

IN THE FAIR WORK COMMISSION

S. 158 - application to vary or revoke a modern award

Application by the Independent Education Union of Australia (130N)

AM2018/9

AEU RESPONSE SUBMISSIONS

(Filed pursuant to the directions made on 7 June 2021)

1. On 7 June 2021 the Commission timetabled the filing of evidence and submissions before the final hearing on 23, 24 and 25 August 2021. On or about 9 July 2021 the IEU and ACA filed a proposed consent variation (the “Consent Variation”)¹ and other interested parties (including the AEU) filed material: direction [1].
2. These are the AEU response submissions filed in accordance with direction [2].
3. The AEU’s response submissions are confined to the 2 issues where its position is (or may) diverge from that of other parties:
 - (a) Issue 1 – Level 5 criteria - clause 14.9; and
 - (b) Issue 2 - support for PRT’s – including reasonable release for mentors- clause 14.11.

Issue 1 – Level 5 criteria - AEU’s proposed clause 14.9

4. AITSL has a national process: “Certification of Highly Accomplished and Lead Teachers” (the “HALT Guide”)² The HALT Guide envisages that: “in participating states and territories, one or more bodies manage the certification process – referred to as the certifying authority”: HALT Guide, p 8 of 48. AITSL’s website³ identifies 8 certifying authorities. There is no relevant certifying authority for Victorian ECT’s. The practical issue is that without a broadening of the Level 5 criteria Victorian EST Award dependent teachers cannot access the Level 5 classification.

¹ As to the two issues as to which the AEU wishes to be heard:

- (a) Community Connections Solutions Australia (“CCSA”) also supports the consent variation: see CCSA submissions, p.2;
- (b) Catholic Employer Relations Ltd. (“CER”) raises a separate issue as to a 5-yearly renewal of HALT accreditation dealt with separately below.
- (c) On the AEU’s review, no other party has filed submissions relevant to these issues.

² CER submissions, footnote 27.

³ <https://www.aitsl.edu.au/teach/understand-certification-and-halt-status>

5. As a result, the AEU supports the aim of the Consent Variation to overcome the fact that award-dependent teachers in non-HALT jurisdictions cannot access the Level 5 classification. The AEU supports the adoption of Level 5 criteria accessible by all teachers in HALT and non-HALT jurisdictions.
6. The Consent Variation proposes a two-step model in non-HALT jurisdictions: (1) employer/employee agreement; and (2) failing agreement, Commission dispute resolution under cl. 31 of the EST Award. The IEU at [45] submits: “a teacher in such a jurisdiction [a non- HALT jurisdiction] who contends they meet the criteria for a HALT can seek such recognition and if not accepted can seek to have the dispute determined by utilising clause 31 – Dispute Resolution: see 14.9(a).”⁴
7. The AEU proposes an alternative mechanism: assessment of whether a teacher has attained the HALT standards by a panel of independent expert assessors. The AEU’s mechanism is intended to reproduce AITSL’s process in the HALT Guide and *adapt it only to the minimum extent necessary* to recognise the fact that (at least for Victorian ECTs) there is no available certifying authority. In a non-HALT jurisdiction, the assessors would “stand in the shoes” of the certifying authority in a HALT jurisdiction, in assessing whether a teacher had attained the APSTs at HALT level. In drafting its alternative clause (14.9) the AEU has used the concept of a teacher being *recognised* as the equivalent of a HALT teacher in a non-HALT jurisdiction; whereas they would be *certified* in a HALT jurisdiction.
8. Nationally, relatively few teachers have accessed HALT accreditation: 840 since 2012.⁵ Given those limited numbers, an assessor system in non-HALT jurisdictions could work in a practical way and would not impose an undue burden on employers, employees or assessors.
9. Two possible issues arise.

⁴ The ACA submissions do not appear to add to the IEU submissions.

⁵ The AITSL website records that there has been a total of 840 HALT teachers certified since 2012: <https://www.aitsl.edu.au/teach/understand-certification-and-halt-status>

10. First, the AEU reads the Consent Variation proposal as providing that an individual employer and employee may agree that the teacher meets the HALT APSTs. In the HALT jurisdictions, HALT accreditation is the decision of a certifying authority which endorses/declines the recommendation of external assessors.⁶ The certifying authority is an authority outside of, and independent from, the individual workplace setting. HALT is a jurisdiction-wide accreditation, portable between employers⁷. Given the aim is to reproduce the accreditation process as closely as possible adapted only for the absence of a relevant certifying authority, a non-HALT jurisdiction HALT recognition mechanism should operate independently from the individual workplace.
11. Secondly, and relatedly, the Consent Variation proposes that in the event of employee/employer dispute, the Commission would resolve the dispute under cl. 31 (the dispute resolution process). In contrast, the AEU submits that attainment of the Level 5 standards in non-HALT jurisdictions should be the solely the product of expert teacher/educator assessment: teacher assessment in non-HALT jurisdictions would more closely reproduce the approach in HALT jurisdictions (certification by an certifying authority acting on the recommendation of expert assessors independent from the workplace). Independent expert assessors are best placed to assess teachers' achievement against the APSTs. A system of expert assessors will also avoid the possible anomaly of the Commission having a role in the non-HALT jurisdictions but not in the HALT jurisdictions where there is no avenue of Commission review of the decision of a certifying authority.

