

**Fair Work Commission: 4 Yearly Review of Modern Awards  
(s.156, *Fair Work Act 2009* (Cth))**

**AM2014/266  
*Educational Services (Teachers) Award 2010* [MA000077]**

**SUBMISSION**

**Educational Services (Teachers) Award 2010**

**30 September 2016**

**Associations of Independent Schools**

**and**

**Independent Education Union of Australia**

**Introduction**

1. These submissions are made on behalf of the Independent Education Union (**IEU**) and the Associations of Independent Schools (**AIS**), which are:
  - Association of Independent Schools of New South Wales
  - Association of Independent Schools of South Australia
  - Association of Independent Schools of Western Australia
  - Independent Schools Queensland
  - Independent Schools Tasmania
  - Independent Schools Victoria.
2. Hereinafter, the IEU and the AIS are referred to as '**the Parties**'.
3. The submissions are made by the Parties in response to the Statement and Directions issued by the Fair Work Commission ('**the Commission**') on 26 August 2016. This submission is a short submission covering the proposed variations sought by the Parties, with a draft determination provided, in accordance with the directions.
4. The Parties proposed, and subsequently agreed upon a number of variations to the *Educational Services (Teachers) Award 2010* ('**the 2010 Award**'), which are identified by the Commission in the Summary of Proposed Variations as at 7 December 2015.

5. The Parties outlined the proposed variations in Part 2 – Summary of the Applications of the submission made on 30 June 2016 with respect to the Commission’s Exposure Draft of the Educational Services (Teachers) Award 2016 (**‘the Exposure Draft’**).

## **Proposed Variations**

6. The applications or claims of the Parties are identified by using the Item Number assigned by the Commission in its Summary of Proposed Variations as at 7 December 2015.
7. The references are to the clauses of the Exposure Draft rather than to the clauses of the current 2010 Award.

### **Item 5**

8. The AIS has proposed variations to the definitions for a four year trained teacher and a five year trained teacher in clause 2 – Definitions of the Exposure Draft.
9. The proposed variations provide an accurate description of a four year trained teacher and a five year trained teacher, which will enable employees and employers, to better interpret the definitions.
10. The Parties have agreed upon the terms of the proposed variations in clause 2 – Definitions of the Exposure Draft:

#### Four year trained teacher

*“Four year trained teacher means a teacher who has completed a degree in education or early childhood education that requires four years of full-time study at an Australian university or the equivalent as determined by the National Office of Overseas Skills Recognition, or the relevant State or Territory teacher registration/accreditation authority, or in the case of early childhood teachers the relevant licensing and accreditation authority.”*

#### Five year trained teacher

*“Five year trained teacher means a teacher who has completed the equivalent of five years of full-time study comprised of either:*

- *a five-year Bachelor of Education (or Early Childhood Education) degree, or*
- *a four-year undergraduate degree with a one-year post-graduate qualification in education, or*
- *a three-year undergraduate degree with a two-year post-graduate qualification in education,*

*at an Australian university or the equivalent as determined by the National Office of Overseas Skills Recognition, or the relevant State or Territory teacher registration/accreditation*

*authority, or in the case of early childhood teachers, the relevant licensing and accreditation authority.”*

**Item 6**

11. The IEU has proposed to vary the definition of a teacher in clause 2 – Definitions of the Exposure Draft.
12. The proposed variation makes it clear that a teacher is defined to include a teacher appointed as a director in a children’s service or early childhood service.
13. The Parties have agreed upon the terms of the proposed variation to the definition of a teacher in clause 2 – Definitions of the Exposure Draft:

*“teacher means a person employed as such by a school, children’s service or early childhood education service and who performs teaching duties which may include delivering an educational program, assessing student participation in an educational program, administering an educational program or performing other duties incidental to the delivery of the educational program. So as to remove any doubt, teacher includes a teacher in a senior leadership position and a teacher appointed as a director in a children’s service or early childhood service, but not a principal or deputy principal.”*

**Item 13**

14. The AIS has proposed to vary the clause dealing with the recognition of previous service, as the clause actually covers the recognition of service with previous employers and with the current employer.
15. The proposed variation clarifies the recognition of teaching experience gained overseas. For recognition, the teaching experience must have been gained whilst the person held qualifications that are recognised by the State or Territory teacher registration/accreditation authority.
16. The Parties have agreed to propose that the following sentence is added at the end of cl.14.2(a) of clause 14 – Classifications of the Exposure Draft:

*“Furthermore, teaching experience gained in a country where the qualifications held at the time of gaining that experience are not recognised by the relevant State or Territory registration/accreditation authority or, in the case of early childhood teachers, the relevant licensing and accreditation authority, will not count towards teaching experience.”*

