

From: Michael Wright <michael@ieu.asn.au>
Sent: Thursday, June 11, 2020 10:32 AM
To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>
Cc: Sophie Margaret Whish <Sophie.Whish@ablawyers.com.au>; Rhys Kingston <Rhys.Kingston@Ablawyers.com.au>; MCarter@aisnsw.edu.au; John Gunn <John.Gunn@ccsa.org.au>; Anthony Odgers <aodgers@ieu.org.au>; AMOD <AMOD@fwc.gov.au>; Carol Matthews <carol@ieu.asn.au>
Subject: AM2020/24 Educational Services (Teachers) Award 2010 - consent position of parties

Dear Associate,

Re.: AM2020/24 Educational Services (Teachers) Award 2010 - consent position of parties

The following consent position has been reached between the IEUA, NSWBC/ABI and the AISs:

- 1. NSWBC, ABI & AIS state on record that 4% for casual employees working in LDC has never applied. It is not ambiguous or an error in the existing award. Express payment of the 4% for casuals would be a substantive change to the award.*
- 2. The IEU states on record that its view differs, and that the 4% loading for casual employees has always applied.*
- 3. The parties agree that the Commission does not need to make a finding, binding declaration of rights or comment as to how the existing award clause currently operates, or has operated for the last 10 years.*
- 4. On this basis, NSWBC, ABI & AIS would not seek to oppose on merit grounds a variation to the award (by way of the exposure draft) so that casuals do receive the 4% in the 2020 version of the award. This should not be taken as any kind of concession as to how the award should have been interpreted for the last 10 years. This is in NSWBC, ABI & AIS's view a new substantive variation for the entitlement to 4% to extend to casuals and in their view, the Commission would need to have regard to the relevant requirements of the Act for such a change. The IEU, notwithstanding and without prejudice to its position as set out above, has no objection to the variation being made under s.156 rather than s.160.*

On that basis, the IEU submits that the variation set out in the attached draft determination can be made without the need for a hearing. In the alternative, if the Commission would be assisted by further submissions from the IEUA as to the merits of the application, the IEUA will provide these at short notice.

Regards,

Michael Wright

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DRAFT DETERMINATION

Fair Work Act 2009

s. 156 – 4 yearly review of modern awards

4 yearly review of modern awards

(AM2019/17)

EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

[MA000077]

Educational Services

[insert]

DATE

4 yearly review of modern awards – Educational Services (Teachers) Award 2010 – modern award varied

A. Further to the decision [REFERENCE] issued by the Full Bench of the Fair Work Commission on (DATE), the *Educational Services (Teachers) Award 2010* is varied as follows:

1. By replacing clause 16.1.(a) with the following clause:

(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 5 hours on a day. Such meal break will start no later than 5 hours after the employee commenced work on that day.

2. By replacing clause 18.1(a) with the following clause:

(a) Once each fortnight with the payment being made no later than the last working day of each fortnight;

3. By replacing clause 33.2(a) with the following clause:

(a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by this award.

4. By replacing the clause at Schedule A.3.1(a) with the following clause:

(a) An employer is required to provide a paid meal break of between 20 and 30 consecutive minutes to an employee who is engaged or rostered to work for more than 5 hours on a day. Such meal break will start no later than 5 hours after the employee commenced work on that day.

5. By replacing the rates tables in Schedules B.1.1 and B.1.2 with the following tables:

B.1.1 Casual employees—full day rates

	All employees (excluding Schedule A)	Teachers employed in early childhood services operating for at least 48 weeks per year (Schedule A)					
		Full day rate	Early morning shift	Afternoon shift	Night shift (rotating)	Night (non-rotating)	Saturday
% of casual full day rate (Sch A)							
	100%	104%	110%	115%	117.5%	130%	125%
	\$	\$	\$	\$	\$	\$	\$
Level 1	246.83	256.70	282.37	295.21	301.62	333.71	320.88
Level 2	251.92	262.00	288.20	301.30	307.85	340.60	327.50
Level 3	258.77	269.12	296.03	309.49	316.22	349.86	336.40
Level 4	268.11	278.83	306.71	320.65	327.63	362.48	348.54
Level 5	277.45	288.55	317.41	331.83	339.05	375.12	360.69
Level 6	286.14	297.59	327.35	342.23	349.67	386.87	371.99
Level 7	294.84	306.63	337.29	352.62	360.29	398.62	383.29
Level 8 ¹	304.17	316.34	347.97	363.79	371.70	411.24	395.43

Level 9	313.52	326.06	358.67	374.97	383.12	423.88	407.58
Level 10	322.85	335.76	369.34	386.12	394.52	436.49	419.70
Level 11	332.20	345.49	380.04	397.31	405.95	449.14	431.86
Level 12	341.53	355.19	390.71	408.47	417.35	461.75	443.99

B.1.2 Casual employees—half day and quarter day rates

	All employees (excluding Schedule A)		Teachers employed in early childhood services operating for at least 48 weeks per year (Schedule A)	
	Half Day rate	Quarter Day rate	Half Day rate	Quarter Day rate
	\$	\$	\$	\$
Level 1	123.41	61.71	128.35	64.18
Level 2	125.96	62.98	131.00	65.50
Level 3	129.39	64.69	134.56	67.28
Level 4	134.05	67.03	139.41	69.71
Level 5	138.72	69.36	144.27	72.14
Level 6	143.07	71.54	148.79	74.40
Level 7	147.42	73.71	153.31	76.66
Level 8 ²	152.08	76.04	158.17	79.08
Level 9	156.76	78.38	163.03	81.51
Level 10	161.43	80.71	167.88	83.94
Level 11	166.10	83.05	172.74	86.37
Level 12	170.76	85.38	177.60	88.80

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

PRESIDENT