

**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***

WITNESS STATEMENT OF KERRI KNOPP

I, **KERRI KNOPP**, of 40 Rosslyn Street, West Melbourne, Victoria 3003, **STATE** as follows:

1. I make this statement on my own behalf and in my capacity as Director, Strategic Relations of Independent Schools Victoria (**ISV**).
2. I am authorised to make this statement on behalf of ISV. I make this statement from my own knowledge unless I indicate otherwise. Where I have received information from a third party, I believe that information to be true unless I state otherwise.

My background and experience

3. I commenced employment with ISV in 1992 in an industrial relations advisory role and have held my current position since 2004.
4. Prior to working with ISV, I was a teacher in Victorian Government schools. I held various leadership roles over this 11-year period.
5. After finishing my teaching career, I worked for the Industrial Relations Commission of Victoria as a Conciliation and Arbitration Board Secretary for approximately 14 months before commencing work with ISV.
6. I hold the following qualifications:
 - (a) Bachelor of Economics (Monash University);
 - (b) Graduate Diploma in Education (Monash University);
 - (c) Graduate Diploma in Industrial Relations/Human Resource Management (RMIT);
and
 - (d) Master of Commerce (Industrial Relations and Human Resource Management) (Hons) (The University of Melbourne).

Independent Schools Victoria and the Associations

7. ISV is a not-for-profit association representing 217 member schools in Victoria. ISV represents, supports and provides services to independent Victorian schools – ie, those schools which are neither government schools nor part of the Catholic education system.
8. Each of the following associations (collectively, the **Associations**) performs a similar role for independent schools in their respective States:
 - (a) Independent Schools Tasmania (**IST**);
 - (b) the Association of Independent Schools of New South Wales (**AISNSW**); and
 - (c) the Association of Independent Schools of South Australia (**AISSA**).
9. AISSA is also a registered employer organisation within the meaning of the *Registered Organisations Act 2009 (Cth)*.
10. The Associations, together with similar associations in other bodies collectively referred to as the "Associations of Independent Schools" (**AIS**), have previously made submissions in the 4 yearly review of modern awards (**4 yearly review**). The AIS were also a key party to the award modernisation proceedings which gave rise to the Teachers Award.
11. Where in this statement I refer to information relevant to another State, it is on the basis of information received from the Associations which I believe to be true.

My role at Independent Schools Victoria

12. I lead the employment relations services provided by ISV to Member Schools. Together with four staff members, I provide a range of services to the governing body (ie, Chairperson of Board, Council or Management Committee) and to senior management personnel (ie Principal, Deputy Principal, Business Manager, Accountant and Human Resources Manager) of Member Schools.
13. Employment matters range from assisting a Member school to manage a performance/conduct concern with an individual staff member to being involved in school-based enterprise bargaining, and from drafting a contract of employment, workplace policy or letter to representing a Member School in an unfair dismissal matter.
14. I have also appeared before the Commission on behalf of the AIS in relation to the award modernisation process and the 4 yearly review.

Development of the Teachers Award

15. I was involved in the discussions regarding the making of the Teachers Award in 2008 and 2009.
16. At that time, the pre-reform awards covering independent school teachers in each State and Territory varied in the amount of notice teachers were required to give to resign from their employment. Many pre-reform awards required that notice be given in "term weeks", or could only be given if the notice period started and ended in a single term. The various notice periods ranged from 4 weeks to 12 weeks. The relevant Victorian award, the *Victorian Independent Schools – Teachers – Award 1998*, in the making of which the ISV participated, provided for 7 term weeks' notice.
17. I understand that the purpose of these notice periods in pre-reform awards was based on the fact that schools closed during non-term weeks. Because of the length of time between some school terms, the relevant State and federal tribunals determined that notice should be given during the weeks in which the school was in operation, and should be of sufficient length to allow for both a teacher to find new work, and for a school to recruit a replacement teacher.
18. These pre-reform awards also allowed for schools to make deductions from a teacher's final pay if the teacher gave insufficient notice of termination, typically equal to the amount of notice the teacher failed to provide.
19. During the award modernisation proceedings in 2008-2009, the terms of the Teachers Award were primarily based on the Victorian pre-reform award, one of the few predecessor awards to the Teachers Award which had been made by the AIRC as opposed to a State tribunal.
20. In the award modernisation process, the AIS' recommendation was a 7 term week notice provision as per the Victorian pre-reform award. This effectively allowed for the reconciliation of those States where only 4 weeks' notice was required, and those where 12 weeks' notice was required.
21. This compromise position was supported by the IEUA and the National Catholic Education Commission. In particular, the AIS and the IEUA reached agreement that the proposed termination of employment clause would provide that:
 - (a) The notice period given by both employers and teachers should be the same;
 - (b) The notice period for teachers in a school would be 7 term weeks; and
 - (c) Where a teacher provided less than the required period, the employer was permitted to withhold monies equivalent to the period of notice not given by the teacher.

