



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Governors of Hale School T/A Hale School
(AG2023/1126)

HALE SCHOOL (ENTERPRISE BARGAINING) AGREEMENT 2023

Educational services

DEPUTY PRESIDENT BEAUMONT

PERTH, 25 MAY 2023

Application for approval of the Hale School (Enterprise Bargaining) Agreement 2023

[1] Governors of Hale School T/A Hale School (the **Applicant**) has made an application for the approval of an enterprise agreement known as the *Hale School (Enterprise Bargaining) Agreement 2023* (the **Agreement**). The application was made under s 185 of the *Fair Work Act 2009* (Cth) (the **Act**). The Agreement is a single enterprise agreement.

[2] Several issues arose during the approval process of the Agreement. First, the Applicant's compliance with s 180(2) of the Act. Second, whether the voting cohort were employed at 'the time' as that term is understood by reference to s 181(1) of the Act. Mr Richard Goater, Director of Staff Development and Human Resources for the Applicant, gave evidence to address the issues identified. Mr Goater was the Applicant's representative involved in the negotiation of the Agreement and in organising the conduct of the vote for the approval of the Agreement.

Compliance with s 180(2) of the Act

[3] Whilst the Independent Education Union of Australia (**IEU**) initially supported the approval of the Agreement, it subsequently raised the issue of whether the employees covered by the Agreement had genuinely agreed to the Agreement. The IEU contended that the Applicant had not complied with s 180(2) of the Act. In doing so, the IEU did not broach whether the purported non-compliance could be cured by the operation of s 188(2) of the Act.

[4] The reason for the asserted lack of genuine agreement was that the Applicant had failed to give to the relevant employees a copy of the *Educational Services (Teachers) Award 2020* (the **Award**).¹ The Award, by virtue of the operation of clause 7 of the Agreement, is incorporated into the Agreement.

¹ MA000077.

[5] Mr Goater gave evidence regarding the steps taken by the Applicant to provide the relevant employees with access to the incorporated Award. Mr Goater said that as part of the employment process new employees are instructed about the operation of the existing agreement and that the existing agreement is to be read in conjunction with the Award.²

[6] Mr Goater further explained that:

- (a) employees always have access to the Applicant's internet service, including during the access period. This means the employees can log onto the system at any time through the Applicant's home page at which time they can view the existing enterprise agreement and the Award;
- (b) because of the introduction of new levels one to five in the classification structure in the Award, teaching staff had received a presentation outlining the Award and explaining the relationship between the new levels in the Award and the Steps classification structure in the existing enterprise agreement and the proposed Agreement; and
- (c) the relationship between the Award and existing enterprise agreement and the Agreement had been reiterated on numerous occasions within the Applicant's Common Room Liaison Committee meetings and through the bargaining process and by the Applicant's Common Room Liaison Committee to employees especially in relation to terms and conditions such as domestic violence leave.³

[7] In *Construction, Forestry, Maritime, Mining and Energy Union v AKN Pty Ltd*, the Full Bench addressed the appellant's contention that the employer had not provided to employees modern awards that had been partially incorporated into the agreement in question.⁴ The Full Bench stated that such 'relevant materials are publicly available (on a range of websites)', and that was sufficient for the material to be readily available to employees.⁵

[8] The evidence points to the relevant employees being able to access the Award by virtue of the Applicant's own intranet and that relevant employees had been made aware of the Award (and the existing agreement) on the commencement of employment, through a presentation regarding the introduction of new classification levels in the Award and during the bargaining process. I am therefore satisfied that the Applicant had taken all reasonable steps to ensure that the relevant employees had access, throughout the access period for the Agreement, to a copy of the Award.

Casual employees

[9] The Form F17 indicated that within the cohort of employees who voted on the Agreement were employees who were employed on a casual basis. It was initially unclear whether the 60 casual employees who cast a vote were employed at 'the time'.⁶ It is accepted that an employer should only make a request under s 181(1) to employees who are employed

² Affidavit of Richard Goater, [5] (**Goater Statement**).

³ Ibid [6]–[8].

⁴ [2020] FWCFB 3438.

⁵ Ibid [45].

⁶ See *Re Shop, Distributive and Allied Employees Association* (2019) 291 IR 233.

‘at the time’, as opposed to those who are not employed at ‘the time’ but who might otherwise be regarded as ‘usually employed.’⁷

[10] In response to the issue raised, Mr Goater gave evidence that he had advised the external voting provider of the names and details of the employees eligible to vote at the time. Mr Goater said that at the relevant time, the Applicant made the request to a total of 183 eligible employees, comprising of two casual employees and 181 permanent employees.⁸ Mr Goater said that having ascertained the employment status of all casuals at the relevant time, only two casuals were employed at the time the request was made for employees to approve the Agreement.⁹ Mr Goater explained that the reference to the 60 casual employees in question 6 of the Form F17 was a reference to the number of casual employees the Applicant would engage in various roles during the school year, such as relief teachers to cover illness and camps.¹⁰

[11] Having considered the evidence of Mr Goater and noting that there is no evidence to contradict his account, I have found that the relevant employees were employed at the time.

Conclusion

[12] In respect of the remaining issue, the Applicant has provided a written undertaking. A copy of the undertaking is attached in Annexure A. I am satisfied that the undertaking will not cause financial detriment to any employee covered by the Agreement and that the undertaking will not result in substantial changes to the Agreement.

[13] In compliance with s 190(4) of the Act, the bargaining representatives’ views regarding the undertakings proffered were sought. They were provided with the opportunity to raise and address any objections they had to the undertakings proffered by the Applicant. No objection was raised.

[14] Subject to the undertakings referred to above, and on the basis of the material contained in the application and accompanying declarations, I am satisfied that each of the requirements of ss 186, 187, 188, and 190 of the Act as are relevant to this application for approval have been met.

