



# DRAFT REPORT

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## 4 yearly review of modern awards

(AM2014/266)

### EDUCATIONAL SERVICES (TEACHERS) AWARD 2010 [MA000100]

COMMISSIONER CIRKOVIC

HOBART, 15 MARCH 2017

*4 yearly review of modern award – Educational Services (Teachers) Award 2010.*

[1] On Monday 30 January 2017 and Tuesday 7 March 2017 conferences were held to discuss the Summary of Submissions – Technical and Drafting (the summary) in relation to the review of the *Educational Services (Teachers) Award 2010*.

[2] The following items in the summary were discussed at the conferences. The tracked changes reflect the position of the parties following the conference of 7 March 2017:

- Item 1: withdrawn by United Voice.
- Item 2: ~~United Voice proposes that words ‘whichever makes them more accessible’ be retained in clause 3.3 in the Exposure Draft (ED). The IEU does not oppose. The AFEI referred to an earlier decision of the Full Bench and submits that those words place a difficult obligation on employers, and propose the words should not be included in the ED. To be discussed further at next conference. Withdrawn by United Voice.~~
- Item 3: ~~IEU & AIS propose that Clause 6.1(b) and (c) should only refer to Schedule A, as only employees employed under Schedule A are entitled to overtime payments and penalty rates. AFEI and CCSA oppose IEU & AIS proposal to vary. To be discussed further at next conference. IEU & AIS propose a notation to clarify that clause 6.1(b) and (c) relate to schedule A only. CCSA propose a notation in clause 6.1 that identified that clause 6.1(b) and (c) do not apply to teachers employed in a school (or similar wording that covered that sector). IEU & AIS agree with CCSA proposed notation. Agreed, as per CCSA proposal.~~
- Item 4: ~~ABI propose that clauses 12.2, A.2, A.3.1 and A.4.2 be added to list of facilitative provisions in clause 7.2. ABI submit that clause 7.2 simply lists facilitative provisions and that they are not requesting a variation to the award as those provisions are already facilitative. IEU & AIS prefer the ED clause to the version proposed by ABI. IEU & AIS submit that this was a consent position prior to the making of the award and modern award and that it is a matter for further submissions. AFEI agree with ABI’s proposal. A matter for submissions and to be discussed further at next conference. AIS submit that if the Commission is of the view that 12.2, A.2, A.3.1 and A.4.2 are facilitative provisions, they do not have a significant objection to them being~~

included in clause 7.2. AIS submit that they do not want to open these clauses up to be more facilitative. IEU oppose the inclusion of the clauses in clause 7.2 based on the assertion of ABI that it would be in some way useful or normative. ABI and NSWBC propose that it would be a matter for submissions. A matter for submissions and to be discussed further at next conference.

- Item 5: Agreed, as per IEU & AIS proposal.
- Item 6: Agreed, as per IEU & AIS proposal.
- Item 7: Agreed, as per IEU & AIS proposal.
- Item 8: Agreed, as per IEU & AIS proposal.
- Item 9: Agreed, as per IEU & AIS proposal.
- Item 10: ~~IEU & AIS submit the title of clause 14.2 is misleading and should not include the word 'previous'. They submit that it should also include service with current employer as well as previous service. AFEI submit IEU & AIS proposal is unnecessary, that the ED is consistent with current award. AFEI position is that previous service includes that with current employer or with another employer. A matter for submissions and to be discussed further at next conference. Parties agreed to look at alternative wording and provide brief submissions and/or communicate amongst themselves re appropriate wording and location in ED, prior to next conference.~~
- Item 11: In response to question raised by the Commission it is agreed between parties that a separate definition of 'years of service' is unnecessary and should be removed.
- Item 12: ~~IEU & AIS do not support the inclusion of minimum hourly rate of pay in clause 17.1. They submit it is potentially misleading to use an hourly rate as a part-time teacher's salary is based on the proportion of a full-time teacher's face to face teaching and hourly rates are generally not used in the sector. They request that that column be removed. AFEI agree with IEU & AIS position. CCSA oppose IEU & AIS position. To be discussed further at next conference. IEU & AIS position remains that the hourly rate should not be included, proposed a notation that would make it clear that the hourly rate is applicable only to schedule A employees. CCSA oppose IEU & AIS position and proposal. A matter for submissions and to be discussed further at next conference.~~
- Item 13: Agreed, as per IEU & AIS proposal.
- Item 14: AFEI withdrew their opposition to ABI's proposal. Agreed, as per ABI & NSWBC proposal.
- Item 15: In response to question raised by the Commission it is agreed between parties that they do not support the inclusion of further definition of Level 2 and 3 leadership allowances in clause 18.3(c)(ii).
- Item 16: Agreed, as per IEU & AIS proposal.
- Item 17: IEU & AIS propose that sub clause 21.2 be divided into two separate sub clauses: 21.2 'This clause does not apply to teachers employed in early childhood services operating for at least 48 weeks per year covered by Schedule A' and 21.3 'For the purpose of this clause: (a) school or preschool service date means the date from which employees are paid at the commencement of the school/preschool year in their first year of service with the employer; and (b) employee means an employee other than a casual employee.' ~~AFEI oppose the position of IEU & AIS, as it considers the ED is sufficiently clear on the pro-rata payment of salary inclusive of annual leave. To be discussed further at next conference. AFEI withdraws its opposition to position of IEU & AIS. CCSA supports the proposal of IEU & AIS. Agreed, as per IEU & AIS proposal.~~
- Item 18: Agreed, as per ABI & NSWBC proposal.
- Item 19: Agreed, as per IEU & AIS proposal. AFEI note this clause might be addressed in plain language drafting.

- Item 20: Agreed, as per IEU & AIS proposal.
- Item 21: Parties agreed that the comparison document referring to ED has been corrected.
- Item 22: Agreed, as per IEU & AIS proposal.
- Item 23: ~~IEU & AIS submit that Rostered Days Off (RDOs) are not relevant for teachers and that provision for RDOs only belongs in schedule A. ABI & NSWBC agree that Schedule A.2.12 should not be picked up by the wider award. Their comment is that the inclusion of the clause in Schedule A is odd as that Schedule deals with childhood services operating for at least 48 weeks per year and this specific clause relates to services operating less than 48 weeks per year. To be discussed further at next conference. Action: AMOD to provide explanation as to why that clause appears in Schedule A. To be discussed further at next conference.~~
- Item 24: ~~IEU & AIS seek to make further submissions about the rationale behind the expression as proposed in its substantive applications. IEU & AIS made further submissions on 25 January 2017. To be dealt with as a substantive issue.~~
- Item 25: ~~IEU & AIS do not support the inclusion of hourly rates of pay. AFEL agree with IEU & AIS position, they note it is the same position in relation to item 12. CCSA oppose IEU & AIS proposal. To be discussed further at next conference. A matter for submissions.~~
- Item 26: Agreed, as per IEU & AIS proposal.
- Item 27: Agreed, as per ABI proposal.

[3] This matter is listed for further conference at **2:00pm Thursday 30 March 2017** in Sydney. Any comments on the accuracy of the draft record are to be filed by no later than **5:00pm on Thursday 23 March 2017**.

COMMISSIONER

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