ASSOCIATION OF INDEPENDENT SCHOOLS OF VICTORIA INC.

ASSOCIATION OF INDEPENDENT SCHOOLS OF VICTORIA INCORPORATED

SUBMISSION

TO

SENATE EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS COMMITTEE

ON

INQUIRY INTO THE *WORKPLACE RELATIONS AMENDMENT (TRANSITION TO FORWARD WITH FAIRNESS) BILL* 2008 (CTH.)

29 FEBRUARY 2008

AiSV

20 Garden St,
South Yarra, Vic 3141
P.O. Box 2138, Prahran, Vic 3181
A0009210H ABN 44 711 074 857

T: (03) 9825 7200 F: (03) 9826 6066
E: aisv@ais.vic.edu.au W: www.ais.vic.edu.au

ABOUT THE ASSOCIATION

The Association of Independent Schools of Victoria Incorporated ('the Association') represents some 213 independent schools or more than nine per cent of all schools in Victoria.

More than 113,000 students or nearly 14 per cent of Victoria's student population attend these independent schools. The Association's membership includes secular and religious schools of various denominations.

The Association provides services and products to enable schools to support their students in the changing educational environment. As a member service organisation, the Association develops and delivers quality products and services to support Member Schools to fund and provide quality educational outcomes.

The Association works closely with state and federal education departments, academic and professional organisations and individuals, contributing to national and state education policy objectives.

PURPOSE OF THIS SUBMISSION

The Association has identified some provisions of the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill* 2008 (Cth.) ('the Transition Bill') that are of concern to its members. The identified concerns also have relevance to employers in the other school education sectors in all Australian States and Territories.

The identified concerns have implications for

- the future working arrangements of teachers, with respect to hours of work and paid leave;
- future working arrangements impacting adversely upon the recruitment of persons into the teaching profession and the retention of teachers currently in the profession; and
- the productivity of teachers.

The Association has confined its comments to the following sections of the Transition Bill, namely:

- Section 576T, and
- Section 576J(i).

In section 3 of this Submission, the Association identifies a concern with Regulation 2.4A (Hours of work) of the *Workplace Relations Act* 1996 (Cth.).

THE SUBMISSION

Section 1

Section 576T (Terms that contain State-based differences) [Subdivision B of Division 3 of Part 10A of the Transitional Bill]

1.1 Section 576T specifies the general rule that modern awards must not contain terms and conditions of employment that are determined by reference to State or Territory boundaries. There is provision for a five-year transition period from the date that a modern award commences.

1.2 Independent school employers and their employees in the State of Victoria understand the need for change in industrial or workplace relations systems. They have experienced many changes since 1993. There is no intrinsic objection to a national workplace relations system. Similarly, there is no objection to legislated minimum conditions of employment, provided there is capacity to recognise that not all sectors within an industry are identical.

1.3 By way of example, the education industry is an industry that has a number of divisions, namely:

- universities;
- TAFEs;
- schools;
- preschools; and
- other entities, such as private training providers.

The Association's members are not for profit organisations that operate schools, and may include the preschool years.

1.4 If regard is given to the employment of school teachers in Victoria, then there are three quite different awards specifying the minimum conditions of employment for teachers depending upon the sector in which they are employed. There is a common rule award applying to the independent school sector, an award applying to the Catholic school sector and an award applying to Victorian Government school teachers.

1.5 It is recognised that the award applying to Victorian government schools may be regarded as an enterprise award and will thus be exempted from the award modernisation process.

1.6 If the award modernisation request and the Australian Industrial Relations Commission require the development of one modern award for the remaining two sectors in Victoria, then this would be a difficult exercise. If the award modernisation request required independent and Catholic schools in each Australian State and Territory to be parties to the one modern award, finding common ground would be even more difficult. The set of conditions of employment that apply in each sector in each State and Territory are different. Any resulting award would

change the conditions of employment for many teachers, and not necessarily to the advantage of teachers or their employers.

1.7 **Recommendation 1**

It is recommended that paragraph 576E of the Transition Bill be amended to require the Australian Industrial Relations Commission to inform itself by consulting with the parties to an award. It is submitted that it is not sufficient to obtain information only by "*undertaking or commissioning research*" (paragraph 576E(4)(a) or by "*consulting with any other person, body or organisation in any manner it considers appropriate*" (paragraph 576J(4)(b). The provision, as currently drafted, has the potential to exclude the award parties from the consultation process.

