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Your ref: AM2016/15

AM2014/266

Dear Award Modernisation Team

**4 yearly review of modern awards—Plain Language—Standard Clauses
Comments in respect of Full Bench's provisional views regarding the *Educational Services (Teachers) Award 2010*.**

We write on behalf of Independent Schools Victoria (**ISV**), Independent Schools Tasmania (**IST**) and the Associations of Independent Schools of New South Wales (**AISSNSW**) and South Australia (**AISSA**) (collectively, the **Associations**) and refer to:

- » the Decision of the Full Bench in this matter dated 11 December 2018 ([2018] FWCFB 7447) (**December 2018 Decision**); and
- » the Draft Determination in respect of the *Educational Services (Teachers) Award 2010* (**Teachers Award**) published on 13 December 2018.

In the December 2018 Decision, the Full Bench invited any parties interested in the Full Bench's provisional views to comment on the Draft Determinations. In response to that invitation, we enclose submissions setting out the position of the Associations and arguments in support of that position.

The Associations note that they have made no request for an oral hearing of these issues. However, they wish to reserve their rights to make such a request following receipt of any materials in response to these submissions.

Yours sincerely



Michaela Moloney
Partner

**IN THE FAIR WORK COMMISSION
4 YEARLY REVIEW OF MODERN AWARDS
PLAIN LANGUAGE—STANDARD CLAUSES**

**Matter Nos: AM2016/15 – Plain Language—Standard Clauses
AM2014/266 – Educational Services (Teachers) Award 2010**

**SUBMISSIONS REGARDING THE PLAIN LANGUAGE STANDARD CLAUSES
DRAFT DETERMINATION FOR
THE EDUCATIONAL SERVICES (TEACHERS) AWARD 2010**

The following submissions are made on behalf of Independent Schools Victoria (**ISV**), Independent Schools Tasmania (**IST**) and the Associations of Independent Schools of New South Wales (**AISNSW**) and South Australia (**AISSA**) (collectively, the **Associations**)¹ in response to the invitation of the Full Bench in its Decision dated 11 December 2018 (**December 2018 Decision**) in the above matters:

1. In the Decision, the Full Bench indicated its *provisional* view at paragraphs [113] to [116] that clause 11 of the Teachers Award, "Notice of termination by an employee", should be re-drafted to incorporate:
 - (a) a prohibition of deductions in circumstances where an employer has agreed to accept less than the required period of notice ([113](ii));
 - (b) a 'cap' of one week's wages from the amount that may be deducted from monies due to the employee ([113](iii)); and
 - (c) a qualification that deductions made pursuant to the clause not be unreasonable in the circumstances ([113](iv)).

2. Due to circumstances specific to the school education industry, the Associations respectfully oppose the incorporation of a 'cap' of one week's wages set out at

¹ The Associations represent the views of ISV, IST, AISNSW and AISSA and not the other organisations which together as the "Associations of Independent Schools" (**AIS**) have made previous submissions in the 4 yearly review.

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paragraph 1(b) above for the reasons set out in these submissions. The Associations note that this view is limited to those teachers employed **by schools**.

3. The Associations submit that it is reasonable in the circumstances for schools to be authorised to deduct, from monies due to a teacher, the full amount of notice (if any) required by the award but not provided by the teacher. In any event, in circumstances where the amount of notice required is 7 term weeks, any 'cap' ought to be higher than one week.
4. The Associations otherwise respectfully agree that it is appropriate for the Teachers Award to be varied to incorporate paragraphs 1(a) and 1(c) above, and with the Full Bench's view at paragraph [114] of the December 2018 Decision that the exclusion of employees under 18 years of age has no utility in the Teachers Award.
5. The Associations have **enclosed** their preferred draft determination setting out their preferred position in Schedule A to these submissions.

The Associations

6. The members of the Associations are non-government schools other than schools in the Catholic school systems. These schools are otherwise known as independent schools. Each of the Associations is a peak body for independent schools in its relevant State.

