

IN THE FAIR WORK COMMISSION
4 YEARLY REVIEW OF MODERN AWARDS – OVERTIME FOR CASUALS

Matter No: AM2017/51

SUBMISSION REGARDING OVERTIME FOR CASUALS
EDUCATIONAL SERVICES (SCHOOLS) GENERAL STAFF AWARD 2010

The Association of Independent Schools of NSW (AISNSW)
Independent Schools Victoria (ISV)
Independent Schools Tasmania (IST)
Independent Schools Queensland (ISQ)
Association of Independent Schools of South Australia (AISSA)
Association of Independent Schools of Western Australia (AISWA)

1. This submission is made on behalf of the following organisations:
 - The Association of Independent Schools of NSW (AISNSW)
 - Independent Schools Victoria (ISV)
 - Independent Schools Tasmania (IST)
 - Independent Schools Queensland (ISQ)
 - Association of Independent Schools of South Australia (AISSA)
 - Association of Independent Schools of Western Australia (AISWA)
2. We agree with the submissions of IEUA and United Voice filed with the Fair Work Commission on 13 May 2019 in this matter that casual employees employed under the *Educational Services (Schools) General Staff Award 2010 (the Award)* are entitled to be paid overtime once they have worked more than 38 ordinary hours in one week.
3. We do not however agree that casual employees should have their daily ordinary hours limited to 7.6 ordinary hours or 10 ordinary hours. The majority of the spans of ordinary hours in clause 22.3 are 12 hours. Clause 22.3(a) provides a span of 11 ordinary hours for some employee classifications. Accordingly, the ordinary hours of work are limited to 11 or 12 per day for a day worker. For a shift worker, clause 25.1 limits the ordinary hours of work to 10 per day. To insert a limitation of 7.6 ordinary hours would have the effect of significantly restricting the available ordinary hours of a casual employee when compared to an employee engaged as a day worker (up to 12 ordinary hours) and an employee engaged as a shift worker (up to 10 ordinary hours).
4. Neither the IEUA or United Voice identified the basis on which they have submitted that the 7.6 ordinary hours or 10 ordinary hours restrictions should be inserted to the Award. We are of the view that there is no basis for such restrictions to be inserted.
5. It is noted that clause 22.2(a) of the IEUA Draft Determination limits the number of ordinary hours for a casual employee to 7.6 per day "where the casual employee is engaged for less than a fortnight." We note that the IEUA has not provided a submission in support of its proposal for clause 22.2(a) so it is not possible to address the matter in depth. However our submission is that the inclusion of the

clause would be inconsistent the definition of "Casual employment" contained in clause 10.5 of the Award, and anomalous to the conventional industrial precedence that casual employees are "engaged as such" and that their engagement ceases at the end of each shift.

6. We attach a Draft Determination with the necessary amendments to the Award to enable casual employees to have their ordinary hours limited to 38 in one week. The amendments relate to clause 22.1 as once the clear restriction to 38 ordinary hours in one week is established, clause 27 of the Award will entitle casual employees to overtime as it confers the entitlement on all employees covered by the Award. The numbering of clauses 22.2 – 22.6 should be adjusted and any clause references in the Award to these clauses should be also amended.
7. In relation to the calculation of the overtime rate for casual employees, we note that United Voice have sought no amendments to the Award to clarify that matter and that the IEUA have sought an amendment. Neither have provided a submission on why the casual loading is payable on overtime hours but the IEUA have assumed that it is payable. Without a submission on this matter it is difficult to address it in this submission. We would however bring this matter to the attention of the Commission.
8. Should the Commission decide that the casual loading is payable when overtime hours are worked by casual employees under the Award, we agree with the IEUA's submission that it should not be paid on a compounding basis. That is, the casual loading and the overtime penalty should be calculated on the base rate of pay for the classification and added separately to the base rate of pay to produce the hourly overtime rate for a casual employee. The equation would be as follows:

$$\begin{array}{l} \text{Hourly Overtime Rate} \\ \text{For a Casual Employee} \end{array} = \begin{array}{l} \text{Base Rate} \\ \text{of Pay} \end{array} + \begin{array}{l} (25\% \text{ of the Base} \\ \text{Rate of Pay}) \end{array} + \begin{array}{l} (\text{Overtime Penalty} \\ \% \text{ of the Base Rate} \\ \text{Pay [e.g. 50\%]}) \end{array}$$

As an example, in effect the casual overtime rate (inclusive of the 25% casual loading) for overtime worked from Monday to Friday under the Award would be 175% of the ordinary hourly rate of pay for the first 3 hours and 225% of the ordinary hourly rate after that to utilise the terms within the Award. This is a simpler way in which to convey the calculation of the overtime rate for casual employees.

Claire Bailey
Acting Assistant Head of Workplace Management
The Association of Independent Schools of NSW

Dated: 5 July 2019

DRAFT DETERMINATION

Fair Work Act 2009

Part 2-3, Div 4 – 4 yearly review of modern awards

4 yearly review of modern awards –Overtime for Casuals

(AM2017/51)

EDUCATIONAL SERVICES (SCHOOLS) GENERAL STAFF AWARD 2010

[MA000076]

VICE PRESIDENT HATCHER

DEPUTY PRESIDENT KOVACIC

DEPUTY PRESIDENT BULL

SYDNEY, [insert date] 2019

4 yearly review of modern awards – overtime for casuals

- A. Further to the Decision [insert Decision reference] issued on [insert date] that the *Educational Services (Schools) General Staff Award 2010* be varied as follows.
1. By deleting the current clause 22.1 and inserting a new clause 22.1 as follows:
22.1 Subject to this clause, a full-time employee's ordinary hours of work will be 38 per week. The ordinary hours of work for a part-time employee will be in accordance with clause 10—Types of employment.
 2. By inserting a new clause 22.2 as follows:
22.2 Subject to this clause, a casual employee's ordinary hours of work will be a maximum of 38 hours per week.
 3. By renumbering clauses 22.2, 22.3, 22.4 and 22.5 as 22.3, 22.4, 22.5 and 22.6.

The determination shall operate on and from [insert date].

VICE PRESIDENT