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\*For all information including pricing, cinema locations and voucher terms and conditions please visit [www.ata.edu.au](http://www.ata.edu.au).

### ATA Board Meetings

The ATA Board meets from time to time (at least four times per year face to face) and conducts regular teleconferences. The ATA Board aims to improve the range of services offered to ATA members.

Members are welcome to contribute items for the Board to discuss through contacting one of the Board members or emailing the ATA at the addresses listed below. Members are invited to contribute to the newsletter, which is published quarterly. The ATA Newsletter is distributed in hard copy form to all members and is also available on the ATA website for download.

Within Tuition Editor: Mohan Dhall  
mdhall@ata.edu.au; Ph (02) 9704 5724 or mobile on (0408) 619 714

### Contacting Us

For contributions and comments please email the ATA mdhall@ata.edu.au or mlopez@ata.edu.au. Alternatively, mail us at:

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# Lucky AAMI now insures ATA members.

Get 12 months cover for as little as \$220.

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- ✓ **Special Tutor Policy** – AAMI have an exclusive offer for ATA members. To find out more about this policy, call 13 22 44.

## 13 22 44

LUCKY YOU'RE WITH AAMI



Offer only available to current ATA members. Read the applicable product disclosure statement or policy wording before making any decision regarding these products. Call 13 22 44 for a copy.

## STOP PRESS STOP PRESS STOP PRESS

### ATA Updates:

The ATA has now formalised complaints-handling within the tuition sector by creating a Conflict Resolution form which can be downloaded from the ATA website. In the past month the ATA has received 2 complaints neither of which involved an ATA member. One involved a Queensland-based computer disk provider engaging in conduct that the complainant felt involved high pressure selling in breach of the *Trade Practices Act 1974 (Cth)*. The other involved a Blue Mountains based business that the complainant said was denigrating one-to-one tuition. All members are reminded to have the Code of Conduct on display and to always abide by the requirements of the ATA Code. This distinguishes ATA members from other tuition providers. The Code is reviewed annually.

### Sticker availability

The ATA has stickers available for car bumpers and for windows of premises. All new members received two such stickers upon acceptance of membership. Additional stickers can be purchased for \$1 each from the office. Postage is free.

### Back Issues of the Newsletter

Previous issues of the ATA newsletter are available upon request. We now have nearly 4 years of quarterly newsletters which cover a huge range of issues relevant to the tutoring industry domestically. Moreover, they can be downloaded free from the ATA website: [www.ata.edu.au](http://www.ata.edu.au).



## The Australian Tutoring Association (ATA) Ltd Announcing a new alliance with Hoyts

The ATA Board is pleased to announce another business alliance. Following on from a very successful alliance with AAMI (formerly RGIB) and a new alliance with Westpac, the Hoyts deal provides significant savings for ATA members. The deal is an offer of packets of 10 tickets to ATA members purchased from the ATA Head Office for \$110. This averages at \$11.00 per ticket instead of the usual retail price of \$17.50 for adults and \$12.50 for children and \$14.50 concession. The ATA deal allows ATA members to purchase 10 movie tickets for \$110 - or at a price of only \$11 each. This is much cheaper than is available for a bulk purchase direct from Hoyts. A purchase of 10 tickets from the Hoyts website would cost \$125 (for 10 Super Saver tickets). With all of our business alliances certain terms and conditions (T&Cs) apply.

### Terms and Conditions\*

1. All vouchers are non-refundable and not subject to any further discount
2. The vouchers are valid for 6 months
3. The vouchers are not for use after 5pm on Saturday nights
4. The vouchers can be redeemed for 3D films but an upgrade fee will be charged
5. The vouchers can be redeemed for Hoyts Extreme and Hoyts Halfpipe screens
6. The vouchers are redeemable for general seating only
7. The vouchers can be redeemed at Hoyts, AMC and selected Palace Cinemas. There are 20 sites in NSW, 2 in the ACT, 6 in WA, 18 in Victoria, 3 in SA and 5 in Qld. For a complete list of the actual cinemas and their locations please visit the ATA website.

A complete list of Terms and Conditions is available from the ATA website: <http://www.ata.edu.au>

Note: The ATA-Hoyts alliance will be trialled for 6 months and then reviewed. If members support the initiative and benefit from it then we shall seek to extend it. The ATA is making an initial investment of 300 tickets available for members and they shall be sold strictly in order in which requests are made. ATA members are encouraged to take advantage of this offer for the benefit of staff in tuition centres and possibly also for the benefit of students. Some ATA registered businesses may seek to use the vouchers as rewards to students.