Award-specific provision in the Teachers Award

7. The Teachers Award currently provides for award-specific terms in respect of notice of termination. In particular, it provides at clauses 11.2 and 11.4 that, for a teacher employed by a **school**, the notice of termination by either the school or the teacher must be **7 term weeks**, as opposed to the amount set out in the NES, as follows:

11.2 Notice of termination by an employer—schools

*Subject to clause 12.5, the employment of an employee (other than a casual employee) will not be terminated without at least **seven term weeks' notice** (inclusive of the notice required under the NES), the payment of seven weeks' salary instead of notice or part notice and part payment instead of notice provided that the total weeks' notice and weeks' payment instead equal seven.*

...

11.4 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer.

[Emphasis added]

8. At clause 11.5, the Teachers Award provides for deduction in the terms of the standard deduction clause made during the award modernisation proceedings, as follows:

11.5 If an employee fails to give the notice specified in clauses 11.2 or 11.3 the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

9. Ms Knopp is able to give evidence that, to her knowledge:²
- (a) the Teachers Award applies to approximately 50% of independent schools in Victoria;
 - (b) various enterprise agreements cover the remaining 50% of independent schools, all Catholic schools and all government schools in Victoria;
 - (c) most (if not all) enterprise agreements covering independent schools in Victoria provide that in the event an employee gives insufficient notice of resignation, the school may withhold up to 7 weeks' pay.

Legal Framework

10. Section 324(1)(b) of the *Fair Work Act (2009) (FW Act)* relevantly provides that "An employer may deduct an amount from an amount payable to an employee in accordance with subsection 323(1) if...the deduction is authorised by or under a modern award or an FWC order".
11. Section 326(1) further provides that:

A term of a modern award, an enterprise agreement or a contract of employment has no effect to the extent that the term permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee in relation to the performance of work, if the deduction is:

- (a) directly or indirectly for the benefit of the employer or a party related to the employer; and

² Knopp Statement at [22]-[23].

(b) *unreasonable in the circumstances.*

12. It is clear that any deduction in the event of insufficient notice of resignation is "for the benefit of the employer". Accordingly, the key question is whether or not a deduction under the term is reasonable in the circumstances, and therefore allowable under s 326 of the FW Act.
13. As noted by the Full Bench in the December 2018 Decision, the most authoritative consideration of whether a deduction is "unreasonable in the circumstances" is that of Bromberg J in *Australian Education Union v State of Victoria (Department of Education and Early Childhood Development)* [2015] FCA 1196 (**AEU decision**). In that decision, His Honour relevantly observed that:
 - (a) the meaning of 'unreasonable' in the context of s 236(1) is "*best captured*" by the dictionary definition "*inequitable, unfair, unjustifiable*" (at [149]);
 - (b) the historical basis for s 326 was found in legislation intended to protect the employee from the employer "*seeking to benefit twice from the employee's work*" (at [155]);
 - (c) whether a deduction is 'unreasonable in the circumstances' will "depend upon relevant surrounding circumstances. It will be a question of fact and degree" (at [176]);
 - (d) a broad approach is to be taken to the circumstances which are to be considered (at [182]).
14. The reasoning for the provisional view of the Full Bench and the Draft Determination was set out in the Decision of the Full Bench dated 13 June 2018 [2018] FWCFB 3009 (**June 2018 Decision**). In that decision, the Full Bench considered the following issues:
 - (a) in respect of whether the deduction was an allowable modern award term, whether it was '*essential for the purpose of making [the requirement for notice] operate in a practical way*' (at [47]);
 - (b) there was a risk that '*the deductions permitted by [the relevant deduction clause] may be disproportionate to the loss suffered by the employer as a consequence of the employee not providing the requisite notice*' (at [97]);