**Item 15**

17. The IEU has proposed to vary the description applying to the quarter day rate.

**Submission of the IEU and AIS (30 September 2016)**

18. The proposed variation sets out the relevant information in one subclause in a succinct manner that is easier for employees and employers to interpret.
19. The Parties have agreed upon the terms of the proposed variation to what was cl.17.4(c) (now cl.17.5(c)) of clause 17 – Minimum wages of the Exposure Draft:

*“17.5(c) Minimum payments*

*a. Provided that:*

- (i) a casual employee in a school will be paid for a minimum of half a day; and*
- (ii) a casual employee in a children’s service or early childhood education service may be paid for a minimum of a quarter day.*

*Where:*

- a day is the usual required attendance time for an employee at that school or service;*
- a half day is half the usual required attendance time for an employee at that school or service; and*
- a quarter day is a quarter of the usual required attendance time for an employee at that school or service.”*

**Item 18**

20. The IEU has proposed a variation to cap the number of days that teachers employed in distance education may work in a school year at 205 days.
21. The proposed variation makes it clear to employees and employers that the cap of 205 days applies to a teacher irrespective of whether the teacher is engaged to provide face-to-face teaching in a school or to provide distance education.
22. The Parties have agreed upon the proposed variation to cl.15.5 of clause 15 – Ordinary hours of work of the Exposure Draft, which is to renumber cl.15.5 as cl.15.5(a) and to add cl.15.5(b):  
*“(b) For the avoidance of doubt, cl.15.5(a) applies to an employee employed to provide distance education.”*

**Item 19**

23. The AIS proposed a variation to the wording of meal breaks.
24. The proposed variation clarifies the entitlement to an unpaid meal break and the time by which the meal break must commence.
25. The Parties have agreed upon the terms of the proposed variation to cl.16.1 (Unpaid meal break) of clause 16 - Breaks of the Exposure Draft:

*“(a) An employer is required to provide an unpaid meal break of not less than 30 consecutive minutes to an employee who is engaged or rostered to work for more than five hours on a day. Such meal break will start no later than five hours after the employee commenced work on that day.*

*(b) Clause 16.1(a) does not apply to an employee employed in an early childhood service and required to work for at least 48 weeks per year and who is covered by the provisions of Schedule A.”*

### **Additional Proposed Variation**

26. The Parties have recently noticed an unintended consequence of the words used in clauses 15.2, 21.2 and 22.4 of the Exposure Draft. The relevant clauses in the 2010 Award are clauses 19.2, 22.1 and 23.4, respectively. The Parties also propose a change to the title of Schedule A of the Exposure Draft.
27. All future references will be to the clauses of the Exposure Draft.
28. The current clauses, which deal with the entitlements of a teacher employed in an early childhood service, place the emphasis on the operating weeks of an early childhood service rather than on the working weeks of a teacher employed by an early childhood service operating under Schedule A. Schedule A applies to an early childhood service operating for at least 48 weeks per year.
29. This emphasis has the unintended consequence of not permitting an early childhood service operating for at least 48 weeks per year to employ a teacher to work only term weeks. The wording of the current clauses means that a service operating 48 weeks per year may only employ a teacher to work 48 weeks (or more) rather than for term weeks.
30. The majority of early childhood services operated for at least 48 weeks per year by school employers employ teachers to work term weeks (up to 205 days) with their hours of work and annual leave arrangements in accordance with clauses 15 (Ordinary hours of work), 20 (Annual leave) and 21 (Pro rata payment of salary inclusive of annual leave) of the Exposure Draft.
31. The proposed variations will enable an early childhood service operating for at least 48 weeks per year to employ a teacher to work term weeks during the school year or to work 48 or more weeks per year.
32. The Parties have agreed upon the terms of the proposed variation to clause 15.2 of clause 15 – Ordinary hours of work of the Exposure Draft

*“This clause does not apply to teachers, including a teacher appointed as a Director, employed in an early childhood service where the teacher is required to work for 48 or more weeks per year and is covered by the provisions of Schedule A.”*

33. The Parties have agreed upon the terms of the proposed variation to clause 21.2 of clause 21 – Pro rata payment of salary inclusive of annual leave of the Exposure Draft:

*“This clause does not apply to teachers employed in early childhood services required to work for at least 48 weeks per year and covered by Schedule A.”*

34. The Parties have agreed upon the terms of the proposed variation to clause 22.4 of clause 22 – Annual leave loading of the Exposure Draft:

*“Clause 22.3 does not apply to teachers covered by Schedule A - Hours of Work and Related Matters—Teachers employed in early childhood services and required to work at least 48 weeks per year.”*

35. The Parties have agreed to propose a variation to the title of Schedule A of the Exposure Draft:

*“Schedule A - Hours of Work and Related Matters—Teachers employed in early childhood services and required to work at least 48 weeks per year.”*

### **Type of Case**

36. The Parties will be relying upon merit to support their proposed variations. It may be necessary, however, to call up to two witnesses in respect of Item 6 above. This matter involves a question as to the appropriate modern award for coverage of a teacher sub-grouping.

