



# DECISION

*Fair Work Act 2009*

s.158 - Application to vary or revoke a modern award

## **Independent Education Union of Australia** (AM2018/9)

VICE PRESIDENT HATCHER  
DEPUTY PRESIDENT DEAN  
DEPUTY PRESIDENT SAUNDERS

SYDNEY, 1 NOVEMBER 2021

*Application to vary Educational Services (Teachers) Award 2020 on work value grounds.*

[1] In a decision issued on 11 October 2021,<sup>1</sup> we determined a number of outstanding issues concerning the variations to the *Educational Services (Teachers) Award 2020* (EST Award) necessary to give effect to our primary decision of 19 April 2021.<sup>2</sup> We published a draft determination in conjunction with the 11 October 2021 decision, and provided interested parties with a period of 14 days to file any submissions in response.

[2] Submissions have been received from the Independent Education Union of Australia (IEU), the Australian Education Union (AEU), and the Australian Childcare Alliance and Australian Business Industrial (ACA/ABI). In its submissions dated 21 October 2021, the IEU identified modifications/corrections that should be made in respect of the proposed clauses 14.2(a), 14.5(b), 19.3(g)(i), B.1.1 and H.1(a). The AEU and ACA/ABI agree with this. Accordingly, these modifications/corrections should be made to the variation determination.

[3] The IEU also identified in its submissions dated 21 October 2021 what it contended was a drafting error in the proposed clause 14.5(a)(i). The AEU agreed, but this was opposed by ACA/ABI, which contended that the clause as drafted reflected the intended position. In a further submission dated 26 October 2021, the IEU submitted that it agreed with the ACA/ABI concerning what the intended position was and had reached agreement with the ACA/ABI as to an amendment to the proposed clause 14.5(a)(i) to resolve the issue. We are prepared to accept the agreed position, and the variation determination will be modified as per the IEU's 26 October 2021 submission.

[4] In further correspondence dated 29 October 2021, the IEU identified inconsistencies between clause 14.1 and clause 17.1 in the draft determination, including in relation to the classification descriptors for Levels 3 and 4. The descriptors for these classifications in clause

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<sup>1</sup> [2021] FWCFB 6021

<sup>2</sup> [2021] FWCFB 2051

17.1, in relation to the number of years of satisfactory service needed to qualify for the classifications, reflected the primary decision,<sup>3</sup> whereas those in clause 14.1 had been adjusted by agreement between the IEU and the ACA/ABI to account for the problem that employees transitioning to Levels 3 or 4 as at 1 January 2022 pursuant to the transitional provisions would not have three years' service at the preceding classification level. The presiding member conducted a conference of the parties in relation to this issue on 29 October 2021, and directed that the parties confer on an urgent basis about the issue. In further correspondence dated 1 November 2021, the IEU advised that it had conferred with the ACA/ABI about the issue and an agreement had been reached that the issue would be resolved by:

- (1) altering the classification descriptors for Levels 3 and 4 in clause 14.1 to return it to a position closer to that in the primary decision;
- (2) amending the transitional provisions in clause H.3 of Schedule H to ensure that past service at a proficient level is fully recognised; and
- (3) otherwise amending the classification descriptors in clause 17.1 to ensure consistency with clause 14.1.

[5] No other party expressed a view in relation to the issue. We accept that the agreed position adopted by the IEU and the ACA/ABI represents an appropriate resolution of the issue, and it will be reflected in the final variation determination.

[6] The determination varying the EST Award is published in conjunction with this decision. The determination will take effect on 1 January 2022.



VICE PRESIDENT

*Final written submissions:*

1 November 2021.

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<sup>3</sup> Ibid at [657]