Reliance on the Teachers Award

Victoria

22. In Victoria, I estimate that the Teachers Award applies to approximately 50% of independent schools.
23. The remaining 50% of independent schools have enterprise agreements in operation. Most such enterprise agreements provide for the notice of termination provisions in the Teachers Award (with some variation) including both 7 term weeks' notice of resignation and allowing for deductions of up to 7 weeks' salary where insufficient notice is given.

South Australia

24. I am informed that AISSA has approximately 100 members, and that the Teachers Award applies to approximately 1/3 of its members.
25. Of the remaining 2/3 of AISSA members, half are covered by either the *Lutheran Schools (SA) Enterprise Agreement 2017* and half by other enterprise agreements. The majority of enterprise agreements provide for 6 weeks' notice of termination, with a small number requiring 10-12 weeks' notice.
26. All agreements covering AISSA member schools allow for the withholding of salary and allowances up to the required period of notice if the teacher does not provide such notice of resignation.

Tasmania

27. I am informed that IST has 30 Member Schools, and that the Teachers Award applies by law or incorporation to all but one of its members.
28. Fourteen Member Schools are covered by enterprise agreements, however all but one of these is read in conjunction with the Teachers Award.
29. The 13 schools covered by enterprise agreements which are read in conjunction with the Teachers Award incorporate the Award's notice provisions, including 7 weeks' notice by either party and permission for the deduction of wages where an employee fails to provide the required notice, for the entire period of notice not provided.
30. The sole school agreement which does not adopt the Teachers Award's notice provisions provides for the notice provisions in the NES. This agreement also allows for the deduction of salary equal to the period of notice not provided.

New South Wales

31. I am informed that 40 of the AISNSW's Member Schools are covered by the Teachers Award, the remainder are covered by enterprise agreements. I understand that these enterprise agreements all permit deductions up to the amount of notice not provided, and make clear that an amount equal to the balance of the notice period not given becomes a debt payable to the school.
32. I am informed that there is anecdotal evidence indicating that teachers view the potential loss of entitlements in relation to notice as an incentive for teachers to provide the appropriate required notice. Following the introduction of a forfeiture clause into the pre-modern award collective agreements in around 2006, incidents of teachers resigning with short notice (and the associated costs described below) dramatically decreased.

Survey of Victorian Schools

33. In January 2019, in response to the Draft Determination, I conducted an online survey of Member Schools of the ISV regarding the impact of teachers giving insufficient notice of resignation (**short notice**). 103 survey responses, representing 90 Member Schools, were received between 14 January and 21 January 2019.. I note that due to the timeframe for responding to the Draft Determination, this survey was distributed during school holidays when the majority of school staff are on leave.

Teacher requirements

34. Teachers in every State and Territory are regulated in some form. For example, in Victoria, teachers must be registered with the Victorian Institute of Teaching (**VIT**).
35. Classroom teaching may **only** be delivered by a teacher registered with the VIT. This means that every class in a Victorian school must be delivered by a registered teacher.
36. In addition to the minimum standard of being registered with the VIT or equivalent registration body, schools have a number of varying requirements for teachers. Schools must source teachers with:
 - (a) The appropriate skills and qualifications to teach the particular classes run by the school for which there are current vacancies, as well as extra-curricular activities which are provided as part of the school's offering;
 - (b) The appropriate teaching methods and experience to teach the particular cohort, eg Year 12 students, primary students, accelerated students, students with special needs, etc; and

- (c) The school's ethos (eg religious ethos) or who match the school's educational philosophy – eg Montessori or Steiner schools require teachers with experience delivering those specialised educational philosophies.
37. There may also be other particular requirements held by a school in relation to a teaching position. In order to provide the best quality education to students, schools cannot recruit any teacher – it must be the right teacher for the position.
38. The recruitment experience of a regional school is typically different to that of a metropolitan-based school. A regional school may be drawing from a small pool of local candidates, and will not have the potential bank of "back up" teachers that exist in metropolitan areas. It is not unusual for a regional school to find that there are no locally-based, or no suitable, applicants for a particular teaching role, which means that it is necessary to try to source teachers from other areas of the State or from interstate or overseas.
39. For example, at least 3 respondents to the survey identified themselves as regional or "country" schools and commented on the difficulty in recruiting maths, language and drama teachers. In such circumstances, the recruitment process is invariably longer.

