specified by the employer in a letter of appointment. The hours of work will not exceed 37 hours 55 minutes per week and will be worked between 8am and 5pm daily from Monday to Friday inclusive.
- 3.1.2 All hours that the employee is required to work, including additional approved contact hours, approved preparation time, approved administration time (including notes on the child or children), approved training, required attendance at meetings or approved additional travelling time, shall be paid at the employee's standard rate. The hours of work will include actual and reasonable travelling time between work locations where the work is continuous.
- 3.1.3 Managers will arrange for the engagement of, and work available to, support workers to be co-ordinated in order to maximise the opportunity for support workers to establish regular work patterns and have continuous hours.
- 3.1.4 Where new work becomes available, current employees will be offered the new work in the first instance, where practicable.
- 3.1.5 Where an employee would like additional hours of work, the employee will notify their Service Manager of this in writing four weeks prior to the start of a school term. If after the allocation time, no additional hours of work were allocated to that employee, the Service Manager will provide a written explanation for this.
- 3.1.6 The days worked by employees are aligned with school terms. This means employees (including those supporting a child/children attending a licensed early childhood service that remains open when schools are closed for instruction) are not required to work while schools are closed for instruction, unless by mutual agreement. Unless employees are on paid annual leave during school term breaks this time will be unpaid.
- 3.1.7 Temporary increase to hours of work
- a) The employer may, on a temporary basis due to changes in circumstances surrounding the child or children to whom employees provide support, request an employee to work additional hours.
 - b) Where the employer requests and the employees agree to work additional hours on a temporary basis, clause 3.3 shall not apply.
 - c) The employee shall not unreasonably withhold their consent to work additional hours on a temporary basis.

- d) The employer will specify the duration of the temporary increase in hour. At the end of the specified duration of temporary change, the employee's hours of work will revert to those applying immediately before the temporary change.

3.2 Category of Employment

3.2.1 The employer shall specify in a letter of appointment the employee's category of employment as:

- a) Permanent, set hours;
- b) Permanent, variable hours; or
- c) Fixed term.

3.2.2 Annual Minimum Paid Number of Hours

- a) For employees who are employed as permanent, variable hours employees under clause 3.2.1(b), the employer shall, in addition to the employee's actual hours and days of work, specify in the letter of appointment the employee's annual minimum paid number of hours that shall be paid in each financial year.
- b) To ensure the effective operation of clause 3.2.2(a), permanent, variable hours employees may be required to work at various locations within reasonable travelling distance and to undertake work where it is offered. Provided the employer's request is reasonable, the employee shall not unreasonably withhold their agreement to the employer's request.

3.3 Variation of Hours

3.3.1 Permanent, set hours

- a) Where the employer proposes to change a permanent, set hours employee's hours and/or days of work as specified in the appointment letter, the employer shall, in accordance with the principles of clause 4.2, advise the employee in writing with the reasons for the proposed change.
- b) Prior to a proposed change taking effect, where a reduction of set hours is proposed, the employer shall consult with the employee to assess:
 - Whether the variation can be avoided or lessened
 - Whether that reduction can be absorbed by attrition
 - Whether other suitable work is available which shall be offered to the affected employee in the first instance.

- c) Where an employee agrees to a change in hours and/or days of work, these shall be recorded with one month's written notice of the implementation date of the new hours.
- d) Where it is reasonable that an employee does not agree to a reduction in set hours the employee shall have access to the surplus staff provisions of this agreement. If severance is payable, this shall be paid in accordance with clause 4.4.1.

3.3.2 Annual Minimum Number of Paid hours

- a) Where the employee makes a written request to reduce their number of annual minimum paid hours, this shall be subject to agreement by the employer. The employer shall not unreasonably withhold their agreement to the employee's request.
- b) Where the employer proposes the annual minimum number of paid hours will be more than those paid in the previous financial year, this shall be in writing and shall be subject to agreement by the employee.
- c) Where the employer proposes the annual minimum number of paid hours will be less than those paid in the previous financial year, the employer shall advise the employee in writing with the reasons for the proposed change to allow for consultation. The employer shall consult with affected employees and their representatives from NZEI Te Riu Roa prior to making a final decision. Where an employee and the employer agree to a reduction in the annual minimum number of paid hours, these shall be recorded in writing no less than one month from the implementation date of the new hours.
- d) Where the employee does not agree to a reduction in the annual minimum number of paid hours, the employee shall have access to the surplus staffing provisions of this Agreement. If severance is payable, this shall be paid in accordance with clause 4.4.1.

3.3.3 Permanent, variable hours

The hours worked by a permanent, variable hours employee may vary from time to time due to changes in circumstances surrounding the child or children to whom they provide support.

- a) Where the employer proposes to change an employee's hours and/or days of work as specified in the appointment letter, the employer shall provide one month's written notice (which may be by email) to the employee of any variation to their hours of work with reasons for the proposed change.

- b) Where the change involves either a reduction or an increase in hours and/or days of work, the employer shall consult with the employee to assess:
 - Whether the variation can be avoided or lessened
 - In the case of reduction in hours, whether that reduction can be absorbed by attrition
 - In the case of an increase in hours, whether that increase will create any difficulties for the employee
 - Whether other suitable work is available which shall be offered to the affected employee in the first instance
- c) The employee shall not unreasonably withhold agreement to vary their hours and/or days of work.

3.3.4 Fixed Term

- a) Other than on the expiry of a fixed term appointment pursuant to clause 3.7, where the employer proposes to change an employee's hours and/or days of work as specified in the appointment letter, the employer shall provide a minimum of two weeks' written notice (which may be by email) to the employee of any variation to their hours of work with reasons for the proposed change.
- b) Where the change involves either a reduction or an increase in hours, the employer shall consult with the employee to assess:
 - Whether any reduction can be avoided or lessened and whether there is other suitable work available.
 - In the case of an increase in hours, whether this increase will create any difficulties for the employee.

3.4 Equal Opportunities & Pay and Employment Equity Provisions

- 3.4.1 The Ministry of Education is committed to promoting, developing and monitoring equal employment opportunities and programmes.
- 3.4.2 These will deliver the Equal Opportunities provisions of the State Sector Act 1988 which requires the Ministry to identify and eliminate 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.
- 3.4.3 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.

