

REGISTER OF ENTERPRISE AGREEMENTS

ENTERPRISE AGREEMENT NO: EA08/8

TITLE: St Aloysius' College, Milsons Point Maintenance and Outdoor Staff Enterprise Agreement 2008

I.R.C. NO: IRC8/272

DATE APPROVED/COMMENCEMENT: 10 March 2008 / 10 March 2008

TERM: 10

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 2 May 2008

DATE TERMINATED:

NUMBER OF PAGES: 9

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all employees employed by the Trustees of the Jesuit Fathers trading as St Aloysius' College, Milsons Point, who are engaged in all work done for the College by Maintenance and Outdoor Staff and who fall within the coverage of the Maintenance and Outdoor Staff (Catholic Schools) (State) Award 2005.

PARTIES: Trustees of the Jesuit Fathers, trading as St Aloysius' College, Milsons Point -&- the New South Wales Independent Education Union

ST ALOYSIUS' COLLEGE, MILSONS POINT MAINTENANCE AND OUTDOOR STAFF ENTERPRISE AGREEMENT 2008

1. Title

This Agreement shall be known as the *St Aloysius' College, Milsons Point Maintenance and Outdoor Staff Enterprise Agreement 2008*.

2. Arrangement

Clause No.	Subject Matter
1	Title
2	Arrangement
3	Scope and Parties Bound
4	Duress
5	Commencement Date of Agreement and Period of Operation
6	Relationship to the Award
7	Objects of the Agreement
8	Employment Relations at the College
9	Long Service Leave
10	Annual Holiday Loading
11	Superannuation
12	Election regarding Superannuation, Long Service Leave and Annual Leave Loading
13	Termination of Employment
14	Disputes Procedure

3. Scope and Parties Bound

This Agreement shall be binding upon the Trustees of the Jesuit Fathers, trading as St Aloysius' College, Milsons Point ("**the College**") and the NSW Independent Education Union ("**the IEU**") and its officers and members, in respect of all work done for the College by Maintenance and Outdoor Staff (including: Casual, Temporary and Part-time employees) who are employed under the *Maintenance and Outdoor Staff (Catholic Schools) (State) Award 2005*.

4. Duress

This Agreement was not entered into by either party under duress from the other party or any other person or persons.

5. Commencement Date of Agreement and Period of Operation

5.1 This Agreement shall commence on *[Insert date of ratification by the Industrial Relations Commission of NSW]* and its nominal expiry date is 31 December 2008.

5.2 Despite clause 5.1, the following provisions of this Agreement do not commence operation until 1 February 2008:

Clause 9, Long Service leave;

Clause 10, Annual Holiday Loading;

Clause 11, Superannuation;

Clause 12, Election regarding Superannuation, Long Service Leave and Annual Holiday Loading; and

Clause 13, Termination of Employment.

Between the date of ratification and 1 February 2008, the terms of the *Maintenance and Outdoor Staff (Catholic Schools) (State) Award 2005* which is binding on Maintenance and Outdoor Staff immediately before the making of this Agreement will continue to apply to those employees.

6. Relationship to the Award

6.1 This Agreement shall be read and interpreted wholly in conjunction with the *Maintenance and Outdoor Staff (Catholic Schools) (State) Award 2005* (“**the Award**”).

6.2 Except as provided for in this Agreement, the provisions of the Award shall continue to apply.

6.3 In the event of any inconsistency between the Award and this Agreement, the Agreement shall prevail to the extent of the inconsistency.

7. Objects of the Agreement

In reaching this Agreement, the parties have recognised:

- (a) the need to maintain a professional working environment which respects the teachings and values of the Catholic Church, and supports the philosophy, spirituality and pedagogical style of the Society of Jesus;
- (b) the mutual responsibility to continue the development of education of a high quality at the College, and the public perception of its people, programmes and activities;
- (c) that the College’s offer of choice and flexibility with employment practices detailed in this Agreement respects the individual circumstances of its employees and in this regard, promotes the working environment and quality of education referred above;
- (d) that productivity and efficiency have a growing influence in educational policies and practices, and can be reflected in qualitative and quantitative measures implemented at the College; and
- (e) the need to maintain the long term financial viability of the College.

8. Employment Relations at the College

8.1 The parties acknowledge that the College’s approach to employment relations is motivated by its *Guidelines for Employment Relations* as adopted by the College Council (“**the Council**”), and amended by the Council from time to time.

The Guidelines do not constitute part of the contract of employment.

9. Long Service Leave

This clause replaces clause 21, Long Service Leave – Schedule B Schools, of the Award.