School recruitment cycle

40. The following statements reflect the general pattern of recruitment in independent schools in Victoria, South Australia, NSW and Tasmania. Not all independent schools will follow the same cycle, but the majority do so.
41. Schools operate for four terms in each year. There are typically 2 non-term weeks following Term 1, Term 2 and Term 3, and then a longer period of non-term weeks between Term 4 and the start of the following year's Term 1.
42. The recruitment cycle follows a typical pattern:
- (a) independent schools commence 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) the advertising of vacancies has typically ceased by late November and the majority of schools endeavour to have all vacant positions recruited by this time.
43. Generally, if there are outstanding vacancies as at November/December, advertisements will generate fewer responses, as the majority of teachers will be "bedded down" in a school,

having already determined their employer for the following year. Because of this, choice of candidate is reduced and it is harder to recruit the right candidate for the position.

44. Changes of employment in the sector (and in all education sectors) follow a similar pattern. On the whole, teachers are most likely to change employers at the end of one school year and the start of another. Once assigned to classes with a particular school, teachers typically prefer to remain an employee of that school for the duration of the school year. The preference to complete a year, while not universal, is widespread.
45. Schools, and the communities of students and parents which schools service, also prefer that teachers remain with the school for a full year for a variety of reasons. There is a joint focus on the continuity of a class teacher for a full school year.
46. Schools expect that staffing changes will generally follow this cycle. Many schools issue a notice to teaching staff at the end of Term 2 requesting an indication of their intentions for the following year. Once there are fewer than 7 weeks left in Term 4, schools expect that they have received all resignations for the year and can confidently plan for the following year. Typically schools will then allocate teachers to classes based on their skill mix and preferences for the whole year

The impact of short notice on schools

47. Where an employee gives notice, a school must take immediate steps to recruit a replacement teacher.

Direct recruitment costs

48. Due to the various requirements schools have for their teachers, it may take some length of time to recruit an appropriate replacement. However, they are effectively required to have a replacement teacher in place as soon as the departing teacher ceases to work, in order to teach that departing teacher's classes. Accordingly, schools are almost always required to rely upon casual replacement teachers to ensure they are compliant with their regulatory obligations. This of course has associated financial costs.
49. Casual replacement teachers are entitled to a casual loading pursuant to the award. When short notice is given, the period such casual teachers are required increases proportionately to the insufficient notice.
50. Responses to the survey varied regarding the financial costs of engaging casual replacement teachers or "CRTs". However, the responses which specified CRT fees ranged from \$295.31 to \$430 per day, with a mean of \$349.56 per day. Other schools did not specify daily fees, but noted that they paid higher fees than they ordinarily would for such CRTs – for example,

in order to obtain an appropriate teacher at short notice, one school was required to engage a CRT several classifications more senior than the departing teacher. Another school estimated there was up to a 37% increase in wages when engaging CRTs.

51. Responses to the survey made it clear that many schools incur costs over and above CRTs' increased salaries. While schools would often arrange their own recruitment in the course of the ordinary recruitment cycle, in cases of short notice, schools are much more likely to rely on recruitment agencies. Without prompting, 21 schools specifically identified agency costs as a financial impact arising from short notice, and the majority of these indicated that it was because of the lack of notice that they were forced to utilise such recruitment agencies. Some schools indicated that following their own attempts at recruitment, they would need to rely on recruitment agencies to ensure they found a suitable replacement in time.
52. The reported value of agency commissions varied from school to school, depending on the agency used, the salary of the replacement teacher (CRT or fixed term) and the length of time the replacement teacher would be engaged. Some schools reported that the costs of a replacement were 10-15% of the replacement teacher's annual salary. The majority of agency costs reported were in the range of \$10,000 to \$20,000. Schools indicated that these fees were high due to the quick turnaround required. In some cases the agency costs alone were far higher than maximum 7 weeks' salary deduction permitted for short notice.
53. Many schools also referred to conducting their own advertising for replacements where short notice was given. The most common advertising costs referred to were approximately \$300 per advertisement on a recruitment website such as Seek, and \$3,000 for an advertisement in a State newspaper such as *The Age*. Multiple schools reported total advertising costs of \$5,000. These costs were higher than a school's ordinary advertising costs because the advertisements were directed at a single position compared with multiple positions, as is typically the case in the ordinary recruitment cycle.
54. Schools also incur financial costs in training and induction, which could be up to \$2,000 per new employee. Due to the often short term nature of replacement teaching staff, schools indicated that these advertising and induction costs were effectively wasted costs, as they would be incurred again in recruiting and inducting the permanent replacement for the role (eg "double onboarding").
55. Finally, a number of schools did not specify individual recruitment costs, but indicated that total recruitment costs could be up to \$35,000.