3.4.4 The parties agree that remuneration; job choice and job opportunities should not be affected by gender or any other prohibited grounds of discrimination under the Human Rights Act 1993.

3.4.5 The parties will engage over the matter of pay equity in accordance with the agreed pay equity joint working group principles and will develop a response plan to address any inequities found.

3.5 Morning and Afternoon Tea

All employees will receive each day free tea, coffee, milk and sugar (or appropriate alternatives) for morning, mid-day and afternoon breaks. This may be by way of provision of ingredients or reimbursement of the purchase of these ingredients.

3.6 Appointments

All vacant positions shall, wherever practicable, be notified or advertised in a manner sufficient to enable suitably qualified persons to apply for the position. The nature of the employment will be notified in the advertisement for the vacancy and/or the letter of appointment.

3.7 Fixed Term Appointments

3.7.1 Where appointments are not permanent the provisions of this subclause will apply.

- a) An employee and an employer may agree that the employment of the employee will end:
 - i. at the close of a specified date or period; or
 - ii. on the occurrence of a specified event; or
 - iii. at the conclusion of a specified project.
- b) Before an employee and employer agree that the employment of the employee will end in a way specified in subsection (a), the employer must:
 - i. have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way; and
 - ii. 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.

- c) The following reasons are not genuine reasons for the purposes of subsection (b)(i):
 - i. to exclude or limit the rights of the employee under the Employment Relations Act 2000;
 - ii. to establish the suitability of the employees for permanent employment.

3.7.2 Where an appointment is for a fixed term, the letter of appointment will state the way in which the appointment will end and the reasons for the employee's employment ending that way.

3.8 Code of Conduct

Employees will adhere to the responsibilities, principles, and standards of integrity and conduct stipulated in the Ministry of Education Code of Conduct.

3.9 Appointment Criteria

3.9.1 Attention is drawn to the State Sector Act 1988 insofar as it provides that the person best suited to the position shall be appointed. In applying that section the employer will have regard to the experience, qualifications and abilities relevant to the position and such other relevant matters as it determines.

3.9.2 Employers are required to make available to applicants on request details for the duties to be carried out and the criteria being adhered to in making that appointment.

3.9.3 Equal opportunities principles shall be applied and demonstrated in appointment procedures.

3.10 Review of Appointment

3.10.1 Employees shall have the right to request a review in relation to any appointment or any aspect of the appointment process (whether or not the employee was an applicant) except for acting appointments.

3.10.2 The review process is available from the employee's manager, Group Manager People Capability in National Office or on the Ministry intranet.

3.10.3 A review is initiated by lodging an application for a review, in writing, to the Group Manager People Capability, within 10 working days of the formal notification of the provisional appointment.

3.11 Health and Well-being

- 3.11.1 Ministry of Education and staff recognise the importance of good health and well-being. The Ministry will provide a safe work environment for staff. Staff will maintain a safety-conscious attitude to their work and will ensure that they are safe while at work and that no action or inaction while at work will cause harm to other staff or visitors.
- 3.11.2 Both the Ministry of Education and employees have responsibilities under the Health and Safety at Work Act 2015. The Health and Safety Policies of the Ministry will apply.
- 3.11.3 The Ministry is responsible for providing good and safe working conditions and opportunities for the enhancement of the abilities of individual employees under the State Sector Act 1988 and the Health and Safety at Work Act 2015.
- 3.11.4 The Ministry recognises that good and safe working conditions may be affected by factors such as workloads, working conditions related to clients and the provision of essential resources.
- 3.11.5 Employees will only be required to work in situations where there is no heightened personal risk over their normal work situation and the facilities and equipment are appropriate to the task.
- 3.11.6 The parties agree in principle that responsibility for pre-exposure immunisation of employees rests with employers who should accept responsibility for safety in the workplace, advised as necessary by Health officials.
- 3.11.7 In situations where employees may be at significantly increased risk of acquiring hepatitis B or similar diseases because of the nature of their job, the situation shall be assessed on an individual basis to decide if immunisation programmes would be set up to cover all employees covered by this Agreement.
- 3.11.8 In all situations where there is a risk of infection, it shall be the duty of employers to require safe working practices on the part of employees and to ensure appropriate hygiene measures are followed to reduce such risk to a minimum, whether or not immunisation is considered advisable.

3.12 Professional Support

- 3.12.1 The parties agree that ongoing professional support and training are important components in the provision of quality service to clients.

- 3.12.2 The Ministry will provide professional support, resources and appropriate training.
- 3.12.3 The Ministry will approve paid leave and any expenses related to the provision of training identified as a result of the performance review process as per 3.14.4.

3.13 Personal Files

Employees shall have access to their personal files.

3.14 Performance Review

- 3.14.1 The employer shall from time to time, but at least annually, review the performance of the employee either generally or in respect of any particular matter.
- 3.14.2 The performance review will be conducted in accordance with the Ministry performance appraisal policy for support workers and procedure in place at that time. Where no procedure is in place a procedure shall be used that both parties agree on. Where the parties cannot agree on a procedure, the employer shall make the final decision.
- 3.14.3 The employee will, to the best of the employee's ability, assist the employer to conduct any review under this clause and provide all such information, as the employer shall reasonably require.
- 3.14.4 As part of the performance review process, the employer, in consultation with the employee, will identify any requirement for upskilling or improving competency and any training or professional development that may be required.

3.15 Competency

- 3.15.1 Where there are matters of competency which are causing concern in respect of any employee, the employer shall advise the employee in writing of the specific matter(s) causing concern and of the corrective action required and the timeframe allowed.
- 3.15.2 As part of this process the employer shall put in place appropriate assistance and personal guidance to assist the employee.
- 3.15.3 Where this assistance and guidance has not remedied the situation the disciplinary procedures in accordance with clause 3.17 shall apply.
- 3.15.4 Employees must be advised of their right to request union assistance and/or representation at any stage.

3.16 Complaints

- 3.16.1 Where there appear to be concerns, discussion between the complainant, the employer and employee (where appropriate) may resolve matters of concern. Where this is not the case, further action can only be taken if those matters become complaints (i.e. are set down in writing and endorsed by the complainant) to the employer.
- 3.16.2 Written complaints should be referred to the employee concerned for reply.
- 3.16.3 The employee must be advised of her/his right to union assistance and/or representation at any stage.
- 3.16.4 The employer shall consider the employee's reply before making a decision. Anyone who has a 'personal interest' in a complaint shall take no part in the decision making about the complaint.
- 3.16.5 Every effort shall be made by the employer to reconcile the differences involved and achieve an outcome that is fair to the employee and the complainant.
- 3.16.6 Nothing in this clause prevents the employer from initiating disciplinary procedures.