[15] The model flexibility term prescribed by the *Fair Work Regulations 2009* (Cth) is attached to the Agreement and taken to be a term of it.

[16] The IEU, being a bargaining representative for the Agreement, has given notice under s 183 of the Act that it wants the Agreement to cover it. In accordance with s 201(2), and based on the declaration provided by the IEU, I note that the IEU is covered by the Agreement.

⁷ *Construction, Forestry, Maritime, Mining and Energy Union v Noorton Pty Ltd* [2018] FWCFB 7224, [19], citing *National Tertiary Education Union v Swinburne University of Technology* (2015) 232 FCR 246, 254 [24], [27] (Jessup J), 261 [38] (White J).

⁸ Goater Statement (n 2) [11].

⁹ Ibid [13].

¹⁰ Ibid.

[17] The Agreement was approved on 25 May 2023 and, in accordance with s 54, will operate from 1 June 2023. The nominal expiry date of the Agreement is 31 December 2024.



DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2023/1126

Applicant:
Governors of Hale School (ABN 49 810 035 782)

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Dr Richard Goater, Director of Staff Development and Human Resources, have the authority given to me by the Governors of Hale School (ABN 49 810 035 782) to give the following undertakings with respect to the *Hale School (Enterprise Bargaining) Agreement 2023* ("the Agreement"):

1. Clause 8 of the Agreement – The National Employment Standards, will be deleted and replaced with the following clause:

This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.


Signature


Date

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

Note - the model flexibility term is taken to be a term of this agreement and can be found at the end of the agreement.

Hale School

(Enterprise Bargaining)

Agreement 2023

SCHEDULE

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1) TITLE

This Agreement shall be known as the Hale School (Enterprise Bargaining) Agreement 2023 and shall replace the Hale School (Enterprise Bargaining) Agreement 2020.

2) PARTIES TO THE AGREEMENT

This Agreement is made between the Governors of Hale School (Hale School) and Teachers who are employed within the scope of the *Educational Services (Teachers) Award 2020* and is a single enterprise agreement made pursuant to s.172(2) of the *Fair Work Act 2009* (Cth.) (the Act).

3) COVERAGE

1. This Agreement covers:
 - (a) the School;
 - (b) School Teachers; and
 - (c) Early Learning Teachers.
2. This Agreement does not cover:
 - (a) Identified Senior Executives; and
 - (b) School Psychologists or Counsellors (unless also employed as a Teacher); and
 - (c) Foreign language or LOTE Teachers engaged to instruct students on an individual basis e.g. conversation or other individual tuition; and
 - (d) Persons employed as teachers' aides, education assistants, instructors, helpers, tutors, or supervisors in or in connection with Boarding, Hale 58, Outdoor Education, exams and childcare (unless appointed as Teachers); and
 - (e) Employees who are engaged for the purpose of religious instruction or supervision of prayers or to undertake other religious duties of a non-teaching nature (unless also employed as a Teacher); and
 - (f) Persons instructing students of the School in the areas of music or other individual arts and engaged on an individual fee basis (unless appointed as Teachers); and
 - (g) Sports coaches and trainers (unless appointed as Teachers); and
 - (h) Employees who are covered by the *Educational Services (Schools) General Staff Award 2020*.

4) SCOPE OF THE AGREEMENT

1. This Agreement applies to Teachers who are employed within the scope of the *Educational Services (Teachers) Award 2020*.
2. The number of Employees covered by this Agreement is approximately 235.

5) COMMENCEMENT DATE AND DURATION OF AGREEMENT

1. This Agreement will come into effect seven days after the date of approval by the FWC, in accordance with s.54 of the Act.

2. The nominal expiry date for this Agreement is 31 December 2024. The terms and conditions of this Agreement will remain in place until a subsequent agreement is registered.

6) DEFINITIONS

- **Act** means the *Fair Work Act 2009* (Cth).
- **Award** means the *Educational Services (Teachers) Award 2020*.
- **Employee** means a person employed by the School.
- **FWC** means the Fair Work Commission.
- **Identified Senior Executives** means the Headmaster, Deputy Headmaster and Head of Senior School.
- **NES** means the National Employment Standards as contained in Part 2-2 of the Act.
- **Non-Term Week** means a week in the school year other than a Term week, and includes periods designated as school holidays for students.
- **Ordinary hours** mean 38 hours per week averaged over a 12-month period.
- **School** means the Governors of Hale School.
- **School year** means the period of 12 months from the day employees are required to attend the School for the new educational year, or the calendar year, as determined by the School, and includes Term Weeks and Non-Term Weeks.
- **Teacher** means an Employee of the School who is registered by the Teachers Registration Board of Western Australia (TRBWA) and is employed by the School to perform duties which include delivering an educational program, assessing student participation in an education program, administering an education program and performing other duties incidental to the delivery of the education program. A Teacher may include a Teacher in a senior leadership position, but does not include Identified Senior Executives.
- **Term Week** means a week in the School year that students are required to attend School as set out in each School calendar.

7) RELATIONSHIP TO PARENT AWARD

1. The Award is incorporated into this Agreement.
2. Where there is any inconsistency between this Agreement and the Award, this Agreement will prevail to the extent of the inconsistency.

8) THE NATIONAL EMPLOYMENT STANDARDS

1. The NES contains the minimum entitlements of a Teacher covered by this Agreement. This Agreement may provide ancillary or supplementary terms in respect of the NES.
2. This Agreement provides enterprise specific detail where it deals with a matter provided for in the NES.