15. The Associations submit that it is reasonable in the specific circumstances of the school education industry for the proposed clause 11.3 to permit deductions of the full amount of notice not provided by an employee (ie up to 7 weeks). This is because:
- (a) A deduction of the amount of notice not given, up to 7 weeks, more appropriately compensates schools for losses caused by insufficient notice;
 - (b) In an industry where both employers and employees are required to give 7 weeks' notice, a deduction of up to 7 weeks is fair and proportional, and essential for the purpose of making the requirement for notice operate in a practical way
 - (c) The deduction of up to 7 weeks' was clearly contemplated by the relevant employee organisation and raised with the Commission in the award modernisation proceedings and subsequently agreed to.
16. Further, the Associations are unaware of any evidence that the provisions allowing a deduction of up to 7 weeks have operated in an unreasonable way.

Effect of short notice in the school sector

17. When considering the reasonableness of the deduction provision in the standard notice of termination clause in the June 2018 Decision, the Full Bench placed substantial emphasis on the compensatory function of the deduction (at [97]). It appears the cap of one week was introduced in order to prevent deductions being disproportionate to the loss experienced by an employer.
18. In drafting the standard clause and the one week cap, the Full Bench was required to consider the wide variety of circumstances across the majority of Australian occupations and industries.
19. In contrast, the Associations submit that in the specific occupation of teaching in the school education industry, the Full Bench may be satisfied that a deduction of up to 7 weeks is highly unlikely to be disproportionate to the loss suffered by a school or otherwise unreasonable.

School recruitment process

20. Teachers are a regulated profession in each State and Territory (in contrast to the vast majority of modern award-covered employees). State and Territory legislation

requires that each class be taught by a teacher registered with the relevant regulatory authority – for example, in Victoria, each class must be taught by a teacher registered with the Victorian Institute of Teaching (VIT).³

21. Schools operate according to an annual structure which consists of 4 terms per year. The demands placed upon each school, and accordingly their staffing requirements, are pre-determined at the start of the year depending on the number and requirements of its students. Classes are allocated either prior to, or at, the commencement of the year and once determined there is little scope for variation.⁴
22. The Associations are able to lead evidence regarding the process of teacher recruitment. This evidence will demonstrate a regular pattern of recruitment that practically limits the times in which schools are able to recruit experienced and well qualified teachers. This recruitment process typically includes:⁵
 - (a) independent schools commencing recruitment for the following school year in late Term 2 (ie June) of the preceding year;
 - (b) the majority of vacant/available positions are advertised from mid-July to late August;
 - (c) advertising of vacancies has ceased by late November and the majority of schools endeavour to have all vacant positions recruited by this time.
23. The majority of teachers approach their employment on the basis that they will be employed for a full school year and generally do not change their employment at any time other than the end of one school year and the start of another. Similarly, schools prefer for a teacher to be employed for the whole school year.⁶
24. The primary reason for these preferences is a focus on continuity for schools, teachers, students and parents. This is beneficial to all interested parties in the school community, as it allows for teachers to build relationship with students that recognise their capabilities and are conducive to their learning styles, and ensure there is a

³ Knopp Statement at [34]-[35].

⁴ Knopp Statement at [41] and [44].

⁵ Knopp Statement at [42].

⁶ Knopp Statement at [44-46].

continuous responsibility for students' learning and development throughout the year.⁷

25. The annual recruitment process engaged in by schools and teachers limits the flexibility of schools to hire teachers outside of this cycle. While there are exceptions, teachers are often unwilling to change employers mid-year.⁸ Even when teachers are prepared to do so, they must of course give 7 term weeks' notice to their current school employer. Even if vacant positions are advertised immediately, it can often take upwards of a term to recruit a permanent replacement.
26. The above factors also mean that during and towards the end of Term 4, recruitment is even more difficult. This is because the majority of teachers, and in particular those teachers who are highly qualified and desirable, will have determined their employment for the upcoming year. Short notice compounds this problem.⁹
27. Schools in regional areas face even greater challenges in recruiting and retaining highly qualified and experienced teachers as they are frequently drawing from a smaller pool of candidates.¹⁰

