



DECISION

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 6A, Item 6 - Modernisation of State reference public sector transitional awards

State reference public sector transitional award modernisation (AM2014/31)

SCHOOL SERVICES OFFICERS (STATE GOVERNMENT SCHOOLS), VICTORIA, AWARD 2000 [TRANSITIONAL]

State reference public sector transitional award modernisation (AM2014/37)

TEACHERS' (VICTORIAN GOVERNMENT SCHOOLS) CONDITIONS OF EMPLOYMENT AWARD 2001 [TRANSITIONAL]

Educational services

VICE PRESIDENT WATSON
DEPUTY PRESIDENT CLANCY
COMMISSIONER LEE

MELBOURNE, 28 JULY 2016

State reference public sector transitional award modernisation – Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 – Schedule 6A Items 4, 6, 7, 8 and 9 – Fair Work Act 2009 ss.134 and 284.

[1] These matters arise from the operation of Schedule 6A to the *Fair Work (Transitional Provisions and Consequential Provisions) Act 2009* (the Transitional Act) in relation to two awards that fall within the definition of ‘State reference public sector transitional awards’ under the Transitional Act. The awards are the *School Services Officers (State Government Schools), Victoria, Award 2000 [Transitional]* (the school service officers transitional award) and the *Teachers' (Victorian Government Schools) Conditions of Employment Award 2001 [Transitional]* (the teachers transitional award).

[2] Item 6 of Schedule 6A requires the Commission to make or vary a State reference public sector modern award so that employees covered by State reference public sector transitional awards are covered by a State reference public sector modern award. In a decision issued on 12 December 2014, a Full Bench noted that the State of Victoria (State) and the Australian Education Union (AEU) submitted that a single modern award should be made to replace the predecessor transitional awards, and that the parties have agreed on the terms of that award in some respects.¹

[3] A number of conferences were held before Commissioner Lee in order to attempt to reach agreement on the issues that were still in dispute. However, full agreement on the terms has not been achieved to date. The State proposes that the Commission make two separate awards to cover award-covered employees in Victorian Government schools who are engaged under the *Education and Training Reform Act 2006* (Vic). Written submissions have been filed by the State and the AEU, and we therefore turn to consider the alternative proposals for provisions that are not agreed.

Proposed Victorian Government Schools Award

Consultation

[4] The AEU submits that the State seeks to limit the scope of consultation beyond what is usually provided for in awards of the Commission. The AEU definition of significant effects, upon which consultation is mandated, is drawn from the *Education Services (Teachers) Award 2010* and reads as follows:

“Significant effects include termination of employment; major changes in the composition, operation or size of the employer’s workforce or the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; the restructuring of jobs. Provided that where this award makes provision for the alteration of any of these matters an alteration is deemed not to have significant effect.”

[5] Although there is a general limitation in the award in line with the extent of legislative power arising from the Victorian referral, we consider that the award may be misleading if references are included in relation to termination of employment, the composition, operation and size of the workforce, job opportunities, promotion opportunities and job tenure. We have therefore deleted these references. We have also made amendments to the definition of ‘significant effects’ by confining its scope to reflect jurisdictional limits.

Consultation on school timetabling and overtime

[6] The AEU refers to our previous decision which proposes to exclude topics such as school timetabling, overtime and irregular, sporadic or unpredictable working hours from the award, and submits that consistent with that decision, that it is appropriate to:

- Retain the exclusion of school timetabling in clause 8.3(e)(i) but to ensure that where a timetable change entails changes to the regular roster or ordinary hours of work that that change is not excluded as a subject of consultation; and
- To delete the reference to irregular and sporadic hours in clause 8.3(e)(iii) because it repeats the provision in clause 8.3(c).

[7] We do not accept the first proposal. If hours of work are altered the obligation to consult applies. School timetabling itself does not trigger a consultation obligation.

[8] We accept the second proposal.

Dispute resolution

[9] The AEU proposes removing the phrase “who is covered by the Award” from clause 9.4. It submits that the State’s request to retain the phrase would limit the ability to refer a dispute or grievance to a formal dispute process established by the employer to a party to the dispute or grievance who is covered by the award. We agree that such changes should be made to clarify the effective operation of the procedure.

Termination of employment

[10] The AEU notes that the State has, without comment, not included a termination of employment clause in its draft award. The AEU submits that one should be included as part of clause 10 and draws its proposed clause from the *Educational Services (Teachers) Award 2010*. We accept that limited regulation in the way proposed is appropriate and will include the provision in clause 10.

Regulation of teacher work

[11] In the earlier decision, the Bench indicated that the scope of provisions relating to teachers hours in clauses 12.3, 12.4 and 13 was a matter more appropriately dealt with in agreements rather than the safety net award. In response to this the AEU notes that the provisions proposed by it were drawn verbatim from the transitional award. It submits that the award proposed by the State provides no safety net in relation to teacher work. It does not provide a bandwidth within which work will be performed, it does not limit the number of days per week a teacher may be required to work, it does not provide for weekly or fortnightly hours of work. As a result, the AEU proposes:

- An amendment to clause 12.1 to make it consistent with s.63 of the *Fair Work Act 2009* in providing for an average of 38 hours and specifying a period over which the averaging will be calculated;
- Inserting clauses 12.5 and 12.6 which restate provisions of clauses 6.3.1 and 6.4.3 of the teachers transitional awards concerning consultation and agreement between teachers and employer in relation to the arrangement of work; and
- Inserting a provision in clause 13.4 which allows for teachers to be paid during school vacation periods.

