



# REPORT TO FULL BENCH

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

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

(AM2019/17)

DEPUTY PRESIDENT CLANCY

MELBOURNE, 19 MAY 2020

*4 yearly review of modern awards – finalisation of Exposure Drafts and draft variation determinations – Tranche 3 awards – Educational Services (Teachers) Award 2010.*

[1] Arising from the Statement of the Full Bench dated 5 May 2020<sup>1</sup> with respect to finalising the Tranche 3 awards, a conference of parties with an interest in the *Educational Services (Teachers) Award 2010* was held on Tuesday 12 May 2020 in an effort to resolve the outstanding issues in dispute.

### **Clause 18.1**

[2] Australian Business Industrial & NSW Business Chamber Limited (ABI) has previously indicated it does not agree with the *provisional* view we expressed in the Background Paper published on 23 March 2020 (the Tranche 3 BP) that clause 18.1 of the Exposure Draft and the draft variation determination that were published on 29 January 2020, amongst others, be amended as proposed by the Independent Education Union of Australia (IEU) and the Association of Independent Schools (AIS).

[3] ABI opposed the proposal that clause 18.1(a) be varied to ensure the fortnightly payment of wages by adding the words ‘with the payment being made no later than the last working day of each fortnight’, on the grounds that it is unnecessary and creates ambiguity.

[4] Shortly prior to the conference, the IEU sent correspondence to ABI suggesting an amendment to Clause 18.1(a) (**in red below**) so that it reads:

**“18.1 All monies payable will be paid:**

- (a) once each fortnight with the payment, **excepting teachers being employed pursuant to Schedule A**, being made no later than the last working day of each fortnight...”

[5] Schedule A applies to teachers employed in early childhood services operating for at least 48 weeks per year. These are the teachers that appear to be of most interest to the members and clients of ABI.

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<sup>1</sup> [2020] FWCFB 2357.

[6] At the conference, ABI indicated that it agreed with this proposal and that it otherwise had no issues with the other amendments proposed by the Independent Education Union of Australia (IEU) and the Association of Independent Schools (AIS). The result is that with the exception of the matters relating to Schedule B outlined below, there are no longer any outstanding issues in dispute.

## **Schedule B**

[7] Schedule B of the Exposure Draft includes two tables outlining rates of pay for certain categories of casual employees (*B.1.1 Casual employees – full day rates* and *B.1.2 Casual employees – half day rates*).

[8] The IEU proposes inserting the following additional columns:

- 1) A column for Teachers employed in early childhood services operating for at least 48 weeks per year who are not shiftworkers in table B.1.1; and similarly
- 2) A column for Teachers employed in early childhood services operating for at least 48 weeks per year who are not shiftworkers in table B.1.2.

[9] Neither the AIS nor ABI object to this.

[10] The parties remain in dispute regarding the way that the casual rates of pay in tables in Schedules B.1.1 and B.1.2 are to be calculated. The IEU maintains that the rates in Schedules B.1.1 and B.1.2 need to incorporate the 4% loading contained in clause 17.2 of the Exposure Draft. The IEU's position is based on the way in which it says the term "appropriate minimum rate for the classification as specified in clause 14 – Classifications" in clause 17.5(a)(ii) of the Exposure Draft is to be interpreted.

[11] AIS and ABI maintain the 4% loading contained in clause 17.2 of the Exposure Draft does not need to be incorporated and submit that the non application of the 4% loading represents the current interpretation of the current Award.

[12] This dispute was not able to be resolved in the conference and the IEU has requested to be heard prior to the making any final determination.



DEPUTY PRESIDENT