

FAIR WORK ACT 2009

S156 4 YEARLY REVIEW OF MODERN AWARDS

AM2014/47 ANNUAL LEAVE

SUBMISSION OF THE INDEPENDENT EDUCATION UNION

1. This submission and the accompanying witness statement have been prepared in response to the draft determinations applying to the Educational Services (Teachers) Award 2010 ('the award') as republished by the Commission on 19 October this year.

The IEU's interest

2. The IEU is the only union representing the interest of teachers in non-government school education whose employment is subject to the award. Currently the union has approximately 71,450 members of whom in excess of 65% are teachers.

Draft determinations should not apply

3. The IEU submits that the proposed determinations should apply only to teachers covered by Schedule B of the award. That is teachers employed in early childhood services operating for at least 48 weeks per year. They should not apply to school teachers in receipt of school holidays.
4. As a result of discussions with representatives of the Associations of Independent Schools, the IEU and the AIS have agreed on a common position of opposition to the amendment of the award by the draft determinations issuing from the Commission in the annual leave common matter. While we have not had the opportunity to review the submissions of the AIS prior to their being lodged, to the extent that they are directed at opposing the variation of the award in respect of the annual leave determinations we support them.

Excessive leave and Cashing Out

5. Cl 19.8 of the award provides for the absorption of annual leave into school holidays. The practical application of this clause is that employees accumulate leave during

term time, in a school year comprised of 3 or 4 terms, and that leave is deemed to be taken in the school holidays. There is no accumulation of leave from year to year.

6. The draft determination provides that an essential precondition to an employee taking excessive annual leave is that a balance of 6 weeks must remain. The award operates to ensure that no school teacher can accumulate more than 4 weeks annual leave. The excessive leave clauses, if included, would not operate and for this reason should not be included.
7. Similarly the draft determination provides that a minimum of 4 weeks annual leave must remain after an employee has cashed out annual leave. Again the award operates to ensure that no more than 4 weeks annual can be accumulated. The cashing out clauses, if included would have no work to do and for this reason should not be included.
8. In each of its two decisions in this matter the Commission has commented, with approval, on the desirability of standardization of annual leave provisions in awards. In our submission this should be balanced against the need, identified in the modern awards objective, to ensure that the award is easy to understand and sustainable. Including provisions that are redundant at their inception cannot further this element of the objective.

Leave in advance

9. In its decision of 11 June this year the Commission gave weight to the Employer Survey insofar as it purported to show demand in the workforce for the annual leave in advance provisions being sought. No such survey was circulated in school education. Nor, to best of our knowledge was there any consultation with employers or employees or their representatives in school education in respect of this element of the employers' application. In her statement accompanying these submissions Ms Shembrey states that in nearly 40 years of working in schools she has never known or been acquainted with an instance where an employee has requested annual leave in advance. Moreover, given the quantum of leave available during the year, her evidence indicates that requests for unpaid additional leave predominate.
10. At paragraph 404 of the June decision the Commission summarized the employer submissions in respect of the consistency of the provisions sought with the modern award objective. (The Commission, at paragraph 414, later adopted these submissions as a core element of its reasons for deciding to vary awards.) At subparagraph 404 (iii) the employers submit that more opportunities to take leave will

reduce excessive leave balances. As discussed above school teachers do not accrue excessive leave.

11. In the same sub-paragraph the Commission references a broad claim by the employer applicants that the variation would not offend s134(1)(f) of the modern awards objective by increasing employment costs. When school teachers are absent during term time schools have set measures to minimize the cost of engaging casual, relief and replacement teachers. These include requiring a set number of additional classes ('extras') from the permanent teacher workforce. Wholesale access to leave during the school term would quickly exhaust the extras available to schools and significantly increase costs through the necessity to engage additional teachers.

12. The existing provisions of the modern award in respect of: the averaging of the hours of work; a cap on the maximum number of days that an employee can be required to attend during term weeks and the provision of school holidays with pay including annual leave were negotiated and agreed by industry employee and employer representatives over a period of more than a year. They broadly reproduced the existing conditions in place in all states and territories prior to the making of the award. The industry parties intended that the award would give effect to s93(3) of the Act in requiring an employee to take annual leave during school holidays and that that requirement was inherently reasonable given the dictates of the school year and the overall quantum of leave available.

