

**Fair Work Commission: 4 Yearly Review of Modern Awards
(s.156, Fair Work Act 2009 (Cth))**

**AM2014/225
Educational Services (Schools) General Staff Award 2010 [MA000076]**

SUBMISSIONS IN REPLY

Exposure Draft - Educational Services (Schools) General Staff Award 2015

Associations of Independent Schools

and

Independent Education Union of Australia

Introduction

1. These submissions in reply are made on behalf of the Associations of Independent Schools (**AIS**) and the Independent Education Union of Australia (**IEU**), hereinafter referred to as '**the Parties**', in accordance with the Statement issued by the Fair Work Commission on 23 March 2016.
2. The Parties submitted a marked-up version of the Exposure Draft of the Educational Services (Schools) General Staff Award 2015 (**Exposure Draft**) on 14 April 2016, together with a joint submission.
3. The purpose of this submission is to provide responses to the submissions made on 15 April 2016 by two employer associations.

Submission made by the Australian Federation of Employers and Industries (AFEI)

Clause 10.2(d)(ii) – Broken shifts

4. On 14 April 2016, the Parties submitted that the phrase "*other than a casual employee*" should be inserted, enclosed in brackets, after the word "*employee*" and before the word "*is*" in the first line of cl.10.2(d)(ii) of the Exposure Draft. The

purpose of the proposed change is to replicate the wording in cl.25.3(b) of the current version of the *Educational Services (Schools) General Staff Award 2010 (2010 General Staff Award)*. The proposed change makes it clear that a casual employee is not entitled to be paid the broken shift penalty.

5. Clause 6.5(d) (i) of the Exposure Draft makes it clear that a casual employee is engaged and paid for a minimum of two hours per shift. This clause corresponds with the first sentence of cl.10.5(c) of the 2010 General Staff Award.
6. These two clauses of the Exposure Draft, when read together, replicate the employment arrangements under the 2010 General Staff Award. That is, a casual employee engaged to work a broken shift would be engaged for two engagements, each of not less than two hours, during the ordinary spread of hours. The casual employee is entitled to be paid the casual loading but has no entitlement to be paid the broken shift penalty.
7. The variation proposed by the AFEI would change the operation of the 2010 General Staff Award.

Clause 16.3 – Reasonable additional hours – part-time employees

8. On 14 April 2016, the Parties submitted that the heading of “*Where the employee’s hours are averaged*” in cl.16.3 of the Exposure Draft should be deleted. The heading, if it remains in cl.16.3 of the Exposure Draft, would have the effect of changing the operation of cl.22.4 of the 2010 General Staff Award.
9. Accordingly, the submission of the AFEI supports the change suggested by the Parties in the marked-up Exposure Draft submitted on 14 April 2016.

Submission made by Australian Business Industrial and The NSW Business Chamber Ltd (ABI)

Common Matters

10. The parties acknowledge that the submission of ABI with respect to
 - the supported wage system clause
 - the reference to occupational health and safety
 - the phrase “*modern award, as varied*”
 - the note regarding FW Regulations in the payment of wages clause

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will be determined by the Fair Work Commission in relation to all modern awards. Accordingly, the Parties are not providing a submission in reply with respect to these matters.

Clause 6.4(c)

11. The Parties support the ABI submission that the words “*at least*” should be removed from the Exposure Draft for the reasons provided by the ABI.

Clause 10

12. The Parties spent considerable time reviewing the operation of clauses 9, 10 and 15 of the Exposure Draft.
13. The Parties consider that the construction of the clauses, as proposed by the Fair Work Commission, do not alter the operation of the 2010 General Staff Award and will be able to be interpreted by employees and employers.

5 May 2016