9.1 General Provisions

- (a) Except in so far as expressly varied by the provisions of this clause 9, the provisions of the *Long Service Leave Act 1955 (NSW)* shall apply to employees employed under this Agreement.
- (b) For the avoidance of doubt, any long service leave which has accrued under previous Award arrangements will be recognised by the College.
- (c) For the purpose of this clause 9, an employee who, in accordance with clause 4, Contract of Employment, of the Award, is not required to work 48 weeks of the year shall be deemed to have completed a year of service if he/she had been employed for the whole of the school Term time of that calendar year.

9.2 Quantum of Leave – Rate of Accrual of Long Service Leave

From 1 February 2008, the College shall adopt a new arrangement for the accrual of long service leave. This arrangement (the default position) is provided in clause 9.2(a).

The arrangement prior to this agreement, however, will still remain available to an employee upon election, and is provided in clause 9.2(b).

- (a) Employees who do not make an Election to Accrue Long Service Leave at the Rate Applying Prior to this Agreement

Subject to clause 9.4, the amount of long service leave to which an employee shall be entitled shall be in accordance with the *Long Service Leave Act 1955 (NSW)*.

- (b) Employees who do make an Election to Accrue Long Service Leave at the Rate Applying Prior to this Agreement

Despite clause 9.2(a), and subject to clause 9.4, if an employee has made an election under clause 12.1 to continue to accrue long service leave at the rate applying prior to this Agreement, where the employee has completed at least ten years' continuous service with the College the amount of long service leave which the employee shall be entitled shall be:

- (i) in respect of ten years' continuous service so completed, 13 weeks;
- (ii) in respect of each additional five years of continuous service with the College since the employee last became entitled to long service leave, 6.5 weeks; and
- (iii) on the termination of the employee's employment, in respect of completed continuous service with the College since the employee last became entitled to an amount of long service leave, a proportionate amount on the basis of –
 - two months for ten years service prior to 26 January 2004; and
 - 13 weeks for ten years service from 26 January 2004.

9.3 Pro-Rata Payment on Termination for Less than Ten Years' Service

- (a) Employees who do not make an Election to Accrue Long Service Leave at the Rate Applying Prior to this Agreement

In the case of an employee who has completed with the College at least five years' continuous service but not yet ten years' continuous service, and whose services are terminated by the College

for any reason other than misconduct or cease for any other reason, the amount of long service leave which the employee shall be entitled to shall be calculated as follows:

In respect of the Period:	Calculation of Long Service Leave
Up to 26 January 2004	0.866 weeks per year of service
From 26 January 2004 to 31 January 2008	1.3 weeks per year of service
From 1 February 2008	0.866 weeks per year of service

(b) Employees who do make an Election to Accrue Long Service Leave at the Rate Applying Prior to this Agreement

Despite clause 9.3 (a), if an employee has made an election under clause 12.1 to continue to accrue long service leave at the rate applying prior to this Agreement, where the employee has completed with the College at least five years' continuous service but not yet ten years' continuous service, and whose services are terminated by the College for any reason other than misconduct or cease for any other reason, the amount of long service leave which the employee shall be entitled to shall be a proportionate amount on the basis of –

- two months for ten years service prior to 26 January 2004; and
- 13 weeks for ten years service from 26 January 2004

(such service to include service with the College as an adult and otherwise than as an adult).

9.4 Calculations of Entitlement for Employees who Commenced Prior to 1 February 2008

In the case of an employee whose service with the College began prior to 1 February 2008, and whose service would entitle the employee to long service leave under this clause, the amount of long service leave to which such employee shall be entitled shall be the sum of the following amounts:

- the amount calculated on the basis of the provisions of the *Long Service Leave Act 1955 (NSW)* in respect of the period of service before 26 January 2004; and
- an amount calculated on the basis of the provisions of clause 21, Long Service Leave, of the *Maintenance and Outdoor Staff (Catholic Schools) (State) Award* published 7 December 2001 [330 I.G. 43], as varied, in respect of the period from 26 January 2004 until 30 June 2005; and
- an amount calculated on the basis of the provisions of clause 21, Long Service Leave – Schedule B Schools, of the *Maintenance and Outdoor Staff (Catholic Schools) (State) Award 2005* from 1 July 2005 until 31 January 2008.
- The above periods of calculation are listed in the table below:

Calculation of Entitlement Maintenance and Outdoor Staff Employed in a School	
Prior to 26 January 2004	0.866 weeks per year up to ten years' service In respect of each additional five years service since the employee last became entitled to long service leave, one month
From 26 January 2004 until 31 January 2008	1.3 weeks per year up to ten years' service In respect of each additional five years service since the employee last became entitled to long service leave, 6.5 weeks

9.5 **No Break in Service**

The service of an employee with the College shall be deemed continuous notwithstanding the service has been interrupted by reason of the employee taking maternity leave or adoption leave (including paid and unpaid leave in accordance with clause 19B(a), Parental Leave – Schedule B Schools – Maternity Leave, or clause 19B(c), Parental Leave – Schedule B Schools – Adoption Leave, of the Award respectively) or other approved leave without pay but the period during which the service is so interrupted shall not be taken into account in calculating the period of service.