3.17 Disciplinary Procedures

- 3.17.1 In the event of allegations of misconduct against an employee the procedures set out below shall be followed:
- 3.17.2 The employee must be advised in writing of the specific matter(s) causing concern and be given a reasonable opportunity to state any reasons or explanations.
- 3.17.3 The employee must be advised of their right to seek assistance and/or representation from the union or any other nominated person at any stage.
- 3.17.4 The employee must be advised in writing of the corrective action required to amend their conduct and be given a reasonable opportunity to do so within an agreed timeframe.
- 3.17.5 Before any substantive disciplinary action is taken, an appropriate investigation is to be undertaken by the Secretary or delegated representative.
- 3.17.6 Depending on the seriousness of the misconduct consideration will be given as to whether a disciplinary matter may be addressed informally.

- 3.17.7 The process and results of any disciplinary action is to be recorded in writing, sighted and signed by the employee and any representatives of the parties, prior to a copy being placed on his/her personal file.
- 3.17.8 If the alleged misconduct is sufficiently serious the Secretary or delegated representative may place the employee on suspension on pay or transferred temporarily to other duties pending an investigation.
- 3.17.9 An employee who has been suspended and the allegation is found to be without substance must be entitled to resume the position from which she/he was suspended.
- 3.17.10 If the employee refuses to, or cannot, amend/improve their conduct/behaviour after a warning, a final warning should be given by the Secretary or delegated representative in writing, indicating that if the employee does not improve their conduct/behaviour to the required level their employment may be terminated by the Secretary. Where applicable, there must be sufficient time and/or training given after each warning to allow the employee to make the required improvement.
- 3.17.11 An employee may be dismissed without previous warning and without notice in the case of serious misconduct.
- 3.17.12 An employee aggrieved by any action taken by the employer must be advised of her/his right to pursue a grievance in terms of the personal grievance procedures.

3.18. Abandonment of Employment

If any employee is absent from work for more than five working days, without making reasonable effort to notify their Manager, he/she shall be deemed to have terminated his/her service without notice; provided that it shall be the duty of their Manager to make all reasonable efforts to contact the employee.

3.19 Notice of Termination

- 3.19.1 *Permanent employees* - one month's notice of termination of employment shall be given by either party. This may be varied by mutual agreement.
- 3.19.2 *Fixed term employees* - fixed term employees' agreements are terminated by the expiry of their term. If the agreement is terminated by the occurrence of a specified event or conclusion of a specified project where the date is not known at the time the agreement was entered into the employer will provide at least 2 weeks' notice of the actual date of termination. Every effort will be made to provide the maximum amount of notice as circumstances permit.

3.19.3 *All employees* - the employer may choose to pay in lieu all or any portion of the notice period.

3.19.4 Provided that in the case of misconduct the employer may dismiss any employee with 2 weeks' notice, or any employee without notice in the case of serious misconduct.

PART FOUR
SURPLUS STAFFING

4.1 Application

The surplus staffing provisions of this Agreement apply to permanent employees only.

4.2 Principles

The Ministry recognises the serious consequences that the loss of employment can have on individual employees and proposes to minimise the use of redundancy as far as possible to keep as many employees as possible in employment. The Ministry will, where practicable, explore other employment options with staff whose positions have been disestablished. This may include approaching other crown agencies and government departments for re-deployment opportunities for surplus staff.

4.3 Staff Surplus Situation

4.3.1 A surplus staffing situation exists when the Secretary or delegated nominee requires a reduction in the number of permanent employees or permanent employees can no longer be employed in their current positions including any situation due to any of the circumstances referred to in clause 4.5.

4.3.2 The Ministry will advise NZEI as to the names and positions of potentially affected staff who are known NZEI members.

4.4 Redeployment - Redundancy

- 4.4.1 a) In the event a permanent employee's position is declared redundant and no reasonable offer of employment is made before the expiry of the one month's notice period under 3.19.1 the permanent employee is entitled to compensation equal to 8% of ordinary pay for the preceding 12 months plus 2% of ordinary pay for the preceding 12 months for each year of service minus one, up to a maximum of the equivalent of 3 month's pay at that time, providing that an employee bound by this Collective Agreement as at 29 June 2005 will receive a minimum redundancy compensation payment equal to 2 months' ordinary pay for the preceding 12 months.
- b) A reasonable offer of employment means an offer with terms and conditions that are no less favourable or that the employee is willing to accept.

4.4.2 No employee shall be entitled to receive redundancy compensation under this clause if, prior to the date of termination under clause 3.19, the employee receives an offer of employment from another Crown entity, or in the state sector, which is in the same location, or within reasonable commuting distance, with similar terms and conditions.

4.5 Continuity of Employment in Restructuring

4.5.1 The purpose of this provision is to provide protection for the employment of employees (other than employees to whom Schedule 1A of the Employment Relations Act 2000 applies) if the Ministry is restructured as a result of:

- a) entering into a contract or arrangement under which the Ministry's functions (or part of those functions) are undertaken for the Ministry by another person; or
- b) selling or transferring the Ministry's functions (or part of those functions) to another employer.

4.5.2 The process to be followed in negotiating with a new employer about the restructuring in relation to affected employees shall be as follows:

- a) If the Ministry is being, or is proposed to be restructured and, as a result of that restructuring, the work being performed by any affected employees of the Ministry is, or is to be, performed by a new employer, then the following provisions will apply:
 - i. In accordance with the principles outlined in 4.2, where it is identified that there will be an impact on NZEI members as a result of a specific proposal to restructure, the Ministry will inform the National Secretary of NZEI at the earliest opportunity. The Ministry will provide copies of the information outlined in 4.5.2(a)(i) and (ii) to the National Secretary of NZEI.
 - 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 provide details of the work currently performed by those employees together with details of the terms and conditions of their employment (including the total remuneration of each affected employee, length of service and any accrued benefits or entitlements);
 - iii. The Ministry will request that the new employer submit a proposal for the employment of the affected employees by the new employer, including the matters referred to in 4.5.2(b);

- iv. When the new employer submits a proposal, the Ministry will arrange to meet with the new employer for the purpose of negotiating on the proposal.
 - v. The Ministry will also facilitate a meeting between the new employer and NZEI.
- b) The following shall be matters relating to the affected employees' employment to be negotiated with the new employer:
- i. The number and type of positions in respect of which the affected employees may be offered employment by the new employer;
 - ii. The terms and conditions of employment on which the affected employees may be offered employment in those positions (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);
 - iii. 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;
 - iv. The arrangements, if required, for when and how offers of employment are to be made to the affected employees and the mode of acceptance.