Impact on schools

28. When a teacher resigns without sufficient notice, schools experience a number of financial and non-financial disadvantages.
29. Most obviously, schools will be required to immediately employ appropriately qualified and registered replacement teachers. Due to the recruitment process, structured school year and regulatory requirements detailed above, schools need to ensure that when any teacher's employment ends, another teacher is able to immediately take on the resigning teacher's classes and other duties. The shorter the notice period provided by a teacher, the more urgent it is to find a replacement.
30. Where insufficient notice of resignation is provided, schools will typically be required to employ casual replacement teachers (**CRTs**). Highly skilled and experienced casual teachers are in high demand. Such teachers are required to be paid a loading

⁷ Knopp Statement at [45].

⁸ Knopp Statement at [44].

⁹ Knopp Statement at [46].

¹⁰ Knopp Statement at [38]-[39].

of 25% under the Teachers Award, and accordingly this leads to higher costs for schools. Victorian independent schools surveyed by Ms Knopp indicated that the cost of CRTs was \$295.31 to \$430 per day.¹¹ This is significantly higher than the minimum wage for a permanent teacher under the Teachers Award. As of 1 July 2018 the highest paid classification, Level 12, is entitled to a daily rate of \$265.27.

31. Further, due to the length of time it may take to recruit a permanent replacement employee, casual teachers may be required to be engaged for significant periods of time. The length of time casual teachers are required will clearly increase in proportion to the amount of the notice period a teacher fails to give.
32. The survey conducted by Ms Knopp indicated a number of additional costs which arise where short notice is given. These costs would not otherwise arise, or would otherwise be significantly reduced, where sufficient notice was given. Such costs include:
 - (a) fees and commissions charged by recruitment agencies, who are more commonly relied upon in circumstances of short notice. These fees could be 10-15% of the replacement teacher's annual salary, in the range of \$10,000 to \$20,000, and greater than standard recruitment costs due to the requirement for a quick turnaround;¹²
 - (b) advertising costs, including recruitment website and newspaper advertisements. These fees can range from \$300 to \$3,000 per advertisement, depending on the medium, and some schools reported total costs of \$5,000;¹³
 - (c) wasted costs on training and induction, which could be up to \$2,000 per replacement teacher.¹⁴
33. By its nature, casual employment is not a reliable short, medium or long term solution for schools to the problem of insufficient notice. A single casual teacher who is immediately available following a teacher resigning with no notice may not be able to commit for the entire period it takes to recruit a replacement. Further, at clause

¹¹ Knopp Statement at [50].

¹² Knopp Statement at [51]-[52].

¹³ Knopp Statement at [53].

¹⁴ Knopp Statement at [54].

10.5(a) of the Teachers Award there are limitations on engaging a casual teacher on a day-to-day basis for a period of more than four term weeks (although this may be extended to one school term by mutual agreement). This results in duplicate costs when a further temporary, or a permanent replacement, is recruited.¹⁵

34. Some schools gave total estimates of the financial cost of short notice of being up to \$35,000.¹⁶

35. The giving of short notice, and the consequent time required to employ an ongoing replacement, also leads to a number of other disadvantages affecting the school, including:

(a) a lack of continuity in learning for the teacher's classes, due to the engagement of one or a succession of teachers on a short term basis until an ongoing appointment can be made;¹⁷

(b) other teachers and general staff being required to take on additional recruitment, administrative and teaching work, estimated costs of which ranged from \$1,500 to \$5,000;¹⁸

(c) concerned or disgruntled students (especially senior students), staff and parents with respect to continuity of student learning;¹⁹

(d) the need to put in place ad hoc supports for students which incur additional costs (eg, the costs of Distance Education or tutoring, which could run to several thousand dollars);²⁰

(e) being required to engage teachers who do not meet the requirements of the particular teaching role which has been vacated, including in relation to:

(i) special skills;

¹⁵ Knopp Statement at [54].

¹⁶ Knopp Statement at [55].

