

Fair Work Commission – 4 Yearly Review of Modern Awards

Educational Services (Teachers) Award 2010

AM2014/266

IEU SUBMISSION: TRANCHE 3 EXPOSURE DRAFT

1. With the exception of the changes to the draft proposed below the IEU agrees with the Commission's provisional view, as set out at paragraph 6 of the Full Bench decision of 29 January¹, that the variation of this award, in accordance with the draft variation determinations set out at Attachment C to that decision, is necessary to achieve the modern awards objective.

Variations agreed with the Associations of Independent Schools (AIS)

2. The IEU met with the AIS's on 24 February to discuss the exposure draft. The AIS's represent either all or a large majority of award dependent school employers. The IEU is the only union with coverage of teachers in non-government schools. The parties agreed to propose and support three further variations to the exposure draft.

Meal Breaks

3. We have had the opportunity of reading the submission in draft prepared by the AIS in respect of variations previously agreed and submitted to the Commission concerning the meal breaks clauses in the award. We confirm our continued agreement to the changes proposed at paragraph 6 of that submission for the reasons outlined in the AIS submission and in the parties' prior submissions to the Commission in 2015/16 and 2017.

Payment of Wages

4. Clause 18.1(a) of the award should be varied to ensure that, in respect of employees paid fortnightly, it is clear when payment is due. The variation would add the

¹ [2020] FWCFB 421

following words to the existing words of Clause 18.1 “*with the payment being made no later than the last working day of each fortnight;*”.

Employee leaving during redundancy notice period

5. Clause 33.2 of the award should be varied to ensure consistency with the longer, non-standard notice period of 7 weeks applying in this award.
6. The variation would delete the words “*section 117(3) of the Act*” and replace them with the words “*this award*”.
7. In proposing a variation to this standard clause, common to most awards, we note that in a previous decision the Commission has already determined to vary the standard clause (to permit a greater amount of withholding in the event of short notice) for reasons related directly to the non-standard period of notice in the award². The variation in this instance is essential for the purpose of making the clause operate in a practical way.

Errors in Schedule B

8. The rates of pay tables appended to the award in Schedule B, specifically Schedules B.1 and B.1.2 are incorrect. The repeated error in calculation of rates applicable to employees in children’s or early childhood services arises from the exclusion of the 4% loading to be applied by virtue of the provisions of clause 17.2 of the award.
9. To ensure that the tables in Schedule B are accurate and clear the Commission should amend the tables in Schedule B as follows:
 - (i) By adding a new column in B.1.1 for teachers employed in early childhood services operating for at least 48 weeks per year who are not shift workers;
 - (ii) By varying the rates contained in columns 2-5 of B.1.1 to include the 4% loading
 - (iii) By adding a new column in B.1.2 for teachers employed in early childhood services operating for at least 48 weeks per year

² [2019] FWCFB at paragraph 45

Draft Determination

10. The variations sought in this submission are set out in the attached draft determination.

DRAFT DETERMINATION

Fair Work Act 2009

s. 156 – 4 yearly review of modern awards

4 yearly review of modern awards

(AM2019/17)

EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

[MA000077]

Educational Services

FULL BENCH

DATE

4 yearly review of modern awards – Educational Services (Teachers) Award 2010 – modern award varied

A. Further to the decision [REFERENCE] issued by the Full Bench of the Fair Work Commission on (DATE), the *Educational Services (Teachers) Award 2010* is varied as follows:

1. By replacing clause 16.1.(a) with the following clause:

(a) An employer is required to provide an unpaid meal break of not less than 30 consecutive minutes to an employee who is engaged or rostered to work for more than 5 hours on a day. Such meal break will start no later than 5 hours after the employee commenced work on that day.

2. By replacing clause 18.1(a) with the following clause:

(a) Once each fortnight with the payment being made no later than the last working day of each fortnight;

3. By replacing clause 33.2(a) with the following clause:

(a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by this award.

4. By replacing the clause at Schedule A.3.1(a) with the following clause:

(a) An employer is required to provide a paid meal break of between 20 and 30 consecutive minutes to an employee who is engaged or rostered to work for more than 5 hours on a day. Such meal break will start no later than 5 hours after the employee commenced work on that day.

5. By replacing the rates tables in Schedules B.1.1 and B.1.2 with the following tables:

B.1.1 Casual employees—full day rates

	All employees (excluding Schedule A)	Teachers employed in early childhood services operating for at least 48 weeks per year (Schedule A)					
	Full day rate	Full day rate	Early morning shift	Afternoon shift	Night shift (rotating)	Night (non-rotating)	Saturday
	% of casual full day rate (Sch A)						
	100%	104%	110%	115%	117.5%	130%	125%
	\$	\$	\$	\$	\$	\$	\$
Level 1	246.83	256.70	282.37	295.21	301.62	333.71	320.88
Level 2	251.92	262.00	288.20	301.30	307.85	340.60	327.50
Level 3	258.77	269.12	296.03	309.49	316.22	349.86	336.40
Level 4	268.11	278.83	306.71	320.65	327.63	362.48	348.54
Level 5	277.45	288.55	317.41	331.83	339.05	375.12	360.69
Level 6	286.14	297.59	327.35	342.23	349.67	386.87	371.99
Level 7	294.84	306.63	337.29	352.62	360.29	398.62	383.29
Level 8 ¹	304.17	316.34	347.97	363.79	371.70	411.24	395.43
Level 9	313.52	326.06	358.67	374.97	383.12	423.88	407.58
Level 10	322.85	335.76	369.34	386.12	394.52	436.49	419.70
Level 11	332.20	345.49	380.04	397.31	405.95	449.14	431.86
Level 12	341.53	355.19	390.71	408.47	417.35	461.75	443.99

B.1.2 Casual employees—half day and quarter day rates

	All employees (excluding Schedule A)		Teachers employed in early childhood services operating for at least 48 weeks per year (Schedule A)	
	Half Day rate	Quarter Day rate	Half Day rate	Quarter Day rate
	\$	\$	\$	\$
Level 1	123.41	61.71	128.35	64.18
Level 2	125.96	62.98	131.00	65.50
Level 3	129.39	64.69	134.56	67.28
Level 4	134.05	67.03	139.41	69.71
Level 5	138.72	69.36	144.27	72.14
Level 6	143.07	71.54	148.79	74.40
Level 7	147.42	73.71	153.31	76.66
Level 8 ²	152.08	76.04	158.17	79.08
Level 9	156.76	78.38	163.03	81.51
Level 10	161.43	80.71	167.88	83.94
Level 11	166.10	83.05	172.74	86.37
Level 12	170.76	85.38	177.60	88.80

B. This determination comes into operation from (DATE). In accordance with s.165(3) of the *Fair Work Act 2009*, this determination does not take effect until the start of the first pay period that starts on or after (DATE)

PRESIDENT