4.5.3 The following provisions set out the entitlements, if any, that are available at the time of the restructuring for employees who do not transfer to the new employer:

- a) For the purposes of this clause, "employment in an equivalent position" in relation to an affected employee's position in the Ministry is employment:-
- i. in substantially the same position; and
 - ii. in the same general locality; and
 - iii. 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
 - iv. 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.

- b) The surplus staffing provisions of this Agreement will apply to an affected employee who is either:-
 - i. not offered employment by the new employer; or
 - ii. who is not offered employment in an equivalent position by the new employer (including where the employee is offered, but does not accept, an offer of employment in a position that is not equivalent to the affected employee's position).
- c) The surplus staffing provisions of this Agreement will apply to an affected employee who declines an offer of employment in an equivalent position with the new employer except that the employee shall not be entitled to redundancy compensation.

PART FIVE
REMUNERATION

5.1 Wage Scale

The following rates will apply:

Step	Current rates	Rates effective 6 July 2017
1	\$16.44	\$16.77
2	\$16.77	\$17.11
3	\$17.24	\$17.58
4	\$17.63	\$17.98
5	\$18.27	\$18.64
6	\$18.90	\$19.28
7	\$19.48	\$19.87

5.1.1 Incremental steps on the scale are an acknowledgement of the ways in which employees improve/increase their knowledge, skills and experience from year to year. An employee shall advance step by step annually, up to the maximum step on the wage scale. Increments may only be withheld when it can be demonstrated that expectations have not been met to a reasonable level.

5.1.2 The Ministry may approve accelerated advancement through the steps of the scale.

5.1.3 By the date each increment is due, employees will be informed by pay advice of their updated hourly rate. Where an increment is to be withheld, the Manager will provide reasons, in writing, to the employee for non-payment of the increment.

5.2 Placement on Appointment

5.2.1 An employee shall on appointment be placed at any point on the wage scale taking into account the minimum starting point, and:

- a) previous relevant paid or unpaid work experience;
- b) relevant academic or other professional qualifications;
- c) the ability to recruit either within the location or generally, the specific skills and/or experience for the position.

5.2.2 Relevant experience will include service in the education sector as a teacher, therapist or school support staff.

5.3 Review of Wages

- 5.3.1 Employees shall have access to the Ministry salary review grievance procedures. A copy of the full salary review grievance procedures is available on the Ministry intranet, or from the employee's manager or People Capability.
- 5.3.2 In the first instance, employees should request a review, in writing, to their manager immediately following notification of any wage review. The complaint should detail:
- a) the exact nature of the complaint;
 - b) the remedy sought;
 - c) any other matter relating to the wage paid.
- 5.3.3 Employees may request and will be granted a personal interview with their manager at which a union representative may assist the employee.
- 5.3.4 The manager will take account of the employee's submission and of all other relevant factors.
- 5.3.5 The manager will advise the employee in writing of the decision of the review and the basis for that decision.
- 5.3.6 Employees not satisfied with their manager's decision may request a review by their district manager.

5.4 Regression

The wage rate for an individual employee within a particular range for the job will not be reduced by reason of the operation of the wages system.

5.5 Payment of Wages

- 5.5.1 Wages shall be paid fortnightly by way of direct credit on receipt of the appropriate written authority from the employee. In the event of a direct credit not being able to be actioned, the amount due will be made available to the employee on the normal payday.
- 5.5.2 The employer shall provide an employee a written advice of the gross pay and deductions made each time the employee's gross pay or any deduction is altered.

5.6 Te Reo Maori and Tikanga Maori Assessment

Where staff member's skill and knowledge of Te Reo and Tikanga Maori have been assessed by the Ministry of Education and a level of attainment set out in Ministry policy has been reached the dollar amounts set out below will be added to the individual's salary. This will be paid in addition to the appropriate step on the salary scale and will form an integral part of the salary particularly for matters such as superannuation and taxation.

Assessment Level	Remuneration Level
A	\$1.50
B	\$1.00
C	\$0.75
D	\$0.50

PART SIX
EXPENSES

6.1 Provision of Transport

- 6.1.1 Where employees are required by the Ministry to use their private vehicle for travel between more than one work location the Ministry policy on reimbursement of private motor vehicle expenses will apply. This provides for reimbursement in accordance with Inland Revenue Department mileage rates. The rates and any changes to the rates will be available from the employee's manager and on the Ministry's intranet.
- 6.1.2 All employees when using private motor vehicles on official business will be included in the Ministry motor vehicle insurance scheme. A joint Ministry/NZEI plain English explanation of how this policy applies to support workers will be provided to newly appointed support workers as part of the induction process and included in the support workers' handbook currently under development. The full policy can be found on the Ministry's intranet.

6.2 Expenses on Official Business

- 6.2.1 When travelling on official business from the office, worksite or Ministry district (as appropriate) where the employee is normally based and expenses directly related to carrying out that business are incurred which are not normally incurred, the employee shall be reimbursed the actual and reasonable cost of these expenses.
- 6.2.2 Employees shall be reimbursed for actual and reasonable costs for other work related expenses, including materials, where prior approval of the expense has been received from the employee's manager.
- 6.2.3 Ministry policy on the reimbursement of expenses will apply. The policy is available on the Ministry Intranet or a copy can be obtained from the Finance Group or the employee's manager.

6.3 Transfer and Travel Expenses on Relocation

Negotiation and agreement between the employer and employee (or agent) about the exact level of assistance the employer shall pay towards relocation expenses will be completed prior to confirmation of appointment. Negotiation should include assistance to/from the new location.