Indirect costs

56. There are further costs which arise from short notice which are less direct but no less significant to schools.
57. Schools are required to invest a significant amount of time in recruiting for staff to replace teachers who depart with short notice. For example:
 - (a) HR and administrative staff may be required to perform overtime in order to arrange for urgent recruitment;
 - (b) teachers in leadership positions are required to prioritise recruitment duties over other work at short notice;
 - (c) leadership staff are also required to urgently re-assign classes, which, if timetables need to be adjusted, can take several days;
 - (d) in some cases temporary administrative staff need to be engaged to cover duties which would otherwise be performed by employees working to mitigate the impact of a teacher's short notice.
58. Some schools gave estimates of the value of this lost time, which ranged from \$1,500 to \$5,000 per instance of short notice.
59. Schools indicated that short notice was most commonly given at the end of the school year, meaning that other staff would need to work over the school holidays (when they would otherwise be on paid leave) in order to recruit for the role.
60. The issue also appears to affect school and teacher morale. Some schools reported that their other employees, and in particular the departing teachers' former colleagues, would react with anger and annoyance, or consider the departing teacher as selfish for leaving the remaining staff to do extra work. The departure of a teacher at short notice means that existing staff increase their own teaching loads, and associated administration and paperwork, while a CRT or fixed term replacement is sought.
61. The departure of specialised teachers can also pose unique issues for a school and require them to implement special measures to support their students as a result of short notice. For example, where a teacher was the only teacher of a subject in which students had already enrolled, a few schools found it necessary to pay for distance education for those students costing several thousand dollars. Other schools noted the cost of putting in place tutoring over the school holidays.

62. There is an expectation from students and their parents that student learning will be continuous over the course of a school year. Where short notice is given, there is a greater chance that a casual replacement teacher will be required, and a greater probability that such replacement teacher will not meet all of the requirements of the position, in terms of experience, qualifications, specialisation etc. Schools are typically unable to offer an ongoing contract to such candidates who are not entirely suitable for the role, which incurs repeat direct financial costs, as well as leading to a further lack of continuity. Short notice also reduces the opportunities for schools to plan an appropriate transition from one teacher to another, reducing the opportunity to ensure continuity between the two.
63. Issues regarding the quality of education, a teacher's capacity to meet the specific requirements of a school community, and the continuity of learning throughout the year, contribute to a school's reputation and its results. This lack in continuity will always have some impact, but this is increased where, due to short notice, schools are unable to make contingency plans. This makes students (particularly senior students) and their parents disgruntled and impacts on the number of enrolments and the level of financial support from the school community. One school reported that the cost of lost enrolments would "dwarf" the amount that could be withheld up to the period of notice not given.

School response to short notice

64. Schools indicated that the majority of teachers provide seven term weeks' notice of their resignation. Sixty percent of schools indicated that they sometimes or always withhold some amount of pay where the required notice period has not been given. Eighty nine percent of schools indicated that the capacity to withhold pay in such circumstances encouraged employees to comply with their notice obligations.
65. A number of schools provided specific examples of scenarios where a teacher had given short notice, and the school's response. In none of these examples was the amount withheld disproportionate to the direct and indirect costs to the school or in any way unreasonable.
66. The survey results show that schools do exercise a discretion as to when they withhold salary in circumstances of short notice. Several schools referred to examples where employees had resigned due to illness, injury or family reasons, and in such circumstances schools decided not to withhold any amount in spite of the significant costs they incurred.


KERRI KNOPP

25 January 2019