Renewal of certification in line with AITSL – each 5 years

12. CER submits at [32] - [33] that there would be an unfairness if Level 5 employees within a HALT jurisdiction were required to engage in a 5 yearly reassessment and renewal process and those in non-HALT jurisdictions were not subject to a renewal process. The AEU accepts that point: all HALT teachers ought to have renew in line with the AITSL principles.

⁶ See: *Guide to the Certification of Highly Accomplished and Lead Teachers in Australia*, p. 25 of 48 (the HALT Guide")

⁷ As to portability see: HALT Guide, p 8 of 48.

13. The HALT Guide provides for “Renewal of Certification” (p 34 of 48). The process in the non-HALT jurisdictions should reproduce as closely as possible the process in the HALT jurisdictions, adapted only for the absence of a relevant certifying authority.
14. AITSL’s separate Guide to the Renewal of Certification of Highly Accomplished and Lead Teachers in Australia”⁸ (the “Renewal Guide”) provides for Renewal of Certification. Certification is granted for a fixed period of five years. The Renewal Guide provides: “an application for renewal of certification will be independently assessed by an assessor.” (p 13 of 32). The AEU submits that the EST Award should reproduce the equivalent of this AITSL requirement for non-HALT jurisdictions for renewal of HALT recognition.
15. In acknowledgement of CER’s submission, the AEU proposes a new cl. 14.9(c) as follows:

“For the purposes of clause 14.9(a)(i), the assessment will be for a fixed period of five years and any teacher who wishes to renew their recognition must notify their employer that they wish to renew their recognition. An application for renewal of recognition will be independently assessed by an assessor appointed under clause 14.9(b) and assessed in accordance with any applicable AITSL guideline.”

Issue 2 – support to PRT’s to be extended to reasonable release for mentors where operationally practicable – cl. 14.11

16. Insofar as the Consent Variation mandates reasonable release where operationally practicable for PRT’s to support their attainment of full registration, the AEU supports the Consent Variation. It expressly supports the IEU’s submissions at [62] that “proposed clause 14.11 provides a balanced approach, which recognises the need for employers to assist new teachers, but also recognises that such assistance is subject to what is operationally practicable.”

⁸ CER submissions, footnote 27. “Separate’ in the sense that there is a stand-alone Guide as to renewal.

17. The AEU also supports the IEU's submissions at [59] that "to obtain that status [of proficient registration] a teacher must have access to a supervisor/mentor who is a teacher with proficient status. The supervisor is a teacher who supports a teacher seeking proficient status to develop their practice against the APSTs at a Proficient Teacher level and guides them through the accreditation process."
18. The AEU submits that clause 14.11 as set out in the Consent Variation ought to be modified so there is also reasonable release from ordinary duties where operationally practicable for mentors who provide the means of support for a PRT to achieve full registration.
19. The AEU says a safety net standard for reasonable release for mentors where operationally practicable is appropriate for 3 reasons.
20. First, support to PRTs requires support for mentors. The national document as to teacher registration (the NFTR) provides in Appendix 1 that PRTs will be given "support" to attain full registration. The new remuneration structure is anchored on the professional career standards established by the APST and tied to teacher registration: April Reasons [653]. Once it is accepted that the PRT support is provided by means of a mentor-system (as it is - see the relevant Victorian and NSW documents below) support requires reasonable release for PRTs and for those who provide the support: namely, mentors. If mentors are not reasonably available to provide the support, there will be no effective support for PRTs.
21. Secondly, mentoring is a substantial job. There is substantial work additional to ordinary duties involved for a mentor to support a PRT. Mentors ought not to be expected to assume that additional burden in addition to ordinary duties without reasonable release from those ordinary duties where operationally practicable. Reasonable release for mentors is a supportive pillar of support for PRTs.
22. In assessing what work over and above ordinary duties is required for mentors who support a PRT, in its initial submissions the AEU referred to the situation in Victoria and, in particular, a VIT website publication: Guide: Supporting Provisionally Registered Teachers: a guide to the (full) registration process (pages 1-41) (the "Guide").