The ATA Board is currently assessing two more possible business alliances for the express purpose of adding value to membership. If either of these materialises into a formal alliance then members will have a wonderful range of benefits to access.

### Contents Inside this issue:

|   |   |
|---|---|
| Newsletter contents   | 1 |
| ATA-Hoyts Alliance  | 1 |
| The Fair Work Act 2009 (Cth) and the tutoring                 | 2 |
| The Fair Work Act 2009 (Cth) and the tutoring sector (cont'd) | 3 |
| An opening for a new ATA Board Member                         | 3 |
| ATA in the Press  | 4 |
| Tutoring in the news  | 5 |
| Stop Press  | 6 |

### NTA Annual Conference

In April ATA CEO Mohan Dhall will be delivering 2 talks in Louisville, Kentucky, USA to the Annual Conference of the US National Tutoring Association (NTA). This trip is part funded by the ATA and will be used to build on the alliance already formed and to further understand models of certification that can be created which are relevant for the Australian situation.



## The Fair Work Act 2009 (Cth) and the tutoring sector: an open discussion with Fair Work Australia

by Mohan Dhall

In early January and through February the ATA received a number of calls from concerned members in regards to the workings of the *Fair Work Act 2009 (Cth)*. One of the main issues raised was whether the use of casual employees meant that a minimum of three hours had to be paid for every shift. The following research and the conversation transcribed should be helpful to ATA members that are employees but:

### IT DOES NOT CONSTITUTE LEGAL ADVICE.

#### Background research and considerations

When a business operator wants to see whether the casual 3 hour minimum shift requirement applies, in the first instance they need to establish whether the relationship is one of employer-employee or whether it is a business-subcontractor arrangement. This is NOT simply determined by how the business characterises the relationship. It depends on a range of factors such as whether the tutor derives 80% or more of their income from the business, whether the business supplies all materials, whether the place of work is determined by the business and so forth. Assuming that the business DOES engage employees then the next issue to resolve is whether any Award, including modern awards applies. This can be determined by doing a search of the Fair Work government website, State-based industrial relations offices and contacting relevant unions. Only once it is established that there is NO relevant Award or Agreement then can it be the case that no minimum number of casual hours per shift applies. This is the author's understanding as gleaned from the conversation below.

**Please wait for a site operator to respond. DISCLAIMER: Please note that all information collected is handled in accordance with the Fair Work Ombudsman privacy statement, available on our website. The information provided by Fair Work Ombudsman staff is not legal advice. You are now chatting with 'Gail'**

**Gail:** Welcome to the Fair Work Ombudsman's Live Help service. How can I help you today?

**Mohan:** Is it true that all employees on a casual contract must work a minimum of 3 paid hour per session or do they need to be paid for a minimum of three hours?

**Gail:** If the modern award states this then yes they would could you please advise me regarding the following questions. To provide information that is specific to your circumstances, I will first need to determine which industrial instrument applies. Can you advise if a registered agreement been signed (e.g. an AWA, ITEA or Enterprise Agreement) or if are you aware of the specific award code that covers this employment? To help ensure you are provided with accurate information, can you tell me a bit more about the business. What is the name and address of the business? Is it a constitutional corporation (broadly speaking a Pty Ltd). Has the business ever been known by any other name or located at another address? Is the business a financial member of

any associations (for example an employer association)? Was the business created after 27 March 2006?

**Mohan:** I am the CEO of the Australian Tutoring Association. We have about 320 member businesses some of which are based in NSW only and others which are national. Some of the members are asking whether it is true, for a Sydney-based enterprise, that uses university students to tutor, in the absence of any Award (there is no relevant Award) or any other agreement, is the minimum number of hours that must be paid for or worked by such casuals 3 hours?

**Gail:** If they are award free the minim(um) three hours would not apply. (It would) only (apply) if it is part of the modern award.

**Mohan:** So, to be clear: as there is no tutoring award and no agreement of any kind between the casual staff and the employer, then a less than 3 hour pattern of casual work can be negotiated?

**Gail:** I will just check if there is no modern award but if they are award free there would be no minimum casual hours.

**Mohan:** Thanks 'Gail'. I did do a search of Awards - there are two school awards and one tutors award which covers those in ACE Colleges but none for the regular tuition enterprises that I could find. Does this match your search?

**Gail:** Just checking one of the modern awards won't be long.

**Mohan:** While you are checking - I will be writing this up in the ATA Newsletter. It will carry the disclaimer that this is not legal advice. It is however very relevant to probably over half of the ATA member organisations and therefore upwards of 3000 tutors nationally. I trust this is okay?