9.6 **Payment in Lieu of Long Service Leave**

- (a) An employee with ten years' continuous service with the College may cash out an amount of accrued but untaken long service leave on the following basis:
 - (i) the employee elects to cash out the accrued long service leave;
 - (ii) the employee provides a written election to the College stating that he/she wishes to cash out the accrued long service leave; and
 - (iii) the College, in its discretion, authorises the employee to cash out the accrued long service leave.
- (b) If an employee cashes out an amount of accrued long service leave in accordance with this clause:
 - (i) the College will, within a reasonable time, give the employee the amount of pay he/she would have received if he/she had taken the long service leave that he/she has cashed out; and
 - (ii) the employee will no longer be entitled to the long service leave he/she has cashed out.

10. **Annual Holiday Loading**

This clause replaces clause 16, Annual Leave Loading, of the Award.

- 10.1 An employee who has made an election under clause 12.1 not to receive additional superannuation contributions will be entitled to the benefits of this clause 10.

For the avoidance of doubt, an employee will not otherwise be entitled to annual holiday loading.

- 10.2 In this clause 10, the *Annual Holidays Act 1944 (NSW)* is referred to as “the Act”.

- 10.3 Where an employee is given and takes their annual holiday or where, by agreement between the College and employee, the annual holiday is given and taken in more than one separate period, then before each of such separate periods the College shall pay the employee a holiday loading determined in accordance with this clause 10.

- 10.4 The holiday loading is payable in addition to the pay for the period of the annual holiday given and taken and due to the employee under the Act and the Award.

- 10.5 The holiday loading is to be calculated in relation to any period of annual holiday to which the employee becomes entitled under the Act and the Award or, where such holiday is given and taken in separate periods in relation to each such separate period.

NOTE: Refer to clause 10.7 in relation to holidays taken wholly or partly in advance.

- 10.6 The holiday loading is the amount payable for the period or the separate period, as the case may be, stated in clause 10.5 at the rate of 17.5 per cent per week of the appropriate ordinary weekly time rate of pay prescribed by the Award for the classification in which the employee was employed immediately

before commencing his/her annual holiday, but shall not include any allowances, penalty rates, shift allowances, overtime or any other payments prescribed by the Award.

- 10.7 (a) No holiday loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employee continues until the day when he/she would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with clause 10.6 applying the Award wage rate payable on that day.
- (b) Notwithstanding clause 10.7(a), an employee shall be paid a holiday loading where the annual holiday falls wholly or partly in advance during the school summer vacation period. The employee shall be entitled to the fraction of four weeks loading as is equal to the number of weeks worked by the employee in that school year compared to the number of weeks in the year since the school service date.
- (c) Where an employee receives a payment pursuant to clause 15(iii)(c)(1), Annual Leave and Payment on Termination, of the Award, the employee shall be entitled to be paid for that part of the fraction of four weeks holiday loading as is equal to the number of weeks worked by the employee in that school year compared to the number of weeks since the school service date.
- 10.8 (a) Where the College terminates the employee's employment for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which he/she is entitled, he/she shall be paid a holiday loading calculated in accordance with clause 10.6 for the period not taken.
- (b) Except as provided in clause 10.8(a), no holiday loading is payable on the termination of an employee's employment.

11. Superannuation

This clause replaces clause 31, Superannuation, of the Award.

11.1 Superannuation Contributions

- (a) Except as provided in clause 11.5, the College must make superannuation contributions in respect of each employee of such amount as required to ensure that the College does not incur any superannuation guarantee charge ("SGC") under the *Superannuation Guarantee Administration Act 1992 (Cth)* ("SGAA") and the *Superannuation Guarantee Charge Act 1992 (Cth)*.
- (b) Despite clause 11.5 (a)(ii), in the case of a Casual employee the College will make contributions as provided in clause 11.2 where the employee earns in excess of \$2,090.00 during his/her employment with the College in the course of any year running from 1 July to the following 30 June.

Once a Casual employee has qualified to receive contributions in a given year, as above, the College shall make contributions as provided in clause 11.2 in respect of that employee in each ensuing year of employment with the College.

- (c) In the case of employees over 70 years of age for whom the College is not required to contribute the charge percentage, the College will contribute three per cent of the employee's notional earnings base as defined in clause 11.2.