9) FLEXIBILITY ARRANGEMENTS

1. Despite anything else in this Agreement or the Award, the School and a Teacher may agree to vary the application of the terms of this Agreement relating to any of the following in order to meet the genuine needs of both the School and the Teacher:
 - a) arrangements for when work is performed; or
 - b) overtime rates; or

- c) penalty rates; or
 - d) allowances; or
 - e) annual leave loading.
2. An agreement must be one that is genuinely made by the School and the Teacher without coercion or duress.
 3. An agreement may only be made after the individual Teacher has commenced employment with the School.
 4. If the School wishes to initiate the making of an agreement, it must:
 - a) give the Teacher a written proposal; and
 - b) if the School is aware that the Teacher has, or reasonably should be aware that the Teacher may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the Teacher understands the proposal.
 5. An agreement must result in the Teacher being better off overall at the time the agreement is made than if the agreement had not been made.
 6. An agreement must do all of the following:
 - a) state the names of the School and the Teacher; and
 - b) identify the Agreement or Award term, or terms, the application of which is to be varied; and
 - c) set out how the application of the Agreement or Award term; and
 - d) set out how the agreement results in the Teacher being better off overall at the time the agreement is made than if the agreement had not been made; and
 - e) state the date the agreement is to start.
 7. An agreement must be:
 - a) in writing; and
 - b) signed by the School and the Teacher and, if the Teacher is under 18 years of age, by the Teacher's parent or guardian.
 8. Except as provided in Clause 9)7.b), an agreement must not require the approval or consent of a person other than the School and the Teacher.
 9. The School must keep the agreement as a time and wages record and provide a copy to the Teacher.
 10. The School and the Teacher must genuinely agree, without duress or coercion to any variation of any agreement thus made.
 11. An agreement may be terminated:
 - a) at any time, by written agreement between the School and the Teacher; or
 - b) by the School or Teacher giving 13 weeks' written notice to the other party.

Note: If the School and Teacher agree to an arrangement that purports to be an individual flexibility arrangement under this clause and the arrangement does not meet a requirement set out in section 144 of the Act then the Teacher or the School may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the Act).

12. An agreement terminated as mentioned in Clause 9)11.b), ceases to have effect at the end of the period of notice required under that clause.
13. The right to make an agreement under this clause is additional to, and does not affect, any other term of this Agreement or the Award that provides for an agreement between the School and an individual Teacher.

10) CONSULTATION

Consultation about major changes

1. If the School makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on Teachers, the School must:
 - (a) give notice of the changes to all Teachers who may be affected by them and their representatives (if any); and
 - (b) discuss with affected Teachers and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on Teachers; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on Teachers; and
 - (c) commence discussions as soon as practicable after a definite decision has been made.
2. For avoidance of doubt, the School's reasonable development of the yearly teaching timetable and staff calendars will not constitute a major change that invokes the requirements of this clause.
3. For the purposes of the discussion under Clause 10)(1.)(b), the School must give in writing to the affected Teachers and their representatives (if any) all relevant information about the changes including:
 - (a) their nature; and
 - (b) their expected effect on Teachers; and
 - (c) any other matters likely to affect Teachers.
4. Clause 10)3 does not require the School to disclose any confidential information if its disclosure would be contrary to the School's interests.
5. The School must promptly consider any matters raised by the Teachers or their representatives about the changes in the course of the discussion under Clause 10)(1.)(b).
6. In this clause, significant effects, on Teachers, includes any of the following:
 - (a) termination of employment; or
 - (b) major changes in the composition, operation or size of the School's workforce or in the skills required; or
 - (c) loss of, or reduction in, job or promotion opportunities; or
 - (d) loss of, or reduction in, job tenure; or
 - (e) alteration of hours of work; or
 - (f) the need for Teachers to be retrained or transferred to other work or locations; or
 - (g) job restructuring.

7. Where this Agreement makes provision for alteration of any of the matters defined at Clause 10)6, such alteration is taken not to have significant effect.

Consultation about changes to rosters or hours of work

8. Clauses 10)8 to 10)12 apply if the School proposes to change the regular roster or ordinary hours of work of a Teacher, other than a Teacher whose working hours are irregular, sporadic or unpredictable.
9. For avoidance of doubt, the School's reasonable development of the yearly teaching timetable and staff calendars will not constitute a change that invokes the requirements of this clause.
10. The School must consult with any Teachers affected by the proposed change and their representatives (if any).
11. For the purpose of the consultation, the School must:
 - (a) provide to the Teachers and representatives mentioned in Clause 10)9 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
 - (b) invite the Teachers to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and invite their representative (if any) to give their views about that impact.
12. The School must consider any views given under Clause 10)(11.)(b).
13. Clauses 10)8 to 10)12 are to be read in conjunction with other provisions of this Agreement concerning the scheduling of work or the giving of notice.

11) DISPUTE RESOLUTION PROCEDURE

1. This clause sets out the procedures to be followed if a dispute arises about a matter under this Agreement or in relation to the Awards or the NES.
2. The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the Teacher or Teachers concerned and the relevant supervisor.
3. If the dispute is not resolved through discussion as mentioned in Clause 11)2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the Teacher or Teachers concerned and more senior levels of management, as appropriate.
4. If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under Clauses 11)2 and 11)3, a party to the dispute may refer it to the Fair Work Commission.
5. The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation, and consent arbitration.
6. If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute.

7. A party to the dispute may appoint a person, organisation, or association to support and/or represent them in any discussion or process under this clause.
8. While procedures are being followed under this clause in relation to a dispute:
 - (a) work must continue in accordance with this Agreement, the Awards, and the Act; and
 - (b) a Teacher must not unreasonably fail to comply with any direction given by the School about performing work, whether at the same or another workplace, that is safe and appropriate for the Teacher to perform.
9. Clause 11)8 is subject to any applicable work health and safety legislation.

12) TYPES OF EMPLOYMENT

1. Categories

Teachers will be employed in one of the following categories:

- (a) casual employment: means employment on a day-to-day basis for a period of not more than four consecutive Term Weeks.
- (b) fixed-term employment: where a Teacher is employed for a fixed period of at least four weeks but no more than 12 months (able to be extended for a further 12 months) on either a full-time or part-time basis.
- (c) part-time employment: a part-time Teacher is a Teacher who is engaged to work on a regular basis for less than, but not more than 90% of, the hours of a full-time Teacher in the School.
- (d) full-time employment: a full-time Teacher has ongoing employment and is engaged to work an average of 38 ordinary hours per week averaged out over a calendar year.

