

AM2014/47

4 YEARLY REVIEW OF MODERN AWARDS

COMMON ISSUE - ANNUAL LEAVE

SUBMISSION OF THE INDEPENDENT EDUCATION UNION OF AUSTRALIA

Introduction

1. Paragraph 1 of the directions issued by the Commission on 11 June 2015 invited interested parties to file a submission addressing the wording of the model term and whether it should be included in all modern awards.
2. The IEU submits that the model term should not be included in all modern awards as it should not be included in the *Educational Services (Teachers) Award 2010*. In respect of this award we also submit that there is no term which could provide effectively for the taking either of annual leave in advance or the taking of excessive annual leave. We have nothing to say concerning the wording of the model term in respect of its application to other awards.

The IEU's interest

3. The IEU is the only union representing the industrial interests of teachers whose employment is subject to the award. Currently the union has around 71,400 members of whom in excess of 65% are teachers employed in non-government schools throughout Australia.

The Commission's decision

4. The Commission set out its primary reasons for extending the model term in respect of annual leave in advance to all awards at paragraph 411 of its decision. The reasons given were that the entitlement would be of benefit to employees and that it would align the entitlements of award and agreement free employees with those of award covered employees.
5. In respect of the model term proposed for excessive annual leave the Commission gave, at paragraph 190 of its decision, as its reason for the purpose of the term that it was intended to establish mechanisms to assist employers and employees in eliminating or reducing excessive annual leave. The Full Bench also found at *paragraphs 116 et seq* that survey evidence supported finding that most employees don't use all of their leave and a significant percentage of employees had six weeks or more accrued annual leave and that this had adverse impacts on both employees and employers.

The modern awards objective

6. The inclusion of the model clauses in the *Educational Services (Teachers) Award* is not consistent with the modern award objective at *s134(1) of the Act* in that the clauses are not relevant to the manner in which work is performed in accordance with the award and would, if included, have no work to do.

7. The submission of the AIS in this matter clearly sets out the manner in which the award operates in respect of both the accrual and the taking of annual leave. The school year and school holidays ensure that teachers cannot accrue more than 4 weeks annual leave and we are not aware of any instance where this has occurred. In addition the IEU is not aware of any agreement that provides for a significantly differing pattern of work entailing either the accrual of more than 4 weeks annual leave or the taking of annual leave in advance. We support the submission made by the AIS.

8. The essence of the Commission's decision is that the clauses provide a benefit to employers and employees. There can be no benefit to either in this instance.