

FAIR WORK COMMISSION

Matter: AM2021/54

IN THE MATTER OF CASUAL TERMS AWARD REVIEW 2021

THE ASSOCIATIONS OF INDEPENDENT SCHOOLS' NOTE ON THE COMMISSION'S PROVISIONAL VIEWS

1. This note is filed on behalf of the following associations of independent schools (**Associations**) in accordance with paragraph 4 of the Statement and Directions dated 22 June 2021:
 - Independent Schools Victoria Incorporated
 - Association of Independent Schools of New South Wales Limited
 - Association of Independent Schools of South Australia
 - Independent Schools Queensland Ltd
 - Independent Schools Tasmania Incorporated.
2. The Associations' interest is in the operation of the Teachers Award and they therefore seek to be heard in relation to that Award only.
3. Whilst the Associations support the provisional views of the Commission insofar as they relate to the operation of the Teachers Award, they wish to clarify the basis of their agreement with the provisional views on questions 7-8. These questions broadly turn on how to define a casual employee and whether any limitation on the use of casuals under the Teachers Award is appropriate.

Recasting the limit on a casual engagement should omit the reference to "employment on a day-to-day basis"

4. In summary, whilst the Associations now support the retention of the limitation of a casual engagement for not more than four consecutive weeks or term weeks (subject to the limited rights of extension), they do not support retention of the phrase "employment on a day-to-day basis". This is broadly consistent with the draft determination proposed by the AEU in its May submission where it proposed that the limitation in clause 12.1 of the Teachers Award should be recast to say, "*A casual employee may be engaged for a period of not more than 4 consecutive weeks, or 4 consecutive term weeks in the case of a teacher in a school or preschool*".
5. The Associations would otherwise support the proposal of the IEU insofar as it proposes to include a definition of casual employee by reference to s 15A of the Act and retain clause 12, so long as clause 12 is appropriately revised to remove the phrase "employment on a day-to-day basis". The removal would still preserve the purpose of clause 12.1 as advanced by the IEU, i.e. to impose a time limit on the duration of casual employment.¹

¹ See IEU Reply submission at [27].

Proposed amendments to the Teachers Award to give effect to the Commission's provisional views

6. Taking a minimalist approach to change, the Associations therefore propose the following amendments to the Teachers Award in order to give effect to the Commission's provisional views:

Insert the following definitions into clause 2:

Casual employee has the meaning in s 15A of the Act.

Casual employment means the employment of a casual employee in accordance with clause 12.

Revise clause 12.1 to state:

A casual employee may be engaged for a period of not more than 4 consecutive weeks, or 4 consecutive term weeks in the case of a teacher in a school or preschool.

Proposed amendments conveniently resolve any difficulties and uncertainty in interpreting the Teachers Award in the context of the Act as amended

7. The Associations submit that once the definition of casual employee as per the Act is adopted in the Teachers Award, the reference to "employment on a day-to-day basis" is unnecessary, confusing and should be removed to make the Teachers Award operate more effectively with the Act as amended.

Dated: 23 June 2021