¹⁷ Knopp Statement at [62].

¹⁸ Knopp Statement at [57]-[60].

¹⁹ Knopp Statement at [60]-[63].

²⁰ Knopp Statement at [61].

- (ii) qualifications;
- (iii) teaching methods;
- (iv) teaching experience;
- (v) suitability to the school ethos (eg religion)
- (vi) suitability to the school's education philosophy (eg credentials and experience with Montessori or Steiner methodology);
- (vii) suitability for the school's culture in respect of teaching and learning styles.²¹

36. Each of the effects listed above have *indirect* financial impacts on a school. For example, a lack of continuity in learning leads to student and parent concern, and can lead to less favourable results for an affected class. Casual teachers who are not suited to the ongoing requirements of a school are also likely to lead to student and/or parent concern. Concerns in the school community and/or variances in results can subsequently lead to impacts on the school's reputation, and can contribute to reduced enrolments and/or financial support from the school community which could "dwarf" the amount that might be withheld because of short notice.²²
37. To the extent that the purpose of the proposed clause 11.3 is compensatory, the Associations accordingly submit that in the circumstances of this sector, it is highly unlikely that any deductions made pursuant to clause 11.5 would be disproportionate to the financial and non-financial loss suffered by the employer. Rather, the direct and indirect financial costs to a school are likely to exceed the amount that could be withheld by the school in event a teacher gives short notice.
38. Further, any disproportionality to the loss likely to be suffered by a School (which would be rare) may be addressed by the proposed qualification at 11.3(d) that "*[a]ny deduction under paragraph (b) must not be unreasonable in the circumstances*". A disproportionate deduction (ie where a school deducts more than the "short notice" has in fact cost them) would be unreasonable in the circumstances and therefore prohibited under the proposed clause 11.3.

²¹ Knopp Statement at [36].

²² Knopp Statement at [63].

39. Further, the survey conducted by ISV indicates that schools do not make deductions in circumstances where such a deduction would be unreasonable. For example, several schools indicated that where employees resigned at short notice for legitimate reasons such as their health or family, they did not deduct any notice in spite of the costs incurred.²³
40. The Associations submit that the Commission's proposed clause 11.3(d) is sufficient to ensure that "*deductions made in compliance with the term would not be 'of no effect'*"(at [103] of the June 2018 Decision). Together with the other amendments proposed in the draft determination, the proposed clause 11.3(d) is sufficient to ensure that the Teachers Award meets the modern awards objective of providing a fair and relevant minimum safety net of terms and conditions (FW Act s 134). Accordingly, the inclusion of a further limitation on the power to deduct wages in the form of the one week cap goes **beyond** the extent "*necessary to achieve the modern award objective*", and accordingly the Association submit it should not be included in the award (FW Act s 138).

Proportionality and fairness

41. The Full Bench has determined that in respect of the standard clause, a cap of one week's notice is a reasonable limit to ensure that any deductions made under the clause are reasonable in all the circumstances. This cap applies when an employee may be required by the award and NES to provide between 1 and 4 weeks' notice of resignation. The cap is equal to the minimum notice period that may be required under such awards.
42. In contrast to the standard position, both schools and teachers are required to provide 7 term weeks' notice of termination under the Teachers Award. For the reasons set out under paragraphs 17 to 38, this period of notice is necessary in an industry where recruitment for ongoing positions is conducted at particular times of the year, and often a significant period of time in advance of when such positions will commence. Both schools and teachers experience similar inconvenience and disadvantage as a result of insufficient notice of termination.
43. Further, the fairness of deducting an amount up to the whole period of insufficient notice is supported by the views of school staff, including other teachers. Some

²³ Knopp Statement at [64]-[66].

schools reported that teachers reacted with "*anger*" and "*annoyance*" where a teacher departed with short notice, as it meant a significant burden falls to the remaining staff.²⁴