2. Terms of engagement

On appointment, the School will provide the Teacher (other than a casual Teacher) with a letter of appointment stating the teaching level and rate of salary applicable on commencement. Details of their pastoral, co-curricular and related commitments will also be provided.

3. Casual employment

- (a) Casual employment means employment on a day-to-day basis for a period of not more than four consecutive Term Weeks.
- (b) A casual employment engagement may be extended by agreement between the School and the Casual Teacher provided the total period of the engagement does not exceed one School term.
- (c) The rates of pay for a Casual Teacher are at Step 9 of Table 1 in Clause 16).
- (d) A Casual Teacher is not entitled to any of the following benefits under this Agreement:
 - (i) notice of termination of employment;
 - (ii) redundancy;
 - (iii) remuneration packaging;
 - (iv) annual leave;
 - (v) leave loading;
 - (vi) paid personal/carer's leave;
 - (vii) paid compassionate leave;
 - (viii) parental payment or paid partner leave;
 - (ix) pro rata payment of salary inclusive of annual leave.

4. Fixed-term employment

- (a) Where the School engages the Teacher on a fixed-term basis, the letter of appointment will inform the Teacher of the reason the employment is fixed-term, the date of commencement, the period of the employment and the end date.
- (b) A Teacher may be employed for a fixed period up to 24 consecutive months to:
 - (i) undertake a specified project for which funding has been made available;
 - (ii) undertake a specified task which has a limited period of operation; or
 - (iii) replace a Teacher who is on leave, performing other duties temporarily or whose employment has terminated after the commencement of the School year. Where the replacement arrangement extends beyond 12 months, the fixed term employment may be extended for up to a further 12 months.
- (c) A fixed-term Teacher engaged for a total period of equal to or less than 24 consecutive months is not entitled to any of the following benefits under this Agreement:
 - (i) parental payment or paid partner leave;
 - (ii) examination leave; and
 - (iii) qualification conferral leave
- (d) A fixed-term Teacher will be provided with 12.5 days pro-rata per annum of personal/carer's leave upon commencement.

5. Part-time employment

- (a) In the case of a part-time Teacher, the letter of appointment will include the Teacher's teaching load expressed as a percentage of a full-time load in the School and that their pastoral, co-curricular and related commitments will generally be, on balance, in the same proportion to their teaching load as that of a full-time Teacher.
- (b) A part-time Teacher is entitled to the benefits under this Agreement on a pro-rata basis. The pro-rata basis will be calculated by dividing the number of face-to-face teaching hours prescribed for the part-time Teacher from time to time by the usual number of face-to-face teaching hours prescribed for a full-time Teacher in the School.
- (c) Teaching load and days of attendance may be varied by mutual consent between the School and the Teacher at any time. If a part-time Teacher is required to attend duties on a day that they do not normally attend, and that attendance is in addition to their normal pro-rata duties the Teacher shall be paid for such attendance at a casual rate of pay. In considering pro-rata duties, regard will be had as to whether Teachers at the School normally perform such duties in addition to, or in substitution for teaching duties.
- (d) The School may vary the teaching load or days of attendance, where such a variation is required as a result of a change in funding, enrolment or curriculum, by providing seven weeks' notice in writing or where the change would result in a reduction in salary, the salary is maintained for a period of seven weeks.
- (e) If a part-time Teacher's hours are reduced, without their consent, by more than 25%, they will be entitled to the provisions of Clause 14).

6. Full-time employment

- (a) The School may engage Teachers on a full-time basis in accordance with this Clause. In doing so the School will determine the ordinary full-time face-to-face classroom teaching hours per week for the Teacher up to a maximum of 37 periods per seven-day cycle for Teachers in the Middle years and at the Secondary level, and 34 periods per seven-day cycle for Teachers at Primary level.
- (b) The School may require a Teacher to teach extra classes in addition to the ordinary face-to-face teaching hours provided for in Clause 12)(6.)(a) above. These additional classes would be up to a maximum of 14 per term or as otherwise agreed between the School and the Teacher. These extra classes are additional to a teacher's total timetabled hours and do not include things like sports covers which substitute for a normal teaching schedule.
- (c) The School may agree with a Teacher to vary the face-to-face teaching hours provided for in Clause 12)(6.)(a) or aspects of the School programme provided for in Clause 15). If so, the Teacher would be eligible for the payment of a Responsibility Allowance as provided for in Clause 16)4 or an additional salary proportionate to the additional hours if the variation exceeded the overall combined ordinary expectations of a Teacher.

7. Probationary Period

Teachers will initially be appointed as Probationary Teachers. The period of probation will be one (1) year. To be appointed to the permanent staff, Teachers will be required to undergo a formal summative appraisal procedure. The period of probation may be extended for a second year. The probationary period will be recognised as service when considering Superannuation, Long Service Leave benefits, Personal/Carer's Leave and Parental Leave entitlements.

13) NOTICE OF TERMINATION

Notice of termination is provided for in the NES. This clause provides enterprise specific detail and supplements the NES.

1. Notice of termination by the School

- (a) Where a Teacher has had five (5) or more years' continuous service the School may terminate the Teacher's employment by giving a full terms' notice in writing or payment in lieu of all or part of the notice period.
- (b) Where a Teacher has had less than five (5) years' continuous service the School may terminate the Teacher's employment by giving seven weeks' notice in writing, wholly within the one School term or full payment in lieu of all or part of the notice period.

2. Notice of termination by a Teacher

- (a) The notice of termination required to be given by a Teacher is the same as that required of the School.
- (b) If a Teacher fails to give the notice specified in Clause 13)(2.)(a) the School may deduct from wages due to the Teacher under this Agreement or Award, an amount that is no more than two weeks wages for the Teacher.