PART SEVEN
HOLIDAYS AND LEAVE

7.1 Leave

No leave taken, of whatever kind, will extend an employee's term of appointment.

7.2 Annual Leave

7.2.1 A permanent employee or an employee employed for a continuous fixed term period of 12 months or more shall be granted four weeks' annual leave, except that employees who complete 4 years of service shall be granted five weeks' annual leave in that and succeeding leave years. Annual leave becomes due on the anniversary of each year of service; however annual leave accrued prior to the completion of a whole year may be taken as anticipated annual leave.

7.2.2 On termination of employment, employees will receive in their final pay any outstanding annual leave entitlements, and either;

- a) (for employees who are entitled to 4 weeks annual leave), 8% of gross earnings since the last entitlement to annual leave arose, or if none, since the commencement of employment, or
- b) (for employees who are entitled to 5 weeks annual leave), 10% of gross earnings since the last entitlement to annual leave arose, or if none, since the commencement of employment.

7.3 Holidays

7.3.1 Every employee shall be granted the following holidays, provided the employee normally works on that day.

Public Holidays

- Christmas Day
- Boxing Day
- New Year's Day
- The day after New Year's Day
- Waitangi Day
- Good Friday
- Easter Monday
- Anzac Day
- Sovereign's Birthday
- Labour Day

- Anniversary Day (as observed in the locality concerned)
- a) **Holidays falling during leave or time off** - Where a public holiday falls during a period of annual leave, sick leave on pay or special leave on pay an employee is entitled to that holiday which is not to be debited against such leave.
- b) Leave without pay - (Including military leave without pay) - an employee shall not be entitled to payment for a holiday falling during a period of leave without pay.
- c) When Easter Tuesday falls during a school term, and the school or centre is closed for that day, an employee who normally works on that day will not be stood down.

7.3.2 The days worked by employees (including those supporting a child/children attending a licensed early childhood service that remains open when schools are closed for instruction) is align with school terms. Any Public Holiday that falls within a period that schools are not open for instruction for the purpose of a term break is not payable unless the employee is on approved annual leave. For clarity, in applying this provision, the Ministry will consider whether, but for the public holiday, the employee would have been at work.

7.3.3 An employee required to work on a public holiday 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 another day's holiday for any part of a public holiday worked.

7.4 Reserved

7.5 Sick Leave

7.5.1 The Ministry shall grant:

- a) sick leave on pay up to the employee's entitlement as set out in clause 7.5.3; or
- b) sick leave without pay on production of a medical certificate.

Provided that part-time employees will be paid for sick leave at the same rate that would be paid for their usual working day.

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

- a) 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;

- b) 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).

7.5.3 From 18 October 2017, employees shall be entitled to 10 days paid sick leave for each 12 month period of service with the Ministry of Education. Unused sick leave may be accumulated.

Until October 2017, the previous sick leave provisions (detailed at Appendix 4) will apply.

7.5.4 Where absence on sick leave, whether with or without pay extends beyond 1 week, employees must produce to the employer a medical certificate stating the probable period of absence.

7.5.5 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 Ministry 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.

7.5.6 When sickness or injury occurs during annual leave, the employer may agree to the period of sickness or injury being debited against sick leave entitlement, except where the sickness or injury occurs during leave following termination of employment.

7.5.7 Employees shall be granted leave on pay as a charge against their sick leave entitlement when the employee must be absent from work where their spouse or de-facto partner is sick or injured or a person who through sickness or injury becomes dependent on the employee for care.

7.6 Special Leave

7.6.1 From time to time at the Ministry's discretion, an employee may be granted special leave with or without pay. Placement on return from special leave without pay of more than one month is conditional on a suitable vacancy and grading and location cannot be guaranteed. An employee who cannot be placed in employment on their return will continue on leave without pay and will be given three months' notice in writing that their employment is to be terminated at the end of that period if no position is available.

7.6.2 Examples of leave with or without pay include:

Attendance at meetings as a member of a statutory board, search and rescue operation, investiture for a national honour or academic achievement of one's self or near relative or relative-in-law.

7.6.3 Leave granted in accordance with clause 3.12.3 shall be taken as leave with pay. Any additional leave may be approved as either leave with or without pay at the Ministry's discretion.

7.6.4 Leave without pay interrupts but does not break service.

7.7 Bereavement/Tangihanga Leave

7.7.1 An employer shall approve special bereavement/tangihanga leave on pay for an employee to discharge any obligations and/or to pay respects to a deceased person with whom the employee has 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.

7.7.2 If a bereavement occurs while an employee is absent on annual leave, sick leave on pay, or other special leave on pay, such leave will be interrupted and bereavement leave granted. This provision will not apply if the employee is on leave without pay.

7.7.3 In granting time off, therefore, and for how long, the employer must take the following into account:

- a) the closeness of the association between the employee and the deceased (Note: this association need not be a blood relationship);
- b) whether the employee has to take significant responsibility for any or all of the arrangements to do with the ceremonies resulting from the death;
- c) the amount of time needed to discharge properly any responsibilities or obligations;
- d) reasonable travelling time should be allowed, but for cases involving overseas travel that may not be the full period of travel.

7.7.4 A decision must be made as quickly as possible so that the employee is given 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.

7.7.5 If paid special leave is not appropriate then annual leave or leave without pay should be granted but as a last resort.

7.7.6 When an unveiling ceremony occurs on a working day, leave on pay shall be granted.

7.7.7 Notwithstanding the above:

- a) The minimum entitlement prescribed in the Holidays Act 2003 for a bereavement on the death of the employee's spouse, partner, parent, child, brother or sister, grandparent, grandchild or spouse's parent is three days' paid leave.
- b) The minimum entitlement prescribed in the Holidays Act 2003 for a bereavement on the death of any other person where obligations such as those in 7.7.1 exist is one day.

7.8 Parental Leave

7.8.1 Parental leave is leave without pay. Any leave taken under this provision will not extend the term of the employee's appointment.

7.8.2 Employees are entitled to parental leave in the following circumstances:

- female employees having a baby, and to their spouses or partners (includes a married, civil union or de facto relationship with a different or same-sex partner)
- employees, and their spouses or partners (includes a married, civil union or de facto relationship with a different or same-sex partner), who begin permanently caring for a child under six years who is not their natural child (this includes permanent care such as adoption and home for life, but not foster care).