44. In such circumstances, the Associations submit that the cap should be equal to the minimum notice period that may be required – ie, 7 weeks' pay, or the equivalent of an uncapped deduction.
45. If the Commission remains of the view that a cap is necessary in these circumstances, the Associations respectfully submit that a cap of one week is disproportionate to a 7 term week notice period.
46. The effect of introducing a one week cap introduces a dramatic imbalance between employer and employee in relation to the issue of notice. In the proposed clause 11.3 in the Draft Determination, both employees and employers are required to provide 7 term weeks' notice of termination. However, whereas employers are required to provide the entire notice period in lieu where insufficient notice is given, employees would practically only be required to give one week's notice, as they would be unlikely to suffer any consequence for failing to give a greater amount of notice.
47. As a matter of fairness, and in recognition of the financial and non-financial detriment suffered by schools when insufficient notice is given, an uncapped deduction is justified for teachers employed by schools.
48. Further, the Associations submit that allowing a greater period of deduction is **necessary** for the employee notice provision at proposed clause 11.3 to operate in a practical way. A greater period of deduction will ensure that employers are either given sufficient time to recruit for a suitable replacement teacher, or are adequately compensated for the costs incurred when insufficient notice is provided (as set out above at 17 to 36).

Relevance of award history

49. The Associations submit that the history of notice clauses in awards covering the teaching industry supports their view that deductions from the notice period of up to 7 weeks are reasonable in this industry.

²⁴ Knopp Statement at [60].

50. The history of notice of termination provisions in independent schools was the subject of submissions to the award modernisation proceedings which made the Teachers Award.²⁵ The relevant pre-reform awards provided for a range of non-standard notice requirements, including:
- (a) an amount of weeks equal to or greater than the "standard" 1-4 weeks, being an amount between 4 and 12 term weeks';
 - (b) restricting notice to 'term weeks' (that is, weeks forming a school term); and/or
 - (c) requiring notice to be wholly within one term.
51. In each State or Territory, save for the Northern Territory, these awards permitted deductions from the teacher's final salary up to the amount of notice not given by a teacher. The notice period which was required to be given by a teacher in an independent school, and whether deductions from those amounts were authorised, are summarised at Schedule B to these submissions.
52. The requirement for 7 weeks' notice (which was to be given entirely within term time) has been a feature of the Victorian awards since 1947, in which it was a requirement of the *Determination of the Teachers' (Girls' Schools) Board* published on 14 October 1946. At that time, 7 weeks was equivalent to approximately half a school term.
53. From 1988 the requirement for 7 term weeks' notice has been accompanied by the right of employing schools to withhold moneys due to a teacher for failure to give that notice (see the *Independent Schools Award (No. 2 of 1988)*).
54. Both the above instruments were predecessors to the pre-reform *Victorian Independent Schools – Teachers – Award 1998 (Victorian Teachers Award 1998)*. In the award modernisation proceedings, the terms of the Teachers Award were primarily based on the Victorian Teachers Award 1998.²⁶ The seven term weeks' notice which appeared in the Victorian (and ACT) pre-reform awards was put forward by the AIS as a "*workable compromise for the other states and territories*".²⁷

²⁵ "Submissions of the Associations of Independent Schools" (AM2008/33) 6 March 2009 at [67]-[69].

²⁶ Knopp Statement at [19].

²⁷ "Submissions of the Associations of Independent Schools" (AM2008/33) 6 March 2009 at [68].

55. The Independent Education Union of Australia (IEUA) (the relevant employee organisation in the sector) initially sought that only 4 weeks' notice of termination need be provided. It noted that "*this issue is contentious because of the ability of the employer to deduct payment if an employee resigns with insufficient notice*".²⁸
56. However, following discussions between the parties, 7 term weeks' notice and the consequent deduction of up to 7 weeks' salary was subsequently supported by the IEUA and the National Catholic Education Commission.²⁹
57. The history of termination and deduction clauses in the pre-reform awards and earlier demonstrates a history of the parties in this industry relying on significant periods of notice of termination.
58. Further, the agreement of the IEUA to the deduction of notice in the award modernisation process, following it raising the issue of deductions, further supports the reasonability of an uncapped deduction in this industry.