3. Job search entitlement

Where the School has given notice of termination to a Teacher, a Teacher must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the Teacher after consultation with the School.

4. Statement of service

Upon the termination of employment of a Teacher, the School will provide upon the request of the Teacher, a statement of service setting out:

- (a) the commencement and cessation dates of employment;
- (b) for a casual Teacher, the number of days of duty worked by the Teacher during the period of the engagement; and
- (c) a brief description of the Teacher's duties at the School.

14) REDUNDANCY

Notwithstanding the provisions of the NES and Part 3 Section 12.1 – 12.4 "Redundancy" in the Award it is acknowledged that redundancy is a termination of service because the School does not require the position the Teacher occupied to be occupied by anyone.

The procedures, support, severance pay scales and framework for redundancy are outlined in the School's Policy – "Redundancy Conditions and Payments".

15) PROFESSIONAL PRACTICES

1. The School requires Teachers to participate in all aspects of the School program, including but not limited to:

- (a) Being an active and informed participant in the pastoral care of boys;
- (b) Effectively fulfilling their duty of care and behaviour management of boys;
- (c) Providing a differentiated teaching and learning environment where every boy is given the opportunity to excel;
- (d) Maintaining a high level of professionalism in fulfilling their duties, responsibilities, teamwork and communication;
- (e) Making a significant contribution to the School's co-curricular program;
- (f) Participating in regular performance management procedures and professional learning linked to the Professional Standards for Teaching in Western Australia and to the School's processes for improving student learning; and
- (g) Attending School functions, assemblies, staff meetings, chapel services and special occasions.

2. Professional Learning

- (a) The School is committed to providing Teachers with professional learning development opportunities. Such professional development should where appropriate be registered with TRBWA.
- (b) The School shall advise Teachers of the dates of any School designated professional development, training and/or meetings in the preceding year before the end of Term 4
- (c) Part-time Teachers may be required to attend professional development training and/or meetings in accordance with the provisions outlined in Clause 12)5.
- (d) Teachers are required to participate in professional development to maintain their accreditation as prescribed by TRBWA.

16) SALARY RATES

1. The rates of pay at the School will continue to be derived from the combination of two components:
 - (a) Base Salary Scale; and
 - (b) Responsibility Scale.

2. Base Salary Scale

Teachers will automatically progress through the Steps to Step 14 following completion of each teaching year of service without need for further accreditation. For clarity, a part-time teacher must work the equivalent number of teaching days for a full time teacher to constitute a full teaching year of service in order to progress.

3. The annual leave loading entitlement is included in the salaries below.

Table 1 – Base Salary Scale

	2020	Effective from 5 Oct 2020	Effective from 10 Jan 2022	Effective from 10 Jan 2022*	Effective from 9 Jan 2023	Effective from 8 Jan 2024
STEP	\$	\$	\$	\$	\$	\$
		2.00%	0.90%	2.10%	3.00%	3.50%
5	79,421	81,009	81,739	83,456	85,960	88,969
6	82,961	84,620	85,382	87,175	89,790	92,933
7	86,505	88,235	89,029	90,899	93,626	96,903
8	90,930	92,749	93,583	95,548	98,414	101,858
9	95,803	97,719	98,598	100,669	103,689	107,318
10	99,785	101,781	102,697	104,854	108,000	111,780
11	103,330	105,397	106,345	108,578	111,835	115,749
12	107,760	109,915	110,904	113,233	116,630	120,712
13	112,208	114,452	115,482	117,907	121,444	125,695
14	115,553	117,864	118,925	121,422	125,065	129,442

*processed in pay fortnight ended 4 March 2022 and backdated to 10 January 2022.

4. Responsibility Scale
 - (a) 100 points of the Responsibility Scale will equate to 20% of the Step 14 base salary scale.
 - (b) A responsibility allowance will be paid to a Teacher where the School requires the performance of administrative, pastoral care and/or educational leadership duties additional to those usually required of Teachers by the School.
 - (c) A responsibility allowance is linked to a position of responsibility rather than tied to an individual Teacher and is only payable for the period that the Teacher holds the position of responsibility.
 - (d) The School shall, at its discretion, determine who is eligible for a responsibility allowance and the amount of the responsibility allowance.

- (e) The School will provide written advice to a Teacher who is to receive a responsibility allowance of the position, its tenure, the duties required and the allowance to be paid.
- (f) Where a position of responsibility is shared, then payments will be shared on a corresponding pro rata basis.
- (g) The Co-curricular Allowance for Teachers who coach and supervise students Year 7 to 12 will equate to 40 points of the Responsibility Scale.
- (h) In the Junior School all full-time Teachers receive the 40-point Co-curricular allowance for pastoral care and sport and cultural activities.

Table 2 – Responsibility Scale

	2020	Effective from 5 Oct 2020	Effective from 10 Jan 2022	Effective from 10 Jan 2022*	Effective from 9 Jan 2023	Effective from 8 Jan 2024
POINTS	\$	\$	\$	\$	\$	\$
		2.00%	0.90%	2.10%	3.00%	3.50%
5	1,156	1,179	1,190	1,215	1,251	1,295
10	2,312	2,359	2,380	2,430	2,503	2,590
15	3,469	3,538	3,570	3,644	3,753	3,884
20	4,625	4,717	4,760	4,860	5,005	5,181
25	5,778	5,893	5,947	6,071	6,254	6,472
30	6,934	7,073	7,136	7,286	7,505	7,768
35	8,088	8,250	8,324	8,500	8,755	9,062
40	9,244	9,429	9,514	9,714	10,005	10,356
45	10,401	10,609	10,704	10,928	11,256	11,650
50	11,555	11,786	11,892	12,141	12,505	12,943
55	12,710	12,964	13,081	13,356	13,757	14,240
60	13,865	14,142	14,270	14,570	15,007	15,531
65	15,021	15,322	15,460	15,785	16,259	16,828
70	16,178	16,501	16,650	16,999	17,509	18,122
75	17,333	17,679	17,839	18,213	18,759	19,414
80	18,488	18,858	19,027	19,427	20,010	20,710
85	19,645	20,038	20,218	20,642	21,261	22,005
90	20,799	21,215	21,406	21,856	22,512	23,301
95	21,956	22,395	22,596	23,071	23,763	24,594
100	23,110	23,572	23,784	24,283	25,011	25,885
66.67	15,407	15,715	15,857	16,190	16,676	17,261
33.33	7,702	7,856	7,927	8,093	8,336	8,629

