

REGISTER OF ENTERPRISE AGREEMENTS

ENTERPRISE AGREEMENT NO: EA08/9

TITLE: St Aloysius' College, Milsons Point Teachers Enterprise Agreement 2008

I.R.C. NO: IRC8/271

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

TERM: 21

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE:

DATE TERMINATED: 2 May 2008

NUMBER OF PAGES: 9

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all employees employed by the Trustees of Jesuit Fathers trading as St Aloysius' College, Milsons Point, who are engaged in all work done by Teachers and who fall within the coverage of the Teachers (Independent Schools) (State) Award 2007.

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 TEACHERS ENTERPRISE AGREEMENT 2008

1. Title

This Agreement shall be known as the *St Aloysius' College, Milsons Point Teachers Enterprise Agreement 2008*.

2. Arrangement

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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 by Teachers (including: Casual, Part-time and Temporary Teachers) for the College.

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 2009.

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 *Teachers (Independent Schools) (State) Award 2007* which is binding on Teachers immediately before the making of this Agreement will continue to apply to Teachers.

6. Relationship to the Award

6.1 This Agreement shall be read and interpreted wholly in conjunction with the *Teachers (Independent Schools) (State) Award 2007* (“**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 to 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* (“**the Guidelines**”) as adopted by the College Council (“**the Council**”), and amended by the Council from time to time.

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

9. Long Service Leave

This clause replaces subclause 9.5, Long Service Leave, 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 Teachers 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, a Teacher shall be deemed to have completed a year of service if he/she had been employed for the whole of the 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 a Teacher upon election, and is provided in clause 9.2(b).

- (a) Teachers 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 a Teacher shall be entitled shall be in accordance with the *Long Service Leave Act 1955 (NSW)*.

- (b) Teachers 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 a Teacher 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 Teacher has completed at least ten years' continuous service with the College the amount of long service leave which the Teacher 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 Teacher last became entitled to long service leave, ten weeks; and
- (iii) on the termination of the Teacher's employment, in respect of completed continuous service with the College since the Teacher last became entitled to an amount of long service leave, a proportionate amount on the basis of two weeks for one year's service.

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

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

In the case of a Teacher 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 Teacher shall be entitled to shall be calculated as follows:

| In respect of the Period: | Calculation of Long Service Leave |
|---|--|
| From 1 May 1995 to 28 January 2001 | 1.05 weeks per year of service |
| From 29 January 2001 to 31 January 2008 | 1.3 weeks per year of service |
| From 1 February 2008 | 0.866 weeks per year of service |

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

Despite clause 9.3 (a), if a Teacher 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 Teacher 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 Teacher shall be entitled to shall be a proportionate amount on the basis of 13 weeks for ten years' service (such service to include service with the College as an adult and otherwise than as an adult).

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

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

- (a) 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 1 August 1985; and
- (b) an amount calculated on the basis of the provisions of clause 12, Long Service Leave, of the *Teachers (Non Government Schools) (State) Award* published 10 May 1996 (292 I.G. 651) in respect of the period from 1 August 1985 to 30 April 1995; and
- (c) an amount calculated on the basis of the provisions of clause 12, Long Service Leave, of the *Teachers (Independent Schools) (State) Award* in respect of the period from 1 May 1995 until 28 January 2001;
- (d) an amount calculated on the basis of the provisions of clause 10.5(b), Long Service Leave, of the *Teachers (Independent Schools) (State) Award* effective from 29 January 2001 until 31 January 2008.
- (e) The above periods of calculation are listed in the table below:

| Calculation of Entitlement Teachers Employed in a School | |
|---|---|
| Prior to 31 July 1985 | 0.866 weeks per year |
| 1 August 1985 to 30 April 1995 | 1.05 weeks per year up to ten years' service 1.5 weeks per year, or proportion of a year, after ten years' service |
| 1 May 1995 to 28 January 2001 | 1.05 weeks per year up to ten years' service Two weeks per year, or proportion of a year, after ten years' service |
| From 29 January 2001 to 31 January 2008 | 1.3 weeks per year up to ten years' service Two weeks per year, or proportion of a year, after ten years' service |