23. The IEU submissions refer to the NSW documents: NESA (2019), Proficient Teacher Accreditation Policy and NESA Supervisor Guide.⁹ There are strong parallels between the NSW and Victorian processes. The NESA guide provides as follows:

Supervisors are responsible for:

- providing advice and feedback to teachers to support them in meeting the Standards for Proficient Teacher
- determining when a valid and reliable decision can be made about a teacher's practice against the Standards, in consultation with the teacher and the TAA
- advising the teacher and the principal or TAA in writing of any issue/s with a teacher's practice that may negatively impact on the Proficient Teacher accreditation decision
- observing the teacher's practice over time, providing timely and constructive feedback, and an observation report for the purposes of finalising accreditation
- collaborating with the teacher to help them select appropriate evidence to annotate and submit, and confirming that the teacher's annotated documentary evidence
- completing a Proficient Teacher Accreditation Report describing how the teacher's practice meets each of the seven Standards

24. Although there are some variations across jurisdictions where registration applies, by and large, each of the other states and territories also have also adopted a mentor system of support for PRTs and a mentor's work is of a similar scope across jurisdictions.

25. Thirdly, such a provision is fair from the perspective of employer and employees. Fairness from the employee perspective involves recognition of the mentor assuming of the burden of substantial additional work over and above ordinary duties. The balance represented by the words "where operationally practicable" means that such a provision can operate fairly for employers. The clause is structured in an inherently flexible way to accommodate differences across jurisdictions and varied circumstances which may apply to individual employers and employees. Further, at least in Victoria, some level of financial support is available to employers which may serve to support what is operationally practicable.¹⁰ The AEU does not know of any comparable financial support

⁹ See IEU's Initial Submissions, [59] footnote 10.

¹⁰ ACA's submissions, [69].

available in other states. In Victoria, the Victorian government offers funding for early childhood services to support provisionally registered early childhood teachers to move to full registration with VIT.¹¹ An early childhood service can apply for funding of \$2872 per teacher. The funding can be used as follows:

Funding can be used in any way that supports the provisionally registered teacher to move to full teacher registration. This includes:

- providing paid time release, travel or accommodation expenses for both the provisionally registered teacher and a mentor to work with each other
- employing a casual relief teacher to backfill the provisionally registered teacher and/or the mentor
- supporting the provisionally registered teacher to undertake formal professional learning. This might include (but is not limited to) attendance at conferences, workshops, seminars, online courses, subscriptions to teacher magazines/journals/research articles, coaching from an external consultant and teacher text book resources on particular topics.

26. An applicant for that funding support will enter into a funding agreement.¹²

27. The Victorian government funding arrangements recognise that supporting a PRT to achieve full registration may be delivered by directing support towards a mentor. The AEU's modification to the Consent Variation offers a safety net entitlement to mentors reasonably necessary to support a PRT to achieve full registration and to recognise that mentors take on the significant work of mentoring in addition to their ordinary duties as proficient teachers. It strikes a balance between employers and employees by limiting reasonable release to where it is operationally practicable.

¹¹ See:

https://www.education.vic.gov.au/childhood/professionals/profdev/Pages/provisionally_registered_teachers_funding.aspx

¹² <https://www.education.vic.gov.au/Documents/childhood/professionals/profdev/Funding-Agreement.docx>

28. In its initial submissions the ACA makes certain submissions as to mentoring at [56]-[62], including as to whether this issue ought to be decided at this stage of this case. The ACA submits that issues about reasonable release for mentors are not truly ancillary to the Commission’s April Reasons.¹³ The AEU submits that safety net support for PRTs and their mentors is consequential on the adoption of the new remuneration structure. The AEU’s position “responds” to the modifications in the remuneration structure” (April Reasons, [665]). The Commission’s April decision set forth a new remuneration structure which aligned teacher registration issues and an Award classification structure in a new way. The importance of registration can be seen in the fact that full registration serves as the demarcation line between Level 1 and Level 2. An appropriate award safety net provision to support a PRT advance through the skills-based career structure is fair having regard to the modern awards objective. Responding to the new remuneration structure compels the industrial parties to focus on what needs to happen for a PRT to attain that full registration. The Commission’s new remuneration structure has led the AEU to focus at an award level on necessary levels of Award support to PRTs and their mentors. Whilst (conceptually) it may be possible for the AEU to apply to vary the award under s.157 on a stand-alone basis seeking reasonable release for mentors, it is submitted that it is appropriate that the Commission consider this issue at the outset of the adoption of a new remuneration structure as part of its broad evaluative judgement (see April Reasons, [220]) as to how the new remuneration structure should operate fairly for teachers and employers alike. It is an issue best considered in the broader context of a new remuneration structure rather than as a later “bolt-on”. At a practical level, the AEU submits that it is appropriate to deal with this issue at the Commission’s August hearing rather than (as ACA observes) “potentially have it unanswered for another hearing.”¹⁴

Dated: 30 July 2021

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¹³ ACA submissions, [59].

¹⁴ See ACA submission, [58].