7.8.3 Leave up to 52 weeks may be granted to employees with at least one year's service. For those with less than one year's service, parental leave up to 26 weeks may be granted. The maximum period of parental leave may be taken by either the employee exclusively or it may be shared between the employee and their partner either concurrently or consecutively. This applies whether or not only one or both partners are employed by the Ministry.

Where the employee assumes the permanent care, or gives birth, to two or more children at the same time, then for the purposes of these provisions the employee's entitlement shall be the same as if they had given birth or assumed permanent care for one child.

7.8.4 If you or your spouse or partner are having a baby and want to take parental leave or negotiated carer leave you must write to your employer at least three months before the baby's expected due date.

If neither you, your spouse or partner are having a baby but you're going to start being the permanent primary carer of a child under 6 years, let your employer

know as soon as possible when it is likely to happen. Write to your employer at least 14 days before you want to take parental leave.

- 7.8.5 If you or your spouse or partner are giving birth to the child, you must attach a copy of a certificate from a doctor or midwife naming who is pregnant and the baby's due date. If it is your spouse or partner who is pregnant, you need to include a written letter from her saying that you are her spouse or partner and you'll be going to assume the care for the child she is going to have.

If you are taking permanent primary responsibility for the care, development and upbringing of a child under 6 years, you will need to attach to your statement:

- a certified copy of a court order placing the child in your day-to-day care or custody, or
- a copy of a letter from the chief executive of the Ministry or organisation who has custody of the child confirming that the employee is or will be the primary carer in respect of the child, or
- a copy of the application for a parenting order or adoption order (if one has been made) and a statutory declaration.

Job Protection

- 7.8.6 An employee returning from parental leave is entitled to resume work in the same position she/he occupied at the time of commencing parental leave. The period of leave will not, however extend the term of the employee's appointment.
- 7.8.7 The employer may agree to the employee returning to a similar position. A similar position means a position with an equivalent wage and level, in the same location or other location within reasonable commuting distance and involving responsibilities broadly comparable to those exercised in the previous position.
- 7.8.8 When an employee goes on parental leave the Ministry should as first preference hold the employee's position open (Note: this includes filling it temporarily) but if the Ministry needs to fill the position permanently, at the time the employee indicates their intention to return to duty the Ministry shall offer one of the following (in order of priority):
- a) the same position if it is vacant at that time or a similar position to the one they occupied before commencing parental leave; or
 - b) an extension of parental leave up to 12 months until the employee's previous position or a similar position becomes available; or

- c) an offer to the employee of a similar position in another location if one is available with transfer assistance applying. If the offer is refused the employee continues on extended parental leave for up to 12 months; or
- d) an offer of employment in a different position in the same location (a position of a lower grading or one involving different duties i.e. not a similar position as defined above); if the appointment is not acceptable to the employee the employee continues on extended parental leave as provided for in paragraph ii above for up to 12 months; or
- e) where extended parental leave as provided in paragraph i to iv above expires and no position is available for the employee, the employee continues on leave without pay and the Ministry may terminate employment with three months' notice.

7.8.9 In addition to parental leave:

- a) a woman employee who is pregnant is entitled before taking parental leave to take a total of up to 10 days' special leave without pay for reasons connected with her pregnancy.
- b) a male employee may take a continuous 14-day period of leave without pay as leave. Leave may be taken any time during the six weeks span beginning 21 days before the expected date of delivery or adoption and ending 21 days after the actual date of delivery or adoption.

7.9 Re-entry after Absence Due to Childcare

7.9.1 An employee who resigned from a permanent position to care for pre-school children may apply to re-enter Group Special Education under preferential provisions provided that:

- a) the absence does not exceed four years from the date of resignation or five years from the date of cessation of duties to take up parental leave;
- b) the applicant must;
 - produce a birth certificate for the pre-school child,
 - sign a statutory declaration to the effect that absence has been due to the care of the pre-school child and paid employment has not been entered into for more than 20 hours per week;
- c) an application seeking to return to Group Special Education should give at least three months' notice and renew that notice at least one month before the date he/she wishes to return to work or one month before the expiry of the period in a. whichever is the earlier.

- 7.9.2 Where the employee meets all the provisions of clause 7.9.1 above, and at the time of application:
- a) has the necessary skills to fill competently a vacancy which is available in Group Special Education; and
 - b) the position is substantially the same in character and at the same or lower wage and grading as the position previously held, then the applicant under these provisions is to be appointed in preference to any other applicant for the position.
- 7.9.3 There shall be no right of review against the appointment of an applicant under these provisions unless the applicant is appointed to a position at a higher grade than that held at the time of resigning.
- 7.9.4 If an applicant under this provision is not appointed to any position within three months after the expiry of the period in clause 7.9.1(a) the benefits of these provisions will lapse.
- 7.9.5 Absence for childcare reasons will interrupt service but not break it. The period of absence will not count as service for the purpose of sick leave or annual leave or any other leave entitlement.

7.10 Jury Service Leave

An employee may be granted paid leave for jury service. Expenses may be retained by the employee but all juror's fees are to be paid to the Ministry unless an employee elects to take annual leave or leave without pay in which case the fees may be retained.

7.11 Witness Leave

- 7.11.1 Where an employee is called as a witness in a private capacity for a Criminal or Traffic case up to three days' paid leave may be granted. The employee is to recover fees and expenses from the party calling the witness, and repay the fees to the Ministry.
- 7.11.2 Where an employee is called as a witness in a private capacity for other than a Criminal or Traffic case, annual leave or leave without pay may be granted. The employee is to pay any expenses incurred and is to retain such fees and expenses as may be awarded by the Court.

7.12 Sports & Cultural Leave

The Ministry may grant up to 4 weeks' leave on pay per year to represent New Zealand in cultural and sporting events. Selection for sporting events must be on a national basis. For cultural events there should be some public relations benefit to New Zealand and for sporting events international competition must take place at some stage during the tour. In considering applications under this section, the Ministry will have regard for the sporting and cultural contact policy of the Government.

PART EIGHT
UNION MATTERS

8.1 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.

8.2 Union Worksite Representatives

The parties recognise the essential role that union worksite representatives play as the face of the union they represent in the workplace and in union structures.