[12] Consistent with the earlier Full Bench decision we do not consider that such provisions are necessary or appropriate.

Proposed Victorian Government Schools – Early Childhood – Award

Salary

[13] The AEU submits that the salary tables in Schedule A of the proposed award should be altered to align the rates and the salary structures with the directly comparable rates and structures in the *Educational Services (Teachers) Award 2010* and the *Children’s Services*

Award 2010. It submits that these rates have been adopted in the agreed draft for the local government sector of this industry, and apply in the community and for-profit elements of the early childhood education industry. The AEU notes that rates proposed by it are higher than those proposed by the State, which are derived from the rates in the transitional awards. It further notes that while minimum rates in the industry have transitioned from the rates in the transitional awards to those in the modern awards, this has not occurred in those parts of the industry which are operated by state reference public sector employers.

[14] In our view the rates should be properly fixed minimum rates. We have adopted the State's proposed rates.

Definition of standard rate

[15] The AEU notes that the definition of standard rate in clause 3 should be amended so that it refers to the appropriate term in Schedule A as amended in its draft. As we have adopted the State's rates, the definition will need to refer to the appropriate salary in Schedule A – Early Childhood Teacher, Category A, subdivision 1.

Consultation

[16] The AEU makes the same submissions in relation to this issue as above in the Proposed Victorian Government Schools Award. We adopt and apply our conclusions set out above.

Consultation on school timetabling and overtime

[17] The AEU makes the same submissions in relation to this issue as above in the Proposed Victorian Government Schools Award. For the same reasons we adopt our conclusions outlined above.

Dispute resolution

[18] The AEU makes the same submissions in relation to this issue as above in the Proposed Victorian Government Schools Award. We adopt the same approach as outlined above for the reasons

Termination of employment

[19] The AEU makes the same submissions in relation to this issue as above in the Proposed Victorian Government Schools Award. We apply the same approach as outlined in relation to teachers.

Redundancy clause

[20] The AEU notes that the State has proposed an award which does not contain a redundancy clause even though both transitional awards contain one. We consider that the regulation involved in the AEU proposal unduly impinges on the limitations in the referral agreement. We have omitted the redundancy clause.

Educators' time for support duties

[21] The AEU notes that such duties are dealt with in the *Educational Services – Early Childhood Assistants – Victoria – Award 1999* in clause 20.2. It submits that such a provision, reworded as clause 12.4 of its proposed awards is appropriate so that the effect of the clause is to make plain that educators have duties which extend beyond the period of direct contact with children in the kindergarten program. We agree that such provisions should be included.

Hourly rates for educators

[22] The AEU notes that as the hourly rate for educators are set out in Schedule A in its proposed award, clause 13.2 need only apply to teachers. We agree.

Minimum salaries for teachers and educators

[23] The AEU notes that clauses 13.3 and 13.4 of the State's draft deal with minimum salaries for teachers and educators, and that as such the AEU seeks to reframe them in the light of the proposed amendments to the salary structures in Schedule A. Because we have adopted the minimum rates proposed by the State, clause 13 will need to contain appropriate definitions.

Early childhood teacher payment during school vacations

[24] The AEU notes that clause 13.5 of the State's draft award entitles a teacher to be paid during school holidays and that it replaces an entitlement to holidays in the *Early Childhood Teachers Interim Award 1999* which provides in clause 19.1 for teachers to be entitled to holidays for the duration of school holidays as set by the Education Department. It further notes that the proposal has similar effect to clause 19 of the *Educational Services (Teachers) Award 2010* which has been adopted in the agreed draft filed in relation to early childhood in local government. We will adopt the State's proposal.

Minimum casual rates of pay

[25] The AEU notes that minimum rates of casual pay are dealt with in the State's clause 15, and proposes retaining provisions in clause 10.3 of the *Early Childhood Teachers Interim Award 1999* which provide for a minimum 3.5 hours payment and specify an amount of non-teaching time to be incorporated in that payment. We do not consider that these extra requirements should be included.

Work on weekends or public holidays

[26] In relation to weekend or public holiday work, the AEU notes that the State's proposals in 17.6 repeat the relevant provisions in the two transitional awards but omit in each case the final prescription of a minimum payment for work on weekends or public holidays. The AEU proposes that minimum payment of three and one-quarter hours be reinstated. We do not consider that the minimum payment is necessary or appropriate.

Awards Issued

[27] We publish the awards in conjunction with the handing down of this decision. We will provide that the awards commence from 15 August 2016.



VICE PRESIDENT

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¹ [2014] FWCFB 7317.