12.5	2,889	2,946	2,973	3,035	3,126	3,236
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*processed in pay fortnight ended 4 March 2022 and backdated to 10 January 2022.

5. Advanced Teacher Levels

(a) The Allowance for Advanced Teacher Level 1 shall be equivalent to 30 Points (as per Table 2 above), Advanced Teacher Level 2 to 60 points and Advanced Teacher Level 3 to 90 points, for the duration of the Agreement. A review of the Advanced Teacher criteria and application processes will be undertaken in collaboration with Teachers.

6. Senior Teachers

For Teachers retiring from a position of responsibility, the Headmaster may consider making available the following allowances to deserving Teachers:

(a) Heads of Departments and Head of House may receive 66.6% of their Allowance in the first year after retiring, and 33.3% of the Allowance during the second year after retiring from their position of responsibility.

17) ORDINARY HOURS OF WORK

This clause provides for enterprise specific detail and supplements the NES that deals with maximum weekly hours.

1. Notwithstanding the NES, and due to the operational requirements of the School, the ordinary hours of a Teacher may be averaged over a 12-month period.
2. The ordinary hours of work for a Teacher during Term Weeks are variable. In return, a Teacher is not generally required to attend during periods when the students are not present, subject to the needs of the School regarding professional development, student free days and other activities requiring the Teacher's attendance.
3. The maximum number of days that the Teacher will be required to attend during Term Weeks and Non-Term Weeks will be 205 in each school year.
4. The following circumstances are not included in the ordinary hours of work for a Teacher:
 - (a) co-curricular activities that are conducted on a weekend;
 - (b) School related overseas, intrastate or interstate trips, conferences, professional learning and similar activities undertaken by mutual consent during Non-Term Weeks;
 - (c) When the Teacher appointed to a Position of Responsibility is performing duties in Non-Term Weeks that are directly associated with the leadership position;
 - (d) When the Teacher has boarding house responsibilities and the Teacher is performing those duties during Term Weeks and Non-Term Weeks; and
 - (e) Exceptional circumstances, such as the requirement to provide pastoral care to students in the event of a tragedy in the School community, in which a Teacher may be recalled to perform duties relating to their position.
5. Generally, the School will provide written notice of the Term Weeks and days in Non-Term Weeks on which the Teachers are required to attend, six months in advance of the requirement to attend.

6. The annual salary and any applicable allowances payable are paid in full satisfaction of a Teacher's entitlements for the School year or a proportion of the School year. The Teacher's absence from School during Non-Term Weeks is deemed to include their entitlement to annual leave.
7. Breaks
The School will provide an unpaid meal break of not less than 30 consecutive minutes to a Teacher who is engaged or rostered to work for more than five hours on a day. The meal break will start no later than five hours after the Teacher commenced work on that day

18) LEAVE

1. Long Service Leave

Notwithstanding the provisions of *Long Service Leave Act 1958*, a Teacher shall be entitled to Long Service Leave on full pay as follows:

- (a) On completion of eight (8) years continuous service, accumulated at 1.3 weeks per year. Long Service Leave will normally be taken as complete terms, but shorter periods of leave may be approved in consultation with the Headmaster.
- (b) Upon resignation, or termination for reasons other than serious misconduct, pro rata benefit for Long Service Leave will be payable after the completion of seven (7) years continuous service at the School.
- (c) Long Service Leave shall be taken within four (4) years of the entitlement being accrued, unless prior arrangements with the Headmaster have been made

2. Personal/Carers Leave

- (a) In accordance with the provisions of Clause 24 – Personal leave of the Award, a Teacher who is unable to attend or remain at the place of employment during the normal hours of duty by reason of personal ill health or injury will be entitled to payment during such absence, and a Teacher with direct responsibilities to either members of his/her immediate family or members of his/her household who need care and support will be entitled to use, in accordance with this subclause, any personal/carer's leave entitlement for absences to provide care and support for such persons when they are ill.
- (b) Notwithstanding the provisions of Clause 24 – Personal leave of the Award, the entitlement to paid leave shall accrue progressively at the rate of twelve and a half days (12.5) for each completed year of service.
- (c) A Teacher must notify the School of the Teacher's absence as soon as reasonably practicable. The notice must be to the effect that the Teacher requires the leave because of a personal illness or injury or to provide care or support to a member of the Teacher's immediate family or household as the member is suffering either a personal illness or injury or an emergency. In relation to carer's leave, the notice must include:
 - (i) the name of the person requiring care and support and the person's relationship to the Teacher;
 - (ii) the reasons for taking such leave; and
 - (iii) the estimated length of absence.

- (d) A Teacher is entitled to personal/carer's leave provided that:

- (i) the Teacher produces a medical certificate from a Medical Practitioner or a statutory declaration to the School for any absence of more than two consecutive days;
- (ii) the Teacher provides a medical certificate from a Medical Practitioner or a statutory declaration to the School for any absence continuous with a public holiday to which the Teacher is entitled, or continuous with the first or last day of a term which would not otherwise require the provision of evidence;
- (3) the Teacher produces a medical certificate from a Medical Practitioner or a statutory declaration to the School where the number of days of paid personal/carer's leave already taken without the production of a medical certificate or a statutory declaration exceeds five days in the one School year.