1.8 The underlying rationale for the recommendation in 1.7 above is that awards have developed over many years. Whilst simplification of the language in awards and amendment of outdated provisions is welcomed, changing the provisions of an award in an industry or industry sector that is different from other industries may be detrimental to the employers and employees in the affected workplaces. It is reasonable to consult the parties to awards, which include employers, employer organisations and unions, about the effects of the changes emanating from an award modernisation request.

1.9 As the award applying to teachers employed by Victorian independent schools is quite different to the awards of other industry sectors, particularly in the context of hours of work and leave arrangements, subsuming the award into a national award may be detrimental to employers and employees. State-based differences currently exist in terms of working arrangements, hours of work, leave entitlements and school holidays. It is submitted that the current arrangements have served employers and employees well over many years and rationalisation is neither needed nor advantageous to employers and teachers.

1.10 **Recommendation 2**

It is recommended that the Australian Industrial Relations Commission be given the discretion to determine whether the State or Territory boundaries of an award should be retained. That is, it is reasonable for the Commission, in response to an award modernisation request, to not make a modern award for some industry sectors or sub-sectors where the stakeholders are able to logically argue that State-based differences have served all parties well and their removal would be detrimental.

Section 2

Section 576J Section 576J (Matters that may be dealt with by modern awards)
[Subdivision A of Division 3 of Part 10A of the Transition Bill]

2.1 Paragraph 576J(1)(i) makes superannuation an allowable modern award matter, despite the extensive regulation of superannuation by federal legislation. Removing superannuation as an allowable award matter from 30 June 2008 had the potential to make it easier for employers and employees to know their legislated superannuation obligations and rights. Allowing superannuation to be a matter in modern awards will create confusion, greater compliance requirements and the possible restriction of employee superannuation fund choice.

2.2 **Recommendation**
It is recommended that superannuation should not be an allowable modern award matter. It is submitted that it is preferable for superannuation rights and obligations to be determined by one source, preferably legislation. This makes it easier and simpler for employers and employees to know and understand their rights and obligations.

Section 3

Regulation 2.4A (Hours of work) of the *Workplace Relations Regulations* 2006 (Cth.)

3.1 Subregulation 2.4A(1) provides that "*Division 3 of Part 7 of the Act (hours of work) does not apply to the employment of an employee while the employee's employment is subject to a transitional award or a common rule*". Subregulation 2.4A(3) states that "*subregulation (1) ceases to have effect at the end of the period of 3 years that starts on the reform commencement*".

3.2 **Recommendation**
It is recommended that the Federal Government extends the operation of Regulation 2.4A(1) of the *Workplace Relations Regulations* 2006 (Cth.) until 31 December 2009 or the start up date of the relevant modern award should the start up date be later than 31 December 2009.

3.3 It is submitted that it would not be fair to employers and employees to delete this Regulation prior to 27 March 2009. Equally, exposing employers to a change in the Australia Fair Pay and Conditions Standard of hours of work in March 2009 before introducing a new, and different, National Employment Standard from 1 January 2010 is unreasonable and potentially confusing.

3.4 In support of this position, the hours of work provision under the Australian Fair Pay and Conditions Standard allows for averaging the

hours of work over a period of 12 months. The hours of work provision under the proposed National Employment Standard does not allow for the averaging of hours. However, there is potential for modern awards to include averaging provisions from 1 January 2010.

3.5 The *Discussion Paper: National Employment Standards Exposure Draft* is seeking public comment about the standard for maximum weekly hours. The Discussion Questions on pages 9 and 10 of the Discussion Paper seek comments in relation to dealing with the long and irregular hours worked by high income employees and the hours of work of pieceworkers. One industry sector that needs to be taken into account when considering hours of work is school education.

3.6 Although the Association will make submissions about this issue to the Workplace Relations Policy Group of the Department of Education, Employment and Workplace Relations by 4 April 2008, the following paragraph provides a summary of the problem facing school employers and their teachers.

3.7 In this paragraph, the Association wishes to foreshadow the difficulty imposed by legislating the hours of work upon schools. For example, the work of teachers in schools could be characterised as seasonal work. There are approximately 39 term weeks in a school year and 13 weeks of school holidays. The school holidays incorporate four weeks' annual leave. During term weeks, it is not uncommon for teachers to work more than 38 hours in many of the weeks. That is, teachers attend school camps, parent/teacher/student interviews, meetings with parents about issues with their children and various school events. In return, the teachers are entitled to school holidays without deduction of pay. It is recognised that teachers may undertake work during school holidays but it is not at the direction of their employers and they are not required to attend for work. In summary, if hours of work are legislated for teachers, the seasonal nature of the work needs to be taken into accounts, whether by averaging the hours over a 12-month period or by some other means.