**Gail:** I have located a modern award that would cover the tutors which is the Educational Services (Post-secondary Education) Award 2010 now I will just check about the casual minimum hours.

**Gail:** Is there anything further that I can help you with today?

**Mohan:** Can I have a link to the Award so I can check whether tutors are included?

**Gail:** Yes won't be long and the causal clause reads as follows:-

**Gail:** 1.1 Casual employment

**Gail:** (a) A casual employee is engaged and paid by the hour.

**Gail:** (b) A casual employee will be paid in accordance with the provisions of clause 14.5.

**Gail:** (c) A casual employee must be paid at the termination of each engagement, or in accordance with the usual payment methods for full-time employees.

**Gail:** For teachers and tutor/instructors, the minimum payment for each engagement will be for two hours' work calculated in accordance with clause 14.5(b). For general staff the minimum payment will be for three hours' work at the appropriate rate

**Mohan:** 2 hours then for tutors, but I now need to determine whether the award applies or not. Most of the tutors do not tutor in the Post-secondary sector so I suspect the award not to be relevant. The tutors may be uni students but the tuition is to primary and secondary students.

**Gail:** I will just check this information for you?

**You are now chatting with 'Michael'**



## The ATA in the Press

- Mohan Dhall

#### NSW Public Schools E-Zine

The NSW government has once again publicly acknowledged tuition and has given ATA members a boost through their electronic magazine which is delivered to every public school in the State. In their E-Zine (Issue No.7), the Department provides a 'Facts on Tutors' Article which runs to two pages. The ATA is extensively quoted. The E-Zine is an important avenue for dialogue direct from the Department to public school parents. ATA members are encouraged to download the article from our website at:

<http://www.ata.edu.au> Click on downloads and read about ATA in the Press

#### Tutors - The way of the future? (from Kids on the Coast)

The Kids on The Coast newspaper is distributed throughout southern Queensland and North Eastern NSW. A very long article on tuition was written which extensively quoted from the ATA President Chris Druett. The author of the article was very keen to encourage a balanced approach to supporting schooling supplemented by tuition where appropriate. The author encouraged parents to ask questions about the tuition they are seeking. Many of these replicate the ATA questions. The author also warns parents against buying computer-based programs costing thousands of dollars (with thousands of dollars of interest in addition) and sold without appropriate support.

#### Office of Fair Trading Tips on Tutoring State-wide Press Release

In Mid-March the NSW Office of Fair Trading (OFT) issued a State-wide media release giving advice to parents in regards to tuition. This was felt necessary in response to the 424 complaints that the OFT had received in NSW through 2009.

From a consumer perspective, for every complaint officially received by the OFT there are thought to be about 9 that go unreported. From an industry point-of-view this is something that all tutors should be concerned about. The reputation of an industry underpins its commercial viability. The OFT has released a sheet titled "Tutoring Tips for parents". In it the OFT suggests that consumers ask questions of prospective tutors. These questions come straight from the ATA website. Furthermore, the OFT recognises the ATA as the industry representative body.

The Fair Trading Deputy Commissioner Steve Griffin said "the right tutor could complement the excellent education provided by schools, but parents should be aware of bogus offers. Parents should exercise caution with overseas or interstate institutions promoting their services on the internet".

The OFT also lets parents know that the ATA can assist with conflict resolution should it be required.

#### Looking for that Extra Educational Edge - Illawarra Mercury Article

Emma Shaw, a journalist with the Illawarra Mercury, wrote an extensive article canvassing the tuition decision. Included in her article was information about the industry and excellent coverage and quoting from the ATA as the peak body representing tutors nationally. Apart from raising the issue of tax deductibility for tuition Shaw also provided a couple of case studies of highly successful tuition intervention. The case studies demonstrated the success of one-to-one and mentor-based classes which have helped students to raise their self esteem and experience academic success.

Balancing the successes was case study on a computer-based provider called Wizzkids that had gone into liquidation last year leaving customers out of pocket and without support. The cost of their computer-based programs was \$8000.

Given the juxtaposition of the case studies, the success of face-to-face tuition and the distress of the family let down by the computer-based option, the ATA is still seeking a meeting with the Federal government to request again tax-deductibility for tuition. This initially need only be up to \$700 and should be extended to families that use ATA members only - as they are the only ones publicly prepared to implement and support the ATA Code of Conduct.