3. Compassionate Leave

- (a) Immediate Family: Entitlement to Compassionate Leave – on the death or an illness or injury that causes a serious threat to his or her life of:
 - (i) The spouse or de facto partner of a Teacher;
 - (ii) The child or stepchild of a Teacher;
 - (iii) The parent, stepparent or parent-in-law of a Teacher;
 - (iv) The brother or sister of a Teacher; or
 - (v) Any person who, immediately before that person's death, lived with the Teacher as a member of the Teacher's family.
- (b) A Teacher may take:
 - (i) up to two (2) days paid leave per occasion when a member of the Teacher's immediate family or household dies; or
 - (ii) up to two (2) days paid leave per occasion when a member of the Teacher's immediate family or household contracts or develops a personal injury or illness that poses a serious threat to life.
- (c) Additional periods or extension to existing periods of compassionate leave are at the discretion of the Headmaster.
- (d) A Teacher may use up to 12.5 days accrued personal/carers leave as provided for in Clause 18)2 on full pay per year as additional compassionate leave on the death of a member of the Teacher's immediate family or household.
- (e) Compassionate leave may be taken in a single unbroken period or in separate periods of one day each or as agreed by the School and the Teacher.
- (f) The Teacher is entitled to compassionate leave only if the Teacher gives the School any evidence that the School reasonably requires of the illness, injury or death.
- (g) Compassionate leave is not to be taken during a period of other leave.
- (h) External to Immediate Family: Compassionate leave may be considered for death outside of the immediate family and any request should consider the closeness of the relationship. A Teacher is entitled to up to two (2) days compassionate leave, however the Headmaster has the discretion to act with empathy during this time and considerations for additional compassionate leave will include up to five (5) days leave when the death occurs interstate or overseas.

4. Leave Without Pay

- (a) While a Teacher may apply for leave without pay, the granting of such leave is at the discretion of the Headmaster or his delegate.
- (b) A Teacher applying for leave under this sub-clause must state the period of such leave and the reason for which the leave is being sought.
- (c) Approved unpaid leave does not break the Employee's period of service with the School. However, the period of approved unpaid leave does not count as service for the purpose of accrual of entitlements or any other service-related benefit under this Agreement or the Award.
- (d) If a Teacher is granted leave without pay, the question of the Teacher's specific duties on return to work should be considered before the granting of such leave and any arrangements made, documented. If no prior arrangement is made, a Teacher upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.
- (e) The maximum period for which leave is granted under this clause shall be one (1) year.

5. Special Leave Considerations

- (a) The School acknowledges that some "special considerations" for leave may be required. Such leave may include Family and Domestic Violence Leave or Cultural/Ceremonial Leave.
- (b) A Teacher may, on sufficient cause being shown, be granted special leave with pay.
- (c) "Sufficient cause" is defined as a matter or situation for which no other paid leave is available, no other arrangements can reasonably be made, and the absence from duty is required due to pressing necessity.
- (d) The period determined at the discretion of the Headmaster, having regard to all the circumstances, would not normally exceed three (3) days in any one instance.
- (e) Where leave with pay is not available, the Headmaster may, at his discretion provide another option which may or may not include leave without pay.
- (f) Such discretion is not to be harshly or unfairly exercised.

6. Leave to deal with Family and Domestic Violence

- (a) In accordance with the Act, a Teacher is entitled to paid Family and Domestic Violence leave up to ten (10) days in any one year. The paid Family and Domestic Violence leave does not accumulate from year to year.
- (b) Where Family and Domestic Violence leave exceeding ten days (10) is required, the Teacher is entitled to a further five (5) days unpaid Family and Domestic Violence Leave.
- (c) The School will take steps to ensure information concerning any notice a Teacher has given, or evidence a Teacher has provided under this clause is treated confidentially, as far as it is reasonably practicable to do so.

(d) Nothing in this clause prevents the School from disclosing information provided by a Teacher if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the Teacher or another person.

7. Examination Leave

A Teacher will be granted leave with pay to attend compulsory examinations in an approved relevant course of study.

8. Qualification Conferral Leave

If a Teacher is to receive conferral of a degree/diploma or other qualification in an approved relevant course of study, during a normal workday, then they will be granted leave with pay for up to one day for that purpose.

9. Community Service Leave

Community service leave, including jury duty, is provided as per the NES.

19) PARENTAL PAYMENT

1. Where a Teacher has primary care responsibility for a child immediately following the birth or placement (in the case of adoption) of the child, and has completed at least one (1) year's continuous service as a permanent Teacher prior to the birth or placement of the child, they are entitled to a Parental Payment.
2. Where a part-time Teacher has primary care responsibility for a child immediately following the birth or placement (in the case of adoption) of the child, and has completed at least one (1) year's continuous service as a permanent part-time Teacher prior to the birth or placement of the child, they are entitled to a pro-rata Parental Payment.
3. The Parental Payment is an amount equivalent to 14 weeks' pay, calculated as the average salary rate paid to the permanent Teacher in the 12 months immediately preceding the commencement of parental leave. Superannuation will be applied to the Parental Payment.
4. To be entitled to the Parental Payment for any subsequent pregnancy or adoption:
 - (a) there must be no break in the permanent Teacher's service with the School; and
 - (b) the permanent Teacher must have returned to work immediately following completion of the prior period of parental leave; and
 - (c) the permanent Teacher must have completed at least a further 12 months continuous service with the School since returning to work and immediately preceding the date upon which the Teacher proceeds on the subsequent period of parental leave to be entitled to a Parental Payment of 14 weeks' pay, or if the Teacher completes six months continuous service but less than 12 months, then the Parental Payment will be seven weeks' pay.
5. The Parental Payment will be paid as a fortnightly payment from the time the permanent Teacher commences on a period of parental leave, unless agreed otherwise between the parties.
6. A permanent Teacher is a Teacher engaged on a permanent basis and may be full-time or part-time. Casual Teachers or fixed term Teachers (unless they have been engaged for a total period of more than 24 consecutive months) are not permanent Teachers for the purposes of this clause.