11.2 Calculation of Superannuation Contributions

- (a) For the purposes of clause 11.1, the College will contribute the charge percentage (as defined in the SGAA) (currently nine per cent) of the notional earnings base for a quarter (as defined in the SGAA) ("Quarter") being the employee's "basic earnings" as defined below.

- (b) For the purposes of this clause, “basic earnings” shall mean in respect of any Quarter, the minimum weekly or hourly rate of pay prescribed by the Award for the employee.

11.3 Superannuation Fund

Subject to clause 11.5, the College shall only make superannuation contributions for the benefit of employees to the Non-Government Schools Superannuation Fund or any other complying superannuation fund for the purposes of the SGAA determined by the College from time to time (“**Relevant Fund**”). **Provided that** the College shall make the Non-Government Schools Superannuation Fund available to each employee.

11.4 Additional Superannuation Contributions

- (a) Subject to clause 11.5 and unless an employee has made an election under clause 12.1 not to receive the additional superannuation contribution provided under this clause, from 1 February 2008, in addition to its obligations under clause 11.1, the College must make an additional superannuation contribution in respect of an employee, except a Casual employee, of 2.2% of the employee’s basic earnings to the Relevant Fund.
- (b) These additional contributions will be paid at such times and periods if any as set out in the Deed for the Relevant Fund, or if not specified in the Deed, then as agreed between the College and the employee.

11.5 Exceptions

Unless it is necessary for the purpose of clause 11.1 in order for the College to avoid paying SGC, the College shall not be required to make a contribution pursuant to this Agreement in respect of an employee who:

- (a) is absent from his or her employment without pay, for such period of absence without pay;
- (b) earns less than \$450.00 salary per month; or
- (c) is referred to in section 27, Salary or Wages – General Exclusions, of the SGAA.

12. Election regarding Superannuation, Long Service Leave and Annual Holiday Loading

12.1 Additional Superannuation Election

An employee may elect to both:

- (a) accrue long service leave as provided under clause 9.2(b); and
- (b) receive the benefits provided under clause 10

instead of receiving the additional superannuation contributions under clause 11.4.

The College shall advise the employee of the existence of this option on engagement.

12.2 Time for and Effect of Making an Election

- (a) An employee must make an election in accordance with clause 12.1:
 - (i) if the employee is an employee as at 1 February 2008, on or before 28 February 2008; and
 - (ii) if the employee is employed after 1 February 2008, within four weeks of the commencement of the employee’s employment with the College.

- (b) If an employee does not make an election within the time provided in clause 12.2(a), the employee will be deemed not to have made an election under clause 12.1 and will receive the additional superannuation contributions.
- (c) An employee may only make an election under clause 12.1 once during the life of this Agreement.

13. Termination of Employment

This clause replaces clauses 4(iii), Contract of Employment – Termination of Employment, and 4(v), Contract of Employment – Payment on Termination, of the Award.

13.1 Notice of Termination

- (a) Except for the first week of employment, the employment of a Full-time or Part-time employee may be terminated by either party by giving notice to the other party as set out in the following table “Period of Notice”, or by the payment or forfeiture of the equivalent wages in lieu of notice.

Period of Notice

Years of Continuous Service	Notice Period
Not more than one year	One week minimum
More than one year but less than three years	Two weeks minimum
More than three years but less than five years	Three weeks minimum
More than five years	Four weeks minimum

- (b) In addition to the notice periods specified in clause 13.1(a), employees aged over 45 years and who have completed at least two years continuous service with the College are entitled to one additional week’s notice from the College.
- (c) Clauses 13.1(a) and (b) shall not affect the right of the College to dismiss any employee without notice for misconduct and in such cases wages shall be paid up to the time of dismissal only.
- (d) The employment of a Casual employee may be terminated by one hour’s notice by either party.

13.2 Payment on Termination

- (a) Subject to clause 13.2(b), the College shall pay an employee terminating employment all wages and other monies due, including any payments which may be due in lieu of annual leave and/or long service leave.
- (b) However, should an employee fail to give notice for terminating his/her employment in accordance with clause 13.1, the College may deduct an amount equal to the wages for the period of notice not given from any payments due to the employee, including any annual leave and/or long service leave payments, and any outstanding balance becomes a debt due.

14. Disputes Procedure

Clause 29, Disputes Avoidance and Grievance Procedure, of the Award shall apply with respect to any issue arising from or out of this Agreement.

(FR) ROSS JONES, SJ
Rector
St Aloysius' College, Milsons Point

RICHARD SHEARMAN
General Secretary
NSW Independent Education Union

Date

Date