Further conduct of matter

59. The Associations note that they have made no request for an oral hearing of these issues. However, they wish to reserve their right to make such a request following receipt of any materials in response to these submissions.

25 January 2019

K&L Gates
Lawyers for the Associations

²⁸ "Submission by the Independent Education Union of Australia" (AM2008/33) 6 March 2009 at [37].

²⁹ "Supplementary Submissions of the Associations of Independent Schools" (AM2008/33) 27 April 2009 at [83].

Schedule A – Proposed Draft Determination

The Associations propose that clause 11.3 of paragraph 5 of the Draft Determination published on 13 December 2018 be amended as follows:

11.1 Notice of termination by an employer—schools

- (a) Clause 11.1 applies to an employee employed in a school.
- (b) Subject to clause 12.4, the employment of an employee (other than a casual employee) will not be terminated without at least 7 term weeks' notice (inclusive of the notice required under the NES), the payment of 7 weeks' salary instead of notice, or part notice and part payment instead of notice provided that the total weeks' notice and weeks' payment instead equal 7.

11.2 Notice of termination by an employer—other than schools

- (a) Clause 11.2 applies to an employee who is not employed in a school.
- (b) The employment of an employee (other than a casual employee) will not be terminated without at least 4 weeks' notice (inclusive of the notice required under the NES), or 4 preschool term weeks in the case of a preschool employee, or the payment of 4 weeks' salary instead of notice. If the employee is over 45 years of age and has completed at least 2 years of service, the NES notice period will apply.

11.3 Notice of termination by an employee

- (a) The notice of termination required to be given by an employee is the same as that required of the employee's employer under clause 11.1 or 11.2.
- (b) If an employee does not give the period of notice required under paragraph (a), then the employer may deduct from wages due to the employee under this award an amount that is:
 - (i) where the employer is a school, no more than the period of notice required by paragraph (a) less any period of notice actually given by the employee; or
 - (ii) where the employer is other than a school, no more than one week's wages for the employee.
- (c) If the employer has agreed to a shorter period of notice than that required under paragraph (a), then no deduction can be made under paragraph (b).
- (d) Any deduction under paragraph (b) must not be unreasonable in the circumstances.

...

Schedule B – Summary of pre-reform award conditions

Award	State/Territory	Clause	Notice of termination by employee	Deduction/"forfeiture"
<i>Teachers (Independent Schools) (State) Award – NSW [AN120543]</i>	NSW	4.25	4 weeks, expiring within the term	Authorised for entire period of "short notice"
<i>Independent Schools (Northern Territory) Award 2002 [AP814958]</i>	NT	32.2	4 weeks during term time	Not stated
<i>Teachers' Award – Non Government Schools 2003 – Queensland [AN140296]</i>	Queensland	4.7.4	1 month	Authorised for entire period of "short notice"
<i>Independent Schools' Teachers' Award 1976 WA [AN160178]</i>	WA	6(2)	6 term weeks, effective at the end of the term	Authorised for entire period of "short notice"
<i>Teachers (Non-Government Schools) (ACT) Award 1999 [AP799560CRA]</i>	ACT	6.4.2	7 term weeks	Authorised for entire period of "short notice"
<i>Victorian Independent Schools – Teachers – Award 1998 [AP802001]</i>	Victoria	11.2	7 term weeks, to be given wholly within one term	Authorised for entire period of "short notice"
<i>Independent Schools (Teachers) Tasmania Award</i>	Tasmania	11.3(a)(v)-(vi)	10 weeks, to fall (where possible) wholly within one term	Authorised for entire period of "short notice"
<i>Teachers (Non-Government Schools) Award South Australia [AN150159]</i>	South Australia	4.4.2	12 weeks, to conclude on the last day of a term	Authorised for entire period of "short notice"