20) PARENTAL LEAVE

1. In accordance with the NES, Teachers with responsibility for the care of a child are entitled to apply for a period of up to 12 months unpaid parental leave, with the option to apply for an extension of a further 12 months provided the Teacher provides the School with at least 4 weeks' notice in writing of the intention to extend the period of leave.
2. Parental leave does not break the continuity of service of the Teacher. However, the period of parental leave does not count as service for the purpose of accrual of entitlements or any other service-related benefit under this Agreement or the Award.
3. A permanent Teacher who does not have primary care responsibility for a child immediately following the birth or placement (in the case of adoption) of the child is entitled to two (2) weeks' paid parental leave, calculated as the average salary rate paid to the Teacher in the 12 months immediately preceding the commencement of parental leave, to commence within one week of the birth or placement of their child.
4. A further period of unpaid parental leave resulting from a subsequent pregnancy or placement (in the case of adoption) may be taken without a return to work and shall be deemed to be a new and separate period of parental leave. This further period of unpaid parental leave shall be for a period of up to 52 weeks, will commence from the date of birth or placement (in the case of adoption) of the second or subsequent child, and the initial period of parental leave will end on the date of birth or placement of the second or subsequent child.
5. The Teacher must communicate their parental leave plans in writing to the Headmaster and, where possible, will align their return to work from parental leave to coincide with the commencement of a School term.

21) HOLIDAY AND VACATION LEAVE

1. Except as hereinafter provided, a Teacher shall be allowed the holidays granted by the School in which he/she is employed, including term and Christmas vacations, without deduction of pay.
2. If after one week's continuous service in any calendar year a Teacher lawfully terminates his/her employment or his/her employment is terminated by the School through no fault of the Teacher, the Teacher shall be granted salary instead of vacation leave proportionate to his/her length of service. Provided that a Teacher who was engaged for all four terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.
3. Where a Teacher has been paid for leave, which at the time of termination has not been fully accrued, the School may deduct from any monies owed that portion to which the Teacher is not entitled.
4. Where the employment of a Teacher is terminated by the School prior to the attainment of the accrued vacation leave, then the provisions of Clause 21)3 shall not apply.
5. A Teacher on approved paid leave, shall accrue an entitlement to payment under this clause.
6. A Teacher who is justifiably dismissed for serious misconduct shall not be entitled to the benefits of the provisions of this clause.

22) DEFERRED SALARY SCHEME

In accordance with conditions outlined in the School's Deferred Salary Program Policy, the School is committed to providing all Teachers with the opportunity to enhance their professional lives through participating in this program. Applications to participate in the Deferred Salary Program must be made to the Headmaster and will be approved on an individual basis.

23) NO FURTHER CLAIMS

1. It is a condition of this Agreement that the parties will not seek any further claims, with respect to salaries or conditions, unless they are consistent with the determinations of the FWC.
2. However, further matters may be negotiated and implemented before the expiration of this Agreement provided there is agreement between the parties with respect to such matters.

24) NO REDUCTION

Nothing contained herein shall entitle the School to reduce the salary or conditions of a Teacher which prevailed prior to entering this Agreement without the agreement of the Teacher.

25) NO PRECEDENT

It is a condition of this Agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the School or not.

Annexure A

26) SIGNATORIES

Mark

(Signature)

(Signature)

MARK FOSTER (BOARD CHAIR)

(Name of Signatory in BLOCK LETTERS)
Governors of Hale School at 160 Hale
Road, Wembley Downs, WA 6019

(Name of Signatory in BLOCK LETTERS)
Independent Education Union of Western
Australia, Industrial Union of Workers

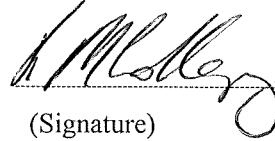
S Lane

(Name of Signatory in BLOCK LETTERS)
SHAUN LANE
Hale School Common Room Liaison
Committee

**17 REGENCY AVE,
MADELEY WA 6065**

26) SIGNATORIES

.....
(Signature)

.....

(Signature)

.....
(Name of Signatory in BLOCK LETTERS)
Governors of Hale School

.....
REBECCA COLLOPY
BRANCH SECRETARY

.....
(Name of Signatory in BLOCK LETTERS)
Independent Education Union of Western
Australia, Industrial Union of Workers
Suite 20, 63 KNUTSFORD AVE
RIVERVALE WA 6103

.....
(Name of Signatory in BLOCK LETTERS)

Hale School Common Room Liaison
Committee

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2023/1126

Applicant:
Governors of Hale School (ABN 49 810 035 782)

Section 185 – Application for approval of a single enterprise agreement

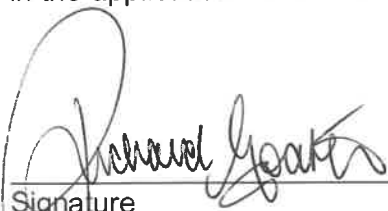
Undertaking – Section 190

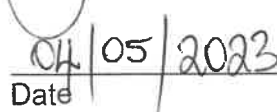
I, Dr Richard Goater, Director of Staff Development and Human Resources, have the authority given to me by the Governors of Hale School (ABN 49 810 035 782) to give the following undertakings with respect to the *Hale School (Enterprise Bargaining) Agreement 2023* ("the Agreement"):

1. Clause 8 of the Agreement – The National Employment Standards, will be deleted and replaced with the following clause:

This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.


Signature


Date

Schedule 2.2 Model flexibility term

(regulation 2.08)

Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing — at any time.