



## Background paper

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

### EDUCATIONAL SERVICES (TEACHERS) AWARD 2010 [MA000077]

(AM2014/266)

<b>To:</b> Commissioner Cirkovic	<b>Date:</b> 6 March 2017
<b>From:</b> Modern Awards Team	
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<b>Subject:</b> Research arising from Draft Report – 14 February 2017	

*Note: This is a background document only. It has been prepared by the Commission research area and does not represent the concluded views on any issue.*

This paper has been prepared in response to a request made in the draft Report<sup>1</sup> of Commissioner Cirkovic that the Award Modernisation Team (AMOD) conduct research regarding an issue raised by the Commissioner on the exposure draft for the *Educational Services (Teachers) Award 2010*. The issue was discussed at the conference on 30 January 2017.

#### **Item 23 of Summary of submissions<sup>2</sup> - hours of work and related matters – Teachers employed in early childhood services operating for at least 48 weeks per year – rostered days off**

*AMOD team to provide explanation as to why clause A.2.12 appears in Schedule A.*

Clause A.2.12 reads as follows:

*“Where a service operates for **less than 48 weeks** per year and the employee receives more than four weeks’ paid leave per year, the employee will accrue rostered days off to a maximum of seven days in any 12 months of consecutive employment. Any days accrued in excess of seven will be subsumed into the period of paid leave.”*

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<sup>1</sup> [Draft report](#) – 14 February 2017

<sup>2</sup> [Summary of submissions – technical and drafting – revised](#), 14 February 2017.

Similar provisions were contained in several NAPSAs. It appears that these provisions were amalgamated to form the Educational Services (Teachers) Award 2010 during the award modernisation process. The NAPSAs and the relevant clauses are as follows:

- Clause 13.6, 'Establishments Operating 41 to 47 Weeks Per Annum' of the [Teachers \(Catholic Early Childhood Services Centres and Preschools\) \(State\) Award 2006](#);
- Clause 11.5, 'Establishments Operating 41 to 47 Weeks Per Annum' of the [Teachers \(Independent Schools Early Childhood Services Centres Other Than Pre-Schools\) \(State\) Award 2005](#);
- Clause 8.8, 'Establishments Operating 41 to 47 Weeks Per Annum' of the [Teachers \(Non-Government Early Childhood Service Centres Other Than Pre-Schools\) \(State\) Award 2006](#); and
- Clause 11.4(d)(ii)(2) of Appendix J 'Implementation of 38 Hour Week – Establishments Operating 40 – 47 Weeks' of the [Broken Hill Commerce and Industry Agreement Consent Award 2001](#).

The text for the first three awards reads:

- *"Where an ECS Centre operates from **41 to 47 weeks** per annum and a teacher receives in consequence more than four weeks paid leave per annum, then the teacher shall accrue rostered days off to a maximum of seven days in any 12 months of consecutive employment and any days accrued in excess of seven days in any 12 months period of employment shall be deemed to be subsumed into the period of paid leave in excess of four weeks."*

Whereas the text for the Broken Hill Commerce and Industry Agreement at clause 11.4(d)(ii)(2), Appendix J reads:

- *"Establishments Operating **40 - 47 Weeks** - An employee may accrue sufficient accrued days off to the extent accrued in accordance with subclause (c) of this clause to enable such days to be taken as rostered days off to a maximum block of seven days at any one time in any twelve months of consecutive employment. Provided that any days accrued in excess of seven days in any twelve months of consecutive employment may be subsumed into a period of paid stand down."*

The Independent Education Union of Australia proposed that a similar provision be contained in the modern award in its submission of 30 March 2009 to the award modernisation proceedings at paragraph at 20.10 (see [Independent Education Union of Australia submission](#)):

- *"Where an early childhood service operates from 41 to 47 weeks per annum and a employee receives in consequence more than four weeks paid leave per annum, then the employee shall accrue rostered days off to a maximum of seven days in any 12 months of consecutive employment and any days accrued in excess of seven days in any 12 months period of employment shall be deemed to be subsumed into the period of paid leave in excess of four weeks."*

The clause was then inserted in the [revised exposure draft](#) published 25 September 2009 at Clause A.2.12 and is mentioned in decision [\[2009\] AIRCFB 826](#) at [58]:

*“A new schedule has also been inserted to deal with hours of work of teachers employed in an early childhood service, operated by a school, which operates for more than 48 weeks per year, rather than in accordance with school terms.”*

It appears that the wording contained in this clause was inserted as intended at the time the award was made. This wording has been retained in the current exposure draft.

AMOD suggests that because the clause explicitly refers to a teacher employed in early childhood services operating at less than 48 weeks per year it may need to be signposted within the body of the award. This is because the Schedule the clause is currently contained in relates to Early Childhood Services operating for at least 48 weeks per year.

AMOD proposes the following subclause be inserted into the exposure draft after clause 15.2 with the subsequent clauses to be renumbered:

**15.3** *A teacher employed in early childhood services for less than 48 weeks per year is entitled to rostered days off in accordance with clause A.2.12.*