

Fair Work Commission

Fair Work Act 2009

AG2021/9160

s.217 Application to remove ambiguity an ambiguity or uncertainty by variation of an enterprise agreement.

SUBMISSIONS OF THE IEUA

1. The Union has as members a very significant proportion of staff employed by employers party to the Victorian Catholic Education Multi-Employer Agreement 2018 (“the VCEMEA 2018”).
2. The Union first raised concerns about ambiguity and uncertainty in Appendix 3 of the VCEMEA 2018 in February 2019.
3. The ambiguity and uncertainty arises because clause 3.1 is irreconcilable with clause 3.2 and clause 2 is deficient in that it does not properly explain how LSL is to accrue.
4. The extraordinary results of trying to apply the ambiguous and uncertain terms are explained in the statement of Mr Jordan filed in this matter. At paragraphs 15 to 30 of his statement, Mr Jordan correctly identifies the ambiguity and uncertainty and the seriously problematic results of trying to apply the clauses as they read.
5. The implications are problematic for employees and employers. The Union has had to provide advice to hundreds of members over the past three years about how the ambiguity and uncertainty is being applied by their employers and this has resulted in many members cancelling their leave, as the payment they would have received was significantly less than they had expected.
6. The Union has advocated for making changes to clauses 2 and 3 of Appendix 3 since February 2019 to resolve the ambiguity and uncertainty such that the LSL appendix can be applied in a logical manner.
7. The Union agrees with the variation proposed by the application which would delete clause 3.2 and amend clause 2 to remove uncertainty about how long-service leave is accrued and paid under the Appendix.
8. The Union has published repeated articles about the LSL appendix in its journal, on its website and through social media (including facebook, Instagram and twitter). We have, through our Organisers, had many conversations with individual members and groups of members about their long service leave. In those conversations, members have:
 - a. indicated that they understand that the current clauses 3.1 and 3.2 are ambiguous, uncertain and problematic;

- b. expressed their concerns about how the current way the ambiguity is being interpreted would affect (or has affected) the payment of any period of LSL;
 - c. have all agreed that the matter needs to be fixed.
9. Through the Union's organisers, we have made enquiries of members about their attitude to resolving the ambiguity and uncertainty in the way proposed by this application. Even after employees were notified of the proposed variation, and re-notified in the Dioceses of Sale, Sandhurst and Ballarat, the Union has been unable to find a single member who would oppose the variation. Some members would not be affected by the variation, or are disinterested, but otherwise members universally support the proposed variation.
10. For all of the reasons above the Union strongly supports the application and submits that the Commission should approve the variation in the terms sought.

Denis Matson
Senior Industrial Officer
Independent Education Union of Australia
Victoria Tasmania