To this end the Ministry will:

- Provide new staff with an introduction to the NZEI worksite representative;
- Make available and bring to the attention of new staff, union membership application forms; and
- Offer the NZEI a session in any training or induction course for new employees

8.3 Union Deductions

8.3.1 The employer, when requested in writing by the National 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).

8.3.2 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.

8.3.3 The manner of deduction and remittance shall be determined by agreement with the National Secretary of the union.

8.3.4 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.

8.4 Leave for Union Meetings

- 8.4.1 The employer shall allow each employee a paid absence of up to two hours for any one meeting the Institute may call in any one year (January to December inclusive), or an aggregate paid absence of up to four hours for any two or more meetings called in that same year. The paid absence in respect of any such meeting shall not exceed two hours to the extent that the employee would otherwise be working for the employer during the meeting.
- 8.4.2 In respect of every such meeting called notice shall be given to the employer as to the date(s), time(s) and place(s) of such meeting(s). Such notice(s) shall be delivered at least 14 days prior to the date of such meeting(s).
- 8.4.3 Employees shall resume duty as soon as practicable after the meeting but the employer shall not be obliged to pay any employee for a period greater than two hours in respect of any such meeting.
- 8.4.4 Only employees 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 a list of employees who attended the meeting shall be given to the employer along with the time of finishing the meeting.

PART NINE
EMPLOYMENT RELATIONSHIP PROBLEMS

9.1 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.

9.2 Resolving an employment relationship problem

9.2.1 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).

9.2.2 An employee (or employer) has the right to be represented at any stage.

9.2.3 When a problem arises, union members should contact their local NZEI Te Riu Roa field officer.

9.3 Personal Grievances

9.3.1 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.

9.3.2 Employees 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. For ease of access these are attached at the end of this Agreement as Appendix 1.

- 9.3.3 As with other employment relationship problems, the parties should always try to resolve a personal grievance through discussion.
- 9.3.4 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.
- 9.3.5 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.

9.4 Services Available

- 9.4.1 To help resolve employment relationship problems, the Ministry of Business, Innovation, and Employment provides:

An information service

This is free. It is available by contacting the Ministry of Business, Innovation and Employment or by phoning toll free 0800 20 90 20. The Ministry of Business, Innovation and Employment's internet address is www.mbie.govt.nz and can be contacted by e-mail at workplace@mbie.govt.nz

Mediation Service

The Mediation Service is a free and independent service available through the Ministry of Business, Innovation, and Employment.

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 TEN
SIGNATORIES

Signatories to this Agreement

Dated at Wellington this day of 2017

For the Ministry of Education

For NZEI Te Riu Roa

Appendix 1

PERSONAL GRIEVANCES, DISPUTES AND ENFORCEMENT Employment Relations Act 2000, sections 103 - 110

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

- (1) 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 applying the test in subsection (2).

- (2) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.
- (3) In applying the test in subsection (2), the Authority or the court must consider—
 - (a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and
 - (b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and
 - (c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and
 - (d) whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.
- (4) In addition to the factors described in subsection (3), the Authority or the court may consider any other factors it thinks appropriate.
- (5) The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were—
 - (a) minor; and
 - (b) did not result in the employee being treated unfairly.

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](#), and [32](#) of that Act to [section 22](#) of that Act must be read as if they were references to [section 104\(1\)](#); 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\(1\)\(a\)](#); and
 - (ii) to [section 22\(1\)\(c\)](#) of that Act must be read as if they were references to [section 104\(1\)\(b\)](#); and
 - (iii) to [section 22\(1\)\(d\)](#) of that Act must be read as if they were references to [section 104\(1\)\(c\)](#).
- (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

- 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 2

Legislation

In all respects, the parties agree that they are committed to complying with all current and future workplace and other relevant legislation, and amendments, and any legislation in substitution thereof including:

Education Act 1964, 1989

Employment Relations Act 2000

Government Superannuation Fund Act 1956

Health and Safety in Employment Act 1992, and relevant codes of practice and guidelines as issued from time to time

Holidays Act 2003

Human Rights Act 1993

Injury Prevention, Rehabilitation and Compensation Act 2001

Official Information Act 1982

Parental Leave and Employment Protection Act 1987

Privacy Act 1993

State Sector Act 1988

Volunteers Employment Protection Act 1983

Wages Protection Act 1983

APPENDIX 3

Terms of Settlement

Education Support Workers, Behaviour Support Workers and Communications Support Workers Collective Agreement

6 July 2017

NZEI Te Riu Roa and the Ministry of Education met to bargain renewal of Education Support Workers, Behaviour Support Workers and Communication Support Workers Collective Agreement during 2016 on 7, 14 and 15 December; and the following dates of 22 June and 6 July 2017.

This document sets out the agreed components of the full settlement of the *Education Support Workers, Behaviour Support Workers and Communications Support Workers Collective Agreement 2017-2018* ('collective agreement'). This agreement has been settled between the Secretary for Education and New Zealand Educational Institute Te Riu Roa (NZEI Te Riu Roa). It is subject to ratification by NZEI Te Riu Roa members pursuant to section 51 of the Employment Relations Act 2000.

In settlement the parties agree to the following:

1. Settlement date

The effective date of this settlement will be 6 July 2017.

These terms of settlement apply to all Ministry of Education employees who are NZEI Te Riu Roa members and fall under the coverage clause specified in the collective agreement as at ratification date.

2. Term

A 7 month and 21 days term shall apply. The term of the collective agreement will be from the 6 July 2017 to 28 February 2018.

3. Remuneration increase:

2% increase to all rates, effective 6 July 2017.

New salary scale to be inserted as follows:

5.1 Wage Scale

Step	Current rates	Rates effective 6 July 2017
1	\$16.44	\$16.77
2	\$16.77	\$17.11
3	\$17.24	\$17.58
4	\$17.63	\$17.98
5	\$18.27	\$18.64
6	\$18.90	\$19.28
7	\$19.48	\$19.87

4. Hours of Work

The following new clause will be inserted.

Clause 3.1.5

Where an employee would like additional hours of work, the employee will notify their service manager of this in writing four weeks prior to the start of a school term. If after the allocation time, no additional hours of work were allocated to that employee, the service manager will provide a written explanation for this.

Subsequently, current clauses 3.1.5 to 3.1.6 will be renumbered.