IN THE FAIR WORK COMMISSION

MATTER NO: AM2014/47

4 YEARLY REVIEW OF MODERN AWARDS – ANNUAL LEAVE

Statement of Maureen Therese Shembrey

I, Maureen Shembrey, [REDACTED], state as follows:

1. I am employed as the Principal's Officer by the Independent Education Union of Australia, Victoria Tasmania branch. I commenced work for the branch in February 2015.
2. Prior to working for the branch I was employed in Catholic Education as a teacher and, latterly, principal from 1977 until 2014. I worked as a teacher and deputy principal at St Thomas Mores' School, Hadfield from 1986 until 1998; as the principal of St Aloysius' School, Caulfield from 1999 until 2007 and as the principal of St Anthony's School Alphington from 2008 until the end of the school year in 2014.
3. In addition to my teaching qualifications I have completed a Graduate Diploma in Educational Administration and a Masters in Religious Education.
4. During my employment as a principal I attended regular principal's network meetings organized by zone by the Catholic Education Office. At this time I was also a representative in the union's Principals' Sub-Branch. I believe this assisted me in further developing a comprehensive understanding of the administrative operation and needs of non-government schools and the work of principals in those schools.
5. In my current role as Principal's Officer I have sole responsibility for providing advice and support to the union's principal members in Victoria and Tasmania. The majority of the advice members seek relates to practical and administrative issues as opposed to industrial matters, although there can be some intersection between the two. I

have an understanding of the union's awards and agreements but I am not an expert in that respect.

6. I have read the revised determinations published by the Commission on 19 October setting out new annual leave entitlements to apply to the Educational Services (Teachers) Award 2010.
7. In the 37 years I worked a teacher, deputy principal and principal and in my work with the union this year I have never heard the term 'annual leave' applied to the leave taken by teachers. Instead teachers' entitlement to leave is usually referred to as 'paid school holidays'.

Excessive Leave

8. Teachers are generally not required to attend for work at a school during the school holidays. The circumstances wherein this may be necessary are very limited. A school's requirement in respect of teacher attendance during school holidays would generally be limited to senior teachers and involve one or two days preparation in advance of the school year or a specific event in the school calendar programmed at the commencement of school term.
9. As teachers do not attend the workplace in the holidays they exhaust their leave as it accrues. I am not aware of any teacher in non-government schools in Victoria having ever carried over a single day of leave from one school year to the next.

Cashing Out of Annual Leave

10. The draft determination provides that an employee can't cash out leave unless they retain an accumulated balance of 4 weeks. No teacher would have access to this benefit as for the reasons set out above they are required to take their leave as it accumulates and therefore cannot accrue more than four weeks.

Annual Leave in Advance

11. From time to time almost all teachers will need to seek leave during term time additional to that provided by the award or more commonly, the agreement applying at their workplace. Among the more common reasons for seeking such leave will be: relocation; household emergencies and family events and celebrations. My experience is that the overwhelming majority of such requests will be for leave without pay.

12. As a principal I didn't receive, and have no knowledge of any other principal having ever received, a request for annual leave in advance. Similarly as a principal I didn't receive any application from a teacher for school holiday leave in advance. However I am aware that some Independent school agreements ensure that the school may pay staff in the school holidays prior to their commencement and that they then do not pay pro-rata school holiday pay on termination.

Response to the proposed changes

13. After receiving a briefing on the changes proposed by employers earlier this year I have had the opportunity to discuss them with a broad cross-section of the union's principal membership in Victoria. As a result I am concerned that the proposed changes to the award don't appear to be relevant or necessary for schools and teachers.

14. The balance between teachers working long hours during term and their receipt of school holidays, during which a range of self-directed professional obligations must be met (but where teachers are generally not required to attend for work at the school) is universal in school education. I am particularly concerned that this balance will be altered if the proposed provisions concerning annual leave in advance are introduced and create an expectation among teacher members that paid leave can be accessed during term-time in return for an equivalent period of the next school holidays being taken as leave without pay. From a principal's perspective at the very least this creates the possibility of additional and unpredictable expenditure on casual and relief teachers.

15. I am also concerned at the effect of the proposed change to the award on school planning. Both the award and every agreement with which I am familiar provide for long periods of notice in respect of changes to work. For example every employer must give a minimum of 6 months notice of teacher attendance requirements. It is not uncommon for schools to require similar periods of notice from teachers seeking to take long service leave. Long notice periods are important for school planning. Schools aim to provide staff, students and parents with a full school timetable at the commencement of every school year. This particularly assists parents and students in respect of study requirements.

Maureen Shembrey

