

**Variation of awards on the initiative of the Commission  
AM2020/12**

***Educational Services (Teachers) Award 2010 [MA000077]***

**SUBMISSION**

**6 April 2020**

**Associations of Independent Schools and Independent Education Union of  
Australia**

1. This submission is made on behalf of the Associations of Independent Schools (AISs), together with the Independent Education Union of Australia (the parties).  
The AISs are made up of:
  - 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. This submission is made in response to the Statement ([2020] FWCFB 1760) issued by the Fair Work Commission (the Commission) on 1 April 2020. The Statement outlines the Commission's preliminary view to insert two clauses into the *Educational Services (Teachers) Award 2010* (the Award) as a result of the Covid-19 pandemic.
3. The parties are understanding of what the Commission is trying to achieve and support the inclusion of pandemic leave.
4. The AISs have had the opportunity to discuss the proposed variations with the Independent Education Union (IEU). It is the view of both the AISs and the IEU that the annual leave at half pay clause should only be inserted into Schedule B of the Award and should not apply to the body of the Award.
5. As the Commission will be aware, the AISs and the IEU made joint and complimentary submissions about the operation of annual leave for teachers during the annual leave

common matter (AM2015/6). It was submitted, and a Full Bench of the Commission agreed, that given the way the school year operated, there was no work for the annual leave terms to do in the body of the Award. Specifically, the Bench stated at [55]:

*'Having considered the material submitted by all parties we have determined that due to the nature of the education industry, including the particular leave arrangements for school teachers, the annual leave model terms should not apply to employees under the Teachers Award other than to teachers employed in early childhood services that operate for at least 48 weeks per year.'* [[2017] FWCFB 2098].

6. Under the Award, the taking of annual leave is not at a time of a teacher's choosing, rather a teacher *"must take annual leave during non-term weeks."* (cl.21.2). Further, cl.19.8 states *"... The employee's absence from school during non-term weeks is deemed to include their entitlement to annual leave."*
7. The Award is premised on teachers taking their annual leave at the end of the year in which it has accrued, and within non-term time.
8. Teachers accrue non-term time inclusive of annual leave based on term weeks worked, in accordance with cl.22 of the Award. Teachers who have been employed since the commencement of the school year or earlier will have accrued enough non-term time to be paid through the school holidays at the end of term 1, whenever they fall.
9. The proposed model clause does not seek to move the entitlement to annual leave, rather allows for it to be taken at half pay on agreement. Even if an employer and employee were to agree to the annual leave being moved and taken at half pay, there is little annual leave that has accrued in 2020 given leave is exhausted at the end of the year prior.
10. More importantly however, the result would simply be moving the period of leave without pay to a later point in the year during non-term time, when all other teachers are deemed to be on annual leave. This is because there would be no work for the teacher to perform at the end of term 4 when all other teachers would be deemed to be on annual leave.
11. The AISs and the IEU do not see any practical benefit in having this clause in the body of the Award and believe there is no work for it to do, for the same reasons the annual leave common matter decision did not apply to the body of the Award. However, it is appropriate it is included in Schedule B of the Award.
12. The IEU and the AISs rely on these submissions and do not intend to appear at the hearing on Wednesday 8 April 2020.

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