\* \* \*



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 – 4 yearly review of modern awards

## 4-yearly review of modern awards

AM/2014/266

### EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

[MA000077]

Educational services

JUSTICE ROSS, PRESIDENT

XX

XX

XX, XX XXXX 2016

#### *4 yearly review of modern awards*

A. Further to the Full Bench decision issued by the Fair Work Commission on XX, the above award is varied by adopting the Exposure Draft, as proposed to be varied by the Parties, save for the following:

1. By deleting the definition of “four year trained teacher” of clause 2 of the Exposure Draft and inserting the following:

**four year trained teacher** means a teacher who has completed a degree in education or early childhood education that requires four years of full-time study at an Australian university or the equivalent as determined by the National Office of Overseas Skills Recognition, or the relevant State or Territory teacher registration/accreditation authority, or in the case of early childhood teachers the relevant licensing and accreditation authority.

2. By deleting the definition of “five year trained teacher” of clause 2 of the Exposure Draft and inserting the following:

**five year trained teacher** means a teacher who has completed the equivalent of five years of full-time study comprised of either:

- a five-year Bachelor of Education (or Early Childhood Education) degree, or
- a four-year undergraduate degree with a one-year post-graduate qualification in education, or
- a three-year undergraduate degree with a two-year post-graduate qualification in education,

at an Australian university or the equivalent as determined by the National Office of Overseas

Skills Recognition, or the relevant State or Territory teacher registration/accreditation authority, or in the case of early childhood teachers, the relevant licensing and accreditation authority.

3. By deleting the definition of “teacher” of clause 2 of the Exposure Draft and inserting the following:

**teacher** means a person employed as such by a school, children’s service or early childhood education service and who performs teaching duties which may include delivering an educational program, assessing student participation in an educational program, administering an educational program or performing other duties incidental to the delivery of the educational program. So as to remove any doubt, teacher includes a teacher in a senior leadership position and a teacher appointed as a director in children’s service or early childhood service, but not a principal or deputy principal.

4. By adding the following sentence at the end of clause 14.2(a) of the Exposure Draft:

Furthermore, teaching experience gained in a country where the qualifications held at the time of gaining that experience are not recognised by the relevant State or Territory registration/accreditation authority or, in the case of early childhood teachers, the relevant licensing and accreditation authority, will not count towards teaching experience.

5. By deleting clause 17.5(c) of the Exposure Draft and replacing with the following:

### **Minimum payments**

Provided that:

- (i) a casual employee in a school will be paid for a minimum of half a day; and
- (ii) a casual employee in a children’s service or early childhood education service may be paid for a minimum of a quarter day.

Where:

- a day is the usual required attendance time for an employee at that school or service;
- a half day is half the usual required attendance time for an employee at that school or service; and
- a quarter day is a quarter of the usual required attendance time for an employee at that school or service.

6. By deleting clause 15.5 of the Exposure Draft and inserting the following:

### **15.5 Maximum number of attendance days**

- (a) The maximum number of days that the employee will be required to attend during term weeks and non-term weeks is 205 in each school year.
- (b) For the avoidance of doubt this clause applies to an employee employed to provide distance education.

7. By deleting clause 16.1 of the Exposure Draft and inserting the following:



## 16.1 Unpaid meal break

- (a) An employer is required to provide an unpaid meal break of not less than 30 consecutive minutes to an employee who is engaged or rostered to work for more than five hours on a day. Such meal break will start no later than five hours after the employee commenced work on that day.
- (b) Clause 16.1(a) does not apply to an employee employed in an early childhood service and required to work for at least 48 weeks per year, and who is covered by the provisions of Schedule A.

8. By deleting clause 15.2 of the Exposure Draft and inserting the following:

This clause does not apply to teachers, including a teacher appointed as a Director, employed in an early childhood service where the teacher is required to work for 48 or more weeks per year, and is covered by the provisions of Schedule A.

9. By deleting clause 21.2 of the Exposure Draft and inserting the following:

This clause does not apply to teachers employed in early childhood services required to work for at least 48 weeks per year and covered by Schedule A.

10. By deleting clause 22.4 of the Exposure Draft and inserting the following:

Clause 22.3 does not apply to teachers covered by Schedule A – Hours of Work and Relations Matters-Teachers employed in early childhood services and required to work at least 48 weeks per year.

11. By deleting the Schedule A title and replacing with:

Schedule A - Hours of Work and Related Matters—Teachers employed in early childhood services and required to work at least 48 weeks per year.

12. This order comes into operation from xx 2016. In accordance with s.165(3) of the *Fair Work Act 2009* this order does not take effect until the start of the first full pay period that starts on or after xx 2016.

PRESIDENT