9.5 Conditions of Taking Leave

- (a) Where a Teacher has become entitled to long service leave in respect of the Teacher's service with the College, the College shall give to the Teacher and the Teacher shall take the leave as soon as practicable having regard to the needs of the College provided always that unless the College otherwise agrees the Teacher shall give not less than two school terms' notice of the Teacher's wish to take leave and further provided that the College shall give the Teacher not less than two school terms' notice of any requirement that such leave be taken.
- (b) Where long service leave is taken so that it commences on the first day after a period of pupil vacation, which falls between school terms, and concludes on the last day prior to a period of pupil vacation which falls between school terms, such long service leave shall be exclusive of the pupil vacation periods occurring prior to and following the period of long service leave.

A period of long service leave taken wholly within one term shall also be exclusive of pupil vacation periods adjacent to the period of leave, if the taking of long service leave of less than one term has been approved by the College.

- (c) Where a Teacher requests and is granted up to one week's leave without pay to be taken in addition to long service leave such that the total period of leave is in accordance with clause 9.5(b) the conditions of that clause shall apply, provided nothing in this paragraph shall affect the provisions of clause 5.6, Pro-Rata Annual Leave Payment – Teachers Who Take Approved Leave Without Pay, of the Award.
- (d) Where long service leave is not taken in full term periods or in accordance with clause 9.5(b) it will be inclusive of pupil vacations, unless the College agrees that the pupil vacation that precedes or follows the long service leave shall not be counted as long service leave.
- (e) Where a Teacher is entitled to an amount of long service leave which is in excess of a school Term, the Teacher may elect not to take that part of the long service leave which is in excess of a Term (“**the deferred leave**”) until such time as the Teacher accumulates further entitlements which when taken together with the deferred leave enables long service leave to be taken for a whole Term.
- (f) Subject to the provisions of this clause 9.5, any long service leave shall be inclusive of any public holidays falling within the period of such leave.

9.6 No Break in Service

The service of a Teacher with the College shall be deemed continuous notwithstanding the service has been interrupted by reason of the Teacher taking maternity leave or adoption leave (including paid and unpaid leave in accordance with clause 9.4(a), Parental Leave – Maternity Leave, or clause 9.4(c), Parental Leave – 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.

9.7 Payment in Lieu of Long Service Leave

- (a) A Teacher 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 Teacher elects to cash out the accrued long service leave;
 - (ii) the Teacher 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 Teacher to cash out the accrued long service leave.

- (b) If a Teacher cashes out an amount of accrued long service leave in accordance with this clause:
 - (i) the College will, within a reasonable time, give the Teacher 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 Teacher will no longer be entitled to the long service leave he/she has cashed out.

9.8 **Recognition of Immediate Past Service for the Calculation of Long Service Leave Credits**

Where a Teacher utilised the provisions of the previous award, the *Teachers (Independent Schools) (State) Award 2004*, relating to the recognition of prior service with a previous employer so that the Teacher was entitled to a transferred long service leave accrual with a new employer (being the College), the obligations on the College and the entitlements of the Teacher (as set out in the previous award) shall continue pursuant to the provisions of this Agreement.

10. **Annual Holiday Loading**

This clause replaces clause 6, Annual Holiday Loading, of the Award.

- 10.1 A Teacher 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, from 1 February 2008 a Teacher will not otherwise be entitled to annual holiday loading.

- 10.2 Subject to clause 10.8, where a Teacher (other than a Casual Teacher), is given and takes annual leave commencing at the beginning of the school summer vacation each year, the Teacher shall be paid an annual holiday loading in accordance with this clause 10.

- 10.3 The loading shall be payable in addition to the payment to the Teacher for the period of the school summer vacation.

- 10.4 The loading shall be calculated:

- (a) In relation to the period of annual leave to which the Teacher is entitled for the time being under the *Annual Holidays Act 1944 (NSW)*, at the end of each year of employment; or
- (b) Where relevant, the period of annual leave calculated under clause 10.8.

- 10.5 The loading shall be the amount payable for the period specified in clauses 10.4 and 10.8 at the rate of 17.5 per cent of the weekly equivalent of the Teacher's annual salary.