ATA members are encouraged to download all of these articles and to have them on display for parents along with the ATA newsletters.

#### "Meet Mr 100%" - and welcome to a mask on consumer protection issues

The NSW Office of Fair Trading (OFT) recently wanted to raise the profile of consumer protection with respect to tuition. In doing so it gathered detailed case studies of consumer complaints, sought commentary from the ATA and then sought a journalist who would publicise the issues via the medium of the newspaper. Alas this process went bizarrely awry when a Sun Herald reporter wrote an article extolling the virtues of an unnamed tutor working in dingy premises for cash. Both the OFT and the ATA were stunned that a consumer protection message instead sounded like a advertisement. Serious issues such as whether the main tutor promoted was child protection checked (mandatory under NSW law), refunds, the use of statistics (widely accepted at face value by the reporter), OH&S issues and accountability to parents were not addressed. The ATA does not seek to limit journalistic license. Nevertheless, when a message seeking to assist vulnerable persons becomes something that does not raise basic and serious child protection and accountability issues it does leave the consumer, the OFT and the peak body for tutors, bewildered and confused.

## The Fair Work Act 2009 (cont'd)

**Mohan:** I was chatting to 'Gail' about the ATA and casual tutors within the primary and secondary tuition sector. The link was lost - seeking to restore it :-)

**Michael:** I can assist you from this point Mohan. I'll just see where you were up to

**Mohan:** But she was asking her supervisor whether our conversation could be printed in the national ATA newsletter and also searching to determine whether the award she had found - the Educational Services (Post-secondary Education) Award 2010 - is relevant to tutors tutoring primary and secondary students in individual enterprises.

**Michael:** I'm just trying to contact Gail to see what she would like me to do in relation to your enquiry.

**Michael:** I've just made contact, wont be much longer. I apologise for the delay. Thanks for waiting Mohan. Okay the Educational Services (Post-secondary Education) Award 2010 (the) award states the following: 'post secondary education services industry means the provision of education and training to persons over the age of 16 years who have exited the school education system'

**Mohan:** Wait.... the tutors are not tutoring in post secondary education. I don't think it is a relevant award???

**Michael:** Therefore it would appear this award would not apply to your employees.

**Mohan:** All their students go to school...

**Michael:** Exactly. You are correct.

**Mohan:** Right. So that means the two hour or three hour minimum does not apply?

**Michael:** If the employee's are award free there would be no minimum hours per shift.

**Mohan:** Also, am I allowed to write this up for ATA members?

**Michael:** You can write this for your members.

**Mohan:** Thanks

### Commentary and Analysis

There is much to consider about this conversation. Clearly, there is some implication for ATA members that are employers as well for tutors employed by ATA members. Many members operate across State borders and therefore may have their operations determined by an agreement or an Award. If this is the case then such businesses need to do their own research in regards to the whether a minimum number of casual hours must be paid. This situation can arise in a number of scenarios: a tutor is employed to work from 3.30pm until 6.30pm (three hours in succession). On a given day a class or session is cancelled due to non-availability of student(s) leaving the tutor with two hours of work. Should the three hours be paid?

Alternatively, a tutor has two students and currently tutors each for an hour. Should three hours pay apply. Note also, the current minimum national wage is \$14.31 and is subject to increases from time to time. Thus tutors should be paid at least \$42.93 over a three-hour session of work.

For further information on Awards and wages members should visit the Federal government website at: <http://www.fairwork.gov.au> or call: 13 13 94

## An opening on the ATA Board

The ATA Board is seeking new talent! Prospective applicants should consider what they have to offer to the organisation as it grows. The ATA is seeking to find new ways to add value to the membership through business alliances and also through finding innovative means by which to attract investment to the sector. The ATA is very progressive membership based enterprise and is leading the tuition sector particularly in regard to its Code of Conduct and the openness with which the ATA wants to embrace and work with mainstream education.

Skills sought include:

- A capacity to identify market opportunities
- A capacity to attract positive media coverage
- A capacity to work with a dynamic and innovative Board

The Australian Tutoring Association (ATA) Ltd. is non-profit company limited by guarantee and none of the Directors is paid for their time or effort or ideas.

## Consider this.

Is your current Bank charging you extra for accepting Premium, Business and International cards?

Unlike our competitors, Westpac will not surcharge\* ATA Members for the acceptance of:

- Premium Credit Cards - eg Platinum Cards
- International Credit Cards
- Commercial/ Business Credit Cards

Westpac encourages ATA Members to become familiar with their Credit Card acceptance pattern before considering a competitor Merchant Service Fee.