5. Sick Leave

Delete clauses 7.5.3 and 7.5.4 replace with:

Clause 7.5.3

From 18 October 2017, Employees shall be entitled to 10 days paid sick leave for each 12 month period of service with the Ministry of Education. Unused sick leave may be accumulated.

Until 18 October 2017, the previous sick leave provisions (detailed at Appendix 4) will apply [insert the current sick leave clause at Appendix 4].

Subsequently, current clauses 7.5.5 to 7.5.8 will be renumbered.

6. Equal Employment Opportunities

Clause 3.4 Equal opportunities in employment

3.4.1 The Ministry of Education is committed to promoting, developing and monitoring equal employment opportunities and programmes.

- 3.4.2 These will deliver the Equal Opportunities provisions of the State Sector Act 1988 which requires the Ministry to identify and eliminate 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.
- 3.4.3 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.
- 3.4.4 The parties agree that remuneration, job choice and job opportunities should not be affected by gender or any other prohibited grounds of discrimination under the Humans Rights Act 1993.
- 3.4.5 The parties will engage over the matter of pay equity in accordance with the agreed pay equity joint working group principles and will develop a response plan to address any inequities found.

7. Disciplinary Procedures

Clause 3.17 Disciplinary Procedures to be updated as follows:

Clause 3.17.6 to be changed to read “Consideration will be given as to whether a disciplinary matter may be addressed informally.”

Clause 3.17.7 will have the reference to oral warnings removed.

The last sentence of clause 3.17.10 will be amended to read “Where applicable, there must be sufficient time and/or training given after each warning to allow the employee to make the required improvement.”

8. Parental leave

The existing parental leave clause 7.8 shall be updated to reflect legislative changes. The existing clauses 7.8.2 – 7.8.5 shall be replaced with the following wording:

- 7.8.2 Employees are entitled to parental leave in the following circumstances:
- female employees having a baby, and to their spouses or partners (includes a married, civil union or de facto relationship with a different or same-sex partner)
 - employees, and their spouses or partners (includes a married, civil union or de facto relationship with a different or same-sex partner), who begin

permanently caring for a child under six years who is not their natural child (this includes permanent care such as adoption and home for life, but not foster care).

- 7.8.3 Leave up to 52 weeks may be granted to employees with at least one year's service. For those with less than one year's service, parental leave up to 26 weeks may be granted. The maximum period of parental leave may be taken by either the employee exclusively or it may be shared between the employee and their partner either concurrently or consecutively. This applies whether or not only one or both partners are employed by the Ministry.

Where the employee assumes the permanent care, or gives birth, to two or more children at the same time, then for the purposes of these provisions the employee's entitlement shall be the same as if they had given birth or assumed permanent care for one child.

- 7.8.4 If you or your spouse or partner are having a baby and want to take parental leave or negotiated carer leave you must write to your employer at least three months before the baby's expected due date.

If neither you, your spouse or partner are having a baby but you're going to start being the permanent primary carer of a child under 6 years, let your employer know as soon as possible when it is likely to happen. Write to your employer at least 14 days before you want to take parental leave.

- 7.8.5 If you or your spouse or partner are giving birth to the child, you must attach a copy of a certificate from a doctor or midwife naming who is pregnant and the baby's due date. If it is your spouse or partner who is pregnant, you need to include a written letter from her saying that you are her spouse or partner and you'll be going to assume the care for the child she is going to have.

If you are taking permanent primary responsibility for the care, development and upbringing of a child under 6 years, you will need to attach to your statement:

- a certified copy of a court order placing the child in your day-to-day care or custody, or
- a copy of a letter from the chief executive of the Ministry or organisation who has custody of the child confirming that the employee is or will be the primary carer in respect of the child, or
- a copy of the application for a parenting order or adoption order (if one has been made) and a statutory declaration.

9. Working Group on Public Debate and Advocacy

The parties agree for Education Support Workers, Behaviour Support Workers and Communication Support Workers to be included in the working group with Field Staff

employees' to discuss participation in public debate and advocacy within their roles as Ministry employees.

This working group will address the issues behind the claim raised during bargaining and the relationship between Support Workers and their obligations as Ministry employees.

- **Alignment of the end dates of Field Staff and Education Support Workers, Behaviour Support Workers and Communication Support Workers Collective Agreements**

The parties agree to meet at least 3 months prior to the expiry date of the above collective agreements to discuss the possible option of merging the two agreements.

11. Administrative/Technical changes

- **Clause 1.1 Parties**
Delete 'Chief Executive' and replace with 'Secretary' and NZEI and replace with 'New Zealand Educational Institute'
- **Clause 1.4 Definitions**
Clause 1.4.1 Add 'Te Riu Roa' after NZEI
Clause 1.4.2 and 1.4.6 Delete 'Chief Executive' and replace with 'Secretary'
- **Clause 1.6 Variation** Delete 'Chief Executive' and replace with 'Secretary'
- **Part Two - NZEI TRR/Ministry of Education – Relationship** replaces reference to update the current date of the relationship agreement.
- **Part Four - Surplus Staffing** Delete 'Chief Executive' and replace with 'Secretary' throughout this section of the CA.
- **Part Five – Remuneration** Delete 'Chief Executive' and replace with 'Secretary'
- **Clause 7.5 Sick Leave**
Clause 7.5.1 and 7.5.6 Delete 'Chief Executive' and replace with 'Ministry'
- **Clause 7.12 Sports Leave** Delete 'Chief Executive' and replace with 'Ministry'
- **Clause 9.4 Service Available** Update reference to 'Labour Department' to 'MBIE'
- **Replace Appendix 3 (2014 terms of settlement) with new Appendix 3 (2017 terms of settlement)**

The parties agree that this document reflects the agreements reached in the settlement of the *Education Support Workers, Behaviour Support Workers and Communications Support Workers Collective Agreement 2017-2018*.

Signed at Wellington on _____ July 2017

Bella Pardoe
Executive Officer
NZEI Te Riu Roa

Kate Tibbitts
Chief People Officer
Ministry of Education

APPENDIX 4

7.5.3 Sick leave entitlements shall be as set out on the table below provided that all employees will have a minimum entitlement of 5 working days per year after 6 months' service.

Period of Employment	Leave Entitlement
Up to 6 months	5 working days apportioned for the period of employment
Each consecutive 6 months thereafter	5 working days