- 10.6 For the purpose of this clause "salary" shall mean the salary payable to the Teacher at the first day of December of the year in which the loading is payable together with, where applicable, the allowances prescribed in clause 7.3, Promotions Positions – Allowances, and 7.4, Promotions Positions – Acting Appointments, of the Award, but not including any other allowances or amount otherwise payable in addition to salary.

- 10.7 Provided that where clause 10.8 applies, "salary" shall mean the salary (together with the allowances prescribed by clause 7.3 and 7.4 of the Award referred above, but not including any other allowances or amount otherwise payable in addition to salary) payable immediately prior to the payment made to the Teacher pursuant to clause 5.3(b), Pro-rata Annual leave Payment – Calculation of Payments, of the Award.

- 10.8 Where a Teacher receives a payment pursuant to clause 5.3(b) of the Award referred above, including the case where a Teacher's employment is terminated by the College during the school year for a reason other than misconduct, the Teacher shall be entitled to be paid for that part of such fraction of the annual

holiday loading he/she would be entitled to for the full school year as is equal to the fraction which the number of school weeks worked by the Teacher in that year bears to the number of school weeks he/she would be normally required by the College to work in a full school year.

11. Superannuation

This clause replaces clause 15, 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 Teacher 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 Teacher the College will make contributions as provided in clause 11.2 where the Teacher earns in excess of \$1,437.00 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 Teacher 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 Teacher in each ensuing year of employment with the College.

- (c) In the case of Teachers 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 Teacher'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 Teacher’s “basic earnings” as defined below.
- (b) For the purposes of this clause, “basic earnings” shall mean in respect of any Quarter:
 - (i) the minimum annual rate of salary prescribed from time to time for the Teacher by clause 3, Salary Scales, of the Award for any Quarter; and
 - (ii) the amount of any:
 - (A) allowance prescribed from time to time for the Teacher by clause 7.3 and 7.4 of the Award referred above; and
 - (B) pro-rata annual leave payment made to the Teacher pursuant to clause 5, Pro-rata Annual Leave Payment, of the Award;

up to the maximum contribution base, as defined in the SGAA, in respect of any Quarter.

11.3 Superannuation Fund

Subject to clause 11.5, the College shall only make superannuation contributions for the benefit of Teachers 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 a Teacher has made an election under clause 12.1 not to receive the additional superannuation contributions 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 a Teacher, except a Casual Teacher, of:
 - (i) 2.2% of basic earnings for a Teacher with less than ten years' continuous service with the College; and
 - (ii) 3.5% of basic earnings for a Teacher with ten or more years' continuous service with the College, per annum, 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 Teachers.

11.5 Exceptions

- (a) 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 contributions pursuant to this Agreement in respect of a Teacher who:
 - (i) is absent from his or her employment without pay, for such period of absence without pay;
 - (ii) earns less than \$450.00 salary per month; or
 - (iii) is referred to in section 27, Salary or Wages – General Exclusions, of the SGAA.
- (b) In respect of a Teacher who is absent on sick leave at half pay under clause 9.1(a)(ii), Sick Leave – Entitlement, of the Award, the College shall only be required to make superannuation contributions in respect of the period of sick leave on half pay based on the salary received by the Teacher during the period of sick leave on half pay.

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

12.1 Additional Superannuation Election

A Teacher 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 Teacher of the existence of this option on engagement.

12.2 Time for and Effect of Making an Election

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

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

13. Termination of Employment

This clause replaces clause 4.2, Termination of Employment, of the Award.

- 13.1 The employment of any Teacher (other than a Casual Teacher) shall not be terminated without at least four school Term weeks notice on either side, or the payment of, or forfeiture, of four weeks' salary in lieu of notice. Provided that such four weeks' notice shall expire within the school Term during which it is given and shall expire either:
- (a) at the end of the said school Term; or
 - (b) at least two weeks before the end of the said school Term.

The forgoing shall not affect the College's right to dismiss summarily any Teacher for incompetence, misrepresentation, neglect of duty or other misconduct.

- 13.2 Should a Teacher fail to give notice in accordance with clause 13.1, the College may deduct an amount equal to the salary for the period of notice not given from any payments to be made to the Teacher on termination, including any annual leave or long service leave payments, and any outstanding balance becomes a debt due.

14. Disputes Procedure

Clause 13, Disputes 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