To find out more about our exclusive ATA offer, please contact the Westpac Merchant Business Solutions Team on 1300 365 376, available weekdays 8.30am - 5.30pm (EST).



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## National testing, the Australian ("National") curriculum and tutoring enterprises

By Mohan Dhall

The educational sector in Australia is undergoing significant and at times controversial change. There is at present the development of an Australian curriculum. There is also national basic skills testing at various years (called NAPLAN tests). In addition there has been the launch of the Federal government school ranking and school assessment website called MySchool. These changes are very significant and each has implications for the tutoring sector on a provincial (State and Territory) level and also at the national level.

### The new national Curriculum

The government body responsible for oversight and creation of the new national Curriculum is called ACARA: the Australian Curriculum, Assessment and Reporting Authority. The Authority's role is to oversee the development of the K-12 Australian Curriculum as articulated in the 2008 Melbourne Declaration of Educational Goals for Young Australians. The project for development of the Australian curriculum has three phases:

- **Phase 1:** Development of Australian curriculum for English, History, Maths and Science. This Phase is well progressed and has released draft curricula in English and History. These are currently publically available for comment.
- **Phase 2:** Development of Australian curriculum for Geography, Languages and the Arts
- **Phase 3:** Development of Australian curriculum for the other remaining academic disciplines

To find out more about the Australian curriculum and the progress of the latest developments visit the ACARA website at: [http://www.acara.edu.au/home\\_page.html](http://www.acara.edu.au/home_page.html)

### Implications for Tutoring

Tutoring can take a variety of approaches and be performed for a multitude of reasons. A high proportion of tuition is based on assisting students to successfully engage with and undertake their studies in mainstream schooling. A national curriculum would make it easier for students who might travel interstate in the course of their schooling.

Increasingly large offshore providers of tuition are creating resources for use by Australian students. Invariably, these resources are written offshore and are 'modified' for the Australian curriculum. In reality, the variance between the States has made consumers more vulnerable to exploitation by offshore providers.

The unification of the curriculum nationally should make it easier for domestic tutors to compete with offshore providers who currently benefit from scale and huge levels of capital investment. Tutors may consider adding value to their operations through provision of resources that can be used by students throughout the nation.

In this way, commercial opportunities are being created by this process of nationalisation.

### NAPLAN Testing

The National Assessment Program Literacy and Numeracy or NAPLAN test are held annually in May for Years 3, 5, 7 and 9. These tests are ostensibly for tracking the literacy and numeracy levels nationally. Literacy incorporates reading, writing and language conventions (including spelling, grammar and punctuation). The tests are held for every two years of school from Year 3 - 9. This means that the effects of schooling can be tracked. From a teaching accountability position this is said to be an appropriate means by which to assess the effectiveness of schools generally and teachers specifically. Testing will be expanded over time to include Civics (or the study of society and governance) and Citizenship.

### Civics and Citizenship Testing

Note that in October of 2010 a group of about 6,500 school students in Years 6 and 10 will be sampling the Civics and Citizenship National Test which will be a part of national assessment in future years.

To find out more about the NAPLAN tests and to download past papers visit the NAPLAN website at: [http://www.naplan.edu.au/home\\_page.html](http://www.naplan.edu.au/home_page.html)

### Implications for Tutoring

Studies have shown that parents take assessment and testing very seriously and tutoring peaks in the years that there are tests. Prior to NAPLAN and the MySchool website, peak years were the final year of high school and the years in which students are undertaking tests to enter the private school system on scholarship or undertaking tests to enter academically selective schools. Now, with a series of national tests there will be an added pressure on students and their families to take tuition in order that the results reflect well on the students. In such a climate there are obvious commercial opportunities, however tutor should not lose sight of education in the process of assisting students for such tests. This means reducing as far as possible the competitive elements inherent in testing and focusing on the students becoming the best they can be personally. Stress and anxiety leads students to underperforming, losing self esteem and forgetting their intrinsic worth as distinct from what they get as feedback on a piece of paper.

**The MySchool website:** <http://www.myschool.edu.au/>

Much controversy has been generated by the MySchool government website. Parents always deserve more information about their child's schooling rather than less. However, some parent sand students feel 'dumb' when their school has been ranked lowly on national testing. In Singapore, where schools are also ranked the government has devised a much broader set of criteria on which to assess schools thus not devaluing those that deliver an excellent education in areas where there are social problems, high levels of unemployment, or other disadvantages affecting students and hampering their ability to perform comparatively well on national tests.